

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

BOOKSPAN, a Delaware general partnership,

Defendant.

06 786

Civil No.

HURLEY, J.  
LINDSAY, M.J.

**STIPULATED JUDGMENT AND ORDER FOR PERMANENT INJUNCTION**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or the "Commission"), has

commenced this action by filing the complaint in this Court on February 28, 2006.

the summons and complaint. The parties, represented by the attorneys whose names appear

hereafter, have agreed to settlement of this action without adjudication of any issue of fact or law.

of the FTC Act, 15 U.S.C. § 44.

4. The complaint states a claim upon which relief may be granted against Defendant under Sections 5(a), 5(m)(1)(A), and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 45(m)(1)(A), and 53(b).

5. Defendant has entered into this Stipulated Judgment and Order for Permanent Injunction ("Order") freely and without coercion. Defendant further acknowledges that it has read the provisions of this Order and is prepared to abide by them.

6. Defendant hereby waives all rights to appeal or otherwise challenge or contest the validity of this Order.

7. Defendant has agreed that this Order does not entitle Defendant to seek or to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, and Defendant further waives any rights to attorneys' fees that may arise under said

provision of law

8. By entering into this stipulation, Defendant does not admit any of the allegations set forth in the complaint, other than the jurisdictional facts. Defendant expressly denies all other allegations in the complaint.

9. Entry of this Order is in the public interest.

**DEFINITIONS**

For the purpose of this Order, the following definitions shall apply:

1. "Defendant" means "Bookspan," a Delaware general partnership

2. "Telemarketing Sales Rule" or "Rule" means the FTC Rule entitled "Telemarketing Sales Rule," 16 C.F.R. § 310, attached hereto as Appendix A or as may hereafter

be amended.

3. "Customer" means any person who is or may be required to pay for goods or services offered through telemarketing.

4. "Telemarketing" means

induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address

of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with

person based on: (a) the person's purchase, rental, or lease of the seller's good or services or a financial transaction between the person and seller, within the eighteen months immediately preceding the date of the telemarketing call; or (b) the person's inquiry or application regarding a product or service offered by the seller, within the three months immediately preceding the date of a telemarketing call.

8. "Representatives" means Defendant's successors, assigns, officers, agents, directors, servants, employees, and those persons in active concert or participation with them

9. "Person" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

10. "Outbound telephone call" means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

11. "National Do Not Call Registry" means the National Do Not Call Registry, which is the 'do-not-call' registry maintained by the Federal Trade Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

**ORDER**

**I. PROHIBITION AGAINST ABUSIVE TELEMARKETING PRACTICES**

stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered, unless the provisions of 16 C.F.R.

§ 310.4(b)(3) (the Telemarketing Sales Rule Do Not Call Safe Harbor) are met; or

B. Initiating any outbound telephone call to a person's telephone number on the National Do Not Call Registry of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services, unless the seller proves:

1. The seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person;
2. The seller has an established business relationship with such person and that person has not previously stated that he or she does not wish to receive outbound telephone calls made by or on behalf of the seller; or
3. The provisions of 16 C.F.R. § 310.4(b)(3) (the Telemarketing Sales Rule Do Not Call Safe Harbor) are met.

*Provided, however,* that if the Commission promulgates rules that modify or supersede the Telemarketing Sales Rule, in whole or part, Defendant shall comply fully and completely with all applicable requirements thereof, on and after the effective date of any such rules.

## II. CIVIL PENALTY

IS FINISHED ORDERED that the amount of six hundred eighty

to Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

A Prior to or concurrently with its execution of this Order, Defendant shall pay

the full amount of the civil penalty to its attorney, who shall hold the entire sum for no purpose

other than payment to the Treasurer of the United States after entry of this Order by the Court.

Within five (5) days of receipt of notice of the entry of this Order, Defendant's attorney shall

(10) business days of receiving a request from Plaintiff or the Commission to do so. Defendant further authorizes Plaintiff and the Commission to verify all information provided on its financial disclosure forms with all appropriate third parties, including, but not limited to, financial institutions.

D. In accordance with 31 U.S.C. § 7701, Defendant is hereby required, unless it has done so already, to furnish to Plaintiff and the FTC its taxpayer identifying number (social security number or employer identification number) which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendant's relationship to

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

the government.

### III. ACCURACY OF FINANCIAL INFORMATION

**IT IS FURTHER ORDERED** that Plaintiff's and the Commission's agreement to, and the Court's approval of, this Order is expressly premised upon the truthfulness, accuracy, and completeness of the document headed "Revenue Data from Bookspan Telemarketing Campaigns" dated November 1, 2005 and supporting attachments (hereinafter "Revenue Data")

allegations set forth in the complaint filed in this matter.

**IV. RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Order, Defendant, and its successors and assigns, shall maintain and make available to the Plaintiff or Commission, within thirty (30) days of the receipt of a written request, business records demonstrating compliance with the terms and provisions of this Order.

**V. DISTRIBUTION OF ORDER BY DEFENDANT AND ACKNOWLEDGMENTS OF RECEIPT**

**IT IS FURTHER ORDERED** that Defendant, and its successors and assigns, shall within thirty (30) days of the entry of this Order, provide a copy of this Order including Appendix A to all of its owners, principals, members, officers, and directors, as well as

respect to the subject matter of this Order; secure from each such person a signed statement



merger, incorporation, dissolution, assignment, and sale, which results in the emergence of a successor corporation, the creation or dissolution of a subsidiary or parent, or any other change, which may affect Defendant's obligations under this Order.

**VII. FEES AND COSTS**

**IT IS FURTHER ORDERED** that each party to this Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

~~VIII. SEVERABILITY~~

**IT IS FURTHER ORDERED** that the provisions of this Order are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

**IX. RETENTION OF JURISDICTION**

~~**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for~~

FOR THE PLAINTIFF:

PETER D. KEISLER  
Assistant Attorney General  
Civil Division  
U.S. Department of Justice

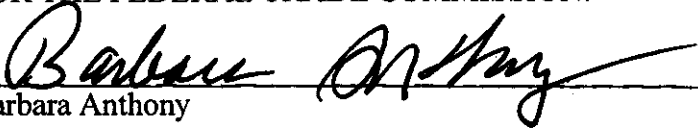
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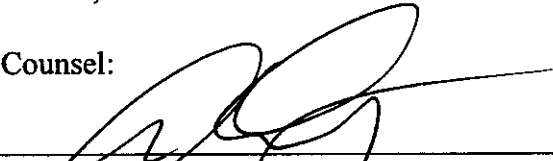
  
Barbara Anthony  
Director, Northeast Region

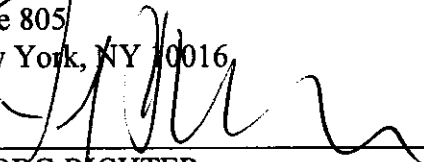
  
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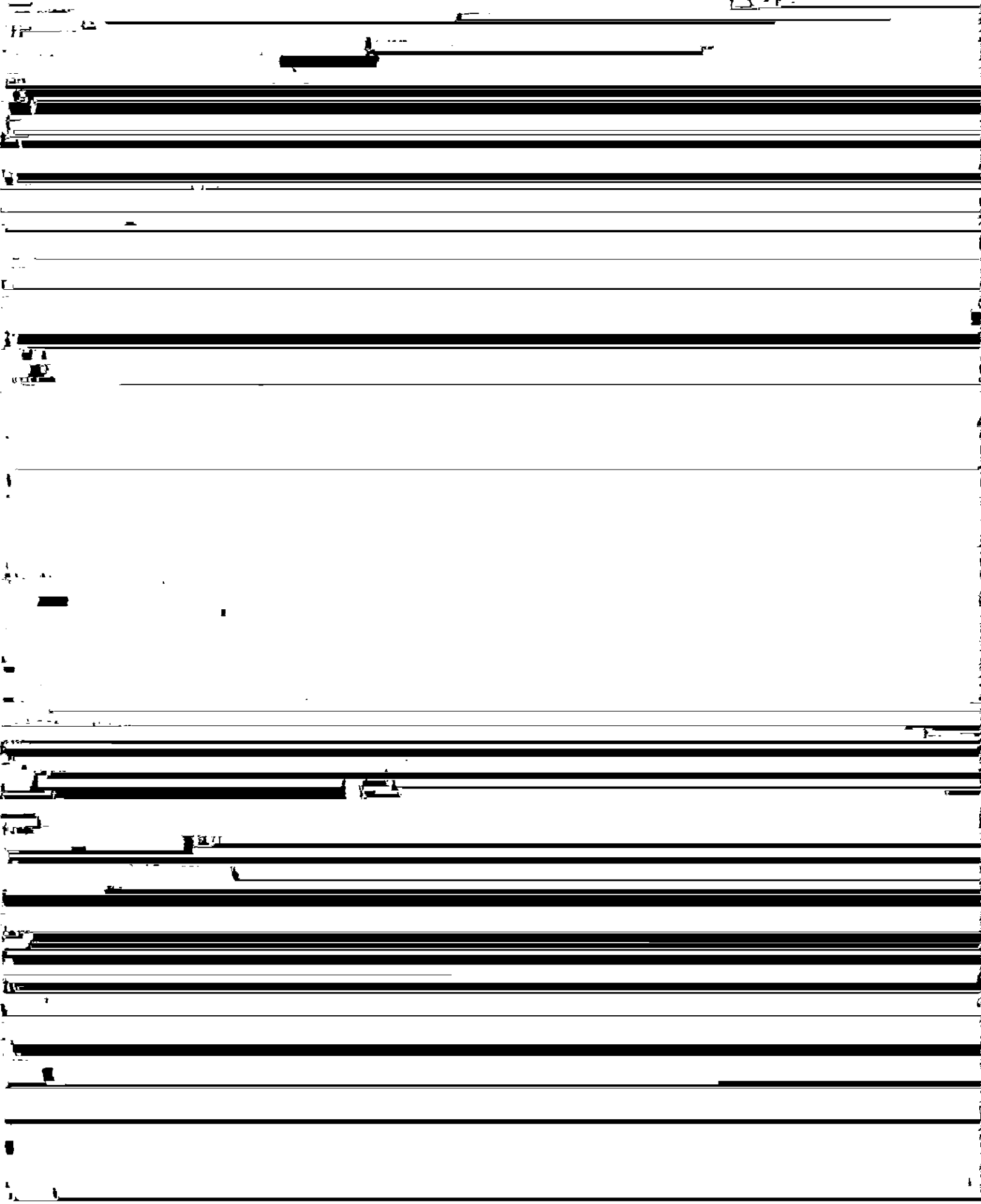
  
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BOOKSPAN  
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RECORDED 18<sup>th</sup> FEBRUARY 2006

REASONS FOR SETTLEMENT

This statement accompanies the final order executed by defendant Bookspan. The final order enjoins defendants from violating the Telemarketing Sales Rule ("Rule"), 16 C.F.R. Part 310, including the National Do Not Call Registry provisions, and it requires payment of a \$680,000 civil penalty.





§ 310.2

16 CFR Ch. I (1-1-05 Edition)

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§ 310.2. Definitions.

(a) *Acquirer* means a business organization, financial institution, or an

(m) *Donor* means any person solicited to make a charitable contribution.

(n) *Established business relationship* means a relationship between a seller

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§ 310.4

16 CFR Ch. I (1-1-05 Edition)

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the credit card system for payment a person's credit history credit record



§ 310.4

16 CFR Ch. I (1-1-05 Edition)

does not connect the call to a sales representative within two (2) seconds of the person's completed greeting.

(2) It is an abusive telemarketing act or practice and a violation of this Rule for any person to sell, rent, lease,

(ii) the seller or telemarketer, for each telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

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Federal Trade Commission

§ 310.6

... directly involved in telephone sales or



Federal Trade Commission

§ 310.8

telemarketer to initiate, an outbound telephone call to any person whose telephone number is within a given area code unless such seller, either directly or through another person, first has paid the annual fee required by

divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) After a person, either directly or through another person, pays the fees set forth in § 310.8(c), the person will be

