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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,)
)
 Plaintiff,)
)
 v.)
)
 JOHN STEFANCHIK, *et al.*,)
)
 Defendants.)
)
 _____)

CASE NO. C04-1852RSM

ORDER DENYING MOTION
TO STRIKE AND GRANTING
MOTION FOR PRELIMINARY
INJUNCTION

I. INTRODUCTION

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Additionally, plaintiff asserts that both Stefanchik and Beringer should be held liable for the actions of Christensen and Atlas Marketing because Stefanchik actively participated in the telemarketing plan, and he is the sole shareholder and president of Beringer. Finally, as a result

1 Stefanchik's books, videos and other publications. Stefanchik is the president, manager, and
2 sole shareholder of Beringer Corporati

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24 ¹ Plaintiff's motion for a preliminary injunction was initially brought against all
25 defendants, both Stefanchik and Christensen in their individual capacities, and both Beringer
26 Corporation and Atlas Marketing. However, on October 15, 2004, Christensen and Atlas
Marketing voluntarily agreed to the entry of a preliminary injunction against themselves. (Dkt.
#16). The preliminary injunction was entered by the Court on October 20, 2004. (Dkt. #19).
Thus, plaintiff's motion continues only against Stefanchik and Beringer Corporation.

1 they will make large amounts of money in their spare time, as much as \$10,000 every 30 days,
2 or \$2,700 for only five or six hours of work. Plaintiff asserts that, contrary to these
3 representations, most consumers who purchase the products and services do not make large
4 sums of money in their spare time, and many don't make any money at all.

5 In their telemarketing pitches, defendants also offer a one-year coaching service that
6 defendants represent is staffed by coaches who are substantially experienced in the paper
7 business, and who are readily available by telephone to assist consumers in finding and
8 completing paper transactions. Plaintiff asserts that defendants' coaches do not have substantial
9 experience in the paper or real estate business, and many times, are not readily available to assist
10 consumers at all. Defendants claim that all coaches are personally trained by Stefanchik.

11 **B. Motion to Dismiss**

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My name is _____ and my phone number is _____. Write down 5-10 hours per week. That's how much time you will need to spend. Each deal may be worth between \$3,000 to \$5,000 to you. You could be making money in 90 days if you do this the Stefanchik way and put in the time and effort.

Defendants do not state why they believe this constitutes inadmissible hearsay.

1 alleged violation of a law which the FTC enforces. Under section 13(b), a district court may

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1 asserts that defendants are unable to demonstrate that they have a reasonable basis for their
2 earnings claims. Plaintiff's argument is supported by the survey results presented by Dr.

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1 Defendants next argue that neither Stefanchik nor Beringer can be held liable for the
2 actions of Christensen or Atlas Marketing. Specifically, defendants argue that they cannot be
3 held vicariously liable for Christensen and Atlas Marketing’s actions because they are not
4 agents for Stefanchik and Beringer. However, that argument is without merit. The FTC argues
5 that Stefanchik and Beringer are directly liable for the misrepresentations they knew of and
6 allowed to be dissemination to the public. Stefanchik reviewed the scripts used by Atlas
7 Marketing, and therefore, was aware that the telemarketers were informing consumers that they
8 could be making \$3,000 - \$5,000 per deal in just 5-10 hours per week.

9 Individuals are personally liable for restitution for corporate misconduct if they “had
10 knowledge that the corporation or one of its agents engaged in dishonest or fraudulent conduct,
11 that the misrepresentations were the type upon which a reasonable and prudent person would
12 rely, and that consumer injury resulted.” *FTC v. Publishing Clearing House, Inc.*, 104 F.3d
13 1168, 1171 (9th Cir. 1996). The knowledge requirement can be satisfied by showing that the
14 individuals had actual knowledge of material misrepresentations, were recklessly indifferent to
15 the truth or falsity of a misrepresentation, on,eap,1w1einer.3(-)h(e).5(a)-33d5(p)-37d0.5w1nere

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1 based on his own success in the paper industry, and that all of his representations are qualified
2 with words such as “if you put in the time and effort you could . . .” or “these results are not
3 typical,” the Court finds, in light of the representations as a whole, a reasonable consumer’s net
4 impression would be that he or she could make large amounts of money in a short amount of
5 time, and defendants’ qualifications do not overcome that net impression. Furthermore, plaintiff
6 has provided evidence that defendants’ claims were material to the consumers’ purchasing

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1 in favor of granting preliminary relief.

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III. CONCLUSION

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Defendants' Motion to Strike (Dkt. #35) is DENIED.

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Plaintiff's Motion for Preliminary Injunction (Dkt. #2) is GRANTED. The Court will

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enter plaintiff's proposed preliminary injunction upon entry of this Order.

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The Clerk shall direct a copy of this Order to all counsel of record.

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DATED this 16 day of December 2004.

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/s/ Ricardo S. Martinez
RICARDO S. MARTINEZ
United States District Judge

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