

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Civil Action No. _____
DEER CREEK PRODUCTS, INC.,	)	
	)	
	)	
v.	)	
	)	
	)	

THEREFORE, upon stipulation of Plaintiff and Defendants, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. This Court has jurisdiction of the subject matter and of the parties.
2. The Complaint states a claim upon which relief may be granted against the Defendants under Sections 5(a)(1), 5(m)(1)(A), 13(b) and 16(a) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b) and 56(a).
3. On September 27, 2002, defendant Deer Creek Products, Inc. filed a voluntary petition for relief under the reorganization provisions of Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq., in the United States Bankruptcy Court for the Southern District of Florida, Case No. 02-27314-PGH (“Bankruptcy Case”). The Commission’s action against Defendant Deer Creek Products, Inc., including the enforcement of a judgment other than a money judgment obtained in this action, is not stayed by 11 U.S.C. § 362(a)(1), (2), (3) or (6) because it is an exercise of the Commission’s police or regulatory power as a governmental unit pursuant to 11 U.S.C. § 362(b)(4) and thus falls within an exception to the automatic stay.

#### **DEFINITION**

4. For the purposes of this Consent Decree, the term “Rule” means the Federal Trade Commission’s Trade Regulation Rule “Mail or Telephone Order Merchandise,” 16 C.F.R. Part 435, or as the Rule may hereafter be amended.

#### **CIVIL PENALTY**

5. Defendants Deer Creek Products, Inc., and Golden Age Products, Inc., their successors and assigns, and Defendant Michael DiStephano, shall pay to Plaintiff a civil penalty, pursuant to section 5(m)(1)(A) of the Federal Trade Commission Act, 15 U.S.C. § 45(m)(1)(A),



## INJUNCTION

8. Defendants, their successors and assigns, and their officers, agents, servants, and employees, and all other persons in active concert or participation with them who receive actual notice of this Consent Decree by personal service or otherwise, are hereby enjoined from violating, directly or through any corporation, subsidiary, division or other device, any provision of the Rule, in any way, including but not limited to:

(a) Soliciting orders for the sale of merchandise by mail, telephone, facsimile or via the Internet unless they have a reasonable basis to expect that they can ship such merchandise within the time clearly and conspicuously stated in the solicitation, or, if no time is clearly and conspicuously stated in the solicitation, within thirty (30) days after receipt of a properly completed order, as required by 16 C.F.R. § 435.1(a)(1).

(b) Failing timely to offer to the buyer an option either to consent to a delay in shipping or to cancel the order and receive a prompt refund, as required by 16 C.F.R. § 435.1(b)(1);

(c) Failing to provide a definite revised shipping date, as required by 16 C.F.R. § 435.1(b)(1);

(d) Failing to provide a prepaid means for buyers to cancel their orders, as required by 16 C.F.R. § 435.1(b)(3); and

(e) Failing to deem the order canceled and to make a prompt refund to buyers who are entitled to such refunds under the Rule, as required by 16 C.F.R. § 435.1(c).

9. In the event the Rule is hereafter amended or modified, Defendants' compliance with the Rule as so amended or modified shall not be deemed a violation of this injunction. A

copy of the Rule is attached hereto as “Appendix A” and incorporated herein as if fully set forth verbatim.

### **RECORDKEEPING REQUIREMENTS**

10. Defendants shall maintain and preserve from destruction all records from the preceding eighteen (18) months demonstrating compliance with the Rule and this Consent Decree, as follows:

(a) All advertisements or other promotional materials for any merchandise covered by the Rule and a complete dissemination schedule for each, including the date and medium of dissemination or the publication and date thereof;

(b) All documents or materials relied upon by the Defendants to substantiate any shipment representation in each advertisement for the merchandise, or, if no shipment representation is made, 30-day shipment;

(c) All documents or materials relied upon by the Defendants to substantiate any shipment representation in any delay option notice or renewed option notice required by the Rule;

(d) All reports, tests, studies, surveys, demonstrations or other evidence (such as complaints from consumers) in their possession or control that contradict, qualify, or call into question any shipment representation in any advertising soliciting the sale of merchandise covered by the Rule (or shipment in 30 days, if no shipment representation is made) or in any delay option notice or renewed option notice or the basis upon which they relied for such representation;

(e) The name and address of each consumer ordering the merchandise;

- (f) The date of their receipt of each consumer's order;
- (g) The applicable time, as set out in Section 435.1(a)(1) of the Rule, for each consumer's order;
- (h) The form of payment (cash, check, money order or charge) for each consumer's order;
- (i) For each consumer's order, the identity and quantity of each item of merchandise ordered;
- (j) The total payment received from each consumer for each consumer's order;
- (k) The date of shipment to the consumer of each item of merchandise in the consumer's order;
- (l) The date of mailing or otherwise providing to each consumer of any delay option notice or renewed option notice required by the Rule;
- (m) If more than one form delay option notice is used, the identity of the form mailed or otherwise provided each consumer;
- (n) The revised or renewed shipment date provided to each consumer in any delay option notice or renewed option notice required by the Rule;
- (o) The date of receipt and type of consumer response to any Rule-required delay option notice or Rule-required renewed option notice;
- (p) The name and address of each consumer who makes any complaint respecting any non-shipment or non-delivery, partial shipment or delivery or untimely shipment or delivery of the merchandise, any non-payment, partial payment or delayed payment of any

refund required by the Rule, or respecting any failure of the Defendants to provide notification of delay and to obtain the consumer's consent thereto, and the date of receipt of the complaint by Defendants;

(q) The date of any consumer request for a refund;

(r) The date and amount of any refund paid to any consumer because of non-delivery or untimely delivery of the merchandise;

(s) All form delay notices and the periods during which they were used; and

(t) All contracts and correspondence with any fulfillment house, drop shipper, agency or other person to perform any activities, directly or indirectly, relating to the advertising, sale or fulfillment of mail or telephone order merchandise, or the keeping of records required by this Consent Decree.

11. In addition to the foregoing, with respect to their compliance with the Rule, for a period of three (3) years after the entry of this Consent Decree Defendants shall maintain and preserve from destruction each complete written complaint of each consumer, including all documentation or other materials included with the complaint by the consumer, respecting any non-delivery, partial delivery or untimely delivery of the merchandise, any non-payment, partial payment or delayed payment of any refund required by the Rule, or respecting any failure of the Defendants to provide notification of delay and to obtain the consumer's consent thereto, and the date of receipt of the complaint by Defendants.

12. For a period of three (3) years after the entry of this Consent Decree, Defendants shall, within fifteen (15) business days of their receipt of a written request

(a) maintain and make available to the Federal Trade Commission or its staff

business records demonstrating compliance with the terms and provisions of this Consent Decree; and

(b) permit the Commission or its staff to inspect and copy all records

Defendants are required by this Consent Decree to keep, *provided, however*, that any documents or records being actively used during the ordinary course of business are to be inspected during non-business hours or at a mutually convenient time.

**PERSONS AFFECTED; CONTINUING JURISDICTION**

13. Defendants shall, within thirty (30) days of the entry of this Consent Decree, provide a copy of this Consent Decree and the Business Guide to the Federal Trade Commission's Mail or Telephone Order Merchandise Rule (Jan. 1995) ("Business Guide") to each of its supervisory or managerial agents, servants, employees and attorneys who are engaged in Defendants' mail, telephone, facsimile or Internet order sales business, secure from each such person a signed statement acknowledging receipt of a copy of this Consent Decree and Business Guide, and shall, within ten (10) days of complying with this paragraph, file an affidavit with the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, setting forth the fact and manner of their compliance, including the name and title of each person to whom a copy of the Consent Decree and Business Guide has been provided.

14. Defendants, their successors and assigns, shall notify the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, at least thirty (30) days prior to any merger, incorporation, dissolution, assignment, sale resulting in the emergence of a successor corporation, creation or dissolution of

a subsidiary or parent, any proposed dismissal or conversion to another Chapter of the Bankruptcy Code of the Bankruptcy Case, or any other changes in corporate status which may affect Defendants' obligations under this Consent Decree. *Provided, however,* that with respect to any proposed change in the corporation about which Defendants learn less than thirty (30) days prior to the date such action is to take place, Defendants shall notify the Commission's Associate Director for Enforcement as soon as practicable after obtaining such knowledge.

15. Defendants, their successors and assigns, shall notify the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580 at least (30) days prior to any change in the individual Defendant's affiliation with, or change in his active participation in the management or direction of, any business which is engaged in the sale or distribution of any merchandise covered by the Rule. *Provided, however,* that with respect to any change about which Defendants learn less than thirty (30) days prior to the date of such change, Defendants shall notify the Commission's Associate Director for Enforcement as soon as practicable after obtaining such knowledge.

16. One hundred twenty (120) days after entry of this Consent Decree, Defendants shall provide a written report to the Federal Trade Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which Defendants have complied and are complying with this Consent Decree. This report shall include but not be limited to:

- (a) a specimen copy of each advertisement or telemarketing script that contains a shipping or delivery representation;
- (b) a specimen copy of each delay option notice used for purposes of complying with any provision of the Rule, and a statement setting forth in detail the procedures

in place for providing such notices to consumers in a timely fashion; and

(c) a statement setting forth in detail Defendants' procedures for timely shipping or providing prompt refunds pursuant to the Rule.

Defendants shall mail this written report to: the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

17. Defendants are hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Federal Trade Commission their taxpayer identifying number (employer identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of their relationship with the government.

18. This Court shall retain jurisdiction of this matter for all purposes, including enabling any of the parties to this Consent Decree 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 Consent Decree, for the enforcement of compliance therewith, or for the punishment of violations thereof.

JUDGMENT IS THEREFORE ENTERED in favor of Plaintiff and against Defendants, pursuant to all the terms and conditions recited above.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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investigation and prosecution of this action.

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FOR THE FEDERAL TRADE COMMISSION:

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FOR THE DEFENDANTS:

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