

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

BARGAINS & DEALS MAGAZINE, LLC, a  
Washington Limited Liability Company, also doing  
business as BARGAINS & DEALS WHOLESAL, and

MICHAEL P. CASEY, individually and as the  
owner of Bargains & Deals Magazine, LLC, and as  
an officer or director of Keith's Wholesale,

Defendants.

CIVIL ACTION NO. C01-1610P

**STIPULATED FINAL  
JUDGMENT AND ORDER  
FOR PERMANENT  
INJUNCTION**

Plaintiff Federal Trade Commission ("Commission" or "FTC"), pursuant to Sections 13(b) and 19(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b(a), has filed a Complaint for injunctive and other relief, charging defendants with violating Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Federal Trade Commission Trade Regulation Rule entitled "Mail or Telephone Order Merchandise Rule" ("the Rule" or "MTOR"), 16 C.F.R. Part 435. The parties have

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(2) **“Consumer”** and **“Customer”** includes any person, as defined above.

(3) **“Defendants”** means Bargains & Deals Magazine, LLC, also d/b/a Bargains & Deals Wholesale, and Michael P. Casey, and each of them, by whatever names each might be known, as well as their successors, assigns, officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, all other persons or entities directly or indirectly under their control or under common control with them, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division or other device.

(4) **“Document”** is synonymous in meaning and equal in scope to the usage of the term in Federal

- 1           2.     Defendants will ship goods or provide services, within a reasonable time period
- 2                     or within a specified time period, upon receipt of payment for those goods or
- 3                     services;
- 4           3.     Defendants have shipped goods upon receipt of payment for those goods;
- 5           4.     Goods that defendants offer for sale or sell are in new condition; and
- 6           5.     Goods that defendants offer for sale or sell have designer or famous brand
- 7                     names; and

8           B.     Violating or assisting others in violating any provision of the Mail or Telephone Order  
9     Merchandise Rule, 16 C.F.R. Part 435, including, but not limited to:

- 10           1.     Soliciting orders for the purchase of goods without a reasonable basis for
- 11                     believing that they can ship the goods within the time stated in the solicitation or,
- 12                     if no time is stated, within thirty (30) days of the solicitation, as required by 16
- 13                     C.F.R. § 435.1(a)(1);
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1 customers, and shall also include, at a minimum, the following: (1) Adequately monitoring the oral  
2 representations made by persons engaged in sales or other customer service functions; (2) establishing  
3 a procedure for receiving and responding to customer complaints; and (3) maintaining a record of the  
4 number and nature of customer complaints regarding transactions in which each employee or  
5 independent contractor is involved; *provided* that this Paragraph does not authorize or require any  
6 defendant to take any steps that violate any federal, state or local law;

7 B. Failing to investigate promptly and fully any customer complaint received by any  
8 business to which this Paragraph applies; and

9 C. Failing to take corrective action with respect to any sales person whom any defendant  
10 determines is not complying with this Order, which may include training, disciplining, and/or terminating  
11 such sales person.

### 12 III. MONITORING BY DEFENDANTS OF SUPPLIERS

13 **IT IS FURTHER ORDERED** that defendants, in connection with any business where: (1)  
14 any defendant is a majority owner of the business or directly or indirectly manages or controls the  
15 business; and (2) the business is engaged in, or assists others in engaging in, the offering for sale or sale  
16 of any product or service over the Internet, are hereby permanently restrained and enjoined from:

17 A. Failing to take reasonable steps to monitor and ensure that all suppliers engaged in  
18 fulfilling orders for defendants' customers are able to fulfill orders of the type, quality, and in the  
19 condition represented to customers by defendants;

20 B. Failing to take reasonable steps to monitor and ensure that all suppliers engaged in  
21 fulfilling orders for defendants' customers are able to fulfill orders in a timely fashion. Such steps shall  
22 include, at a minimum, establishing a procedure for ensuring that suppliers ship merchandise to  
23 defendants' customers within the time represented by defendants or, if no specific time is represented  
24 by defendants, within thirty (30) days of defendants' receipt of payment from consumers; and

25 C. Failing to take corrective action with respect to any supplier whom any defendant  
26 determines: (1) is not shipping merchandise within the time represented to customers by defendants or  
27 within thirty (30) days of defendants' receipt of payment from consumers; or (2) is not shipping  
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1 merchandise of the type, quality, and in the condition represented to customers by defendants. Such  
2 action may include terminating such suppliers.

#### 3 **IV. CONSUMER REDRESS**

4 **IT IS FURTHER ORDERED** that:

5 A. Defendants shall pay to the FTC consumer redress in the amount of \$15,000.00, for  
6 which they are jointly and severally liable, within ten (10) days of the entry of this Order. Payment shall  
7 be made to the FTC by certified check or other guaranteed funds payable to and delivered to the FTC,  
8 or by wire transfer in accord with directions provided by the FTC;

9 B. All funds paid pursuant to this Paragraph shall be deposited into a fund administered by  
10 the Commission or its agent to be used for equitable relief, including but not limited to consumer redress  
11 and any attendant expenses for the administration of any redress fund. In the event that direct redress  
12 to consumers is wholly or partially impracticable or funds remain after redress is completed, the  
13 Commission may apply any remaining funds for such other equitable relief (including consumer  
14 information remedies) as it determines to be reasonably related to the defendants' practices alleged in  
15 the complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as  
16 disgorgement. The Commission shall have full and sole discretion to:

- 17 1. Determine the criteria for participation by individual claimants in any consumer  
18 redress program implemented pursuant to this Order;
- 19 2. Determine the manner and timing of any notices to be given to consumers  
20 regarding the existence and terms of such programs; and
- 21 3. Delegate any and all tasks connected with such redress program to any  
22 individual, partnerships, or corporations; and pay reasonable fees, salaries, and  
23 expenses incurred thereby from the payments made pursuant to this Order;

24 C. Defendants expressly waive their rights to litigate the issue of disgorgement. Defendants  
25 acknowledge and agree that all money paid pursuant to this Order is irrevocably paid to the  
26 Commission for purposes of settlement between plaintiff and defendants;

27 D. In the event that defendants default on the \$15,000.00 payment set forth in Paragraph  
28 IV.A, the amount of \$15,000.00, less the sum of payments made pursuant to Paragraph IV.A, shall

1 become immediately due and payable by defendants, and interest computed at the rate prescribed  
2 under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance; and

3 E. No portion of this Judgment for equitable relief shall be deemed a fine, penalty or  
4 punitive assessment, or forfeiture. Defendants shall have no right to challenge the Commission's choice  
5 of remedies under this Paragraph.

6 **V. RIGHT TO REOPEN**

7 **IT IS FURTHER ON20**

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1. The individual defendant’s current residential address and telephone number;
2. Identification of the individual defendant’s current employer, the employer’s mailing and physical location addresses and telephone numbers, a description of the business activities of each such employer, and defendants’ title and responsibilities for each employer;
3. A copy of each acknowledgment of receipt of this Order obtained by the defendants pursuant to Paragraph XI; and
4. A statement describing the manner in which the defendants have complied and are complying with this Order;

C. Upon written request by a representative of the Commission, defendants shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) days’ notice with respect to any conduct subject to this Order;

D. For the purposes of this Order, each defendant shall, unless otherwise directed by the Commission's authorized representatives, make all communications to the Commission to:  
Federal Trade Commission

1 915 2<sup>nd</sup> Avenue, Room 2896  
2 Seattle, WA 98174

3 Re: FTC v. Bargains & Deal Magazine, LLC, et al.

4 E. For purposes of compliance reporting required by this Paragraph, the Commission is  
5 authorized to communicate directly with defendants.

#### 6 **VIII. RECORD KEEPING**

7 **IT IS FURTHER ORDERED** that for a period of six (6) years from the date of entry of this  
8 Order, in connection with any business where: (1) any defendant is the majority owner of the business  
9 or directly or indirectly manages or controls the business; and (2) the business is engaged in, or assists  
10 others who are engaged in, the offering for sale or sale of any product or service over the Internet,  
11 defendants and their agents, employees, officers, corporations, successors, and assigns, and those  
12 persons in active concert or participation with them who receive actual notice of this Order by personal  
13 service or otherwise, are hereby restrained and enjoined from failing to create and retain the following  
14 records:

15 A. Accounting records that reflect the cost of goods or services sold, revenues generated,  
16 and the disbursement of such revenues;

17 B. Personnel records accurately reflecting: the name, address, and telephone number of  
18 each person employed in any capacity by such business, including as an independent contractor; that  
19 person's job title or position; the date upon which the person commenced work; and the date and  
20 reason for the person's termination, if applicable;

21 C. Customer files containing the names, addresses, telephone numbers, dollar amounts  
22 paid, quantity of items or services purchases, and description of items or services purchased, to the  
23 extent such information is obtained in the ordinary course of business;

24 D. Complaint and refund requests (whether received directly, indirectly or through any  
25 third party) and any responses to those complaints or requests; and

26 E. Copies of all sales scripts, training materials, advertisements, or other marketing  
27 materials, including copies of all Internet web sites used for marketing products or services offered.

#### 28 **IX. COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**



1 B. To interview the officers, directors, and employees, including all personnel involved in  
2 responding to consumer complaints or inquiries, and all sales personnel, whether designated as  
3 employees, consultants, independent contractors or otherwise, of any business to which Paragraph  
4 X.A. of this Order applies, concerning matters relating to compliance with the terms of this Order. The  
5 person interviewed may have counsel present.

6 *Provided that*, upon application of the Commission and for good cause shown, the Court may  
7 enter an *ex parte* order granting immediate access to any defendant's business premises for the  
8 purposes of inspecting and copying all documents relevant to any matter contained in this Order.

9 **XI. REQUIRED DISTRIBUTION OF ORDER BY DEFENDANTS**

10 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of  
11 this Order, defendants shall:

12 A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of  
13 receipt of same from, each officer or director, each individual serving in a management capacity, all  
14 personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether  
15 designated as employees, consultants, independent contractors or otherwise, immediately upon  
16 employing or retaining any such persons, for any business where: (1) any defendant is the majority  
17 owner of the business or directly or indirectly manages or controls the business; and (2) the business is  
18 engaged in or assists others who are in engaged in, the offering for sale or sale of any product or service  
19 over the Internet; and

20 B. Maintain for a period of three (3) years after creation, and upon reasonable notice,  
21 make available to representatives of the Commission, the original signed and dated acknowledgments  
22 of the receipt of copies of this Order, as required by Paragraph XI.A. of this Order.

23 **XII. RETENTION OF JURISDICTION**

24 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for the  
25 purpose of enabling any of the parties to this Order to apply to the Court at any time for such further  
26 orders or directives as may be necessary or appropriate for the interpretation or modification of this  
27 Order, for the enforcement of compliance therewith or the punishment of violations thereof.



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APPENDIX A

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FEDERAL TRADE COMMISSION,  
Plaintiff,

v.

BARGAINS & DEALS MAGAZINE, LLC, a  
Washington Limited Liability Company, also doing  
business as BARGAINS & DEALS WHOLESALE and  
KEITH'S WHOLESALE, and

MICHAEL P. CASEY, individually and as the owner of  
Bargains & Deals Magazine, LLC,

Defendants.

CIVIL ACTION NO. C01-1610P

**AFFIDAVIT OF DEFENDANT**

Michael P. Casey, being duly sworn, hereby states and affirms as follows:

1. My name is Michael P. Casey. My current residence address is

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I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am a defendant in FTC v. Bargains & Deals Magazine, LLC., et al. (United States District Court for the Western District of Washington).

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3. On \_\_\_\_\_, 2002, I received a copy of the Stipulated Final Judgment and Order for Permanent Injunction, which was signed by the Honorable Marsha J. Pechman and entered by