

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

H.G. KUYKENDALL, JR.,
DIVERSIFIED MARKETING SERVICE CORP.,
H.G. KUYKENDALL, SR.,
C.H. KUYKENDALL,
NATIONAL MARKETING SERVICE, INC.,
NPC CORPORATION OF THE MIDWEST, INC., and
MAGAZINE CLUB BILLING SERVICE, INC.,

Defendants.

CIV-96-388-M

**PLAINTIFF'S MOTION TO
SHOW CAUSE WHY
DEFENDANTS SHOULD
NOT BE FOUND IN
CONTEMPT FOR
VIOLATING THE
PERMANENT INJUNCTION**

Plaintiff, the Federal Trade Commission (the "FTC" or "Commission"), respectfully submits this Motion to Show Cause Why Defendants Should Not Be Found in Contempt for Violating the Permanent Injunction issued in this case.

H.G. Kuykendall, Jr., Diversified Marketing Service Corp., H.G. Kuykendall, Sr., C.H. Kuykendall, National Marketing Service, Inc., NPC Corporation of the Midwest, Inc., and Magazine Club Billing Service, Inc. ("defendants"), for the past five years, have continued to operate their magazine subscription business in direct violation of the terms of the Permanent Injunction ("PI") entered by this Court in October 1996. As more fully outlined in the accompanying Memorandum in Support of this Motion and accompanying exhibits, defendants have engaged in precisely the same deceptive, misleading, and unfair practices that led to the FTC's original action — misrepresenting the cost or duration of the subscriptions, misrepresenting the reason they obtain consumers' financial account information, charging consumers' accounts without authorization or agreement, refusing to cancel subscriptions, violating state

laws regarding the ability to cancel telemarketing “contracts,” threatening consumers’ credit ratings, and the like. These practices violate the FTC Act, the Telemarketing Sales Rule (the “TSR”), and, of course, the PI itself and have resulted in millions of dollars of consumer injury.

Each of defendants’ subscription “agreements” entered into since the PI is tainted by defendants’ contempt. Accordingly, the FTC seeks an award of consumer redress commensurate with the total payments consumers made to defendants since they regained control of the businesses, less refunds defendants have made to consumers. The Commission also requests that the Court modify the PI to ban defendants from engaging in any future telemarketing until they can show that they can comply with the PI. Finally, the Commission moves the Court to modify the PI to allow the Commission five more years to monitor any telemarketing activities in which defendants might engage.

The defendants either cannot or will not sell magazines in compliance with the PI, to which they willingly agreed. Defendants’ acts and practices in violation of the PI amount to widespread contempt, in total disregard for the PI and the Court’s authority.

Respectfully submitted,

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