

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Midway Industries Limited Liability Company,
et al.,

Defendants.

Case No. JFM 14-CV-2312

**FINAL ORDER FOR PERMANENT INJUNCTION AND JUDGMENT AGAINST
DEFENDANTS MIDWAY INDUSTRIES LIMITED LIABILITY COMPANY,
COMMERCIAL INDUSTRIES LLC, NATIONAL LLC, STATE POWER & LIGHTING
LLC, STANDARD INDUSTRIES LLC, ESSEX INDUSTRIES, LLC, JOHNSON
DISTRIBUTING LIMITED LIABILITY COMPANY, HANSEN SUPPLY LLC,
ENVIRONMENTAL INDUSTRIES, LLC, MID ATLANTIC INDUSTRIES LLC,
MIDWAY MANAGEMENT, LLC, AND B & E INDUSTRIES, LLC**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint for Permanent Injunction and Other Equitable Relief, subsequently amended as its First Amended Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”) in this matter, 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. §§ 6101-6108, and the Unordered Merchandise Statute, 39 U.S.C. § 3009.

Upon consideration of the motion for default judgment of Plaintiff Federal Trade Commission, the argument of counsel, and the entire record herein, IT IS ORDERED as follows:

FINDINGS

1. The Court has jurisdiction over this matter and over Defendants Midway Industries Limited Liability Company, Commercial Industries LLC, National LLC, State Power & Lighting LLC, Standard Industries LLC, Essex Industries, LLC, Johnson Distributing Limited Liability Company, Hansen Supply LLC, Environmental Industries, LLC, Mid Atlantic Industries LLC, Midway Management, LLC, and B & E Industries, LLC.
2. Venue is proper as to all parties in the District of Maryland.
3. The activities alleged in the Complaint are or were in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
4. The Complaint states a claim upon which relief may be granted against Defendants Midway Industries Limited Liability Company, Commercial Industries LLC, National LLC, State Power & Lighting LLC, Standard Industries LLC, Essex Industries, LLC, Johnson Distributing Limited Liability Company, Hansen Supply LLC, Environmental Industries, LLC, Mid Atlantic Industries LLC, Midway Management, LLC, and B & E Industries, LLC under Section 5 of the FTC Act, 15 U.S.C. § 45, the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, and the Unordered Merchandise Statute, 39 U.S.C. § 3009.
5. Defendants Midway Industries Limited Liability Company, Commercial Industries LLC, National LLC, State Power & Lighting LLC, Standard Industries LLC, Essex Industries, LLC, Johnson Distributing Limited Liability Company, Hansen Supply LLC, Environmental Industries, LLC, Mid Atlantic Industries LLC, Midway Management, LLC, and B & E Industries, LLC, having been properly served with the Complaint, have failed to plead or otherwise respond to the Complaint within the time set forth in the Federal Rules of Civil

Procedure, or to otherwise defend this action. The Clerk of the Court entered default against them on October 7, 2015. (Doc 174).

6. Defendants Midway Industries Limited Liability Company, Commercial Industries LLC, National LLC, State Power & Lighting LLC, Standard Industries LLC, Essex Industries, LLC, Johnson Distributing Limited Liability Company, Hansen Supply LLC, Environmental Industries, LLC, Mid Atlantic Industries LLC, Midway Management, LLC, and B & E Industries, LLC participated in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, the TSR, 16 C.F.R. Part 310, and the Unordered Merchandise Statute, 39 U.S.C. § 3009, and in unfair trade practices in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1). As demonstrated by the declarations and additional evidence filed and cited by the FTC, Defendants Midway Industries Limited Liability Company, Commercial Industries LLC, National LLC, State Power & Lighting LLC, Standard Industries LLC, Essex Industries, LLC, Johnson Distributing Limited Liability Company, Hansen Supply LLC, Environmental Industries, LLC, Mid Atlantic Industries LLC, Midway Management, LLC, and B & E Industries, LLC deceived consumers into paying for unordered light bulbs and cleaning supplies.

7. Defendants' total revenues, minus refunds, from the conduct alleged in the Complaint from 2010 through 2014 amount to \$58,137,415. This amount is ascertainable from the Defendants' business records, as described in the report of the Receiver appointed by the Court. (Doc 49).

8. The Commission is entitled to equitable monetary relief against Defendants Midway Industries Limited Liability Company, Commercial Industries LLC, National LLC, State Power & Lighting LLC, Standard Industries LLC, Essex Industries, LLC, Johnson Distributing Limited

Liability Company, Hansen Supply LLC, Environmental Industries, LLC, Mid Atlantic Industries LLC, Midway Management, LLC, and B & E Industries, LLC in the amount of \$58,137,415.

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 Order is in the public interest.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

A. **“Person”** means a natural person, an 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.

B. **“Defendants”** means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

C. **“Corporate Defendants”** means Defendants Midway Industries Limited Liability Company, Commercial Industries LLC, National LLC, State Power & Lighting LLC, Standard Industries LLC, Essex Industries, LLC, Johnson Distributing Limited Liability Company, Hansen Supply LLC, Environmental Industries, LLC, Mid Atlantic Industries LLC, Midway Management, LLC, and B & E Industries, LLC and their successors and assigns.

D. **“Individual Defendants”** means Defendants Eric A. Epstein, Brian K. Wallen, Andrew J. Stafford, Alan M. Landsman, and Brandon D. Riggs.

E. **“Telemarketing”** means any plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones, and which involves a telephone call, whether or not covered by the Telemarketing Sales Rule.

F. **“Unordered merchandise”** means merchandise mailed or otherwise sent without the prior expressed request or consent of the recipient.

ORDER

I. PERMANENT BAN

IT IS ORDERED that Corporate Defendants are permanently restrained and enjoined from participating in telemarketing, whether directly or through an intermediary.

II. PROHIBITED MISREPRESENTATIONS

IT IS FURTHER ORDERED that Corporate Defendants, Corporate Defendants’ officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with telemarketing, advertising, marketing, promoting, or offering for sale of any goods or services, are permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting expressly or by implication:

- A. that a consumer ordered goods or services that were to be shipped or billed to the consumer;
- B. that they have previously done business with the consumer;
- C. that they would send only a free sample, free gift, or free product catalog;
- D. any material terms regarding the total cost to purchase, receive, or use, and the quantity of, any goods or services that are subject to a sales offer;

E. any material restrictions, limitations, or conditions to purchase, receive, or use the goods or services offered; or

F. any material aspect of the performance, efficacy, nature, characteristics, benefits, or qualities of the goods and services offered.

III. PROHIBITIONS RELATING TO UNORDERED MERCHANDISE

IT IS FURTHER ORDERED that Corporate Defendants, Corporate Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the sale of any goods or services, are hereby permanently restrained and enjoined from:

A. sending unordered merchandise unless such merchandise is clearly and conspicuously marked as a free sample;

B. sending any bill or dunning communication relating to unordered merchandise; or

C. violating the Unordered Merchandise Statute, 39 U.S.C. § 3009 (annexed hereto as Attachment A).

IV. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment in the amount of fifty-eight million, one hundred thirty-seven thousand, four hundred fifteen dollars (\$58,137,415) is entered in favor of the Commission and against the Corporate Defendants jointly and severally, as equitable monetary relief.

B. This monetary judgment shall become immediately due and payable by the Corporate Defendants upon entry of this Order, and interest computed at the rate prescribed under 28 U.S.C. § 1961(a), as amended, shall immediately begin to accrue on the unpaid balance.

V. ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER ORDERED that:

- A. Corporate Defendants' taxpayer identification numbers (Employer Identification Numbers) may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.
- B. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Corporate Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.
- C. The asset freeze imposed by the Preliminary Injunction entered on October 29, 2014, remains in place until further Order of this Court.
- D. The Commission may request any tax-related information, including amended tax returns and any other filings, that Corporate Defendants have the authority to release. Within 14 days of

receipt of a written request from a representative of the Commission, Corporate Defendants must take all necessary steps (such as filing a completed IRS Form 4506 or 8821) to cause the Internal Revenue Service or other tax authority to provide the information directly to the Commission.

VI. RECEIVERSHIP

IT IS FURTHER ORDERED that the appointment of Peter E. Keith as receiver (Receiver) for the Corporate Defendants as entered and continued pursuant to the Orders of July 21, 2014, and October 29, 2014, is hereby continued in full force and effect except as modified in this Section.

A. Within 30 days of the entry of this Order (or within such other period as the Court may determine to grant to the Receiver upon the Receiver's request and for good cause), the Receiver shall provide to the Commission an inventory of the receivership assets and an estimate of the gross liquidation value of the receivership assets. The Receiver shall liquidate all assets of the Corporate Defendants as soon as practicable, and is directed to do so within 120 days of the entry of this Order, except that any party or the Receiver may request that the Court extend this period for good cause. In liquidating the receivership assets, the Receiver shall comply with the Court's direction that he determine, adjust, and protect the interests of consumers and creditors who may have claims against the receivership assets. The Receiver may dispose of any valueless assets as he sees fit. In conjunction with liquidating all of the receivership assets, the Receiver shall determine any necessary steps to fully wind up all of the Corporate Defendants and the receivership.

B. Within 30 days of the liquidation of the receivership assets, the Receiver shall submit a final report and application for fees and expenses relating to the receivership, and upon approval

of the same by the Court, shall pay any remaining funds, less claims approved by the Court, to the Commission. With approval of the Court, the Receiver may hold back funds for a specified period as a reserve to cover additional fees and costs related to actions necessary to fully wind up all of the Corporate Defendants and the Receivership.

C. Upon the Court's approval of the Receiver's final report, and the payment of any funds to the Commission under this Section, the Receiver shall take all steps necessary to fully wind up all of the Corporate Defendants and the receivership. If, with approval of the Court, the Receiver holds back any funds to cover additional fees and costs related to actions necessary to fully wind up all of the Corporate Defendants and the receivership, and if any funds remain in the reserve fund after all such actions are taken, all funds remaining in the reserve fund shall be paid immediately to the Commission or its designated agent.

D. Sections XII (Compensation of Receiver), XIII (Delivery of Books and Records), XIV (Cooperation with Receiver), XV (Transfer of Assets to Receiver), XVI (Non-Compliance with Transfers or Delivery), XVII (Repatriation of Foreign Assets and Documents), XVIII (Interference with Repatriation), and XIX (Stay Of Actions) of the Order of October 29, 2014, continue in full force and effect until further Order of the Court.

VII. CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Corporate Defendants, Corporate Defendants' officers, agents, employees, attorneys, and other persons who are in active concert or participation with any of them are permanently restrained and enjoined from directly or indirectly:

A. failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress. If a representative of the Commission requests in writing any

information related to redress, Corporate Defendants must provide it, in the form prescribed by the Commission, within 14 days.

B. disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that any Defendant obtained prior to entry of this Order in connection with the telemarketing, marketing, advertising, or sale of nondurable office and cleaning supplies including light bulbs; and

C. failing to destroy such customer information in all forms in their possession, custody, or control within 30 days after receipt of written direction to do so from a representative of the Commission.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

VIII. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Corporate Defendants obtain acknowledgments of receipt of this Order:

A. Within 7 days of entry of this Order, each Corporate Defendant must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 10 years after entry of this Order, each Corporate Defendant must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in sales, causing merchandise to be sent

to customers, or causing bills or dunning communications for merchandise to be sent to customers; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Corporate Defendant delivered a copy of this Order, that Corporate Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

IX. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Corporate Defendants make timely submissions to the Commission:

A. One year after entry of this Order, each Corporate Defendant must submit a compliance report, sworn under penalty of perjury. Each Corporate Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with that Corporate Defendant; (b) identify all of that Corporate Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant; (d) describe in detail whether and how that Corporate Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

B. For 20 years after entry of this Order, each Corporate Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or entity that such Corporate Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

C. Each Corporate Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Corporate Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. Midway Industries Limited Liability Company*, Matter No. X140044.

X. RECORDKEEPING

IT IS FURTHER ORDERED that Corporate Defendants must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, Corporate Defendants for any business that it, individually or collectively with any other Defendants, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold;
- B. personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. records of all consumer complaints and refund requests pertaining to sales practices or allegations of sending or billing for unordered merchandise, whether received directly or indirectly, such as through a third party, and any response;
- D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- E. a copy of each unique script used in any sales plan, program, or campaign.

XI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Corporate Defendants' compliance with this Order:

- A. Within 14 days of receipt of a written request from a representative of the Commission, each Corporate Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery,

without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with each Corporate Defendant. Corporate Defendants must permit representatives of the Commission to interview any employee or other person affiliated with any Corporate Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Corporate Defendants or any individual or entity affiliated with Corporate Defendants, without the necessity of identification or prior notice. Nothing in this Order limits 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.

XII. RETENTION OF JURISDICTION

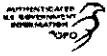
IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED this 31 day of August, 2016.


UNITED STATES DISTRICT JUDGE

FILED
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA
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CLERK OF COURT
DEPT. OF JUSTICE

Attachment A



(b) If any order is issued under subsection (a) and the proceedings under section 3005 are concluded with the issuance of an order under that section, any judicial review of the matter shall be in the district in which the order under subsection (a) was issued.

(c) This section does not apply to mail addressed to publishers of newspapers and other periodical publications entitled to a periodical publication rate or to mail addressed to the agents of those publishers.

(Pub. L. 91-375, Aug. 12, 1970, 84 Stat. 747; Pub. L. 106-168, title I, §105(a), Dec. 12, 1999, 113 Stat. 1810.)

REFERENCES IN TEXT

Rule 65 of the Federal Rules of Civil Procedure, referred to in subsec. (a)(1), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1999—Pub. L. 106-168 added subsecs. (a) and (b), struck out former subsec. (a) which provided for injunctive relief and other orders by the district court in which the defendant gets his mail, and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-168 effective 120 days after Dec. 12, 1999, see section 111 of Pub. L. 106-168, set out as a note under section 3001 of this title.

§ 3008. Prohibition of pandering advertisements

(a) Whoever for himself, or by his agents or assigns, mails or causes to be mailed any pandering advertisement which offers for sale matter which the addressee in his sole discretion believes to be erotically arousing or sexually provocative shall be subject to an order of the Postal Service to refrain from further mailings of such materials to designated addresses thereof.

(b) Upon receipt of notice from an addressee that he has received such mail matter, determined by the addressee in his sole discretion to be of the character described in subsection (a) of this section, the Postal Service shall issue an order, if requested by the addressee, to the sender thereof, directing the sender and his agents or assigns to refrain from further mailings to the named addressees.

(c) The order of the Postal Service shall expressly prohibit the sender and his agents or assigns from making any further mailings to the designated addresses, effective on the thirtieth calendar day after receipt of the order. The order shall also direct the sender and his agents or assigns to delete immediately the names of the designated addressees from all mailing lists owned or controlled by the sender or his agents or assigns and, further, shall prohibit the sender and his agents or assigns from the sale, rental, exchange, or other transaction involving mailing lists bearing the names of the designated addressees.

(d) Whenever the Postal Service believes that the sender or anyone acting on his behalf has violated or is violating the order given under this section, it shall serve upon the sender, by registered or certified mail, a complaint stating the reasons for its belief and request that any response thereto be filed in writing with the

Postal Service within 15 days after the date of such service. If the Postal Service, after appropriate hearing if requested by the sender, and without a hearing if such a hearing is not requested, thereafter determines that the order given has been or is being violated, it is authorized to request the Attorney General to make application, and the Attorney General is authorized to make application, to a district court of the United States for an order directing compliance with such notice.

(e) Any district court of the United States within the jurisdiction of which any mail matter shall have been sent or received in violation of the order provided for by this section shall have jurisdiction, upon application by the Attorney General, to issue an order commanding compliance with such notice. Failure to observe such order may be punishable by the court as contempt thereof.

(f) Receipt of mail matter 30 days or more after the effective date of the order provided for by this section shall create a rebuttable presumption that such mail was sent after such effective date.

(g) Upon request of any addressee, the order of the Postal Service shall include the names of any of his minor children who have not attained their nineteenth birthday, and who reside with the addressee.

(h) The provisions of subchapter II of chapter 5, relating to administrative procedure, and chapter 7, relating to judicial review, of title 5, shall not apply to any provisions of this section.

(1) For purposes of this section—

(1) mail matter, directed to a specific address covered in the order of the Postal Service, without designation of a specific addressee thereon, shall be considered as addressed to the person named in the Postal Service's order; and

(2) the term "children" includes natural children, stepchildren, adopted children, and children who are wards of or in custody of the addressee or who are living with such addressee in a regular parent-child relationship.

(Pub. L. 91-375, Aug. 12, 1970, 84 Stat. 748.)

§ 3009. Mailing of unordered merchandise

(a) Except for (1) free samples clearly and conspicuously marked as such, and (2) merchandise mailed by a charitable organization soliciting contributions, the mailing of unordered merchandise or of communications prohibited by subsection (c) of this section constitutes an unfair method of competition and an unfair trade practice in violation of section 45(a)(1) of title 15.

(b) Any merchandise mailed in violation of subsection (a) of this section, or within the exceptions contained therein, may be treated as a gift by the recipient, who shall have the right to retain, use, discard, or dispose of it in any manner he sees fit without any obligation whatsoever to the sender. All such merchandise shall have attached to it a clear and conspicuous statement informing the recipient that he may treat the merchandise as a gift to him and has the right to retain, use, discard, or dispose of it in any manner he sees fit without any obligation whatsoever to the sender.

(c) No mailer of any merchandise mailed in violation of subsection (a) of this section, or within the exceptions contained therein, shall mail to any recipient of such merchandise a bill for such merchandise or any dunning communications.

(d) For the purposes of this section, "unordered merchandise" means merchandise mailed without the prior expressed request or consent of the recipient.

(Pub. L. 91-375, Aug. 12, 1970, 84 Stat. 749.)

§ 3010. Mailing of sexually oriented advertisements

(a) Any person who mails or causes to be mailed any sexually oriented advertisement shall place on the envelope or cover thereof his name and address as the sender thereof and such mark or notice as the Postal Service may prescribe.

(b) Any person, on his own behalf or on the behalf of any of his children who has not attained the age of 19 years and who resides with him or is under his care, custody, or supervision, may file with the Postal Service a statement, in such form and manner as the Postal Service may prescribe, that he desires to receive no sexually oriented advertisements through the mails. The Postal Service shall maintain and keep current, insofar as practicable, a list of the names and addresses of such persons and shall make the list (including portions thereof or changes therein) available to any person, upon such reasonable terms and conditions as it may prescribe, including the payment of such service charge as it determines to be necessary to defray the cost of compiling and maintaining the list and making it available as provided in this sentence. No person shall mail or cause to be mailed any sexually oriented advertisement to any individual whose name and address has been on the list for more than 30 days.

(c) No person shall sell, lease, lend, exchange, or license the use of, or, except for the purpose expressly authorized by this section, use any mailing list compiled in whole or in part from the list maintained by the Postal Service pursuant to this section.

(d) "Sexually oriented advertisement" means any advertisement that depicts, in actual or simulated form, or explicitly describes, in a predominantly sexual context, human genitalia, any act of natural or unnatural sexual intercourse, any act of sadism or masochism, or any other erotic subject directly related to the foregoing. Material otherwise within the definition of this subsection shall be deemed not to constitute a sexually oriented advertisement if it constitutes only a small and insignificant part of the whole of a single catalog, book, periodical, or other work the remainder of which is not primarily devoted to sexual matters.

(Pub. L. 91-375, Aug. 12, 1970, 84 Stat. 749.)

EFFECTIVE DATE

Section effective first day of sixth month which begins after Aug. 12, 1970, see section 15(b) of Pub. L. 91-375, set out as a note preceding section 101 of this title.

INVASION OF PRIVACY BY MAILING OF SEXUALLY ORIENTED ADVERTISEMENTS

Section 14 of Pub. L. 91-375 provided that:

"(a) [Congressional findings] The Congress finds—

"(1) that the United States mails are being used for the indiscriminate dissemination of advertising matter so designed and so presented as to exploit sexual sensationalism for commercial gain;

"(2) that such matter is profoundly shocking and offensive to many persons who receive it, unsolicited, through the mails;

"(3) that such use of the mails constitutes a serious threat to the dignity and sanctity of the American home and subjects many persons to an unconscionable and unwarranted intrusion upon their fundamental personal right to privacy;

"(4) that such use of the mail reduces the ability of responsible parents to protect their minor children from exposure to material which they as parents believe to be harmful to the normal and healthy ethical, mental, and social development of their children; and

"(5) that the traffic in such offensive advertisements is so large that individual citizens will be helpless to protect their privacy or their families without stronger and more effective Federal controls over the mailing of such matter.

"(b) [Congressional Determination of Public Policy] On the basis of such findings, the Congress determines that it is contrary to the public policy of the United States for the facilities and services of the United States Postal Service to be used for the distribution of such materials to persons who do not want their privacy invaded in this manner or to persons who wish to protect their minor children from exposure to such material."

Provisions of section 14 of Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date not preceding section 101 of this title.

§ 3011. Judicial enforcement

(a) Whenever the Postal Service believes that any person is mailing or causing to be mailed any sexually oriented advertisement in violation of section 3010 of this title, it may request the Attorney General to commence a civil action against such person in a district court of the United States. Upon a finding by the court of a violation of that section, the court may issue an order including one or more of the following provisions as the court deems just under the circumstances:

(1) a direction to the defendant to refrain from mailing any sexually oriented advertisement to a specific addressee, to any group of addressees, or to all persons;

(2) a direction to any postmaster to whom sexually oriented advertisements originating with such defendant are tendered for transmission through the mails to refuse to accept such advertisements for mailing; or

(3) a direction to any postmaster at the office at which registered or certified letters or other letters or mail arrive, addressed to the defendant or his representative, to return the registered or certified letters or other letters or mail to the sender appropriately marked as being in response to mail in violation of section 3010 of this title, after the defendant, or his representative, has been notified and given reasonable opportunity to examine such letters or mail and to obtain delivery of mail which is clearly not connected with activity