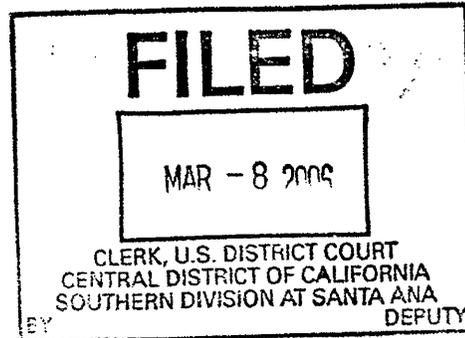


1 DEBRA WONG YANG
United States Attorney
2 LEON W. WEIDMAN
Assistant United States Attorney
3 Chief, Civil Division
GARY PLESSMAN
4 Assistant United States Attorney
Chief, Civil Fraud Section
5 California State Bar No. 101233
Room 7516, Federal Building
6 300 North Los Angeles Street
Los Angeles, CA 90012
7 Telephone (213) 894-2474
Facsimile (213) 894-2380
8 gary.plessman@usdoj.gov
Attorneys for Plaintiff
9 UNITED STATES OF AMERICA



10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 SOUTHERN DIVISION

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 CONVERSION MARKETING, INC., dba
NATIONAL HEALTH SUPPORT CENTER,
17 NATURAL BRIGHT, and POUNDS OFF
PATCH, a California
18 corporation; and

19 ADAM TYLER MACDONALD, dba FAST
WHITE, individually and as an
20 officer of Conversion
Marketing, Inc.;

21
22 Defendants.
23

Case No. SACV06-256 CJC(MLGx)

COMPLAINT FOR CIVIL PENALTIES,
PERMANENT INJUNCTION, AND OTHER
RELIEF

24
25 Plaintiff United States of America, acting upon notification
26 and authorization to the Attorney General by the Federal Trade
27 Commission ("FTC or Commission"), pursuant to Section 16(a)(1) of
28 the Federal Trade Commission Act ("FTC Act"), 15 U.S.C.

1 § 56(a)(1), for its complaint alleges:

2 1. Plaintiff brings this action under Sections 5(a),
3 5(m)(1)(A), 13(b) and 16(a) of the FTC Act, 15 U.S.C. §§ 45(a),
4 45(m)(1)(A), 53(b), and 56(a), and Section 6 of the Telemarketing
5 and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"),
6 15 U.S.C. § 6105, to obtain monetary civil penalties, a permanent
7 injunction, and other equitable relief for defendants' violation
8 of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's
9 Telemarketing Sales Rule (the "TSR" or "Rule"), 16 C.F.R. Part
10 310, as amended by 68 Fed. Reg. 4580, 4669 (January 29, 2003).

11 JURISDICTION AND VENUE

12 2. This Court has subject matter jurisdiction pursuant to
13 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C.
14 §§ 45(m)(1)(A), 53(b), and 56(a). This action arises under 15
15 U.S.C. § 45(a).

16 3. Venue in the Central District of California is proper
17 under 28 U.S.C. §§ 1391(b)-(c) and 1395(a), and 15 U.S.C. § 53(b).

18 DEFENDANTS

19 4. Defendant CONVERSION MARKETING, INC. ("Conversion
20 Marketing"), dba National Health Support Center, Natural Bright,
21 and Pounds Off Patch, is a California corporation, whose principal
22 place of business is 1182 South East Bristol Street, Santa Ana,
23 California 92707. Conversion Marketing is a seller of goods or
24 services to consumers that has caused telemarketers to call
25 consumers to induce the purchase of goods or services of
26 Conversion Marketing. Conversion Marketing is also a telemarketer
27 that initiates outbound telephone calls to induce consumers to
28 purchase its own goods or services and those offered by third

1 parties. Conversion Marketing transacts or has transacted
2 business in this District.

3 5. Defendant ADAM TYLER MACDONALD ("MacDonald") is the sole
4 shareholder, President, and agent for service of process for
5 Conversion Marketing. In connection with the matters alleged
6 herein, he resides or has transacted business in this District.
7 At all times material to this complaint, acting alone or in
8 concert with others, he has formulated, directed, controlled, or
9 participated in the acts and practices of Conversion Marketing,
10 including the acts and practices set forth in this complaint.

11 THE TELEMARKETING SALES RULE

12 AND THE NATIONAL DO NOT CALL REGISTRY

13 6. Congress directed the FTC to prescribe rules prohibiting
14 abusive and deceptive telemarketing acts or practices pursuant to
15 the Telemarketing Act, 15 U.S.C. §§ 6101-6108, in 1994. On August
16 16, 1995, the FTC adopted the Telemarketing Sales Rule (the
17 "Original TSR"), 16 C.F.R. Part 310, which became effective on
18 December 31, 1995. On January 29, 2003, the FTC amended the TSR
19 by issuing a Statement of Basis and Purpose ("SBP") and the final
20 amended TSR (the "Amended TSR"). 68 Fed. Reg. 4580, 4669.

21 7. Among other things, the Amended TSR established a "do-
22 not-call" registry, maintained by the Commission (the "National Do
23 Not Call Registry" or "Registry"), of consumers who do not wish to
24 receive certain types of telemarketing calls. Consumers can
25 register their telephone numbers on the Registry without charge
26 either through a toll-free telephone call or over the Internet at
27 donotcall.gov.

28

1 8. Consumers who receive telemarketing calls to their
2 registered numbers can complain of Registry violations the same
3 way they registered, through a toll-free telephone call or over
4 the Internet at donotcall.gov, or by otherwise contacting law
5 enforcement authorities.

6 9. Since October 17, 2003, sellers and telemarketers have
7 been prohibited from calling numbers on the Registry in violation
8 of the Amended TSR. 16 C.F.R. § 310.4(b)(1)(ii)(B).

9 10. Since September 2, 2003, sellers, telemarketers, and
10 other permitted organizations have been able to access the
11 Registry over the Internet at telemarketing.donotcall.gov to
12 download the registered numbers.

13 11. Since October 1, 2003, sellers and telemarketers have
14 been prohibited from abandoning any outbound telephone call by not
15 connecting the call to a representative within two (2) seconds of
16 the consumer's completed greeting. 16 C.F.R. § 310.4(b)(1)(iv).

17 12. Since October 17, 2003, sellers and telemarketers have
18 been generally prohibited from calling any telephone number within
19 a given area code unless the seller first has paid the annual fee
20 for access to the telephone numbers within that area code that are
21 included in the National Do Not Call Registry. 16 C.F.R.
22 § 310.8(a) and (b).

23 13. Pursuant to Section 3(c) of the Telemarketing Act, 15
24 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C.
25 §57a(d)(3), a violation of the TSR constitutes an unfair or
26 deceptive act or practice in or affecting commerce, in violation
27 of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

28

DEFENDANTS' BUSINESS ACTIVITIES

1
2 14. Defendants MacDonald and Conversion Marketing were
3 and/or are "sellers," as that term is defined in the TSR, 16
4 C.F.R. § 310.2(z), of "Pounds Off Patch," "Carbs Off Patch," other
5 weight loss products, and other goods and services. They have
6 sold these products in connection with a plan, program, or
7 campaign conducted to induce the purchase of goods or services by
8 use of one or more telephones and which involves more than one
9 interstate telephone call and have thus engaged in
10 "telemarketing," as that term is defined in the TSR, 16 C.F.R.
11 § 310.2(cc).

12 15. Defendants MacDonald and Conversion Marketing are also
13 "telemarketers," as that term is defined in the TSR, 16 C.F.R.
14 § 310.2(bb), because, in connection with these telemarketing
15 transactions, they provide, offer to provide, or arrange for
16 others to provide these goods or services to customers in exchange
17 for consideration.

18 16. On or after October 17, 2003, defendants MacDonald and
19 Conversion Marketing have called consumers' telephone numbers that
20 are on the National Do Not Call Registry.

21 17. On or after October 1, 2003, defendants MacDonald and
22 Conversion Marketing have abandoned outbound telephone calls to
23 consumers by failing to connect the call to a representative
24 within two (2) seconds of the consumer's completed greeting.

25 18. On or after October 17, 2003, defendants MacDonald and
26 Conversion Marketing have called, or have caused telemarketers to
27 call, telephone numbers in various area codes without first paying
28

1 the annual fee for access to the telephone numbers within such
2 area codes that are included in the National Do Not Call Registry.

3 19. On or after October 17, 2003, defendants MacDonald and
4 Conversion Marketing, on behalf of third party sellers, have
5 called telephone numbers in various area codes without the third
6 party sellers first paying the annual fee for access to the
7 telephone numbers within area codes that are included in the
8 National Do Not Call Registry.

9 20. At all times relevant to this complaint, defendants
10 have maintained a substantial course of trade or business in the
11 offering for sale and sale of goods or services via the telephone,
12 in or affecting commerce, as "commerce" is defined in Section 4 of
13 the FTC Act, 15 U.S.C. § 44.

14 VIOLATIONS OF THE TELEMARKETING SALES RULE

15 **Count I (Violating the National Do Not Call Registry)**

16 21. In numerous instances, in connection with
17 telemarketing, defendants MacDonald and Conversion Marketing
18 engaged in or caused others to engage in initiating an outbound
19 telephone call to a person's telephone number on the National Do
20 Not Call Registry in violation of the TSR, 16 C.F.R.
21 § 310.4(b)(1)(iii)(B).

22 **COUNT II (Abandoning Calls)**

23 22. In numerous instances, in connection with
24 telemarketing, defendants MacDonald and Conversion Marketing have
25 abandoned, or caused others to abandon, an outbound telephone call
26 by failing to connect the call to a sales representative within
27 two (2) seconds of the completed greeting of the person answering
28

1 the call, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iv)(B)
2 and § 310.4(b)(4).

3 **Count III (Failing to Pay National Registry Fees)**

4 23. In numerous instances, in connection with
5 telemarketing, defendants MacDonald and Conversion Marketing have
6 initiated, or caused others to initiate, an outbound telephone
7 call to a telephone number within a given area code without
8 defendants, either directly or through another person, first
9 paying the required annual fee for access to the telephone
10 numbers, within that area code, that are on the National Do Not
11 Call Registry, in violation of the TSR, 16 C.F.R. § 310.8.

12 **CONSUMER INJURY**

13 24. Consumers in the United States have suffered and will
14 suffer injury as a result of defendants' violations of the TSR.
15 Absent injunctive relief by this Court, defendants are likely to
16 continue to injure consumers and harm the public interest.

17 **THIS COURT'S POWER TO GRANT RELIEF**

18 25. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),
19 empowers this Court to grant injunctive and such other relief as
20 the Court may deem appropriate to halt and remedy any violation of
21 law enforced by the FTC Act.

22 26. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C.
23 § 45(m)(1)(A), as modified by Section 4 of the Federal Civil
24 Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as
25 amended, and as implemented by 16 C.F.R. § 1.98(d)(1997),
26 authorizes this Court to award monetary civil penalties of not
27 more than \$11,000 for each violation of the TSR. Defendants'

28

1 violations of the TSR were committed with the knowledge required
2 by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

3 27. This Court, in the exercise of its equitable
4 jurisdiction, may award ancillary relief to remedy injury caused
5 by defendants' violations of the Rule and the FTC Act.

6 PRAYER FOR RELIEF

7 WHEREFORE, plaintiffs request that this Court, as authorized
8 by Sections 5(a), 5(m)(1)(A), and 13(b) of the FTC Act, 15 U.S.C.
9 §§ 45(a), 45(m)(1)(A), and 53(b), and pursuant to its own
10 equitable powers:

11 A. Enter judgment against defendants and in favor of
12 plaintiff for each violation alleged in this complaint;

13 B. Award plaintiff monetary civil penalties from each
14 defendant for every violation of the TSR;

15 C. Permanently enjoin defendants from violating the TSR and
16 the FTC Act; and

17 / / /

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28

1 D. Award plaintiff such other and additional relief as the
2 Court may determine to be just and proper.

3
4 Dated: March 6, 2006

Respectfully submitted,

5
6 OF COUNSEL:
JEFFREY KLURFELD
7 Regional Director
8 Western Region

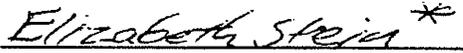
FOR THE UNITED STATES OF AMERICA
PETER D. KEISLER
Assistant Attorney General
Civil Division
U.S. DEPARTMENT OF JUSTICE

9
10 Raymond E. McKown
Faye Chen Barnouw
Attorneys
11 Federal Trade Commission
10877 Wilshire Blvd.
12 Suite 700
Los Angeles, CA 90024
13 Telephone (310) 824-4325
Facsimile (310) 824-4380
14 rmckown@ftc.gov
fbarnouw@ftc.gov

DEBRA WONG YANG
United States Attorney
LEON W. WEIDMAN
Assistant U.S. Attorney
Chief, Civil Division

15 
GARY PLESSMAN
Assistant U.S. Attorney
16 Chief, Civil Fraud Section
Room 7516, Federal Building
17 300 North Los Angeles Street
Los Angeles, CA 90012
18 Telephone (213) 894-2474
Facsimile (213) 894-2380
19 gary.plessman@usdoj.gov

20
21 EUGENE M. THIROLF
Director, Office of Consumer
Litigation

22
23 
ELIZABETH STEIN
24 Office of Consumer Litigation
U.S. Department of Justice
25 P.O. Box 386
Washington, D.C. 20044
26 Phone: (202) 307-0066
Fax: (202) 514-8742

27
28 **By AUSA Gary Plessman
per e-mail authorization*