

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff

v.

TERRANCE MAURICE HOWARD,
doing business as True Techniques and
Absolute Mailers,

Defendant

Civil Action No. SA02CA0344

**STIPULATED FINAL JUDGMENT AND ORDER FOR
PERMANENT INJUNCTION AND MONETARY RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), commenced this action by filing its complaint pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), charging the defendant Terrance Maurice Howard, doing business as True Techniques and Absolute Mailers, with engaging in deceptive acts and practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

Plaintiff, through its counsel, and defendant Terrance Maurice Howard have agreed to the entry of this Final Judgment and Order by this Court in order to resolve all matters in dispute in this action. The Commission and the defendant have consented to entry of this Final Judgment and Order

without trial or adjudication of any issue of law or fact herein and without the defendant admitting liability for any of the violations alleged in the complaint or for any wrongdoing whatsoever.

Being fully advised in the premises and acting upon the joint motion of the parties, the Commission and Terrance Maurice Howard, to enter this Final Judgment and Order,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and all parties thereto;
2. The complaint states a claim upon which relief may be granted against the defendant under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b);
3. Venue in this district is proper under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53 (b);
4. The activities of the defendant are in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;
5. Entry of this Final Judgment and Order is in the public interest; and
6. Defendant has waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, and all rights to seek judicial review or otherwise challenged the validity of this Final Judgment and Order.

DEFINITIONS

For the purpose of this Stipulated Final Judgment and Order, the following definitions shall

apply:

1. ***“Plaintiff,”******“Commission,”*** or ***“FTC”*** means the Federal Trade Commission.
2. ***“Defendant”*** means Terrance Maurice Howard and each of his successors, assigns, agents, servants or employees, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, unless specified otherwise.
3. ***“Assets”*** means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to “goods,” “instruments,” “equipment,” “fixtures,” “general intangibles,” “inventory,” “checks,” “notes” (as these terms are defined in the Uniform Commercial Code), and all chattel, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and cash, wherever located.
4. ***“Work at Home Opportunity”*** means any program, plan, product or service that purportedly enables a participant or purchaser to earn money by working at home.
5. ***“Business venture”*** means any written or oral business agreement or arrangement, however denominated, in which a participant or purchaser, in order to generate income or revenue, pays consideration for the right or means to offer, sell, or distribute goods or services and receives advice, instruction, or assistance in connection with or incident to the establishment, maintenance, or operation of a new

business, or the entry by an existing business into a new line or type of business.

6. “*Assisting others*” means knowingly providing any of the following goods or services to another entity: (1) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material; (3) providing names of, or assisting in the generation of, potential customers; or (4) performing marketing services of any kind.
7. “*Document*” is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

ORDER

I. BAN ON SALE OF WORK AT HOME OPPORTUNITIES

IT IS THEREFORE ORDERED that defendant Terrance Maurice Howard, and each of his successors, assigns, agents, servants or employees, and those persons in active concert or

participation with him who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, are hereby permanently restrained and enjoined from engaging or participating in the advertising, promotion, offering for sale, or sale of work at home opportunities.

II. INJUNCTION AGAINST MISREPRESENTATIONS

A. IT IS FURTHER ORDERED that defendant Terrance Maurice Howard, and each of his successors, assigns, agents, servants or employees, and those persons in active concert or participation with him who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, in connection with the promotion, offering for sale, or sale of business ventures, are hereby permanently restrained and enjoined from:

1. Misrepresenting, expressly or by implication, that consumers will make a substantial amount of money;
2. Misrepresenting, expressly or by implication, that defendant will pay consumers money or other consideration for stuffing envelopes;
3. Misrepresenting, expressly or by implication, the income, profit, or sales volume that a purchaser or investor may or is likely to achieve;
4. Misrepresenting, expressly or by implication, the income, profit or sales volume achieved by prior purchasers or investors; and

5. Misrepresenting, expressly or by implication, the length of time that it may or will take to recoup the purchase price or investment.

B. IT IS FURTHER ORDERED that, with respect to the advertising, promotion, offering for sale, or sale of any good or service, defendant Terrance Maurice Howard, and each of his successors, assigns, agents, servants or employees, and those persons in active concert or participation with him who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device are hereby permanently restrained and enjoined from misrepresenting, expressly or by implication, any fact material to a consumer's decision to purchase defendant's products or services.

III. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of TWO HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$225,000.00) is entered against defendant Terrance Maurice Howard; provided, however, that upon the fulfillment of the payment obligations of Paragraph III(B) and Paragraph III(C) of this Final Order by defendant, this judgment shall be suspended until further order of the Court, and provided further that this judgment shall be subject to the conditions set forth in Paragraph V of this Final Order.
- B. Defendant Terrance Maurice Howard shall be liable for payment of equitable

monetary relief, including, but not limited to, consumer redress and/or disgorgement, and for paying any attendant expenses of administration of any redress fund, in the amount of TWELVE THOUSAND DOLLARS (\$12,000.00).

- C. Within ten (10) days of the execution of this Final Order, defendant Terrance Maurice Howard shall place the entire payment required pursuant to Paragraph III(B) in an escrow account where it will be held in escrow until the entry of this Final Order. Within ten (10) days of the date of entry of this Final Order, defendant Terrance Maurice Howard shall transfer the escrowed amount in the form of wire transfers or certified or cashier's checks made payable to the Commission, or such agent as the Commission may direct.
- D. Time is of the essence for the payments specified above. In the event that defendant Terrance Maurice Howard does not fulfill, or only partially fulfills, the payment obligations set forth in this Paragraph, defendant shall be immediately liable for payment of the entire amount due, plus interest, less any payments already made. Notwithstanding any other provision of this Final Order, defendant agrees that, if he fails to meet the payment obligations set forth in this Paragraph, the facts as alleged in the Complaint filed in this matter shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Final Order, including, but not limited to, a nondischargeability complaint in any subsequent bankruptcy proceeding.

- E. All funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the defendant's practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. Defendant Terrance Maurice Howard shall have no right to challenge the Commission's choice of remedies under this Section.
- F. Defendant Terrance Maurice Howard shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payments under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.

IV. INJUNCTION AGAINST PROVIDING CUSTOMER LISTS

IT IS FURTHER ORDERED that defendant Terrance Maurice Howard is hereby permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, social security number, or other identifying information of any person who purchased a work at home opportunity at any time prior to the date this Final Judgment and Order is entered. Provided, however, that defendant may disclose such identifying information to

a law enforcement agency or as required by any law, regulation, or court order.

V. FINANCIAL STATEMENTS

A. IT IS FURTHER ORDERED that the Commission's agreement to and the Court's approval of this Final Judgment and Order are expressly premised upon the truthfulness, accuracy, and completeness of the financial statements and information provided to the Commission by defendant Terrance Maurice Howard on or about April 22, 2002, which contain material information relied upon by the Commission in negotiating and agreeing to the terms of this Order.

B. IT IS FURTHER ORDERED that if the Commission should have evidence that the above-referenced financial statements and information failed to disclose any material asset the value of which exceeds \$1,000, materially misrepresented the value of any asset, or made any other material misrepresentation or omission, the Commission may move that the Court reopen this Order for the sole purpose of allowing the Commission to modify the monetary liability of the defendant. If the Court finds that the defendant failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission in the above-referenced financial statements and information, the Court shall reinstate the suspended judgment against the defendant, in favor of the Commission, in the amount of TWO HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$225,000.00), which the defendant and the Commission stipulate is the

amount of consumer injury caused by the defendant, as set forth in Paragraph III of this Order. Provided, however, that in all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court. Any proceedings instituted under this Paragraph shall be in addition to and not in lieu of any other proceedings the Commission may initiate to enforce this Order. Solely for the purposes of reopening or enforcing this Paragraph, defendant waives any right to contest any of the allegations set forth in the Complaint filed in this matter.

VI. MONITORING COMPLIANCE OF SALES PERSONNEL

IT IS FURTHER ORDERED that defendant Terrance Maurice Howard, in connection with any business where the defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where the business involves the promotion, offering for sale, or sale of business ventures, or assisting others engaged in the promotion, offering for sale, or sale of business ventures, is hereby permanently restrained and enjoined from:

- A.** Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Paragraph II of this Final Judgment and Order. Such steps shall include adequate monitoring of sales presentations or other calls with consumers, and shall also include, at a minimum, the following:
- (1) listening to the oral representations made by persons engaged in sales or other customer service functions; (2) establishing a procedure for receiving and responding

to consumer complaints; and (3) ascertaining the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved;

- B.** Failing promptly to investigate fully any consumer complaint received by any business to which this Section applies; and
- C.** Failing to take adequate corrective action with respect to any employee or independent contractor who, as determined by the defendant, is not complying with this Final Judgment and Order. Corrective action may include training, disciplining, and/or terminating such employee or independent contractor.

VII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, within five (5) business days after receipt by defendant of this Final Judgment and Order as entered by the Court, defendant shall submit to plaintiff a truthful sworn statement, in the form shown on Appendix A, that shall acknowledge receipt of this Final Judgment and Order.

VIII. DISTRIBUTION OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Final Judgment and Order, defendant Terrance Maurice Howard shall:

- A.** Provide a copy of this Final Judgment and Order to, and obtain a signed and dated acknowledgment of receipt of same, from each officer or director, each individual serving in a management capacity, all personnel involved in responding to consumer

complaints or inquiries, and all sales personnel, immediately upon employing or retaining any such persons for any business where:

1. the defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where
2. the business involves the promotion, offering for sale, or sale of business ventures or assisting others involved in the promotion, offering for sale, or sale of business ventures.

- B.** Maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the plaintiff, the original signed and dated acknowledgments of the receipt of copies of this Final Judgment and Order, as required in Subsection A.

IX. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Final Judgment and Order, defendant Terrance Maurice Howard and each of his successors, assigns, agents, servants or employees, and those persons in active concert or participation with him who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, in connection with any business where the defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where the business involves the promotion, offering for sale, or sale of business ventures or assisting others engaged in the promotion, offering for sale, or

sale of business ventures, are hereby restrained and enjoined from failing to create and retain the following records:

- A.** Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B.** Records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C.** Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D.** Complaint and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests; and
- E.** Copies of all sales scripts, training materials, advertisements, or other marketing materials.

X. COMPLIANCE REPORTING BY DEFENDANT

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Final Judgment and Order may be monitored:

- A.** For a period of five (5) years from the date of entry of this Final Judgment and Order,

defendant shall notify the plaintiff of the following:

1. Any changes in defendant's business or residence addresses, mailing addresses, and telephone numbers, within thirty (30) days of the date of such change;
 2. Any changes in defendant's employment status (including self-employment) within thirty (30) days of such change. Such notice shall include the name and address of each business that defendant is affiliated with or employed by, a statement of the nature of the business, and a statement of the defendant's duties and responsibilities in connection with the business or employment; and
 3. Any proposed change in the structure of any business entity owned or controlled by defendant, such as creation, incorporation, dissolution, assignment, sale, merger, creation or dissolution of subsidiaries, or any other change that may affect compliance obligations arising out of this Final Judgment and Order, thirty (30) days prior to the effective date of any proposed change;
- B.** One hundred eighty (180) days after the date of entry of this Final Judgment and Order, defendant shall provide a written report to the plaintiff, sworn to under penalty of perjury, setting forth in detail the manner and form in which the defendant has complied and is complying with this Final Judgment and Order. This report shall

include but not be limited to:

1. Defendant's current residence address and telephone number;
2. Defendant's current employment, business addresses and telephone numbers, a description of the business activities of such employer, and the defendant's title and responsibilities for such employer;
3. A copy of each acknowledgment of receipt of this Final Judgment and Order obtained by defendant pursuant to Section VIII; and
4. A statement describing the manner in which defendant has complied and is complying with the injunctive and other provisions of Section II of this Final Judgment and Order.

C. Upon written request by a representative of the plaintiff, defendant shall submit additional written reports (under oath, if requested) and produce documents on thirty (30) days' notice with respect to any conduct subject to this Final Judgment and Order;

D. For the purposes of this Final Judgment and Order, defendant shall, unless otherwise directed by the FTC's authorized representatives, mail all written notifications to the FTC to:

Regional Director
Southwest Region
1999 Bryan Street, Suite 2150
Dallas, Texas 75201

Re: FTC v. Terrance Maurice Howard

- E.** For the purposes of this Section, “employment” includes the performance of services as an employee, consultant, or independent contractor; and “employers” includes any individual or entity for whom the defendant performs services as an employee, consultant, or independent contractor; and
- F.** For purposes of the compliance reporting required by this Section, the plaintiff is authorized to communicate directly with the defendant.

XI. PLAINTIFF’S AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that plaintiff is authorized to monitor defendant’s compliance with this Final Judgment and Order by all lawful means, including, but not limited to the following means:

- A.** Plaintiff is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26 - 37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating defendant’s compliance with any provision of this Final Judgment and Order;
- B.** Plaintiff is authorized to use representatives posing as consumers and suppliers to defendant, defendant’s employees, or any other entity managed or controlled in whole or in part by defendant without the necessity of identification or prior notice; and
- C.** Nothing in this Final Judgment and Order shall limit the Commission's lawful use of

compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to investigate whether the defendant has violated any provision of this Final Judgment and Order, Section 5 of the FTC Act, 15 U.S.C. § 45 or the Telemarketing Sales Rule, 16 C.F.R. Part 310.

XII. ACCESS TO BUSINESS PREMISES

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Final Judgment and Order, for the purpose of further determining compliance with this Final Judgment and Order, defendant shall permit representatives of the Commission, within three (3) business days of receipt of written notice from the Commission:

- A.** Access during normal business hours to any office, or facility storing documents, of the defendant or of any business where
 1. the defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where
 2. the business involves the promotion, offering for sale, or sale of business ventures or assisting others engaged in the promotion, offering for sale, or sale of business ventures.

In providing such access, defendant shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Final Judgment and Order; and shall permit Commission representatives to remove documents relevant to any matter contained in this Final Judgment and Order for a

period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and

- B.** To interview the officers, directors, and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which Subsection (A) applies, concerning matters relating to compliance with the terms of this Final Judgment and Order. The person interviewed may have counsel present.

Provided that, upon application of the Commission and for good cause shown, the Court may enter an *ex parte* order granting immediate access to defendant's business premises for the purposes of inspecting and copying all documents relevant to any matter contained in this Final Judgment and Order.

XIII. ATTORNEYS' FEES

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

XIV. LIFT OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze of defendant's assets, imposed in the Preliminary Injunction entered in this proceeding, shall be lifted upon the entry of this Final Judgment and Order.

XV. CONTINUING JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for all purposes.

IT IS SO ORDERED.

Dated this _____ day of _____, 2002.

UNITED STATES DISTRICT JUDGE

SO STIPULATED:

Gary D. Kennedy
Okla. Bar No. 4961
Susan E. Arthur
Texas Bar No. 01365300
Federal Trade Commission
Southwest Region
1999 Bryan Street, Suite 2150
Dallas, Texas 75201
(214) 979-9379 (Kennedy)
(214) 979-9370 (Arthur)
(214) 953-3079
Attorneys for Plaintiff

Terrance Maurice Howard
Defendant