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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RECEIVED

JUL 31 2006
JUDGE JOAN B. GOTTSCHALL
U.S. District Court Judge

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

120194 CANADA, LTD., *et al.*,

Defendants.

Civil Action No. 04C 7204
Judge Gottschall
Magistrate Mason

**STIPULATED ORDER FOR PERMANENT INJUNCTION AND FINAL JUDGMENT
AGAINST DEFENDANTS MISHELE WELLS AND SIMAX CORP.**

Plaintiff, the Federal Trade Commission ("FTC" or "the Commission"), commenced this action by filing its Complaint, followed by an Amended Complaint, for injunctive and other equitable relief (hereinafter "Complaint") pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101, *et seq.*, charging that the defendants engaged in deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule," 16 C.F.R. Part 310.

The FTC and Defendants Mishele Wells and Simax Corp., d/b/a America's Gift House, Gold Universal, Ameriline, and Ameriline Corp. ("Simax Corp."), having been represented by counsel and acting by and through such counsel, have consented to the entry of this Stipulated

Order for Permanent Injunction and Final Judgment (“Stipulated Order” or “Order”) without a trial or adjudication of any issue of law or fact herein.

NOW, THEREFORE, the Commission and Defendants Mishele Wells and Simax Corp., having requested the Court to enter this Stipulated Order, and the Court having considered the Stipulated Order reached among the parties and for other cause appearing, it is **ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. This is an action by the Commission instituted under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, the Telemarketing Act, 15 U.S.C. §§ 6101, *et seq.*, and the FTC’s Telemarketing Sales Rule, 16 C.F.R. Part 310. Pursuant to these statutes and regulations, the Commission has the authority to seek the relief contained herein.

2. The Commission’s Complaint states a claim upon which relief may be granted against Defendants Mishele Wells and Simax Corp., under Sections 5, 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45, 53(b) and 57b, the Telemarketing Act, 15 U.S.C. §§ 6101, *et seq.*, and the FTC’s Telemarketing Sales Rule, 16 C.F.R. Part 310.

3. This Court has jurisdiction over the subject matter of this case and all parties hereto.

4. Venue in the United States District Court for the Northern District of Illinois is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b), (c), and (d).

5. The alleged activities of Defendants Mishele Wells and Simax Corp. are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

6. Defendants Mishele Wells and Simax Corp., without admitting the allegations set forth in Plaintiff's Complaint or any liability in connection therewith, agree to entry of this Stipulated Order.

7. Nothing herein shall constitute a waiver of Defendants' rights against self-incrimination nor be construed as a waiver of any legal or evidentiary privileges against disclosure.

8. The parties shall each bear their own costs and attorneys' fees incurred in this action and have waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, and all rights to seek judicial review, or otherwise to challenge the validity of this Stipulated Order.

9. This Order is in addition to and not in lieu of any other civil or criminal remedies that may be provided by law.

10. Entry of this Stipulated Order is in the public interest.

DEFINITIONS

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

1. "Defendants" means the Corporate Defendant and Individual Defendant. The "Corporate Defendant" is Simax Corp., d/b/a America's Gift House, Gold Universal, Ameriline, and Ameriline Corp., a New York Corporation. The "Individual Defendant" is Mishele Wells, also known as Mishele Andrea Wells.

2. "Asset" or "assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory,

checks, notes, accounts, credits, receivables (as those terms are defined in the Uniform Commercial Code), and all cash, wherever located.

3. "Assisting others" means providing any of the following goods or services: (1) providing for or arranging for the provision of mail or telephone lists that contain, incorporate, or utilize consumers' account numbers; (2) preparing or providing, or causing to be prepared or provided, telephone sales scripts or other materials for use in connection with the promotion of products or services to consumers; (3) providing, mailing or shipping, or arranging for the provision, mailing or shipping, of fulfillment products or services; (4) providing or arranging for the provision of telemarketing or computer processing services; (5) providing or facilitating the means of obtaining payment from consumers, by providing or facilitating access to the credit card or bank account payment and collection system; and (6) providing marketing or customer service support.

4. "Consumer" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

5. "Credit-related products, programs, or services" means any product, program, or service which is advertised, offered for sale, or sold to consumers as a method by which consumers may establish or obtain any extension of credit or credit device, including, but not limited to, credit cards, loans, or financing, or as a method to consolidate or liquidate debts.

6. "Customer" means any person who has paid, or may be required to pay, for goods or services offered for sale or sold by Defendants.

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.

8. "Material" means likely to affect a person's choice of, or conduct regarding, goods or services.

9. "Person" means a natural person, organization, or other legal entity, including, but not limited to, a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

10. "Telemarketing" means a plan, program, or campaign (whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310) which is conducted to induce the purchase of goods or services or a charitable contribution by use of one or more telephones.

ORDER

I.

PROHIBITED BUSINESS ACTIVITIES

IT IS FURTHER ORDERED that, in connection with the advertising, marketing, promoting, offering for sale, or sale of any product, program, or service, Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from:

A. Making, or assisting others in making, any express or implied representation or omission of material fact that is false or misleading, in any manner, including, but not limited to, any false or misleading statement:

1. That Defendants will provide consumers with, or arrange for consumers to receive, a major credit card, such as a Visa or MasterCard;
2. Concerning the Defendants' ability to provide consumers with any credit-related product, program, or service; and
3. Concerning any fact material to a consumer's decision to purchase any product, program or service;

B. Violating, or assisting others to violate, any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, as currently promulgated or as it may hereafter be amended, including, but not limited to:

1. Violating Section 310.3(a)(2) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2), by misrepresenting, directly or by implication, any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer, 16 C.F.R. § 310.3(a)(2)(iii); and
2. Violating Section 310.4(a)(4) of the Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(4), by requesting or receiving payment of any fee or consideration in advance of obtaining or arranging an extension of credit when they have guaranteed or represented a high likelihood of success in obtaining or arranging an extension of credit; and

C. Assisting others who violate any provision of Subsections A and B of this Section.

II.

MONETARY RELIEF

IT IS FURTHER ORDERED that:

A. Defendants shall pay to the Commission the sum of fifteen thousand dollars (USD) (\$15,000.00 (USD)) within fourteen (14) days of the date of entry of this Stipulated Order. All payments required to be made to the Commission under this Section shall be made by certified check or other guaranteed funds payable to and delivered to the Commission, or by wire transfer in accord with directions provided by the Commission.

B. All funds paid pursuant to this Section 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 such equitable relief fund. If the Commission determines, in its sole discretion, that 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 Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Section. The Commission and Defendants acknowledge and agree that this judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture;

C. In the event of any default on any obligation to make payment under this Section, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment, and shall immediately become due and payable; and

D. For purposes of any subsequent proceedings to enforce payments required by this Section, including, but not limited to, a non-dischargeability complaint filed in a bankruptcy proceeding, Defendants waive any right to contest any allegations in Plaintiff's Complaint.

III.

RIGHT TO REOPEN: ACCURACY OF FINANCIAL STATEMENTS

IT IS FURTHER ORDERED that within five (5) business days after the date of entry of this Stipulated Order, Defendants shall submit to the Commission a truthful sworn statement that shall reaffirm and attest to the truthfulness, accuracy, and completeness of the Financial Statement of Individual Defendant executed by Defendant Mishele Wells on February 8, 2006, and the Financial Statement of Corporate Defendant concerning Defendant Simax Corp. executed by Mishele Wells on February 8, 2006. The Commission's agreement to this Stipulated Order is expressly premised upon the financial condition of Defendants, as represented in their financial statements, which contain material information upon which the Commission relied in negotiating and agreeing upon this Stipulated Order.

If, upon motion of the Commission, the Court finds that Defendants failed to submit the sworn statement required by this Section, or that Defendants failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation in or omission from the financial statement, the Court shall enter judgment against them, in favor of the Commission, in the amount of four hundred thousand dollars (USD) (\$400,000.00 (USD))

(the approximate total amount of consumer injury in this matter during the time that Defendants Mishele Wells and Simax Corp. were actively involved in the alleged activities set forth in Plaintiff's Complaint), and the entire amount of the judgment shall become immediately due and payable, less any amount already paid.

Provided, however, that in all other respects, this judgment shall remain in full force and effect, unless otherwise ordered by the Court; and *provided further*, that proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including, but not limited to, contempt proceedings, or any other proceedings that the Commission or the United States might initiate to enforce this Stipulated Order.

IV.

CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, are permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, social security number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to or received any credit-related product, program, or service from any Defendant, or whose identifying information was obtained for the purpose of soliciting them to pay money to or

receive services from any Defendant at any time prior to the date this Order is entered, in connection with the sale or rendition of the products, programs, or services referenced in the Complaint.

Provided, however, that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, may provide such information to a law enforcement agency either voluntarily, or as required by any law, regulation, or court order.

V.

COOPERATION WITH FTC COUNSEL

IT IS FURTHER ORDERED that Defendants shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the FTC's Complaint, cooperate in good faith with the FTC and appear, or cause their officers, employees, representatives, or agents to appear, at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Defendants shall appear, or cause their officers, employees, representatives, or agents to appear, and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena.

VI.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, each Defendant shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including, but not limited to, the following:

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45; and

2. posing as consumers 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

C. Defendants shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided, however, that nothing in this 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

obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

VII.

COMPLIANCE REPORTING BY DEFENDANTS

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

A. For a period of five (5) years from the date of entry of this Order,

1. Defendant Mishele Wells shall notify the Commission of the following:

a. Any changes in her residence, mailing addresses, and telephone

numbers, within ten (10) days of the date of such change;

b. Any changes in her employment status (including self-

employment), and any change in the ownership of the Defendant in any business entity, within ten (10) days of the date of the such change. Such notice shall include the name and address of each business that the Defendant is affiliated with, employed by, creates or forms, or performs services for; 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

c. Any changes in the Defendant's name or use of any aliases or

fictitious names; and

2. Defendants shall notify the Commission of any changes in corporate

structure of any business entity that the Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including,

but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which the Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order, the Defendants shall provide a written report to the FTC, sworn to under penalty of perjury under the laws of the United States, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

1. For Defendant Mishele Wells:

a. The then-current residence address, mailing addresses, and telephone numbers of Defendant Mishele Wells;

b. The then-current employment and business addresses and telephone numbers of Defendant Mishele Wells, a description of the business activities of each such employer or business, and the title and responsibilities of Defendant Mishele Wells, for each such employer or business; and

c. Any other changes required to be reported under subsection A of this Section.

2. For all Defendants:

a. A copy of each acknowledgment of receipt of this Order obtained by Defendant pursuant to Section X of this Order; and

b. Any changes required to be reported pursuant to Subsection A above.

C. For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Enforcement
Federal Trade Commission
601 New Jersey Avenue N.W.
Washington, D.C. 20580
Re: FTC v. 120194 Canada, Ltd., et al., Civil Action No. 04C 7204.

D. For purposes of the compliance reporting required by this Order, the Commission is authorized to communicate directly with Defendants.

VIII.

MONITORING COMPLIANCE OF SALES PERSONNEL

IT IS FURTHER ORDERED that Defendants, in connection with any business where any Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where the business is engaged in telemarketing, or assisting others engaged in telemarketing, are 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 Section I of this Stipulated Order. Such steps shall include adequate monitoring of sales presentations or other calls with customers, 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 corrective action with respect to any sales person whom Defendants determine is not complying with this Order, which may include training, disciplining, and/or terminating such sales person.

IX.

RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, in connection with any business where (1) Defendant Mishele Wells is the majority owner, or directly or indirectly manages or controls the business, and (2) the business is engaged in, or assists others in engaging in, telemarketing, Defendants and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, 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. Personnel 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, telephone 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;

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and

F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including, but not limited to, copies of acknowledgments of receipt of this Order, required by Section X, and all reports submitted to the FTC pursuant to Section VII.

X.

DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendants shall deliver copies of the Order as directed below:

A. **Corporate Defendant:** Defendant Simax Corp. must deliver a copy of this Order to all of its principals, officers, directors, and managers. Defendant Simax Corp. also must deliver copies of this Order to all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

B. **Individual Defendant Mishele Wells as Control Person:** For any business that Defendant Mishele Wells controls, directly or indirectly, or in which Defendant Mishele Wells has a majority ownership interest, Defendant Mishele Wells must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Defendant Mishele Wells must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

C. **Individual Defendant Mishele Wells as employee or non-control person:** For any business where Defendant Mishele Wells is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, Defendant Mishele Wells must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

D. Defendants must secure a signed and dated statement acknowledging receipt of the Order and the Permanent Injunction, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

XI.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that each Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

XII.


RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that the Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Order.


The Commission and Defendants hereby stipulate and agree to entry of the foregoing Stipulated Order, which shall constitute a final judgment in this action.

SIGNED AND STIPULATED BY:


Dated: July 31, 2006


KAREN D. DODGE
Attorney for Plaintiff
Federal Trade Commission

Dated: May 1/06

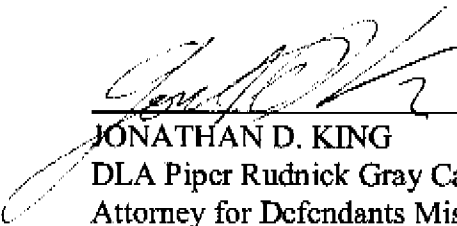

MISHELE WELLS, individually

Dated: May 1/06


SIMAX CORP.
By Mishele Wells, President


APPROVED AS TO FORM:

Dated: 5/8/06


JONATHAN D. KING
DLA Piper Rudnick Gray Cary US LLP
Attorney for Defendants Mishele Wells and
Simax Corp.

IT IS SO ORDERED.

Dated: 8/1/06


HONORABLE JOAN B. GOTTSCHALL
United States District Judge