

under Sections 5 and 13(b) of the FTC Act, as amended, 15 U.S.C. §§ 45 and 53(b).

3. Entry of this Order is in the public interest.
4. Defendant entered into a stipulation in the form of this Order freely, but without admitting any wrongdoing. Defendant has acknowledged that he understands the provisions of the stipulation and is prepared to abide by them.
5. Venue in this district is proper under 28 U.S.C. § 1391 (b) and (c) and 15 U.S.C. § 53(b).
6. The acts and practices of Defendant were or are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
7. This Order shall not be construed as an admission or finding of guilt or wrongdoing on the part of the Defendant.

DEFINITIONS

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

- A. "Defendant" means J.D. Noland.
- B. "Multi-level marketing program" means any marketing program in which participants pay money to the program promoter in return for which the participants obtain the right to: (1) recruit additional participants, or have additional participants placed by the promoter or any other person into the program participants' downline, tree, cooperative, income center, or other similar program grouping; (2) sell goods or services; and (3) receive payment or other compensation, in whole or in part, based upon the sales of those in the

participants' downline, tree, cooperative, income center or similar program grouping.

- C. "Prohibited marketing scheme" means a pyramid sales scheme, Ponzi scheme, chain marketing scheme, or other marketing plan or program characterized by the payment by participants of money to the program in return for which they receive: (1) the right to sell a product or service; and (2) the right to receive, in return for recruiting other participants into the program, rewards which are unrelated to the sale of products or services to ultimate users. Rewards are "unrelated" to the sale of products or services to ultimate users if rewards are not based primarily on revenue from retail sales.
- D. "Retail Sales" means sales of products, services, or business ventures by Defendant, his successors, assigns, agents, servants, employees, and those persons in active concert or participation with him to third-party end users. "Retail sales" does not include sales made by participants in a multi-level marketing program to other participants or recruits or to such a participant's own account.
- E. "Ultimate users" are purchasers of retail sales.

ORDER

Injunctive Provisions

I.

IT IS THEREFORE ORDERED that Defendant, his agents, servants, employees, and those persons in active concert or participation with Defendant who receive actual notice of this Order by personal service or otherwise, are permanently restrained and enjoined from engaging,

participating or assisting in any manner or capacity whatsoever, directly, or in concert with others, or through any business entity or other device, in any prohibited marketing scheme.

II.

IT IS FURTHER ORDERED that Defendant, his agents, servants, employees and those persons in active concert or participation with Defendant who receive actual notice of this Order by personal service or otherwise, in connection with the advertising, promoting, offering for sale, sale, or distribution of any multi-level marketing program are hereby permanently restrained and enjoined from making or assisting in the making of, expressly or by implication, directly or indirectly, orally or in writing, any false or misleading statement or misrepresentation of material fact, including but not limited to the following:

- A. Misrepresenting the potential earnings or income derived from such multi-level marketing program;
- B. Misrepresenting the benefits any person participating in such multi-level marketing program can receive; and
- C. Misrepresenting the amount of sales a person actually made or can potentially make through such multi-level marketing program.

III.

IT IS FURTHER ORDERED that Defendant, his agents, servants, employees and those persons in active concert or participation with Defendant who receive actual notice of this Order by personal service or otherwise, in connection with the advertising, promoting, offering for sale, sale, or distribution of any multi-level marketing program are hereby restrained and enjoined from providing to others the means and instrumentalities with which to make, expressly or by

implication, orally or in writing, any false or misleading representation, or representation that omits any material fact.

Disgorgement

IV.

IT IS FURTHER ORDERED that

- A. The Commission's agreement to this Order is expressly, reasonably, and materially premised upon the truthfulness and accuracy of the profit and loss statement provided by Defendant on April 26, 2002, which is affirmed by Defendant's statement signed under of penalty of perjury on April 26, 2002. If, upon motion by the Commission, this Court finds that Defendant has made any material misrepresentation in the profit and loss statements described in this Section, judgment against Defendant shall be entered in the amount of \$104,748.00 which represents the full amount of disgorgement of funds received by Defendant from Bigsmart, LLC.
- B. Any 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 any redress fund. In the event that direct 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 the Defendant's practices alleged in the Complaint. Any funds not used

for such equitable relief shall be deposited into the United States Treasury as disgorgement. Defendant shall have no right to challenge the Commission's choice of remedies under this Section.

Monitoring and Record Keeping Provisions

V.

IT IS FURTHER ORDERED that Defendant, in connection with the advertising, promoting, offering for sale, sale, or distribution of any multi-level marketing program in which Defendant is a participant, has an ownership interest or is a director, officer (or comparable position with a non-corporate entity) of, or is a person who formulates policies or procedures is permanently enjoined and restrained from:

- A. Failing to take reasonable steps sufficient to monitor and ensure that all Defendant's agents, representatives, employees, or independent contractors comply with Paragraphs I, II, and III of this Order. Reasonable steps shall include, at a minimum, establishing and maintaining a compliance program which includes random, blind testing of the oral representations made by any representative or independent contractor; spot checking of consumers to ensure that no misrepresentations were made; and ascertaining the number and nature of any consumer complaints. Defendant shall, for a period of three (3) years, submit to the Commission, on an annual basis, no later than fifteen (15) days after the anniversary of the date of entry of this Order, a summary report indicating the efforts of Defendant to comply with the requirements of this Paragraph. These annual reports shall be submitted to the Commission's Associate Director for

Marketing Practices at the address listed in Paragraph XIII.

- B. Failing to investigate and resolve promptly any consumer complaint received by Defendant, his agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order regarding any multi-level marketing program, or any aspect thereof, and to notify the consumer of the resolution of the complaint and the reason therefore.

VI.

IT IS FURTHER ORDERED that Defendant, for a period of six (6) years from the date of entry of this Order, in connection with any multi-level marketing program in which Defendant is a participant, has an ownership interest or is a director, officer (or comparable position with a non-corporate entity) of, or is a person who formulates policies or procedures, is hereby restrained and enjoined from failing to create, maintain and make available to representatives of the Commission, upon reasonable notice:

- A. Books, records and accounts which, in reasonable detail, accurately and fairly reflect the income, disbursements, transactions and use of monies by Defendant, or any entity in which Defendant has an ownership interest, is a director, officer (or comparable position with a non-corporate entity) of, or is a person who formulates policies or procedures;
- B. Records accurately reflecting the name, address, and phone number of Defendant's employees, or independent contractors, those persons' job title or position, the date upon which those persons commenced work, and the date and reason for their termination, if applicable. Defendant shall retain such records for

- any terminated person for a period of two years following the date of termination;
- C. Records containing the names, addresses, and phone numbers of all consumers to whom Defendant has sold, invoiced, or shipped any products or services, whether on his own behalf or that of any third party;
- D. Records that, for every consumer complaint or refund request received by Defendant, his agents, servants, and employees, and those persons in active concert or participation with them, whether received directly or indirectly or through any third party, reflect:
- (1) the consumer's name, address, telephone number and the dollar amount paid by the consumer;
 - (2) the written complaint, if any, and the date of the complaint or refund request;
 - (3) the basis of the complaint and the nature and the result of any investigation conducted as to the validity of any complaint;
 - (4) each response by Defendant, his agents, servants, and employees, and those persons in active concert or participation and the date of the response;
 - (5) any final resolution and the date of the resolution; and
 - (6) in the event of a denial by Defendant, his agents, servants, employees, and those persons in active concert or participation of a refund request, the reason for such denial, or if cured, the basis for determining that such complaint has been cured; and
- E. Records relating to all any business venture undertaken by Defendant, his agents, servants, and employees, and those persons in active concert or participation with

them, in connection with any multi-level marketing program, that involve any type of marketing program including, but not limited to, group or individual meetings, telemarketing, Web sites, commercial electronic mail, infomercials or other television or radio advertising, or direct mail, including but not limited to copies of all contracts or agreements between Defendant, his agents, servants, and employees, and those persons in active concert or participation and any sales company, mailhouse, printer, Internet service provider, information provider, telephone company, television or radio station, or other person through whom Defendant, his agents, servants, and employees, and those persons in active concert or participation advertises or promotes products or services, as well as copies of all advertisements, Web pages, commercial electronic mail, or promotional materials utilized in such ventures; and

- F. Copies of all sales scripts, training materials, advertisements or other marketing materials utilized, provided that copies of all sales scripts, training materials, advertisements or other materials used by Defendant, his agents, servants, and employees, and those persons in active concert or participation with him, shall be retained by Defendant for six (6) years after the last date of dissemination or use.

VII.

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, for purposes of determining or securing compliance with this Order, with respect to any multi-level marketing program, Defendant and any multi-level marketing program that the Defendant now or comes to own, operate or control, shall permit representatives of the

Commission upon reasonable written notice:

- A. Access during normal office hours to any office or business facility in which documents relating to compliance with the terms of this Order are stored or held, to inspect and copy such documents; and
- B. To interview current officers, directors, independent contractors, and employees of any entity directly or indirectly under Defendant's control relating to compliance with the terms of this Order without restraint or interference from Defendant at a location reasonably convenient to him and the person to be interviewed. The person interviewed may have counsel present.

Provided that, upon application of the Commission and for good cause shown, the Court may enter an *ex parte* order granting immediate access to Defendant's business premises for the purpose of inspecting and copying all documents relevant to any matter contained in this Order.

Provided further, that Plaintiff may otherwise monitor Defendant's compliance with this Order by all lawful means available, including: (1) the use of investigators or other representatives of the Commission posing as consumers and suppliers of Defendant, his employees or any entity which Defendant own, operate or control, without the necessity of prior identification or notice; (2) without further leave of Court, to obtain discovery as provided by Rules 26-37 of the Federal Rules of Civil Procedure, including the use of compulsory process pursuant to Federal Rule of Civil Procedure 45; and (3) the use of compulsory process pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to investigate whether Defendant has violated any provision of this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

VIII.

IT IS FURTHER ORDERED that Defendant, for a period of three (3) years from entry of this Order, shall give written notice to the Commission of his affiliation or employment with any multi-level marketing program within twenty-one (21) days of the commencement of such affiliation or employment at the address listed in Paragraph XIII. Such notice shall include the new business name and address, a statement of the nature of the business, and a summary of his position and responsibilities with the business.

IX.

IT IS FURTHER ORDERED that Defendant, for a period of three (3) years from the date of entry of this Order, shall, in order to enable the Commission to monitor compliance with the provisions of this Order, give written notice within twenty-one (21) days to the Commission, at the address listed in Paragraph XIII, indicating any change in his mailing and/or residential address.

X.

IT IS FURTHER ORDERED that Defendant, for a period of three (3) years from the date of entry of this Order, for the purposes of determining or securing compliance with this Order, when acting in connection with any multi-level marketing program Defendant has an ownership interest or is a director, officer (or comparable position with a non-corporate entity), or is a person who formulates policies or procedures, shall, within sixty (60) days of a written request from the Commission:

- A. File with the Commission a statement containing the names of the media in or on which Defendant, his agents, representatives, servants, employees, salespersons,

independent contractors or those of any corporations, trusts, or persons or other entities managed or controlled in whole or in part by Defendant, have placed advertisements, the months during which those advertisements were published or broadcast, the caller paid and/or toll-free telephone numbers utilized in furtherance of the sale of products and services, the URL of all Web sites utilized in furtherance of the sale of products and services, and the local carriers and/or telephone service common carriers utilized in furtherance of any telemarketing or teleconferencing activities; and

- B. Produce any requested marketing materials used in the advertising, promoting, offering for sale, sale, or distribution of any product or service sold or offered for sale by Defendant, his agents, representatives, or affiliates.

XI.

IT IS FURTHER ORDERED that:

- A. Within three days after entry of this order, Defendant shall distribute a copy of this Order to all his agents, servants, representatives and independent contractors, and those persons in active concert or participation with him, and Defendant shall make his best efforts to obtain a signed and dated acknowledgment of receipt of the same;
- B. For a period of three (3) years from the date of entry of this Order, Defendant shall distribute a copy of this Order to all new officers, directors, managing agents, employees, or independent contractors of any multi-level marketing program in which Defendant has an ownership interest or is a director, officer (or comparable

position with a non-corporate entity) or is a person who formulates policies or procedures, and obtain a signed and dated acknowledgment of receipt of the same; and

- C. For a period of six (6) years from the date of this Order, Defendant shall retain, and upon reasonable notice make available to representatives of the Commission, the original signed and dated acknowledgments of receipts required by subparagraphs A and B.

XII.

IT IS FURTHER ORDERED that the expiration of any requirement imposed by this Order shall not affect any other obligation arising under this Order.

XIII.

IT IS FURTHER ORDERED that Defendant shall submit any information, notifications, or reports required by this Order to: Associate Director for Marketing Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, or at such future address as the Commission may designate in writing to Defendant.

XIV.

The parties have stipulated and agreed, without further notice to either of them, to entry of the foregoing order, which constitutes a final judgment in this action. Defendant has waived any claim he may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by PL

104-121, 110 Stat. 847, 863-64 (1996), concerning the prosecution of this action to the date of this Order.

XV.

IT IS FURTHER ORDERED that Defendant shall execute, have notarized and return to the Commission at the address listed in Paragraph XIII a signed, dated acknowledgment of receipt of a date-stamped copy of this Order within five (5) days of his receipt of the date-stamped copy of this Order.

XVI.


IT IS FURTHER ORDERED that should Defendant fail to comply with any deadline for reporting information to the Commission pursuant to this order, the Commission shall provide written notice of that failure to Defendant and shall not file any motion for contempt unless Defendant fail to comply within 10 days of mailing such notice to the last address provided to the Commission by Defendant.

XVII.

~~IT IS FURTHER ORDERED, that this Court shall retain jurisdiction of this matter for
all purposes.~~

There being no just cause for delay, this Final Judgment and Order for a Permanent Injunction as to Defendant J.D. Noland, is hereby entered. *All claims against all parties having been adjudicated, the clerk shall terminate this case.*

DATED this 1 day of July, 2002.


The Hon. Frederick J. Martone
United States District Judge