

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ANTHONY W. ANDREWS, individually and
as an officer and director of the corporate
defendants TNT TALKS, INC., and LEAST
COST UTILITIES, INC.,

TRACY A. ANDREWS, individually and as an
officer and director of the corporate defendants
TNT TALKS, INC., and LEAST COST
UTILITIES, INC.,

TNT TALKS, INC., a Florida corporation,
d/b/a ADVANCED CONSUMER SERVICES,
and

LEAST COST UTILITIES, INC., a Florida
corporation, d/b/a ADVANCED CONSUMER
SERVICES,

Defendants.

Civ. No. 6:00-CV-1410-ORL-28-B

**(PROPOSED) STIPULATED
JUDGMENT AND FINAL ORDER
FOR PERMANENT INJUNCTION
AGAINST DEFENDANTS
ANTHONY W. ANDREWS, TRACY
A. ANDREWS, TNT TALKS, INC.,
AND LEAST COST UTILITIES,
INC.**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), commenced this action by filing its Complaint for a permanent injunction and other relief in this matter on October 23, 2000, pursuant to Sections 13(b) and 19(a) of the Federal Trade Commission Act (“FTC Act”),

15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101 *et seq.* The complaint charges Defendants Anthony W. Andrews, Tracy A. Andrews, TNT Talks, Inc. (“TNT”), d/b/a Advanced Consumer Services, and Least Cost Utilities, Inc. (“LCU”), d/b/a Advanced Consumer Services, with violations of Section 5 of the FTC Act, 15 U.S.C. § 45, and the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310.

The Commission, by and through its counsel, and Defendants, by and through their counsel, have agreed to the entry of this Stipulated Final Judgment and Order of Permanent Injunction (“Final Judgment”) by this Court in order to resolve all matters of dispute between them in this action. The Commission and Defendants have consented to entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without Defendants admitting liability or wrongdoing for the offenses alleged in the Complaint.

NOW, THEREFORE, the Commission and Defendants having requested this Court to enter this Final Judgment, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter of this case and of the parties consenting hereto. Venue in the Middle District of Florida is proper.
2. This is an action instituted by Plaintiff under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101 *et seq.*, and Plaintiff has the authority to seek the relief it has requested.

3. The activities of the Defendants are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.

4. The Complaint states a claim upon which relief may be granted against Defendants under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b, and the TSR, 16 C.F.R. Part 310.

5. Defendants waive all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, *amended by* Pub. L. 104-121, 110 Stat 847, 863-64 (1996).

6. The Defendants have also waived all rights to seek appellate review or otherwise challenge or contest the validity of this Final Judgment, and have further waived and released any claim they may have against the Commission, its employees, and agents.

7. Entry of this Final Judgment is in the public interest.

8. This Final Judgment shall not constitute and shall not be interpreted to constitute either an admission by any Defendant or a finding by the Court that any Defendant has engaged in violations of the FTC Act or the TSR.

ORDER

DEFINITIONS

1.

participation with them who receive actual notice of this Final Judgment by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division or other device.

2. “Assets” means any legal or equitable interest in, right to, claim to, or expectation to receive, any real and personal property, including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, contracts, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, lines of credit, all cash, funds, and any other thing of value, wherever located.

3. “Consumer” means a purchaser, customer, subscriber, or natural person.

4. “Telemarketing” means a plan, program, or campaign that is conducted to induce the purchase of goods or services by use of one or more telephones and involves more than one interstate telephone call made. Provided however, that “telemarketing” does not include telephone calls in which the sale of goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the seller.

5. “Assisting others” means knowingly providing any of the following goods or services to another entity: (1) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any telephone script or other marketing material; (3) providing names of, or assisting in the generation of, potential customers; or (4) performing marketing services of any kind.

6. “Credit Card Protection” means the advertisement, promotion, offering for sale, or sale of any product or service represented to register credit or debit accounts, including credit card accounts, or protect, indemnify, or reimburse the holder of a credit or debit account against unauthorized use or charges.

I.

A. Each Defendant is permanently enjoined from engaging or assisting others, whether directly or indirectly, in concert with others, or through any business entity, in the telemarketing of any product(s) or service(s), unless said Defendant first obtains a performance bond in the principal sum of \$300,000 (three hundred thousand dollars).

B. The terms and conditions of the bond requirement in Paragraph A, above, shall be as follows:

1. The bond is conditioned upon compliance by said Defendant with Section 5(a) of the FTC Act, 15 U.S.C. §§ 45, the TSR, 16 C.F.R. Part 310, and the provisions of this Final Judgment. The bond shall be deemed continuous and remain in full force and effect as long as said Defendant continues to engage in the telemarketing of any product(s) or service(s), and for at least three (3) years thereafter. The bond shall cite this Final Judgment as the subject matter of the bond, and shall provide surety thereunder against financial loss due, in whole or part, to any violation by said Defendant of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the TSR, 16 C.F.R. Part 310, or the provisions of this Final Judgment;
2. The bond shall be an insurance agreement providing surety for financial loss that is issued by a surety company (1) admitted to do business in each state in which said Defendant does business and (2) that holds a Federal Certificate of Authority as Acceptable Surety on Federal Bond and Reinsuring. Such bond shall be in favor of both (1) the FTC, for the benefit of any party injured as a result of any violation

of Section 45(a) of the FTC Act, 15 U.S.C. § 45(a), the TSR, 16 C.F.R. Part 310, or the provisions of this Final Judgment, made while engaging in telemarketing or assisting others in telemarketing of any kind, and (2) any consumer so injured;

3. Said Defendants shall provide a copy of the bond required by this Paragraph to the Regional Director of the Northeast Region of the FTC at least ten (10) days prior to the commencement of the activity for which the bond is required;

4. The bond required by this Final Judgment shall be in addition to, and not in lieu of, any bond required by federal, state, or local law, or the order of another court;

5. The defendants shall not disclose the existence of any performance bond required by this paragraph to any consumer, or other purchaser or prospective purchaser of any product or service that is advertised, promoted, offered for sale, sold, or distributed via telemarketing, without also disclosing clearly and prominently, at the same time, “AS REQUIRED BY ORDER OF THE U.S.

DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA, IN SETTLEMENT OF CHARGES OF FALSE AND MISLEADING REPRESENTATIONS IN THE PROMOTION AND SALE OF CREDIT CARD PROTECTION.”; and

6. The bond shall be executed in favor of the Commission if the Commission

individually or through any other person or entity, violated any condition of the bond.

III.

PROHIBITED BUSINESS PRACTICES

IT IS FURTHER ORDERED that, in connection with the advertising, promotion, offering for sale or sale of credit card protection or other goods or services, Defendants are hereby permanently restrained and enjoined from:

- A. Making, or assisting others in making, expressly or by implication, any false or misleading oral or written statement or representation of material fact, including but not limited to:
1. Whether Defendant(s) is affiliated with, or calling from, or on behalf of, any credit card issuer or government agency;
 2. Consumers' credit-related rights or obligations under law, including consumers' liability for any unauthorized use of a credit card;
 3. Whether consumers purchased or agreed to purchase goods or services from Defendant(s), and therefore authorized Defendant(s) to charge consumers' credit card accounts;
 4. Whether Defendant(s) will provide refunds to consumers upon request, without restrictions or conditions;
- B. Making any other misrepresentation of fact material to a consumer's purchasing decision; and

C. Violating the TSR, 16 C.F.R. Part 310, as attached hereto as Attachment A, or as it may be subsequently amended.

IV.

MONETARY JUDGMENT AND CONSUMER REDRESS

IT IS FURTHER ORDERED that:

A. Judgment in the amount of \$2,000,000 (two million dollars) is hereby entered against Defendants, jointly and severally, for equitable monetary relief, including, but not limited to, consumer redress and/or disgorgement, and for paying any attendant expenses of administering any redress fund. Based upon Defendants' sworn representations in their financial statements and payment of the amounts referred to in Subparagraph B and Paragraph XVIII below, and subject to the provisions in Paragraph V of this Final Judgment and Subparagraph C below, this liability will be suspended;

2. All of Defendants TNT Talks and LCU's property in the Receiver's possession and control, and immediately following the sale of such property, the Receiver shall transfer the proceeds from the sale to the Receivership Trust Account: Suntrust Bank, Account No. 0215252204453;

C. All funds paid pursuant to this Paragraph shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the defendants' practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Paragraph; and

D. Defendants expressly waive their rights to litigate the issue of disgorgement. Defendants acknowledge and agree that all money paid pursuant to this Order is irrevocably paid to the Commission for purposes of settlement between Plaintiff and Defendants, and Defendants relinquish all right, title, and interest to assets held by the receiver or receivership estate, or assets subject to claims by the receiver or assets held by the Commission in connection with this case.

E. The Defendants shall also furnish to the Commission, in accordance with 31 U.S.C. § 7701, their taxpayer identification numbers (social security number, social insurance number,

employer identification number, or Revenue Canada identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of each Defendant's relationship with the government.

V.

RECORDING OF SALES CALLS

IT IS FURTHER ORDERED that in the event that Defendants or their agents record any sales presentation or verification call with a consumer in connection with the sale of any service or product, Defendants are permanently restrained and enjoined from accepting or processing any purchases resulting from such calls unless:

- A. The sales presentation and any verification call are recorded in their entirety with the consumer's permission;
- B. The recording includes clear, complete, and understandable disclosures of all material terms of the purchase, and the consumer's express agreement to such terms;
- C. The material terms disclosed in the recorded conversation shall be consistent with any information previously disclosed to the consumer. Material terms include, but are not limited to:
 - 1. A description of the service or product;
 - 2. The cost of the service or product;
 - 3. The amount of any recurring charges;
 - 4. Limitations on any right to obtain a refund; and
 - 5. The business name, address, and telephone number to which the consumer may address any questions or complaints.

This Paragraph shall not affect any obligation to comply with any federal, state, or local law regarding the recording of telephone conversations.

XI.

MONITORING COMPLIANCE OF SALES PERSONNEL

IT IS FURTHER ORDERED that the Defendants Anthony W. Andrews and Tracy A. Andrews, in connection with any business where (1) Defendants, individually or together, are the majority owners of a business, directly or indirectly control or manage the business, and where (2) the business is engaged in telemarketing, or indirectly uses telemarketing as a means of achieving sales are hereby permanently restrained and enjoined from:

A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with the restrictions placed on Defendants by Paragraph III of this Final Judgment, the FTC Act, and the TSR. Such steps shall include adequate monitoring of sales presentations or other calls with customers, and shall also include, at a minimum, the following:

1. Listening to oral representations made by persons engaged in sales or other customer service functions;
 2. Establishing a procedure for receiving and responding to consumer complaints;
 3. Ascertaining the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved;
- provided* that this Subparagraph does not authorize or require Defendants to take any steps that violate any federal, state, or local laws;

B. Failing to promptly and fully investigate any consumer complaint received by any business to which this Subparagraph applies; and

C.

shall retain such records for any terminated employee for a period of two (2) years following the date of termination;

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

D. Copies of all sales scripts, training materials, advertisements, other marketing materials, or web sites.

the business, either Defendant's duties and responsibilities in connection with the business or employment; and

3. Any proposed change in the corporate structure of either corporate Defendant, or any proposed change in the structure of any business entity owned or controlled by either Defendant, such as creation, incorporation, dissolution, assignment, sale, merger, creation, dissolution of subsidiaries, proposed filing of a bankruptcy petition, or change in the corporate name or address, or any other change that may affect compliance obligations arising out of this Final Judgment, thirty (30) days prior to the effective date of any proposed change; provided, however, that with respect to any proposed change in a business entity about which either Defendant learns of less than thirty days prior to the date such action is to take place, the Defendant shall notify the Commission as soon as is practicable after learning of such proposed change;

B. One hundred eighty (180) days after the date of entry of this Final Judgment, each Defendant shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which the Defendant has complied and is complying with this Final Judgment. This report shall include but not be limited to:

1. The Defendant's current residential address and telephone number;

2. Identification of the 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 responsibilities for each employer;
3. A copy of each acknowledgment of receipt of this Final Judgment obtained by the Defendant pursuant to Paragraph XVII;
4. A statement describing the manner in which the Defendant has complied and is complying with (a) the injunctive provisions of this Final Judgment (Paragraphs I-III), and (b) the consumer redress provisions of this Final Judgment (Paragraph VI); and
5. A statement indicating whether any performance bond has been obtained by Defendants pursuant to Paragraph II, and attaching a copy of any such bond so obtained;

E. For the purposes of this Paragraph, “employment” includes the performance of services as an employee, consultant, or independent contractor; and “employers” include any individual or entity for whom any Defendant performs services as an employee, consultant, or independent contractor; and

F. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with Defendants.

XIV.

COMMISSION’S AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that the Commission is authorized to monitor the Defendants compliance with this Final Judgment by all lawful means, including but not limited to, the following:

A. The Commission is authorized, without further leave of the Court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26 - 37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating the Defendants’ compliance with any provision of this Final Judgment;

B. The Commission is authorized to use representatives posing as consumers or suppliers to Defendants, their employees, or any other entity owned or controlled in whole or in part by Defendants, without the necessity of identification or prior notice; and

C. Nothing in this Final Judgment shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate

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

Provided that, upon application of the Commission and for good cause shown, the Court may enter an *ex parte* order granting immediate access to the business premises of either Defendant for the purposes of inspecting and copying all documents relevant to any matter contained in this Final Judgment.

XVI.

DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Final Judgment, Defendants shall:

A. Provide a copy of this Final Judgment to, and obtain a signed and dated acknowledgment of receipt of same from, each officer or director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such persons, for any business where (1) Defendants, individually or together, are the majority owners of a business, directly or indirectly

control or manage the business, and where (2) the business is engaged in telemarketing, or where telemarketing is indirectly used as a means of achieving sales; and

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

XVII.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that within five (5) business days after receipt of this Final Judgment as entered by the Court each Defendant shall submit to the Commission a truthful sworn and notarized statement, in the form shown on Attachment C, that shall acknowledge receipt of this Final Judgment as entered and shall reaffirm and attest to the truthfulness, accuracy, and receipt of the Final Judgment as entered.

pursuant to this Court's Order for Preliminary Injunction entered on November 2, 2000, shall then be terminated and the provisions of said Preliminary Injunction related to the appointment of the Receiver contained therein shall be dissolved.

XIX.

RETENTION OF JURISDICTION

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

Defendants and the Commission, by its counsel, hereby consent to the terms and conditions of this Final Judgment as set forth above and consent to the entry of an Order with the same terms.

STIPULATED AND AGREED TO BY:

PLAINTIFF:

WILLIAM E. KOVACIC
GENERAL COUNSEL

BARBARA ANTHONY
REGIONAL DIRECTOR
NORTHEAST REGION
FEDERAL TRADE COMMISSION:

ANN WEINTRAUB (AW 3080)
MICHELE STOLLS (MS 3618)

DATED: _____

DEFENDANTS:

ANTHONY W. ANDREWS

DATED: _____

TRACY A. ANDREWS

DATED: _____

TNT TALKS, INC.
ANTHONY ANDREWS, President

DATED: _____

LEAST COST UTILITIES, INC.
ANTHONY ANDREWS, President

DATED: _____

ANDREW COVE
(Fl. Bar No.)
Cove and Associates
Attorney for Defendants

DATED: _____

PERMANENT RECEIVER:

DATED: _____

BRIAN MCDOWELL

SO ORDERED, this _____ day of _____, 2001, at _____.

HONORABLE JOHN ANTOON II
UNITED STATES DISTRICT JUDGE