

## **US v. Home Shopping Network Inc. (1999)**

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## **US v. Home Shopping Network Inc. (1999)**

**Case:** US v. Home Shopping Network Inc. (1999)

**Subject Category:** Consent Decree, Consumer Product Claims

**Agency Involved:** FTC

**Complaint Synopsis:** Home Shopping Network agreed to a 1.1 million dollar fine for violating an earlier consent decree prohibiting the company from making unsubstantiated product efficacy claims.

**Consent Details:** Home Shopping Network agreed to pay a 1.1 million dollar fine for violating an earlier consent agreement with the FTC. According to the FTC, Home Shopping made unsubstantiated efficacy claims for products designed to help consumers stop smoking, lose weight, and similar activities. Although the commission accepted the consent decree, one commissioner wrote separately to stress that home shopping was a recidivist. The action that gave rise to the fine was also the subject of the earlier consent decree. In this commissioner's view, the fine was not an adequate deterrent to the behavior.

**Practical Importance to Business of MLM/Direct Sales/Direct Selling/Network Marketing/Party Plan/Multilevel Marketing:** The FTC takes unsubstantiated product claims very seriously.

**US v. Home Shopping Network Inc. (1999)**, Civ. Action no. 99-897-Civ-T-25C: Home Shopping Network agreed to pay a 1.1 million dollar fine for violating an earlier consent agreement with the FTC. According to the FTC, Home Shopping made unsubstantiated efficacy claims for products designed to help consumers stop smoking, lose weight, and similar activities. Although the commission accepted the consent decree, one commissioner wrote separately to stress that home shopping was a recidivist. The action that gave rise to the fine was also the subject of the earlier consent decree. In this commissioner's view, the fine was not an adequate deterrent to the behavior.

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#### Consent Decree

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, Plaintiff,

v.

HOME SHOPPING NETWORK, INC., and  
HOME SHOPPING CLUB, L.P., Defendants.

CIV. ACTION NO. 99-897-CIV-T-25C

#### CONSENT DECREE

WHEREAS: Plaintiff, the United States of America, has commenced this action by filing the Complaint herein; defendants Home Shopping Network, Inc., and Home Shopping Club, L.P., have 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 defendants admitting liability for any of the matters alleged in the Complaint;

THEREFORE, on the joint motion of plaintiff and defendants, 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 defendants under Sections 5(l), 9, 13(b) and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(l), 49, 53(b) and 56(a).

3. The following definition shall apply to this Consent Decree: "Commission's Order" shall mean the Federal Trade Commission ("Commission") Order in FTC Docket

No. 9272 (1996), 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), defendants Home Shopping Network, Inc., and Home Shopping Club, L.P., their successors and assigns, shall pay a monetary civil penalty of \$1,100,000.

5. Defendants, their 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. Defendants Home Shopping Network, Inc., and Home Shopping Club, L.P., their 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.

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

#### PERSONS AFFECTED; CONTINUING JURISDICTION

9. Each defendant shall, within thirty (30) days after the entry of this Consent Decree, provide a copy of the Commission's Order and a copy of this Consent Decree to each of its officers, and to each of its agents and employees responsible for the advertising or promotion of any product covered by the Commission's Order. Within ten (10) days of complying with this paragraph, each defendant shall provide the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, an affidavit setting forth the fact and manner of its compliance, including the name and title of each person to whom a copy of the Commission's Order and Consent Decree has been provided.

10. For a period of five (5) years from the date of entry of this Consent Decree, defendants, their successors and assigns, shall 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.

11. This Court shall 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.

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

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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. Defendants waive 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, 863-63 (1996).

FOR THE UNITED STATES OF AMERICA:

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### Statement of FTC Commissioner Sheila F. Anthony

Re: *Home Shopping Network, Inc. et al.*, Docket No. 9272

#### STATEMENT OF COMMISSIONER SHEILA F. ANTHONY

I reluctantly join my colleagues in voting to accept the consent decree in this matter. I write separately to emphasize my concerns.

My overriding concern is the size of the civil penalty given the conduct alleged here. I find the \$1.1 million civil penalty amount to be barely adequate. Home Shopping Network and its subsidiaries ("HSN") are recidivists. The Commission instituted a suit against HSN in 1995, alleging that HSN had made various unsubstantiated product efficacy claims. Prior to trial, that matter was settled by a consent order which became final in 1996. Among other things, the order requires HSN to have substantiation for all efficacy claims regarding food and drug products. Only two years later, HSN is again before us, and is again facing allegations that it has made multiple unsubstantiated product efficacy claims. Indeed, these allegations give me reason to question whether HSN took its obligations under the 1996 order seriously. Parties cannot escape the requirements of Commission orders by claiming "good faith" incompetence in attempting to comply. Substantial penalties are warranted for parties that fail to reform their conduct and to live up to their obligations under the Commission's consent orders.

Further, a larger civil penalty may have been warranted here to deter future unsubstantiated claims by HSN and other advertisers. Civil penalties and other remedial impositions cannot be a mere cost of doing business. If false claims are profitable even in the wake of penalties, advertisers will continue to make such claims.

I applaud the FTC staff's diligence in monitoring HSN's compliance with the 1996 order and urge continued diligence with respect to HSN and all other parties under order.

Despite my concerns, weighing all of the evidence and factors before me, I am willing to accept the settlement in this case.

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