

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Plaintiff,

v.

VALUEVISION INTERNATIONAL, INC.,

Defendant.

CIV. ACTION NO. 03-2890(DSD/SRN)

CONSENT DECREE

WHEREAS: Plaintiff, the United States of America, has commenced this action by filing the Complaint herein; defendant ValueVision International, Inc. ("ValueVision") has waived service of the Summons and Complaint; the parties have been represented by the attorneys whose names appear hereafter; and the parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law and without defendant admitting liability for any of the matters alleged in the Complaint;

THEREFORE, on the joint motion of plaintiff and defendant, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. This Court has jurisdiction over the subject matter and the parties.
2. The Complaint states a claim upon which relief may be granted against defendant under Sections 5(l), 13(b), and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(l), 53(b), and 56(a).

FILED _____
RICHARD D. SLETTEN, CLERK
JUDGMENT ENTD _____
DEPUTY CLERK _____

3. The "Commission's Order" shall mean the Federal Trade Commission ("Commission") Order in FTC Docket No. C-4022, a copy of which is attached hereto as Exhibit A and made a part of this Consent Decree.

CIVIL PENALTY

4. Pursuant to Section 5(l) of the FTC Act, 15 U.S.C. § 45(l), defendant ValueVision, and its successors and assigns, shall pay a monetary civil penalty of two hundred and fifteen thousand dollars (\$215,000).

5. Defendant ValueVision, and its successors and assigns, shall make the payment required by Paragraph 4 within five (5) days after the date of entry of this Consent Decree by electronic fund transfer in accordance with the instructions provided by: The Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.

6. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the entire unpaid penalty, together with interest as computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, shall immediately become due and payable.

INJUNCTION

7. Defendant ValueVision, and its successors and assigns, and their officers, agents, representatives, and employees, and all persons in active concert or participation with any one or more of them who receive actual notice of this Consent Decree by personal service or otherwise, are hereby permanently enjoined from ever violating, directly or through any corporation, subsidiary, division, or

other device, any provision of the Commission's Order, including through the use of endorsements.

"Endorsements" as used in this Section shall mean as defined in 16 C.F.R. § 255.0(b).

8. In the event that the Commission's Order is hereafter modified, defendant's compliance with such Order as so modified shall not be deemed a violation of this injunction.

DISTRIBUTION OF CONSENT DECREE BY DEFENDANT

9. Defendant ValueVision, and its successors and assigns, must, for a period of five (5) years from the date of entry of this Consent Decree:

- a. Provide a copy of this Consent Decree and the Commission's Order to, and obtain a signed and dated acknowledgment of receipt from: each officer and director; and all personnel, whether such persons are designated as employees, consultants, independent contractors or otherwise, involved in the advertising or promotion of any product or service covered by this Consent Decree, *provided* that defendant must deliver the copy of the Consent Decree and the Commission's Order to current personnel within thirty (30) days after the date of entry of the Consent Decree, and to future personnel within thirty (30) days after the person assumes such position or responsibilities; and
- b. Maintain, for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments required in Subparagraph a of this Paragraph.

RECORD-KEEPING PROVISIONS

10. For a period of five (5) years from the date of entry of this Consent Decree, defendant, and its successors and assigns, must maintain and, upon request, make available to the Commission, copies of all business records demonstrating compliance with the terms and provisions of this Consent Decree, including but not limited to:

- a. Accounting records that reflect the cost of products or services sold, revenues generated and the disbursement of such revenues; and
- b. Personnel records accurately reflecting the name, address, and telephone number of each person employed or retained 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.

11. For a period of five (5) years from the date of entry of this Consent Decree, defendant, and its successors and assigns must, upon request, produce to the Commission a transcript of any television program containing any representation covered by this Consent Decree, certified by the transcriber as a full and accurate transcript of the television program.

COMPLIANCE REPORTING BY DEFENDANT

12. Within thirty (30) days after receipt of a written request by a representative of the Commission, defendant ValueVision, and its successors and assigns, must submit written reports (under oath, if requested) and produce documents with respect to any conduct subject to this Consent Decree.

13. Defendant ValueVision must, in accordance with 31 U.S.C. § 7701, furnish to the Commission its taxpayer identifying number (employer identification number), which will be used for purposes of collecting and reporting on any delinquent amount arising out of defendant's relationship with the government.

WRITTEN NOTIFICATIONS BY DEFENDANT

14. For the purposes of this Consent Decree, defendant ValueVision must, unless otherwise directed by the Commission or its representatives, mail all written notifications to the Commission or the Commission's Associate Director for Enforcement to:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington D.C. 20580
Re: ValueVision International, Inc.

CONTINUING JURISDICTION

15. This Court will retain jurisdiction of this matter for the purpose of enabling any of the parties to this Consent Decree to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Consent Decree, for the enforcement of compliance therewith, for the redress of any violations thereof, or for the punishment of any violations thereof.

SCOPE OF CONSENT DECREE

16. This Consent Decree resolves only claims against the named defendant and does not preclude the plaintiff from initiating further action or seeking any remedy against any other persons or entities, including without limitation persons or entities who may be subject to portions of this Consent Decree by virtue of actions taken in concert or participation with defendant, and persons or entities in any type of indemnification or contractual relationship with defendant.

JUDGMENT IS THEREFORE ENTERED in favor of plaintiff and against defendant, pursuant to all the terms and conditions recited above.

Dated this 17th day of APRIL, 2003.


DAVID S. DOTY
United States District Judge

The parties, by their respective counsel, hereby consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof. Defendant waives any rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).

FOR THE UNITED STATES OF AMERICA:

ROBERT D. McCALLUM, Jr.
Assistant Attorney General
Civil Division
United States Department of Justice

THOMAS B. HEFFELFINGER
United States Attorney
District of Minnesota

By: 

LYNN A. ZENNER
Assistant United States Attorney
District of Minnesota
300 S. 4th Street, Suite 600
Minneapolis, MN 55415
(612) 664-5600

EUGENE M. THIROLF
Director
Office of Consumer Litigation

Elizabeth Stein

ELIZABETH STEIN
Attorney
Office of Consumer Litigation
Civil Division
U.S. Department of Justice
Washington, D.C. 20530
(202) 307-0486

FOR THE FEDERAL TRADE COMMISSION:

ROBERT M. FRISBY
Assistant Director for Enforcement

Laura Koss

LAURA KOSS

Melissa D. Hart

MELISSA D. HART
Attorneys
Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
(202) 326-2890

FOR THE DEFENDANT:

VALUEVISION INTERNATIONAL, INC.

By:

Nathan E. Fagre

Nathan E. Fagre
Senior Vice President &
General Counsel

Attorney for ValueVision, International Inc.

By: Charulata B. Pagar, Esq.
Charulata B. Pagar, Esq.
Hall, Dickler, Kent, Goldstein &
Wood, LLC, a Member of
the Firm.
(312) 819-4175