

DUPLICATE

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

APR 9 2002

LUTHER D. THOMAS, Clerk
By *[Signature]* Deputy Clerk

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

RICHARD L. PROCHNOW, individually,)
and doing business as Direct Sales)
International;)

DENNIS H. GOUGION; individually and)
as an officer of Media Outsourcing Inc.,)
and as an officer of Cross Media)
Marketing Corp.;)

RONALD S. ALTBACH, individually and)
as an officer of Media Outsourcing, Inc.,)
and an officer of Cross Media)
Marketing Corp.;)

MEDIA OUTSOURCING, INC.; a)
Delaware Corporation transacting)
business in Georgia; and)

CROSS MEDIA MARKETING)
CORPORATION, a Delaware)
Corporation transacting business)
in Georgia,)

Defendants.)

CIVIL NO. 1 02-CV- 917

Judge

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

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

Commission), for its Complaint alleges that:

1. Plaintiff brings this action under Sections 5(a), 5(l), 5(m)(1)(A), 13(b), 16(a) and 19 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. §§ 45(a), 45(l), 45(m)(1)(A), 53(b), 56(a) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (Telemarketing Act), 15 U.S.C. § 6101 *et seq.*, to obtain monetary civil penalties, redress, injunctive and other relief from defendants Richard L. Prochnow (Prochnow), individually and doing business as Direct Sales International, Dennis H. Gougion (Gougion), and Media Outsourcing, Inc. (MOS), for their violations of a final order to cease and desist issued by the FTC and against all defendants for their violations of the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310, and to obtain injunctive and other relief for defendants' deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter under 15 U.S.C. §§ 45(a), 45(l), 45(m)(1)(A), 53(b), 56(a), 57b, 6102(c) and 6103(e), and under 28 U.S.C. §§ 1331, 1337, 1345 and 1355.

3. Venue in the United States District Court for the Northern District of Georgia is proper under 15 U.S.C. §§ 53(b) and 6105(b) and under 28 U.S.C. §§ 1391(b-c) and 1395(a).

DEFENDANTS

4. Defendant Prochnow has done business as, *inter alia*, Magazine Sweepstakes Ltd. and Direct Sales International ("DSI") and is a "consultant" for MOS and Cross Media Marketing Corporation (Cross Media). At all times material to this complaint, acting alone or in concert with others, Prochnow has directed, controlled or participated in the acts and practices of MOS set forth in this Complaint. He resides in this district and transacts business at 2550 Heritage Court, Suite 106, Atlanta, Georgia.

5. Defendant Gougion is an officer of MOS and a member of the management team of Cross Media. At all times material to this complaint, acting alone or in concert with others, Gougion has formulated, directed, controlled or participated in the acts and practices of MOS and Cross Media set forth in this Complaint. He resides in this district and transacts business at 2550 Heritage Court, Suite 106, Atlanta, Georgia.

6. Defendant Altbach is an officer of MOS and Cross Media. Since no later than January 28, 2000, acting alone or in concert with others, Altbach has formulated, directed, controlled or participated in the acts and practices of MOS and Cross Media set forth in this Complaint. In his capacity as Director, President and Chief Executive Officer of MOS he transacts business in or has contacts within the Northern District of Georgia .

7. Defendants Prochnow and Gougion have done business through a number of companies, including Direct Sales International L.P. (DSI LP), a limited partnership with an office and place of business at 2550 Heritage Court, Suite 106, Atlanta, Georgia. DSI LP is owned by Prochnow, two relatives of Prochnow, and Direct Sales, Inc., a Georgia corporation owned by Prochnow. From about 1997 to about early 2000, individually or in concert with others, defendants Prochnow and Gougion directed and controlled the acts and practices of DSI LP.

8. In or about January 2000, defendant Cross Media (then operating under the name Symposium Corporation) acquired substantially all of the assets of DSI LP by incorporating a Delaware company called DSI, Inc., which then purchased DSI LP's assets. DSI, Inc. changed its name to MOS. MOS, a wholly-owned subsidiary of the corporation then known as Symposium Corporation, under the direction and control of Altbach, acquired the assets of DSI LP for a purchase price of approximately \$27.6 million, \$25 million of which was cash to Prochnow. Symposium, through MOS, also assumed some of DSI LP's liabilities. Since no later than January 28, 2000, MOS, under the direction and control of Altbach, Gougion, and Prochnow, has continued substantially all of the same business activities, products and services of DSI LP from 2550 Heritage Court, Suite 106, Atlanta, Georgia. Defendant MOS is a successor to DSI LP.

9. Defendant Media Outsourcing, Inc., is a Delaware corporation with its office and place of business located at 2550 Heritage Court, Suite 106, Atlanta, Georgia. MOS is registered with the Georgia Secretary of State as a foreign for-profit corporation. MOS is a wholly-owned subsidiary of Symposium Corporation, which is now known as Cross Media Marketing Corporation.

10. Defendant Cross Media is a Delaware corporation and the parent company of MOS. Its main offices are at 461 Fifth Avenue, 19th Floor, New York, New York 10017. Through its wholly-owned subsidiary MOS, Cross Media transacts business in this district. In December 2000, Symposium Corporation changed its name to Cross Media Marketing Corporation.

11. At all times material herein, defendants Prochnow, Gougion, and MOS (under its own name and under previous business names) telemarketed magazines and buying service memberships, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, from MOS headquarters at 2550 Heritage Court, Atlanta, Georgia.

12. At all times since on or about January 28, 2000, defendants Altbach and Cross Media telemarketed magazines and buying service memberships, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, from MOS headquarters at 2550 Heritage Court, Atlanta, Georgia.

PRIOR COMMISSION AND COURT PROCEEDING

13. In a Commission proceeding bearing Docket No. C-3698, 122 F.T.C. 495 (1996), in which Prochnow, Gougion, and others were charged by the Commission with violating Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the Commission, on December 13, 1996, issued a final order against Prochnow, individually and doing business as DSI, Gougion, and others to cease and desist certain telemarketing, marketing and debt collection practices (FTC Order).

14. On February 1, 1997, the FTC Order became final and enforceable by operation of law, 15 U.S.C. § 45(g)(2), as to defendants Prochnow and Gougion, and has ever since remained in full force and effect.

15. A copy of the 1996 FTC Order is attached to this Complaint as Exhibit A.

16. On March 17, 1997, the United States District Court for the Southern District of Iowa entered a Consent Decree and Permanent Injunction (1997 injunction) ordering Prochnow to pay \$10,000 in civil penalties and enjoining Prochnow, Gougion and others, *inter alia*, from failing to comply with the FTC Order. United States v. Budget Marketing, Civil No. 80-419-E (S.D. Iowa Mar. 17, 1997). The 1997 injunction resolved an action brought by plaintiff in 1988 against Prochnow, Gougion, and others to enforce a Consent Decree and Judgment entered by the United States District Court for the Southern District of Iowa on

October 10, 1980 (1980 decree). United States v. Budget Marketing, Civil No. 80-419-E (S.D. Iowa Oct. 10, 1980). The 1980 decree resolved the plaintiff's action filed in 1980. By its terms, entry of the 1997 injunction dissolved the 1980 injunction.

COURSE OF CONDUCT

17. From about 1997 until about January 2000, defendants Prochnow and Gougion and DSI L.P., doing business as DSI, were engaged in the advertising, offering for sale, sale or distribution of magazines in or affecting commerce, and from 1998 to January 2000 they were engaged in the marketing of buying service memberships in or affecting commerce.

18. Since about January 2000, defendants Prochnow, Gougion, Altbach, Cross Media and MOS, as a successor to DSI L.P., have continued to engage in the same business activities as described in the preceding paragraph.

Magazine Subscriptions

19. At all times material herein, defendants Prochnow, Gougion, and MOS (under its own name and under previous business names) have sold magazines through their own telemarketing operations, and through other persons or entities referred to as, e.g., "dealers," "independent contractors," "telemarketers," "verifiers" and "lead brokers" (all of whom work on behalf of defendants and are hereinafter sometimes referred to as "representatives").

These magazines sold by defendants include those published by national publishers of business and professional magazines and consumer magazines. Since on or about January 28, 2000, defendants Altbach and Cross Media have engaged in the same activities described in this paragraph, also acting through representatives.

20. Defendants or their representatives sell packages consisting of about six to ten magazine subscriptions of varying lengths. Generally each magazine package includes some subscriptions lasting only a year and others lasting two to five years. Defendants charge as little as \$400 for the smaller magazine packages and as much as \$1,300 for the larger packages.

21. Defendants or their representatives contact consumers by telephone to solicit them to enter into subscription agreements, which provide for the purchase of magazines and payment therefor on an installment basis. This method of sale is referred to in the magazine industry as "paid-during-service." Defendants or their representatives also contact consumers by sending them postal mailers inviting them to telephone defendants' representatives, who then enter the consumers into a sweepstakes and pitch magazines to them. In numerous instances, these postal mailers do not disclose that the purpose of the contact is to sell magazines, even though the FTC Order requires such a disclosure in such written communications with consumers.

22. During the telemarketing calls, defendants' representatives in numerous instances fail to disclose information they are required by the FTC Order to disclose to consumers. They fail to disclose the following information to the consumer prior to the time the consumer agrees to the magazine sales agreement: (a) the total cost of each magazine and all the magazines covered by the agreement; (b) the downpayment or first payment required and the number, amount, and due dates of all subsequent installment payments, and the amount of any finance charges; (c) the method of payment; and (d) the purchaser's right to cancel the order within three business days (or the actual number of days if defendants offer a cancellation period longer than three days) after the date the consumer receives the sales agreement by mailing a notice of cancellation.

23. During the telemarketing calls, defendants' representatives in numerous instances misrepresent: (a) either that consumers can cancel their magazine orders at any time or that they cannot cancel their orders at all; and (b) the cost of the magazines or the payment terms.

24. Defendants' representatives also represent that the magazines cost \$2.88 or some other amount per week, a practice prohibited by the FTC Order because the consumers do not have the option of making weekly payments for the magazines.

25. Once a consumer agrees to order magazines, defendants'

representatives generally submit the subscription order to MOS for verification of the order. MOS then contacts the consumer by telephone, which may occur any time between one hour and several days after the initial sale. During verification calls, MOS represents, in violation of the FTC Order, that the magazines cost \$2.88 or some other amount per week, even though consumers do not have the option of making weekly payments for the magazines. In addition, during the verification calls, MOS offers buying service memberships to consumers, as explained in more detail below.

26. After the verification call, the defendants place a credit card charge against the consumer's credit card for the first payment and submit the order to a magazine publisher representative, who directly fulfills magazine orders to the consumer within four to eight weeks.

27. The defendants also sometimes send consumers a written sales agreement. That agreement lists the magazines chosen by the consumer and some of the other terms of the magazine order. In numerous instances, neither the defendants' sales agreement nor any other accompanying documents sent to the consumer discloses in a clear and conspicuous manner the information that the FTC Order requires the defendants to disclose to consumers in writing. Specifically, defendants fail to disclose clearly and conspicuously in writing: (a) the name and number of months of service of each magazine covered by the

agreement; (b) the total cost of each magazine and all magazines covered by the agreement; (c) the number, amount and due dates of all payments; (d) the method of payment; and (e) the purchaser's right to cancel the order within three business days after he receives the sales agreement (or the actual number of days if defendants offer a cancellation period longer than three days).

28. Defendants Prochnow, Gougion and MOS also violate the FTC order because the sales agreements sent to consumers do not set forth the dates on which such agreements were mailed, even though the FTC Order requires the agreement to display this date or the date the consumer signed the agreement. The agreements frequently display a date one to three weeks earlier than the dates they are received by consumers. Further, in numerous instances, defendants Prochnow, Gougion, and MOS fail to provide on a sheet separable from the sales agreement a clearly understandable form which the purchaser may use as a notice of cancellation, even though the FTC Order requires them to do so. In still other cases, consumers have received no written agreements at all. By failing to send written agreements, failing to disclose clearly and conspicuously the right to cancel the order, either pre-dating sales agreements or mailing them long after dating them; and failing to provide a separable, clearly understandable cancellation form, defendants Prochnow, Gougion, and MOS discourage or prevent consumers from exercising their right to cancel the

magazine order.

29. As a result of the deceptive and misleading practices described above, in numerous instances defendants processed magazine orders including terms which the consumers did not agree to. In numerous instances, defendants billed or charged consumers for magazines they did not order or placed credit card charges in amounts that consumers did not agree to pay.

30. In numerous instances, defendants failed to honor cancellation requests where defendants or their representatives had previously either (a) represented to such consumers that they could cancel; or (b) misrepresented the cost of the magazines or payment terms, even though the FTC Order requires defendants Prochnow, Gougion, and MOS to honor such cancellation requests. In some instances, defendants Prochnow, Gougion, and MOS failed to provide full refunds to consumers who canceled their magazine orders, even though the FTC Order requires defendants Prochnow, Gougion, and MOS to provide them with full refunds. Defendants also misrepresented to consumers requesting cancellation that they could not cancel, to induce the consumers into making additional installment payments by credit card pursuant to the magazine sales agreement.

31. Defendants Prochnow, Gougion, and MOS fail to monitor adequately the operations of their representatives and to discontinue doing

business with those representatives who continually engage in conduct prohibited by the FTC Order.

Buying Service Memberships

32. Upon information and belief, from 1998 to 2001, defendants Prochnow, Gougion, and MOS were parties to a joint sales agreement with one or more third parties to "upsell" a buying service membership after defendants obtain credit card information from consumers to purchase the magazines. Upon information and belief, from on or about January 28, 2000, defendants Altbach and Cross Media, acting through MOS, were parties to such agreements. Defendants promote the buying service during the verification call, after verifying the magazine purchase. In their sales pitch for the buying service, defendants represent that consumers will receive a "no obligation" 30-day membership in the buying service through which they can purchase various goods and services at discount prices.

33. In numerous instances, defendants do not disclose during the calls described in the preceding paragraph that they will transfer the consumer's credit card information to a third party buying service, so that the third party can charge the consumer's credit card. In addition, defendants do not disclose, in a manner consumers are likely to notice and understand, that: (a) the buying service will charge the consumer's credit card the annual membership fee of

between \$72 and \$96 shortly after the 30-day membership ends, unless the consumer calls the buying service within 30 days to cancel the membership; and (b) the buying service will charge the consumer's credit card the annual membership fee every year thereafter, unless the consumer calls the buying service to cancel the membership. In many instances, defendants completely fail to disclose the above facts regarding the terms of the buying service membership.

34. In numerous instances, defendants announce that they are providing a 30-day membership and sending a membership kit but do not request the consumer's authorization either to send the membership kit or to charge the consumer's credit card for the membership. Neither a consumer's willingness to receive a membership kit nor the consumer's failure to object when defendants announce that they are sending a membership kit constitutes authorization to charge the consumer's credit card.

35. If a consumer agrees to accept a 30-day membership, and in many instances, even if a consumer does not agree, defendants provide the consumer's name and credit card number or other billing information to the buying service. Defendants then inform the buying service that the consumer accepted the buying service offer. Shortly after defendants provide this information to the buying service, the buying service mails, by third-class bulk mail, a membership kit to the consumer. The kit discloses that the consumer must call to cancel the

membership to avoid a credit card charge, and the telephone number that the consumer must call to cancel the membership. However, many consumers do not open these kits because they appear to be unsolicited promotional or sales materials.

36. Within about 45 days after the defendants provide the consumer's name and billing information to the buying service, the buying service charges the consumer's credit card, unless the consumer has notified the buying service by calling a toll-free number provided only in the membership kit that the consumer wishes to cancel the membership. Thus, in numerous instances the buying service places unauthorized credit card charges as a consequence of the defendants having earlier provided the billing information and represented to the buying service that the consumer authorized the charge. While the buying service's toll-free telephone number appears on the consumer's credit card statement, along with the charge for the buying service membership, the disclosure comes too late for the consumer to avoid a credit card charge and in many instances escapes detection.

37. Numerous consumers did not agree to accept 30-day introductory memberships and did not recall receiving necessary information about cancellation, however, these consumers inadvertently paid the unauthorized credit card charges.

FTC ORDER VIOLATIONS

FIRST CAUSE OF ACTION:

38. On numerous occasions since April 1997, in the course of selling magazine subscriptions through "paid-during-service plans," defendants Prochnow, Gougion, and MOS failed to reveal in writing, with such conspicuousness and clarity as will likely to be read by the purchasers, the following terms of the subscription order:

- a. The name and the exact number of months of service of each publications covered by the contract;
- b. The total cost of each publication and all the publications covered by the contract;
- c. The downpayment or first payment required and the number, amount, and due dates of all subsequent installment payments, and the amount of any finance charges;
- d. The method of payment; and
- e. The purchaser's right to rescind or cancel the subscription order within three business days (or the actual number of days if defendants offer a cancellation period longer than three days) after date of receipt of the sales agreement by mailing a notice of cancellation to the seller's address or, if the seller uses a service

company, to the service company's address, before the expiration of the cancellation period;

thereby violating Parts I(h)(i) through I(h)(v) of the FTC Order.

SECOND CAUSE OF ACTION:

39. On numerous occasions since April 1997, defendants Prochnow, Gougion, and MOS failed to furnish to each consumer a final copy of the consumer's subscription contract, showing either the date mailed to the consumer or the date the consumer signed the contract, and the name of the seller with the seller's address and telephone number or, if the seller uses a service company, the address and telephone number of the service company, thereby violating Part I(m) of the FTC Order.

THIRD CAUSE OF ACTION

40. On numerous occasions since April 1997, defendants Prochnow, Gougion, and MOS failed to provide on a sheet separable from the written sales agreement a clearly understandable form which the purchaser may use as a notice of cancellation, thereby violating Part I(n) of the FTC Order.

FOURTH CAUSE OF ACTION

41. On numerous occasions since April 1997, defendants Prochnow, Gougion, and MOS failed or refused a request to cancel a contract when the representation has been made that the contract will be cancelable, thereby

violating Part I(f) of the FTC Order.

FIFTH CAUSE OF ACTION

42. On numerous occasions since April 1997, defendants Prochnow, Gougion, and MOS failed or refused to cancel, at the subscriber's sole option, all of any portion of a subscription contract whenever any misrepresentation prohibited by the FTC Order has been made, thereby violating Part I(r) of the FTC Order.

SIXTH CAUSE OF ACTION

43. On numerous occasions since April 1997, defendants Prochnow, Gougion, and MOS made references or statements as to the sum of money or duration or period of time in connection with a subscription contract or other purchase agreement which does not in fact provide, at the option of the purchasers, for the payment of the stated sum, at the stated interval, and over the stated duration or period of time, thereby violating Part I(g) of the FTC Order.

SEVENTH CAUSE OF ACTION

44. On numerous occasions since April 1997, defendants Prochnow, Gougion, and MOS assisted their telemarketers to mail thousands of post cards to consumers. These post cards state "We are going nuts looking for you" in an attempt to induce consumers to call the toll-free numbers listed on the post cards. The post cards do not disclose that the purpose of the contact is to sell magazines.

45. Defendants Prochnow, Gougion, and MOS thereby furnished or otherwise placed in the hands of others the means and instrumentalities by and through which the public may be misled or deceived in the manner or as to things prohibited by Part I(c) of FTC Order, thereby violating Part I(s) of the FTC Order.

EIGHTH CAUSE OF ACTION

46. On numerous occasions since April 1997, in connection with the sale or promotion of magazines by dealers, franchisees, licensees, employees, salespersons, agents, solicitors, independent contractors, or other representatives (who are not themselves respondents to the FTC Order), defendants Prochnow, Gougion, and MOS failed to institute and continue a program of continuing surveillance adequate to reveal whether the business operations of each such representative conform to the requirements of the FTC Order, thereby violating Part II(F) of the FTC Order.

NINTH CAUSE OF ACTION

47. On numerous occasions since April 1997, in connection with the sale or promotion of magazines by dealers, franchisees, licensees, employees, salespersons, agents, solicitors, independent contractors, or other representatives (who are not themselves respondents to the FTC Order), defendants Prochnow, Gougion, and MOS failed to discontinue dealing with any representatives who,

as revealed by the program of surveillance set forth in Part II(F) of the FTC Order, continue the deceptive acts or practices prohibited by the FTC Order, thereby violating Part II(G) of the FTC Order.

VIOLATIONS OF THE FTC'S TELEMARKETING SALES RULE

48. In the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*, Congress directed the Commission to prescribe rules prohibiting deceptive and abusive telemarketing acts or practices. On August 16, 1995, the Commission promulgated the Telemarketing Sales Rule, 16 C.F.R. Part 310, with a Statement of Basis and Purpose, 60 Fed. Reg. 43842 (August 23, 1995). The Telemarketing Sales Rule became effective December 31, 1995, and since then has remained in full force and effect.

49. The Telemarketing Sales Rule prohibits sellers and telemarketers, before a customer pays for goods or services offered, from failing to disclose, in a clear and conspicuous manner, all material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer. 16 C.F.R. § 310.3(a)(1)(ii) (2001).

50. The Telemarketing Sales Rule prohibits sellers and telemarketers from making a false or misleading statement to induce any person to pay for goods or services. 16 C.F.R. § 310.3(a)(4) (2001).

51. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102

(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), violations of the Telemarketing Sales Rule constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

52. Defendants are “telemarketers” or “sellers” engaged in “telemarketing” as those terms are defined in the Telemarketing Sales Rule, 16 C.F.R. § 310.2(r), (t) and (u) (2001).

TENTH CAUSE OF ACTION

53. In numerous instances since sometime in 1998, defendants Prochnow, Gougion, MOS, and, since on or about January 28, 2000, all defendants, directly or acting through their representatives, in connection with their telemarketing of buying service memberships, failed to disclose, in a clear and conspicuous manner, before consumers pay for the buying service memberships, all material restrictions, limitations or conditions to purchase, receive or use the goods or services that are the subject of the offers, including, but not limited to,

- a. That a consumer who fails to contact the buying service within a certain period of time to cancel the 30-day membership is automatically enrolled as a member in the buying service, and the consumer’s credit card is charged an annual fee; and
- b. That a member’s credit card is charged a renewal fee each

subsequent year unless the member cancels the membership.

Defendants Prochnow, Gougion, Altbach, MOS, and Cross Media have thereby violated Section 310.3(a)(1)(ii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(1)(ii) (2001).

ELEVENTH CAUSE OF ACTION

54. In numerous instances since April 1997, in connection with their telemarketing of magazines, defendants Prochnow, Gougion, and MOS, or their representatives, and, since on or about January 28, 2000, Altbach and Cross Media, or their representatives, have made false or misleading statements to induce consumers to pay for magazines, including but not limited to, when consumers try to cancel their purchase of magazines, misrepresenting that consumers cannot cancel their purchase of magazines, in violation of Section 310.3(a)(4) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(4).

VIOLATIONS OF SECTION 5(a) OF THE FTC ACT

55. Pursuant to Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), unfair or deceptive acts or practices in or affecting commerce are declared unlawful.

TWELFTH CAUSE OF ACTION

56. In numerous instances since April 1997, in connection with the promotion, marketing, offering for sale, or distribution of magazines and buying service memberships, defendants Prochnow, Gougion, or MOS, or their

representatives, and, since no later than on or about January 28, 2000, defendants Altbach and Cross Media, or their representatives, have represented, expressly or by implication, that they are collecting financial information, such as credit card numbers, to pay for the ordered magazines.

57. Defendants or their representatives have failed to disclose to consumers that the consumer's financial information is turned over to a third party that charges the consumer's credit card for a buying service membership. These facts would be material to consumers in their purchase of magazines.

58. In light of the representation set forth in paragraph 56, defendants' failure to disclose the material information set forth in paragraph 57 was, and is, a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THIRTEENTH CAUSE OF ACTION

59. In numerous instances since April 1997, defendants Prochnow, Gougion, and MOS, or their representatives, and, since on or about January 28, 2000, defendants Altbach and Cross Media, or their representatives, in connection with the promotion, marketing, offering for sale, sale, or distribution of magazines and buying service memberships, have represented, expressly or by implication, that consumers who agree to their offer will receive a "no obligation" 30-day membership in a buying service.

60. Defendants have failed to disclose adequately to consumers:
- a. That a consumer who fails to contact the buying service within a certain period of time to cancel the 30-day membership is automatically enrolled as a member in the buying service, and the consumer's credit card is charged an annual fee; and
 - b. That a member's credit card is charged a renewal fee each subsequent year unless the member cancels the membership.

These facts would be material to consumers in their acceptance of 30-day membership offers.

61. In light of the representation set forth in paragraph 59, defendants' failure to disclose adequately the material information set forth in paragraph 60 was, and is, a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

FOURTEENTH CAUSE OF ACTION

62. In numerous instances since April 1997, defendants Prochnow, Gougion, and MOS, or their representatives, and, since no later than on or about January 28, 2000, defendants Altbach and Cross Media, or their representatives, in connection with the promotion, marketing, offering for sale, sale, or distribution of magazines and buying service memberships, have represented, expressly or by implication, that only the cost of the magazines purchased from

the defendants will be charged to the consumer's credit card and no other charges to the consumer's credit card will be made without the consumer's further express authorization.

63. In truth and in fact, in numerous instances, in addition to being charged for the cost of magazines purchased from the defendants, the consumer's credit card was charged for the annual cost of a buying service membership without the consumer's further express authorization.

64. Therefore, the representation set forth in paragraph 62 was, and is, false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CIVIL PENALTIES, REDRESS, INJUNCTIVE AND OTHER EQUITABLE RELIEF

65. Sections 5(l) and 5(m)(1)(A) of the FTC Act, 15 U.S.C. §§ 45(l) and 45(m)(1)(A), and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and Section 1.98(c) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(c), authorize this Court to award monetary civil penalties of not more than \$11,000 for each violation of the FTC Order or the Telemarketing Sales Rule that occurs on or after November 20, 1996.

66. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize the Court to award such relief

as is necessary to redress the injury to consumers or others resulting from defendants' violations of the Telemarketing Sales Rule, including the rescission and reformation of contracts and the refund of monies.

67. Sections 5(l), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(l), 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to issue a permanent injunction against defendants' violating the FTC Order, the Telemarketing Sales Rule and the FTC Act, and to order ancillary relief, including consumer redress.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests this Court, pursuant to 15 U.S.C. §§ 45(a), 45(l), 45m(1)(A), 53(b), 56(a), 57b, 6102(c) and 6105(b), and pursuant to the Court's own equitable powers to:

1. Enter judgment against all defendants and in favor of plaintiff for each violation alleged in this Complaint;
2. Award plaintiff monetary civil penalties from each of defendants Prochnow, Gougion, and MOS for each day of violation of the FTC Order, and monetary civil penalties from all defendants for each day of violation of the Telemarketing Sales Rule alleged in this Complaint;
3. Permanently enjoin defendants Prochnow, Gougion, and MOS from violating the FTC Order, and permanently enjoin all defendants from violating

the Telemarketing Sales Rule and the FTC Act, as alleged herein;

4. Award such relief as the Court finds necessary to redress injury to consumers resulting from violations of the FTC Order by defendants Prochnow, Gougion, and MOS, and from violations of the Telemarketing Sales Rule and the FTC Act by all defendants, including, but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten monies; and

5. Award plaintiff such additional relief as the Court may deem just and proper.

DATED: April __, 2002.

Respectfully submitted,


ROBERT MCCALLUM, JR.
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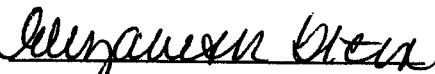
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I certify that this complaint was prepared in accordance with Local Rules 5.1B and 7.1D


Elizabeth Stein