

PUBLIC STATEMENT OF CHAIRMAN PITOFSKY,
COMMISSIONERS ANTHONY AND THOMPSON
T.E.M.M. MARKETING, INC.

We disagree with Commissioner's Swindle's partial dissent in which he states that the ban on the defendants in Part I.B of the order is overbroad. That provision prohibits defendants from "engaging or participating . . . in asking for or collecting donations to any publication, program, or organization." Under the facts, such relief is reasonably related to the challenged law violations.

Defendants misrepresented their affiliation with civic programs and publications and solicited proceeds for advertising space, based, among other things, on false claims that the proceeds would be donated to local charities. As Commissioner Swindle recognizes, this is an "egregious" scam, which often victimized small businesses. In cases involving serious frauds, we often consider whether, weighing factors such as a defendant's misconduct, prior law violations, the extent of consumer injury and availability of redress, imposing a type of ban is appropriate. This is a case in which a ban makes sense and, indeed, a ban on certain marketing and advertising activities is included at Part I.A of the Order.¹

Commissioner Swindle supports that marketing ban but objects to the ban at Part I.B because it prohibits fully protected speech (legitimate charitable fund-raising), rather than purely commercial speech. We are mindful in imposing bans that they may prohibit truthful, non-deceptive speech. For example, one who has engaged in fraudulent telemarketing, theoretically, could engage in legitimate telemarketing. But, examining the facts of each case, we on occasion have concluded that a ban is the most appropriate way to ensure that consumers are protected in the future. Sometimes where the underlying conduct has been so serious and injurious to consumers, significant fencing-in relief, as at Part I.B, is appropriate and necessary. For this reason, we cannot agree with Commissioner Swindle's statement that the ban here "foreclose[s] the prospect of redemption." To the extent it may, it also protects consumers – which is our mission.

Under these facts, it was reasonable to conclude that stronger relief was appropriate.

¹ The ban at Part I.A of the order, which prohibits defendants from "engaging or participating . . . in the offering for sale, sale, marketing or distribution of advertisements, listing, or sponsorships in any publication or program"