

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS

3 _____)
4 FEDERAL TRADE COMMISSION,)
5 Plaintiff,)
6 v.) Civil Action No.
7 ONESOURCE WORLDWIDE NETWORK, INC.,)
8 a corporation,)
9 JAMES MICHAEL FOBAIR,)
10 individually and as an officer of)
11 OneSource Worldwide Network, Inc.,)
12 Defendants.)
13 _____)

14 **STIPULATED FINAL JUDGMENT**

15 WHEREAS: Plaintiff, the Federal Trade Commission ("FTC" or
16 the "Commission") commenced this action by filing the Complaint
17 herein; Defendants have waived service of the Summons and
18 Complaint; the parties have been represented by the attorneys whose
19 names appear hereafter; and the parties have agreed to the
20 settlement of this action upon the following terms and conditions,
21 without adjudication of any issue of fact or law and without
22 Defendants admitting liability for any of the matters alleged in
23 the Complaint;

24 THEREFORE, on the joint motion of Plaintiff and Defendants, it
25 is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

26 **FINDINGS**

- 27 1. This Court has jurisdiction of the subject matter and of
28 the parties;
- 29 2. The Complaint states a claim upon which relief may be
30 granted against OneSource Worldwide Network, Inc. ("OWN") and James

1 Michael Fobair ("Fobair") under Sections 5(a) and 13(b) of the
2 Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 53(b);

3 3. Venue is proper as to all parties in the Northern District
4 of Texas;

5 4. The activities of OWN and Fobair are in or affecting
6 commerce, as defined in the FTC Act, 15 U.S.C. § 44; and

7 5. OWN and Fobair have waived all rights that may arise under
8 the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub.
9 L. 104-121, 110 Stat. 847, 863-64 (1996).

10 **DEFINITIONS**

11 6. "Defendants" means OWN and Fobair, their successors and
12 assigns, and their officers, agents, servants and employees, and
13 all persons in active concert or participation with any one or more
14 of them who receive actual notice of this Stipulated Final Judgment
15 ("Judgment") by personal service or otherwise.

16 7. "Competent and reliable scientific evidence" means tests,
17 analyses, research, studies, or other evidence based on the
18 expertise of professionals in the relevant area, that has been
19 conducted and evaluated in an objective manner by persons qualified
20 to do so, using procedures generally accepted in the profession to
21 yield accurate and reliable results.

22 8. "Laundry product" means any product used in the process of
23 refurbishing textiles, including but not limited to products
24 described as replacing detergents or bleaches, whether referred to
25 as "boosters" or "brighteners," and products described as changing
26 the nature of water by any means that will have a beneficial effect
27 on washing, including water filters, water filtration systems,

1 water purification systems, or water cleaning systems.

2 9. "Consumer" means a purchaser (including purchasers for
3 resale) of one or more products sold by Defendants, whether or not
4 purchased directly from Defendants.

5 **ORDER**

6 **I. PROHIBITED CLAIMS FOR CERTAIN PRODUCTS**

7 **IT IS HEREBY ORDERED THAT** Defendants, directly or through any
8 corporation, subsidiary, division, distributor, or other device, in
9 connection with the advertising, promotion, offering for sale,
10 sale, or distribution of The EarthSmart Laundry CD ("Laundry CD"),
11 or any substantially similar product, in or affecting commerce, are
12 hereby permanently enjoined from representing in any manner,
13 expressly or by implication that:

14 A. such product cleans laundry as well as conventional
15 laundry detergents;

16 B. such product cleans laundry by changing the molecular
17 structure of water;

18 C. scientific tests prove that such product cleans
19 laundry as well as conventional laundry detergents;

20 **II. CLAIMS REQUIRED TO BE TRUE AND SUBSTANTIATED**

21 **IT IS FURTHER ORDERED THAT** Defendants, directly or through any
22 corporation, subsidiary, division, distributor, or other device, in
23 connection with the advertising, promotion, offering for sale,
24 sale, or distribution of any product, in or affecting commerce, are
25 hereby enjoined from making any representation in any manner,
26 expressly or by implication:

27 A. that such product softens fabrics as well as

1 conventional fabric softeners;

2 B. that such product is 100% recyclable.

3 C. regarding such product's comparative or absolute
4 efficacy, benefits, mechanism of action, or performance;
5 unless the representation is true and, at the time it is made,
6 Defendants possess and rely upon competent and reliable evidence,
7 which when appropriate must be competent and reliable scientific
8 evidence, that substantiates the representation.

9 **III. CLAIMS ABOUT TESTS, STUDIES OR RESEARCH**

10 **IT IS FURTHER ORDERED THAT** Defendants, directly or through any
11 corporation, subsidiary, division, distributor, or other device, in
12 connection with the advertising, promotion, offering for sale,
13 sale, or distribution of any product, in or affecting commerce, are
14 hereby enjoined from misrepresenting, in any manner, expressly or
15 by implication, the existence, contents, validity, results,
16 conclusions, or interpretations of any test, study, or research.

17 **IV. CLAIMS MADE THROUGH TESTIMONIALS AND/OR ENDORSEMENTS**

18 **IT IS FURTHER ORDERED THAT** Defendants, directly or through any
19 corporation, subsidiary, division, distributor, or other device, in
20 connection with the advertising, promotion, offering for sale,
21 sale, or distribution of any product, in or affecting commerce, are
22 hereby enjoined from representing in any manner, expressly or by
23 implication, that the experience represented by any user
24 testimonial or endorsement of such product represents the typical
25 or ordinary experience of members of the public who use the
26 product, unless:

27 A. The representation is true and, at the time it is

1 made, Defendants possess and rely upon competent and reliable
2 scientific evidence that substantiates the representation; or,

3 B. Defendants disclose clearly and prominently, and in
4 close proximity to the endorsement or testimonial, either:

5 (1) what the generally expected results would be
6 for users of the product, or

7 (2) the limited applicability of the endorser's
8 experience to what consumers may generally expect to achieve, that
9 is, that consumers should not expect to experience similar results.
10 For purposes of this Paragraph, "endorsement" shall mean as defined
11 in 16 C.F.R. § 255.0(b).

12 **V. ENVIRONMENTAL CLAIMS**

13 **IT IS FURTHER ORDERED THAT** Defendants, directly or through any
14 corporation, subsidiary, division, distributor, or other device, in
15 connection with the advertising, promotion, offering for sale,
16 sale, or distribution of any product, in or affecting commerce, are
17 hereby enjoined from making any representation, in any manner,
18 expressly or by implication:

19 A. that using such product will make rivers, streams,
20 oceans, or other water sources, safer and cleaner by reducing the
21 use of detergents and soaps; or

22 B. regarding such product's environmental benefits;
23 unless, at the time the representation is made, Defendants possess
24 and rely upon competent and reliable evidence, which when
25 appropriate must be competent and reliable scientific evidence,
26 that substantiates the representation.

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1 of this Judgment, whichever is later. In the event of any default
2 in payment, which default continues for ten (10) days beyond the
3 due date of payment, the entire unpaid judgment, together with
4 interest, as computed pursuant to 28 U.S.C. § 1961, from the date
5 of default to the date of payment, shall immediately become due and
6 payable.

7 Plaintiff's agreement to this monetary judgment is expressly
8 premised upon the truthfulness, accuracy, and completeness of the
9 financial condition of Defendants OWN and Fobair, as represented in
10 the Financial Disclosure Statements referenced above, which contain
11 material information upon which the Plaintiff relief in negotiating
12 and agreeing to the waiver of all but \$7,142.86 of the \$7,500,000
13 monetary judgment. In all other respects, this Judgment shall
14 remain in full force and effect unless otherwise ordered by this
15 Court.

16 If, upon motion by the Commission, this Court finds that
17 OWN and/or Fobair made any material misrepresentation in or
18 omission from the Financial Disclosure Statements, the entire
19 remaining amount of the SEVEN AND ONE HALF MILLION DOLLARS
20 (\$7,500,000) suspended judgment entered against OWN and Fobair will
21 be immediately due and payable. In connection with any such
22 motion, the only issue shall be whether the financial information
23 OWN and Fobair provided in the Financial Disclosure Statements was
24 fraudulent, misleading, inaccurate or incomplete in any material
25 respect.

26 The Commission may apply any or all funds received from
27 OWN and Fobair pursuant to this monetary judgment, and any interest

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1 received thereon, to a consumer redress program and to related
2 administrative expenses; *provided*, however, that if the Commission
3 in its sole discretion determines that a consumer redress program
4 is not feasible, the Commission may pay such funds to the United
5 States Treasury as disgorgement. OWN and Fobair shall have no
6 right to contest the manner of distribution chosen by the
7 Commission.

8 OWN and Fobair are hereby required, in accordance with 31
9 U.S.C. § 7701, to furnish to the Commission their taxpayer
10 identifying numbers (social security number or employer
11 identification number), which shall be used for purposes of
12 collecting and reporting on any delinquent amount arising out of
13 their relationship with the government.

14 For purposes of this Paragraph, and any subsequent proceedings
15 in this cause, OWN and Fobair waive any right to contest any of the
16 allegations of Plaintiff's Complaint.

17 **IX. ALLEGATIONS IN THE COMPLAINT**

18 **IT IS FURTHER ORDERED THAT** the facts as alleged in the
19 Complaint filed with this Judgment shall be taken as true solely
20 for the purpose of any subsequent litigation filed by the FTC to
21 enforce its rights under this Judgment, including its claim for
22 monetary relief, including but not limited to a nondischargeability
23 complaint in any subsequent bankruptcy proceeding.

24 **X. PRODUCTION OF SALES RECORDS**

25 **IT IS FURTHER ORDERED THAT** within 30 days after the entering
26 of this Judgment, Defendants OWN and Fobair, their successors and
27 assigns, shall provide to the FTC a description of the available

1 records regarding their sales of the Laundry CD from January 1,
2 1996 to the date of entry of this Judgment, in order for the FTC to
3 design a redress plan. OWN and Fobair shall assist the FTC, and its
4 agents, in locating and producing all records necessary to conduct
5 the proposed claims procedure, including, but not limited to,
6 records identifying the names, addresses, and telephone numbers of
7 consumers who paid for goods from January 1, 1996, the amount the
8 consumer paid, and the amount of any price reduction negotiated by
9 the consumer.

10 **XI. ORDER DISTRIBUTION**

11 **IT IS FURTHER ORDERED THAT**, for a period of 3 years from the
12 date of entry of this Judgment, Defendants shall:

13 A. Provide a copy of this Judgment to, and obtain a
14 signed and dated acknowledgment of receipt of same from, each
15 officer or director, each individual serving in a management
16 capacity, all personnel involved in responding to consumer
17 complaints or inquiries, and all sales personnel, whether
18 designated as employees, consultants, independent contractors or
19 otherwise, immediately upon employing or retaining any such
20 persons, for any business where:

21 1. Any of Defendants is the majority owner of the
22 business or directly or indirectly manages or controls the
23 business, and

24 2. the business is engaged in the marketing of
25 laundry or cleaning products or assisting others engaged in such
26 activities; and

27 B. Maintain for a period of 3 years after creation, and

1 upon reasonable notice, make available to representatives of the
2 Commission, the original signed and dated acknowledgments of the
3 receipt of copies of this Order, as required in Subsection A of
4 this Paragraph.

5 **XII. RECORDKEEPING**

6 **IT IS FURTHER ORDERED THAT** for a period of 3 years from the
7 date of entry of this Judgment, OWN and Fobair shall create and
8 maintain:

9 A. Records sufficient to demonstrate compliance with the
10 provisions of this Judgment, including but not limited to:

11 (1) All advertisements and promotional materials
12 for any laundry or cleaning products offered for sale by
13 Defendants;

14 (2) All materials that were relied upon in
15 disseminating any representation covered by this Judgment; and

16 (3) All tests, reports, studies, surveys,
17 demonstrations, or other evidence in their possession or control
18 that contradict, qualify, or call into question any representation
19 covered by this Judgment, or the basis relied upon for the
20 representation, including complaints and other communications with
21 consumers or with governmental or consumer protection
22 organizations;

23 B. Records containing the name, address, and telephone
24 number of each consumer who purchases products from any of
25 Defendants either directly or through any third party;

26 C. A record of each written consumer complaint
27 (including complaints referred from any third party, such as any

1 office of the Better Business Bureau or any State Attorney
2 General), and each refund request received by any named defendant,
3 including:

4 (1) The consumer's name, address, telephone number
5 and the dollar amount paid by the consumer;

6 (2) The consumer's written complaint or refund
7 request and the date the complaint or refund request was received;

8 (3) The basis of the complaint or refund request,
9 if known, and the nature and result of any investigation conducted
10 as to the complaint;

11 (4) The response to the complaint or refund request
12 and the date of the response; and

13 (5) The final resolution, the date of the
14 resolution, and, in the event of a denial of a refund request, the
15 reason for the denial; and

16 D. With regard to complaints or refund requests received
17 by telephone, OWN and Fobair shall develop and maintain a program
18 to create and maintain the same information as identified in Parts
19 C.(1) through C.(5) of this Paragraph above.

20 **XIII. ACCESS TO BUSINESS PREMISES**

21 **IT IS FURTHER ORDERED THAT**, for a period of 5 years from the
22 date of entry of this Judgment, for the purpose of further
23 determining compliance with this Judgment, Defendants shall permit
24 representatives of the Commission, within 3 business days of
25 receipt of written notice from the Commission:

26 A. Access during normal business hours to any office, or
27 facility storing documents, of any business where:

1 officer or director, or in which he is or is to become a holder of
2 10% or more of the stock; and

3 F. Any termination or suspension of business operations
4 by him, the resumption of business operations, or any termination,
5 suspension or establishment of any type of consulting relationship
6 with any third party relating to the advertising, promotion,
7 offering for sale, sale, or distribution of any products.

8 **XV. NOTIFICATION OF CHANGES IN BUSINESS STRUCTURE**

9 **IT IS FURTHER ORDERED THAT** Defendant OWN, its successors and
10 assigns, shall notify the Associate Director, Division of
11 Enforcement, Bureau of Consumer Protection, Federal Trade
12 Commission, Washington, D.C. 20580, at least 30 days prior to any
13 change in the business of OWN including, but not limited to,
14 merger, incorporation, dissolution, assignment, sale resulting in
15 the emergence of a successor corporation, the creation or
16 dissolution of a subsidiary or parent, or any other change that may
17 affect Defendants' obligations under this Judgment.

18 **XVI. MONITORING COMPLIANCE OF SALES PERSONNEL**

19 **IF IS FURTHER ORDERED THAT** Defendant Fobair, in connection
20 with any business where (1) Fobair is the majority owner of the
21 business or directly or indirectly manages or controls the
22 business, and (2) the business is engaged in the marketing of
23 laundry or cleaning products or assisting others engaged in such
24 activity, is hereby permanently restrained and enjoined from:

25 A. Failing to take reasonable steps sufficient to
26 monitor and ensure that all employees and independent contractors
27 engaged in sales or other customer service functions comply with

1 the injunctive provisions of this Judgment. Such steps shall
2 include adequate monitoring of sales presentations or other calls
3 with customers, and shall also include, at a minimum, the
4 following:

- 5 1. listening to the oral representations made by
6 persons engaged in sales or other customer service functions;
- 7 2. establishing a procedure for receiving and
8 responding to consumer complaints; and
- 9 3. ascertaining the number and nature of consumer
10 complaints regarding transactions in which each employee or
11 independent contractor is involved.

12 Provided that this Paragraph does not authorize or require
13 Fobair to take any steps that violate any federal, state, or local
14 laws;

15 B. Failing promptly to investigate fully any consumer
16 complaint received by any business to which this Paragraph applies;
17 and

18 C. Failing to take corrective action with respect to any
19 sales person whom Fobair determines is not complying with this
20 Order, which may include training, disciplining, and/or terminating
21 such sales person.

22 **XVII. COMPLIANCE REPORTING BY DEFENDANT**

23 **IT IS FURTHER ORDERED THAT** 180 days after the date of entry of
24 this Order, Defendants shall provide a written report to the FTC,
25 sworn to under penalty of perjury, setting forth in detail the
26 manner and form in which Defendants have complied and are complying
27 with this Judgment. This report shall include but not be limited

1 to:

2 A. Fobair's then current residence address and telephone
3 number;

4 B. Fobair's then current employment, business addresses
5 and telephone numbers, a description of the business activities of
6 each such employer, and Fobair's title and responsibilities for
7 each employer;

8 C. A copy of each acknowledgment of receipt of this
9 Judgment obtained by Defendants pursuant to Paragraph XX; and

10 D. A statement describing the manner in which Defendants
11 have complied and are complying with Paragraphs I through VII, XI,
12 XII, and XVI of this Judgment.

13 Upon written request by a representative of the Commission,
14 Defendants shall submit additional written reports (under oath, if
15 requested) and produce documents on 15 days' notice with respect to
16 any conduct subject to this Judgment.

17 For the purposes of this Paragraph, "employment" includes the
18 performance of services as an employee, consultant, or independent
19 contractor; and "employers" include any individual or entity for
20 whom Fobair performs services as an employee, consultant, or
21 independent contractor.

22 For purposes of the compliance reporting required by this
23 Paragraph, the Commission is authorized to communicate in writing
24 directly with Fobair.

25

26 **XVIII. COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

27 **IT IS FURTHER ORDERED THAT** the Commission is authorized to

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1 Defendants OWN and Fobair, their successors and assigns, by this
2 Judgment, or concerning this Judgment, shall be sent to the
3 following address:

4
5 Associate Director
6 Division of Enforcement
7 Federal Trade Commission
8 Washington, D.C. 20580

9 **XX. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

10 **IT IS FURTHER ORDERED THAT**, within 5 business days after
11 receipt by Defendants of this Order as entered by the Court,
12 Defendant Fobair shall submit to the Commission a truthful sworn
13 statement, in the form shown on Appendix A, that shall acknowledge
14 receipt of this Judgment.

15 **XXI. CONTINUING JURISDICTION**

16 **IT IS HEREBY ORDERED THAT** this Court shall retain jurisdiction
17 of this matter for purposes of construction, modification, and
18 enforcement of this Judgment.

19 **SO ORDERED**, this _____ day of _____, 1999 in _____,
20 Texas.

21 _____
22 THE HONORABLE
23 UNITED STATES DISTRICT JUDGE

24
25 The parties hereby consent to the terms and conditions set
26 forth above and consent to entry of the Final Judgment without
27 further notice to the parties. Each party to this Judgment hereby
28 agrees to bear its own costs and attorneys fees incurred in
connection with this action.

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FEDERAL TRADE COMMISSION

Constance M. Vecellio
Pablo M. Zylberglait

Defendant James M. Fobair
on behalf of himself.

Counsel for Plaintiff
Federal Trade Commission
Washington, DC 20580
202-326-3143;3222

Defendant James M. Fobair,
on behalf of OneSource
Worldwide Network, Inc.

Mark T. Blake, Esq.
Counsel for OneSource
Worldwide Network, Inc. and
James M. Fobair

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APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

FEDERAL TRADE COMMISSION,
Plaintiff,

v.

LIFE EXTENSION INTERNATIONAL, INC.,
a corporation,
ONESOURCE WORLDWIDE NETWORK, INC.,
a corporation,
JAMES MICHAEL FOBAIR,
individually and as an officer of
Life Extension International, Inc., and
OneSource Worldwide Network, Inc.,
Defendants.

Civil Action No.

James Michael Fobair, being duly sworn, hereby states and affirms as follows:

1. My name is James Michael Fobair. 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. Life Extension International, Inc., et al. (United States District Court for the Northern District of Texas), Civil Action No. _____.

3. On _____, I received a copy of the Stipulated Final Judgment, which was signed by the Honorable _____ and entered by the Court on _____. A true and correct copy of The Order I received is appended to this

///

1 Affidavit.

2

3 I declare under penalty of perjury under the laws of the
4 United States that the foregoing is true and correct. Executed on
5 _____, at _____.

6

7

James Michael Fobair

8

9 State of _____, City of _____

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Subscribed and sworn to before me
this _____ day of _____, 199____.

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Notary Public
My Commission Expires:

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