

Tradenet Marketing Inc.

©www.mlmllegal.com

Welcome to the MLMLegal.com Legal Cases Project. Here you will find hundreds of legal cases in the fields of MLM, Direct Selling, Network Marketing, Multilevel Marketing and Party Plan. The cases span federal and state courts as well as administrative cases from the FTC, FDA, IRS, SEC, worker's compensation, unemployment compensation, etc.

*The intent of the MLMLegal.com Cases Project is strictly educational, and, to provide insight into the legal issues and cases for an industry that spans the globe in upwards of 150 countries with sales volume exceeding \$100 billion and distributor involvement in the tens of millions. **MLMLegal.Com** does not promote or endorse any company. **MLMLegal.Com** offers no value judgments, either pro or con, regarding the companies profiled in legal cases.*

Jeffrey A. Babener, principal attorney in the Portland, Oregon, law firm Babener & Associates, and editor of www.mlmllegal.com, represents many of the leading direct selling companies in the United States and abroad.

www.mlmllegal.com www.mlmllegal.com www.mlmllegal.com www.mlmllegal.com

Tradenet Marketing Inc.

Case: Tradenet Marketing Inc. (1998)

Subject Category: Consent Decree

Agency Involved: FTC

Complaint Synopsis: Tradenet produced a laundry product that it claimed was as effective as typical laundry detergent. The FTC claimed that the product did not contain "structured water" as claimed, emit negative charges, or work as effectively at cleaning laundry as typical detergent. The FTC also claimed that the company represented user testimonials that did not reflect the typical product experience.

Consent Details: Tradenet agreed to a stipulated judgment. The company agreed to cease claiming that their laundry products cleaned as well as typical detergents, emitted negative charges and that they contain "structured water." The company also must possess reliable and competent scientific evidence before making similar claims in the future, properly disclose testimonials that do not represent the typical user experience, and cease from misrepresenting scientific studies. The company and its officers agreed to pay fines totaling \$450,000, but the FTC agreed to forgo all but \$155,000 in return for the company producing accurate and complete financial disclosures.

Practical Importance to Business of MLM/Direct Sales/Direct Selling/Network Marketing/Party Plan/Multilevel Marketing: False or materially misleading marketing statements are heavily scrutinized by the FTC, and may result in injunctions or fines.

Tradenet Marketing Inc., FTC File No. 982 3018: Tradenet agreed to a stipulated judgment of the complaint. Tradenet agreed to cease claiming that their laundry products cleaned as well as typical detergents, emitted negative charges, and that they contain “structured water.” The company also must possess reliable and competent scientific evidence before making similar claims in the future, properly disclose testimonials that do not represent the typical user experience, cease from misrepresenting scientific studies, and pay a fine of \$300,000. The FTC agreed to forgo all but \$10,416.67 of the fine in return for the company producing accurate and complete financial disclosures.

www.mlmlegal.com www.mlmlegal.com www.mlmlegal.com www.mlmlegal.com

Stipulated Final Judgment: Alberto Guerrero

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

FEDERAL TRADE COMMISSION, Plaintiff,

v.

TRADENET MARKETING, INC., a corporation, L.W. COOPER, individually and as an officer of Tradenet Marketing, Inc., ALBERTO GUERRERO, individually and as an officer of Tradenet Marketing, Inc., TOP MARKETING BUSINESS CONSULTING, INC. a corporation, and ERWIN RICHARD ANNAU, individually and as an officer of Top Marketing Business Consulting, Inc., Defendants.

Civil Action No.

STIPULATED FINAL JUDGMENT

WHEREAS: Plaintiff, the Federal Trade Commission ("FTC" or the "Commission") commenced this action by filing the Complaint herein; Defendant Alberto Guerrero 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 the 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 Alberto Guerrero, it is hereby ORDERED, ADJUDGED, and **DECREED** as follows:

DEFINITIONS

1. "Defendant" means Alberto Guerrero ("Guerrero"), who as of June 1, 1998, resided at 1010 Macrae Avenue Clearwater, Florida 33755, his successors and assigns, and his officers, agents, servants, employees and attorneys, and all persons in active concert or participation with him who receive actual notice of this Stipulated Final Judgment ("Judgment") by personal service or otherwise.
2. "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.
3. "Laundry product" means any product used in the process of refurbishing textiles, including but not limited to products described as replacing detergents or bleaches, whether referred to as "boosters" or "brighteners," and products described as changing the nature of water by any means that will have a beneficial effect on washing, including water filters, water filtration systems, water purification systems, or water cleaning systems.
4. "Consumer" means a purchaser (including purchasers for resale) of one or more products sold by Defendant, whether or not purchased directly from Defendant.

FINDINGS

1. This Court has jurisdiction of the subject matter and of the parties.
2. The Complaint states a claim upon which relief may be granted against Guerrero under Sections 5(a) and 13(b) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 53(b);
3. Venue is proper as to Guerrero in the Middle District of Florida;
4. The activities of Guerrero are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44; and
5. Guerrero has waived all 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).

ORDER

I. PROHIBITED CLAIMS FOR CERTAIN PRODUCTS

IT IS HEREBY ORDERED THAT Defendant, directly or through any corporation, subsidiary, division, distributor, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of The Laundry Solution, The SuperGlobe, or any substantially similar product, in or affecting commerce, is hereby permanently enjoined from representing in any manner, expressly or by implication:

A. that such product cleans as well as conventional laundry detergent;

B. that such product cleans laundry by emitting a negative charge that forces positively charged dirt to leave fabric; or

C. that such product's active ingredients are "structured water," "I_E crystals," "I_E solution," or "I_E structures."

II. CLAIMS REQUIRED TO BE TRUE AND SUBSTANTIATED

IT IS FURTHER ORDERED THAT Defendant, directly or through any corporation, subsidiary, division, distributor, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product, in or affecting commerce, is hereby enjoined from making any representation in any manner, expressly or by implication:

A. that such product cleans as well as conventional laundry detergent;

B. that such product cleans laundry by emitting a negative charge that forces positively charged dirt to leave fabric; or

C. that such product's active ingredients are "structured water," "I_E crystals," "I_E solution," or "I_E structures"; or

D. regarding such product's comparative or absolute efficacy, benefits, mechanism of action, or performance;

unless the representation is true and, at the time it is made, Defendant possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

III. CLAIMS ABOUT TESTS, STUDIES OR RESEARCH

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

IV. CLAIMS MADE THROUGH TESTIMONIALS AND/OR ENDORSEMENTS

IT IS FURTHER ORDERED THAT Defendant, directly or through any corporation, subsidiary, division, distributor, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product, in or affecting commerce, is hereby enjoined from representing in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of such product represents the typical or ordinary experience of members of the public who use the product, unless:

A. The representation is true and, at the time it is made, Defendant possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation; or,

B. Defendant discloses clearly and prominently, and in close proximity to the endorsement or testimonial, either:

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

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

V. ENVIRONMENTAL CLAIMS

IT IS FURTHER ORDERED THAT Defendant, directly or through any corporation, subsidiary, division, distributor, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product, in or affecting commerce, is hereby enjoined from making any representation, in any manner, expressly or by implication:

A. that such product is a solution to the problems of pollution of rivers, streams, lakes, and oceans;

B. regarding such product's comparative or absolute safety to individuals or to the environment; or

C. such product's environmental benefits, unless, at the time the representation is made, Defendant possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

VI. PROHIBITED DISTRIBUTION OF CONSUMER INFORMATION

IT IS FURTHER ORDERED THAT Defendant is hereby enjoined from offering for sale, selling, or distributing to any person other than to a named defendant, an entity in which a named defendant is an owner, or a law enforcement agency, any list of any consumer's name, telephone number, mailing address, bank or credit card account number, or other identifying information.

VII. PROHIBITED ACTIVITIES

IT IS FURTHER ORDERED THAT Defendant is hereby enjoined from providing knowing substantial assistance to others to engage in any of the activities prohibited by Paragraphs I through VI of this Judgment.

VIII. MONETARY JUDGMENT

IT IS FURTHER ORDERED THAT a judgment in the amount of FIFTY-THOUSAND (\$50,000) is hereby entered against Guerrero. Based on Guerrero's sworn representations in his financial disclosure statements dated June 18, 1998 and the attachments thereto (1996 and 1997 U.S. Individual Income Tax Returns -- 1040 Forms), hereinafter together designated "Financial Disclosure Statements," payment of the foregoing monetary judgment is waived, contingent upon the accuracy and completeness of the Financial Disclosure Statements.

Plaintiff's agreement to this monetary judgment is expressly premised upon the truthfulness, accuracy, and completeness of the financial condition of Guerrero, as represented in the Financial Disclosure Statements referenced above, which contain material information upon which the Plaintiff relied in negotiating and agreeing to the waiver of the monetary judgment. In all other respects, this Judgment shall remain in full force and effect unless otherwise ordered by this Court.

If, upon motion by the Commission, this Court finds that Guerrero made any material misrepresentation in or omission from the Financial Disclosure Statements, the entire amount of the FIFTY-THOUSAND (\$50,000) suspended judgment entered against Guerrero will be immediately due and payable. In connection with any such motion, the only issue shall be whether the financial information Guerrero provided in the Financial Disclosure Statements was fraudulent, misleading, inaccurate or incomplete in any material respect.

The Commission may apply any or all funds received from Guerrero pursuant to this monetary judgment, and any interest received thereon, to a consumer redress program and to related administrative expenses; *provided*, however, that if the Commission in its sole discretion determines that a consumer redress program is not feasible, the Commission may pay such funds to the United States Treasury as disgorgement. Guerrero shall have no right to contest the manner of distribution chosen by the Commission.

Guerrero is hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Commission his taxpayer identifying numbers (social security number or employer identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of his relationship with the government.

For purposes of this Paragraph, and any subsequent proceedings to enforce payment, including but not limited to a nondischargeability complaint filed in a bankruptcy proceeding, Guerrero waives any right to contest any of the allegations of Plaintiff's Complaint.

IX. ALLEGATIONS IN THE COMPLAINT TAKEN AS TRUE

IT IS FURTHER ORDERED THAT the facts as alleged in the Complaint filed with this Judgment shall be taken as true in any subsequent litigation filed by the FTC to enforce its rights under this Judgment,

including its claim for monetary relief, including but not limited to a nondischargeability complaint in any subsequent bankruptcy proceeding.

X. PRODUCTION OF SALES RECORDS

IT IS FURTHER ORDERED THAT within 30 days after the entering of this Judgment, Guerrero, his successors and assigns, shall provide to the FTC a description of the available records regarding sales of The Laundry Solution and The SuperGlobe from January 1, 1996 to the date of entry of this Stipulated Final Judgment, in order for the FTC to design a redress plan. Guerrero shall assist the FTC, and its agents, in locating and producing all records necessary to conduct the proposed claims procedure, including, but not limited to, records identifying the names, addresses, and telephone numbers of consumers who paid for goods from January 1, 1996, the amount the consumer paid, and the amount of any price reduction negotiated by the consumer.

XI. ORDER DISTRIBUTION

IT IS FURTHER ORDERED THAT Guerrero, his successors and assigns, shall send a copy of this Judgment to all current and future principals, officers, directors, and managers and to all current and future agents, employees, distributors, and independent contractors having responsibility with respect to this Judgment's subject matter, and shall secure from each such person a signed statement acknowledging receipt of the Judgment. Guerrero shall deliver this Judgment to current personnel within 30 days of the entry of this Judgment, and to future personnel within 30 days after the person assumes such position or responsibilities. Within 60 days of entry of this Judgment, Guerrero shall file with the Federal Trade Commission an affidavit setting forth the fact and manner of his compliance, including the name and title of each person to whom a copy of the Judgment has been provided, and a copy of their acknowledgment.

XII. RECORDKEEPING

IT IS FURTHER ORDERED THAT for a period of 5 years from the date of entry of this Judgment, Guerrero shall create and maintain:

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

- (1) All advertisements and promotional materials for any laundry or cleaning products offered for sale by Defendant;
- (2) All materials that were relied upon in disseminating any representation covered by this Judgment; and
- (3) All tests, reports, studies, surveys, demonstrations, or other evidence in his possession or control that contradict, qualify, or call into question any representation covered by this Judgment, or the basis relied upon for the

representation, including complaints and other communications with consumers or with governmental or consumer protection organizations;

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

C. A record of each written consumer complaint (including complaints referred from any third party, such as any office of the Better Business Bureau or any State Attorney General), and each refund request received by Defendant, including:

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

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

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

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

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

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

XIII. ACCESS TO BUSINESS PREMISES

IT IS FURTHER ORDERED THAT for a period of 5 years from the date of entry of this Judgment, for purposes of determining or securing compliance with this Judgment, Guerrero shall:

A. Upon reasonable written notice by any representative of the Commission, permit representatives of the Commission access during normal business hours to the offices of any business owned or controlled in whole or in part by him to inspect and copy all documents relating in any way to any conduct subject to this Judgment;

B. Upon written request by any representative of the Commission produce documents on 30 days' notice concerning any conduct subject to this Judgment;

C. appear within 30 days' notice to be deposed concerning any conduct subject to this Judgment, or within such time as is jointly agreed to by the counsel for the Commission and Defendant's counsel, if Defendant has counsel; and

D. The Commission may otherwise monitor compliance with this Judgment by all lawful means available, including the use of investigators posing as consumers, distributors or vendors.

XIV. MONITORING

IT IS FURTHER ORDERED THAT for a period of 5 years from the date of entry of this Judgment, Guerrero shall promptly inform the Commission by written notification at least 30 days in advance, or in the case of involuntary termination of employment, within 30 days of such termination, of:

A. Any change in his residential address, occupation, place of business, or place of employment;

B. Any change in the name, address, type of business, or identity of each company, corporation, partnership, or business owned or controlled directly or indirectly by him;

C. Any proposed change in any company, corporation, partnership, or business that is owned or controlled, directly or indirectly, by him including, but not limited to, dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in business relationship(s) that may affect compliance obligations arising out of this Judgment;

D. His affiliation with a new business or employment that involves the advertising, promotion, offering for sale, sale, or distribution of laundry or cleaning products, including a description of such business, the business address, and of his interest in and duties in connection with such business or employment;

E. The formation of any corporation, sole proprietorship, partnership, or independent consulting business or any other business entity that is engaged directly or indirectly in the advertising, promotion, offering for sale, sale, or distribution of laundry or cleaning products, in which he is or is to become an officer or director, or in which he is or is to become a holder of 10% or more of the stock; and

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

XV. NOTICES

IT IS HEREBY ORDERED THAT all notifications required of Guerrero, his successors and assigns, by this Judgment, or concerning this Judgment, shall be sent to the following address:

Associate Director
Division of Enforcement

Federal Trade Commission
Washington, D.C. 20580

XVI. CONTINUING JURISDICTION

IT IS HEREBY ORDERED THAT this Court shall retain jurisdiction of this matter for purposes of construction, modification, and

///

///

///

///

///

///

///

///

///

///

///

///

enforcement of this Judgment.

SO ORDERED, this _____ day of _____, 1998 in _____,

Florida.

THE HONORABLE
UNITED STATES DISTRICT JUDGE

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

FEDERAL TRADE COMMISSION

Constance M. Vecellio
Pablo M. Zylberglait

Defendant Alberto Guerrero

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

<http://www.mllegal.com/legal-cases/TradenetMarketingInc.php>