

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 01-6885-Civ.-MARRA

**CLOSED
CIVIL
CASE**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

STREAMLINE INTERNATIONAL, INC., et al.,

Defendants.

FILED by *Sam* D.C.
MAR 17 2004
CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. FT. LAUD.

**REVISED FINAL JUDGMENT AND ORDER
FOR PERMANENT INJUNCTION AS TO DEFENDANTS
STREAMLINE INTERNATIONAL, INC. AND J.R. JACKSON**

Plaintiff, Federal Trade Commission ("Commission"), filed its Complaint for Permanent Injunction and Other Relief in this matter on May 23, 2001, charging Defendants Streamline International, Inc. ("Streamline"), J.R. Jackson ("Jackson"), individually and doing business as Action Enterprises, and Robert "Bob" Waitkus ("Waitkus"), individually and doing business as WorldWide Opportunities Network, with violations of Section 5 of the FTC Act, 15 U.S.C. § 45(a). On February 7, 2002, this Court entered a Stipulated Final Judgment and Order for Permanent Injunction as to Defendant Waitkus. Pursuant to this Court's findings of fact and conclusions of law, that are hereby incorporated into this Final Order, as well as this Court's consideration of Plaintiff's Motion and Incorporated Memorandum for Ripeness of Summary Judgment and for Material Facts to be Deemed Admitted, and any opposition, the Court enters the following Final Order against Defendants Streamline and Jackson.

In accordance with Rule 65(d) of the Federal Rules of Civil Procedure, this Final Order shall be binding on Defendants Streamline and Jackson, their officers, agents, servants, employees, and upon those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.

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On or about June 16, 2003, the Commission filed its Motion for Summary Judgment, with accompanying memorandum, statement of undisputed material facts, and exhibits. Defendants failed to file an opposition. On or about September 9, 2003, this Court issued an Order To Show Cause Why Plaintiff's Motion For Summary Judgment Should Be Not Granted For Failure To Respond. Defendants failed to respond to this Court's Order or file a response to Plaintiff's Motion for Summary Judgment.

On or about December 31, 2003, the Commission filed its Motion and Incorporated Memorandum for Ripeness of Summary Judgment and for Material Facts to be Deemed Admitted. This Court finds that ample opportunity was provided to Defendants to file a response to Plaintiff's Motion for Summary Judgment, and that the matter is ripe for judgment. This Court's Final Order is issued after due consideration of the underlying merits of Plaintiff's Motion for Summary Judgment, and is not based solely on Defendants' failure to oppose summary judgment.

Defendants have not controverted any of the facts in Plaintiff's Statement of Undisputed Material Facts. This Court finds the material facts set forth in Plaintiff's Statement of Undisputed Material Facts to be supported by specific references to pleadings, a deposition, interrogatories, admissions and/or affidavits on file with the Court. Therefore, pursuant to Local Rule 7.5.D., this Court hereby deems all material facts set forth in Plaintiff's Statement to be admitted.

DEFINITIONS

For the purposes of this Final Order, the following definitions apply:

- A. "Asset" means any legal or equitable interest in, right to, or claim to any real or personal property of defendants Streamline or Jackson, or held for the benefit of defendants Streamline or Jackson, wherever located, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes" (as these terms are defined in the Uniform Commercial Code), chattels, leaseholds, contracts, mails, other deliveries, shares of stock, lists of participants, intellectual property, accounts, credits, receivables, cash, and trusts.

- B. “Business venture” means any written or oral business arrangement, however denominated, which consists of the payment of any consideration for:
- (1) The right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising or other commercial symbol); and
 - (2) More than nominal assistance to any person or entity 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;
- C. “Competent and reliable scientific evidence” means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
- D. “Defendants” means Defendant Streamline and Defendant Jackson, individually or as an officer of Streamline, whether acting directly, indirectly, in connection or participation with others, or through any agent, representative, business entity or other device.
- E. “Multi-level marketing program” means any marketing program in which participants make a payment and receive the right, license or opportunity to derive income as a participant primarily from: (1) recruiting additional participants, or having additional participants placed by the promoter or any other person into the program participant’s downline, tree, cooperative, income center, or other similar program grouping; (2) selling goods or services; and (3) receiving payment or other compensation, in whole or in part, based upon the retail sales of those in the participant’s downline, tree, cooperative, income center or similar program grouping.
- F. “Participating” in a multi-level marketing program or a prohibited marketing scheme includes, but is not limited to, promoting, marketing, advertising, offering for sale, or selling, or assisting others in the offering for sale or selling the right to participate in, the program or scheme, as well as acting or serving as an officer, director, employee, salesperson, agent, shareholder, advisor, consultant, independent contractor, or distributor, or acting as a speaker or spokesperson on behalf of the program or scheme.

- G. “Prohibited marketing scheme” means any marketing program, Ponzi scheme, chain marketing scheme, or other marketing plan or program in which a participant makes a payment and receives the right, license or opportunity to derive income as a participant primarily from: (i) the recruitment of additional recruits by the participant, program, promoter or others; or (ii) non-retail sales made to or by such recruits or their successive generations of recruits.
- H. “Retail sales” means sales of goods or services to third-party end users who are not participants or recruits the multi-level marketing program.

ORDER

Conduct Prohibitions

I.

IT IS THEREFORE ORDERED that Defendants, and those persons in active concert or participation with them who receive actual notice of this Final Order by personal service or otherwise, are hereby permanently restrained and enjoined from participating in any manner or capacity whatsoever, directly, in concert with others, individually or through any business entity or other device, in any multi-level marketing program or prohibited marketing scheme.

II.

IT IS FURTHER ORDERED that Defendants, and those persons in active concert or participation with them who receive actual notice of this Final Order by personal service or otherwise, while participating in any business venture not subject to Paragraph I, are hereby permanently restrained and enjoined from making or assisting in the making of, expressly or by implication, directly or indirectly, orally or in writing, any false or misleading statement or omission of material fact, including but not limited to the following:

- A. Misrepresentations about the potential earnings or income derived from such activity;
- B. Misrepresentations about the benefits any person participating in such an activity actually can receive or reasonably can expect to receive from such activity;
- C. Misrepresentations about the amount of sales, incentives, profit or rewards a person actually made or can potentially make through such activity; and
- D. Using any hypothetical earnings claims.

III.

IT IS FURTHER ORDERED that Defendants, and those persons in active concert or participation with them who receive actual notice of this Final Order by personal service or otherwise, while participating in any business venture not subject to Paragraph I, are hereby permanently restrained and enjoined from providing to others the means and instrumentalities with which to make, expressly or by implication, orally or in writing, any false or misleading statement.

IV.

IT IS FURTHER ORDERED that Defendants, and those persons in active concert or participation with them who receive actual notice of this Final Order by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any dietary supplement in or affecting commerce, are hereby permanently restrained and enjoined from making any representation in any manner, expressly or by implication, that the dietary supplement contains ingredients that are generally recognized as safe by the Food and Drug Administration, unless the representation is true.

V.

IT IS FURTHER ORDERED that Defendants, and those persons in active concert or participation with them who receive actual notice of this Final Order by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any dietary supplement in or affecting commerce, are hereby permanently restrained and enjoined from representing, in any manner, expressly or by implication, the benefit, performance, efficacy or safety of such supplement, unless, at the time the representation is made, Defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation.

VI.

IT IS FURTHER ORDERED that Defendants, while participating in any business venture not subject to Paragraph I, are hereby permanently restrained and enjoined from:

- A. Failing to take reasonable steps sufficient to monitor and ensure that their agents, representatives, employees, or independent contractors comply with this Final Order;

- B. Failing to investigate and resolve promptly any consumer complaint received by the Defendants, their officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Final Order, and to notify the consumer of the resolution of the complaint and the reason therefore; and
- C. Failing to take corrective action with respect to any sales or customer service person whom Defendants determine is not complying with this Final Order, which may include training, disciplining, and/or terminating the employment of such sales person.

VII.

IT IS FURTHER ORDERED that Defendants, and those persons in active concert or participation with them who receive actual notice of this Final Order by personal service or otherwise, are hereby permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to Defendants in this matter, at any time prior to entry of this Final Order. Provided, however, that Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

Monetary Relief

VIII.

IT IS FURTHER ORDERED that judgment is hereby entered in the amount of \$3,204,362.11. Defendant Jackson and Defendant Streamline are jointly and severally liable for the entire amount. All monies paid pursuant to this Paragraph shall be deposited into a fund administered by the Commission for equitable relief, including but not limited to, consumer redress and any attendant expenses of distributing the funds; provided, however, that if the Commission, in its sole discretion, determines that redress is wholly or partially impractical or is otherwise inappropriate, any funds not so used shall be deposited in the United States Treasury as disgorgement or shall be used to educate consumers affected by the practices described in the Commission's complaint in this action. Defendants shall have no right to contest the manner of distribution chosen by the Commission. The Commission in its sole discretion may use a

designated agent to administer consumer redress. No portion of the payment herein provided shall be deemed a payment of any fine, penalty, forfeiture or punitive assessment.

Compliance Monitoring

IX.

IT IS FURTHER ORDERED that the Commission is authorized to monitor Defendants' compliance with this Final Order by all lawful means, including, but not limited to, the following means:

- A. The Commission is authorized to use representatives posing as consumers and employees of, and suppliers to, Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part by Defendants, without the necessity of identification or prior notice; and
- B. Nothing in this Final 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, 57b-1, to investigate whether Defendants have violated any provision of this Final Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

Access to Business Premises

X.

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Final Order, for the purpose of further determining compliance with this Final Order, Defendants 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 any business where (1) Defendant Jackson is a majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business manufactures, labels, advertises, promotes, offers for sale, sells, or distributes dietary supplements. In providing such access, Defendant Jackson shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Final Order; and shall permit Commission representatives to remove documents relevant to any matter

contained in this Final Order for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and

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

Distribution of the Final Order by Defendant Jackson

XI.

IT IS FURTHER ORDERED that Defendant Jackson shall:

- A. For a period of five (5) years from the date of entry of this Final Order, provide a copy of this Final 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, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such persons, for any business where (1) Defendant Jackson is a majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business manufactures, labels, advertises, promotes, offers for sale, sells, or distributes dietary supplements; 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 of the receipt of copies of this Final Order, as required in Subsection (A) of this Paragraph.

Notification

XII.

IT IS FURTHER ORDERED that, for the purpose of this Final Order, all correspondence, notifications, or reports that Defendants are required to provide to the Commission shall reference the case name and number of this matter and shall be sent to: Associate Director for Marketing Practices, Federal Trade Commission, 600 Pennsylvania

Avenue, NW, Washington, DC 20580, or at such future address as the Commission may designate in writing to Defendant Jackson.

Acknowledgment of Receipt of Final Order

XIII.

IT IS FURTHER ORDERED that, within five (5) days of receipt by Defendants of this Final Order as entered by the Court, Defendant Jackson shall submit to the Commission a truthful sworn statement, in the form shown in the appendix to this Final Order, that shall acknowledge receipt of this Final Order.

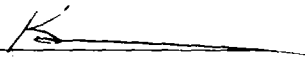
Retention of Jurisdiction and Entry of Judgment

XIV.

IT IS FURTHER ORDERED, that this Court shall retain jurisdiction of this matter for all purposes.

IT IS FURTHER ORDERED that all pending motions are **DENIED as moot**. The Clerk shall **CLOSE** this case.

There being no just cause for delay, this Final Judgment and Final Order for a Permanent Injunction as to Defendants is hereby entered this 17th day of March, 2004.


Kenneth A. Marra
United States District Judge

Copies to:

Counsel for Plaintiff FTC:
DAVID M. TOROK, ESQ.
K. MICHELLE GRAJALES, ESQ.
600 Pennsylvania Ave., N.W., Room 238
Washington, D.C. 20580
Telephone:(202) 326-3075; 3172
Facsimile:(202) 326-3395
Email: dtorok@ftc.gov; mgrajales@ftc.gov

Counsel for Defendants J.R. Jackson
and Streamline International, Inc.:
JAMES E. BEAM, ESQ.,
230 South 500 East
Suite 200
Salt Lake City, Utah 84102
Telephone: (801) 532-1871
Facsimile: (801) 355-1084

Counsel for Defendant Robert Waitkus
TODD STONE, ESQ.
Ruden, McClosky, Smith, Shuster & Russell
200 East Broward Blvd.
Ft. Lauderdale, FL 33301
Telephone: (954) 527-6206
Facsimile: (954) 333-4206
Email: tis@ruden.com

Appendix

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 01-6885-Civ.-Marra

_____)
FEDERAL TRADE COMMISSION,)
)
Plaintiff,)
)
v.)
)
STREAMLINE INTERNATIONAL, INC., et al.,)
)
Defendants.)
_____)

AFFIDAVIT OF J.R. JACKSON

I, J. R. Jackson, being duly sworn, hereby state and affirm as follows:

1. My name is J. R. Jackson. My current residence address is:

_____.

I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am a defendant in FTC v. Streamline International, Inc., et al., Case No. 01-6885-Civ.-Marra (United States District Court for the Southern District of Florida).

3. On _____ [date], I received a copy of the Final Judgment and Final Order For Permanent Injunction, which was signed by the Honorable Kenneth A. Marra and entered by the Court on _____ [date of entry of Final Order]. A true and correct copy of the Final Order I received is appended to this Affidavit.

4. The information contained in the attached financial statements, that I am submitting herewith to the Federal Trade Commission is true, accurate, and complete.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on _____ [date], at _____ [city and state].

J. R. Jackson

Subscribed and sworn to before me this ____ day of _____, 2004.

Notary Public
My Commission Expires:
