

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

JOHN STEFANCHIK, individually and as an officer and director of Beringer Corporation,

SCOTT B. CHRISTENSEN, individually and as an officer and director of Atlas Marketing, Inc.,

BERINGER CORPORATION, dba The Stefanchik Organization, a Washington corporation, and

ATLAS MARKETING, INC., also dba The Stefanchik Organization, a Nevada Corporation,

Defendants.

CIVIL ACTION NO.: CV04-1852RSM

**AMENDED PRELIMINARY
INJUNCTION AND ORDER FOR
OTHER EQUITABLE RELIEF AS TO
DEFENDANTS JOHN STEFANCHIK
AND THE BERINGER
CORPORATION**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), has filed a Complaint for permanent injunction and other equitable relief pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), charging defendants John Stefanchik, Scott B. Christensen, Beringer Corporation, and Atlas Marketing, Inc., doing business collectively as “The Stefanchik Organization,” with deceptive acts and practices in connection with the direct mail and

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Internet marketing and telemarketing of course materials, in-person workshops, videotapes, audio tapes and other products and services that purport to teach consumers how to make money brokering, purchasing, and/or reselling privately held mortgages or promissory notes thv2(s)e31hv2(-60.UTD-0.31)

1 4. The acts and practices of the Defendants are in or affecting commerce, as defined
2 in Section 4 of the FTC Act, 15 U.S.C. § 44.

3 5. This Court has the authority to grant a preliminary injunction and other
4 appropriate relief pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b) and Rule 65 of the
5 Federal Rules of Civil Procedure. FTC v. Gem Merch. Corp., 87 F.3d 466, 468-69 (11th Cir.
6 1996); FTC v. World Travel Vacation Brokers, Inc., 861 F.2d 1020, 1025-26 (7th Cir. 1988).

7 6. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the issuance of such
8 preliminary relief upon a proper showing that, weighing the equities and considering the
9 Commission’s likelihood of ultimate success, such action would be in the public interest.

10 7. Section 5(a) of the FTC Act prohibits deceptive acts and practices in or affecting
11 commerce. To be deceptive, an act or practice must be one that is likely to mislead consumers
12 acting reasonably under the circumstances, and is material. FTC v. Pantron I Corp., 33 F.3d
13 1088, 1095 (9th Cir. 1994), *citing* Cliffdale Assocs., Inc., 103 F.T.C. 110, 164-65 (1984).

14 8. The Telemarketing Sales Rule prohibits telemarketers and sellers from
15 misrepresenting directly or by implication, any material aspect of the performance, efficacy, nature
16 or central characteristics of goods or services that are the subject of a sales offer,
17 16 C.F.R. §310.3(a)(2)(iii), and from making a false or misleading statement to induce any person
18 to pay for goods and services, 16 C.F.R. §310.3(a)(4).

19 9. Defendants are “sellers” or “telemarketers” engaged in “telemarketing” as those
20 terms are defined in the Telemarketing Sales Rule. 16 C.F.R. § 310.2(cc).

21 10. The FTC has demonstrated a likelihood of success on the merits under Section
22 5(a) of the FTC Act and under the TSR. As demonstrated by the excerpts taken from
23 Defendants’ direct mail pieces, Internet web site, telemarketing scripts, and sworn consumer
24 declarations, the Defendants have claimed that consumers who purchase Defendants’ products or
25 services will quickly make large amounts of money in their spare time by learning and using the
26 methods taught therein, and that Defendants’ personal coaching service is staffed by persons
27 substantially experienced in the paper business who are readily available by telephone to assist
28 consumers in finding and completing paper transactions. As demonstrated by the declarations of

1 consumers and Manoj Hastak, Ph.D., and the results of the survey Dr. Hastak has conducted of
2 Defendants' purchasers, these claims are likely to be false and/or unsubstantiated and in violation
3 of both Section 5(a)of the FTC Act and the TSR.

4 11. Weighing the equities and considering the FTC's likelihood of success, entry of
5 this Preliminary Injunction and Order for Other Equitable Relief ("Order") is in the public interest.
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7 DEFINITIONS

8 1. "**Defendants**" means John Stefanchik and Beringer Corporation, doing business
9 collectively with the other defendants in this action as "The Stefanchik Organization," and each of
10 them, by whatever names each might be known, as well as their successors and assigns, whether
11 acting directly or through any corporation, subsidiary, division or other device.

12 2. "**Assisting others**" means knowingly providing any of the following goods or
13 services to another entity: (1) performing customer service functions, including, but not limited to,
14 receiving or responding to consumer complaints; (2) formulating or providing, or arranging for
15 the formulation or provision of, any telephone sales script or any other marketing material; (3)
16 providing names of, or assisting in the generation of, potential customers; (4) providing the
17 fulfillment services for the marketing or sale of any product or service; or (5) performing
18 marketing services of any kind.

19 3. "**Document**" is synonymous in meaning and equal in scope to the usage of the
20 term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts,
21 photographs, audio and video recordings, computer records, and other data compilations from
22 which information can be obtained and translated, if necessary, through detection devices into
23 reasonably usable form. A draft or non-identical copy is a separate document within the meaning
24 of the term.

25 4. "**Paper Business**" means the business of finding, brokering, creating, purchasing,
26 and/or selling privateeee(d)-38.1 m(o)-58.1(r)-45.1(t)-60.3(g)-38.1(a)-34.3(g)-38.1(e)28.9(s)-28.9 (o)-58.1(r)-45.1 (p)-38.

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1 G. In connection with telemarketing, as defined in the Telemarketing Sales Rule,
2 violating or assisting others to violate any provision of the Rule, including, but not limited to:

- 3 1. Misrepresenting, directly or by implication, any material aspect of the
4 performance, efficacy, nature, or central characteristics of goods or
5 services that are the subject of the sales offer, in violation of Section
6 310.3(a)(2)(iii) of the Rule, 16 C.F.R. § 310.3(a)(2)(iii); and
- 7 2. Making a false or misleading statement to induce any person to pay for any
8 good or service in violation of Section 310.3(a)(4) of the Rule, 16 C.F.R.
9 § 310.3(a)(4).

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11 **II. NOTICE OF CORPORATE OR PERSONAL ASSET TRANSACTIONS**

12 **IT IS FURTHER ORDERED** that Defendants and their officers, agents, directors,
13 employees, salespersons, independent contractors, subsidiaries, affiliates, successors, assigns, and
14 all other persons or entities in active concert or participation with any of them who receive actual
15 notice of this Order by personal service or otherwise, including by facsimile, are hereby restrained
16 and enjoined from any transfer of any money or tangible or intangible assets or any expenditure
17 with a value of over ten thousand dollars (\$10,000.00) from the date of entry of this Order,
18 without disclosing to the Commission, at least five (5) business days prior to the transfer or
19 expenditure, the purpose and recipient of such transfer or expenditure. The funds, property, and
20 assets affected by this Part shall include both existing assets and assets acquired after the date of
21 entry of this Order, including, without limitation, those acquired by loan or gift.

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23 **III. PROHIBITED DISCLOSURE OF CONSUMER LISTS**

24 **IT IS FURTHER ORDERED** that Defendants and their officers, agents, directors,
25 employees, salespersons, independent contractors, subsidiaries, affiliates, successors, assigns, and
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1 telephone number, credit card number, bank account number, e-mail address, or other identifying
2 information of any person who has paid any money to any Defendant in connection with
3 promoting, offering for sale, selling, or participating in the sale of, directly or indirectly, any target
4 product or service. *Provided*, however, that Defendants may disclose such identifying
5 information to a law enforcement agency or as required by any law, regulation, or court order.
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7 **IV. RECORD KEEPING/BUSINESS OPERATIONS**

8 **IT IS FURTHER ORDERED** that Defendants, and their officers, agents, directors,
9 employees, salespersons, independent contractors, subsidiaries, affiliates, successors, assigns, and
10 all other persons or entities in active concert or participation with any of them who receive actual
11 notice of this Order by personal service or otherwise, including by facsimile, in connection with
12 the advertising, promotion, marketing, offering for sale, or sale of any target product or service,
13 are hereby restrained and enjoined from:

14 A. Failing to create and maintain documents that, in reasonable detail, accurately,
15 fairly, and completely reflect the Defendants' incomes, disbursements, transactions, and use of
16 money, beginning as of the date of entry of this Order;

17 B. Failing to make and keep books, records, accounts, bank statements, current
18 accountants' reports, general ledgers, general journals, cash receipt ledgers, cash disbursement
19 ledgers and source documents, documents indicating title to real or personal property, and any
20 other documents or electronic data which, in reasonable detail, accurately and fairly reflect the
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1 D. Failing to maintain complete records of any consumer complaints and disputes,
2 whether coming from the consumer or any intermediary, such as a government agency or Better
3 Business Bureau, and any responses made to those complaints or disputes; and

4 E. Creating, operating or exercising any control over any business entity, including
5 any partnership, limited partnership, joint venture, sole proprietorship, or corporation, without
6 first providing the Commission with a written statement disclosing: (1) the name of the business
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1 B. Failing promptly to investigate fully any consumer complaint received by any
2 business to which this Part applies; and

3 C. Failing to take corrective action with respect to any sales person whom Defendants
4 determine is not complying with this Order, which may include training, disciplining, and/or
5 terminating such sales person.

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7 **VI. DISTRIBUTION OF ORDER BY DEFENDANTS**

8 **IT IS FURTHER ORDERED** that Defendants shall immediately provide a copy of this
9 Order to each affiliate, partner, subsidiary, division, sales entity, successor, assign, officer,
10 director, employee, independent contractor, agent, attorney, fulfillment house, call center, and
11 representative of the Defendants, and within ten (10) calendar days following service of this Order
12 by the Commission, shall serve upon Nadine Samter, Esq., 915 Second Avenue, Suite 2896,
13 Seattle, WA 98174, an affidavit identifying the names, titles, addresses, and telephone numbers of
14 the persons and entities that Defendants have served with a copy of this Order in compliance with
15 this provision.

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17 **VII. SERVICE OF THIS ORDER BY PLAINTIFF**

18 **IT IS FURTHER ORDERED**
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