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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS:

Robert Pitofsky, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle

In the Matter of

**Kalvin P. Schmidt, individually, and doing business as DKS Enterprises, DS
Productions, DES Enterprises, www.mkt-america.com, and www.mkt-usa.com.**

Docket NO. C-3834

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, his attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent for purposes of the order of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that respondent has violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Calvin P. Schmidt is a Minnesota resident who does business as DKS Enterprises, DS Productions, DES Enterprises, www.mkt-america.com, and www.mkt-usa.com. He conducts his business activities out of his home, 911 3rd Street, N.W., Waseca, Minnesota 56093.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "Prohibited Marketing Program" means a pyramid sales scheme, ponzi scheme, chain marketing scheme, or other marketing plan or program in which a person who participates makes a payment and receives the right, license or opportunity to derive income as a participant primarily from: (i) the recruitment of additional recruits by the participant, program promotor or others; (ii) sales made to or by such recruits or their recruits; or (iii) any other payments made by recruits. A "Prohibited Marketing Program" does not include a marketing plan or program in which the program promotor demonstrates that it has instituted and enforced rules that have the actual effect of insuring that a participant derives income primarily from the sale of goods or services to persons who do not recruit participants into the program.

For purposes of this Order, the phrase "goods or services" does not include a membership or opportunity to participate in a sales or marketing program, or access codes or numbers which allow participation in a sales or marketing program.

2. "Clearly and prominently" shall mean as follows:

A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. *Provided, however*, that in any advertisement presented solely through video or audio means, the disclosure may be made through the same means in which the ad is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media the disclosure shall also be unavoidable and shall be presented prior to the consumer incurring any financial obligation.

B. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or first page.

C. On a product label, the disclosure shall be in a type size and location on the principal display panel sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

3. Unless otherwise specified, "respondent" shall mean Calvin P. Schmidt, individually and doing business as DKS Enterprises, DS Productions, DES Enterprises, www.mkt-america.com, and www.mkt-usa.com; and, his agents, representatives, and employees.

4. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED THAT respondent, directly or through any corporation, subsidiary, division, or other device, shall cease and desist from engaging, participating, or assisting in any manner or capacity whatsoever in any Prohibited Marketing Program.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with any marketing plan or program, or with the promotion, offering for sale, sale or distribution of any good or service, shall not:

A. Represent, expressly or by implication:

1. the income, profits, or sales volume that has been achieved by participants in any marketing program or purchasers of any good or service;
2. the income, profits, or sales volume that may be achieved by participants in any marketing program or purchasers of any good or service; or

3. any other fact material to a consumer's decision to participate in such marketing plan or program or purchase such good or service

unless such representation is true and, at the time it is made, respondent possesses and relies upon competent and reliable evidence that substantiates the representation.

B. Make any representation in any manner, expressly or by implication, of specific earnings, profits or sales volume that have been achieved or may be achieved by participants in any marketing program or purchasers of any good or service without also clearly and prominently disclosing (1) the number of persons who earned at least the amount represented, and (2) the percentage of total participants or purchasers who earned at least the amount represented.

III.

IT IS FURTHER ORDERED that respondent Calvin P. Schmidt, in connection with any business owned or controlled, in whole or in part, by him, for five (5) years after the date of issuance of this order, shall maintain and upon request make available to the Federal Trade Commission, for inspection and copying, business records demonstrating his compliance with the terms and provisions of this order, including:

A. All advertisements and promotional materials containing representations concerning actual or possible earnings by participants in any marketing plan or program or by purchasers of any good or service;

B. All materials that were relied upon in disseminating representations concerning actual or possible earnings by participants in any marketing plan or program or by purchasers of any good or service;

C. The income, disbursements, transactions, and use of money by any such business;

D. The name, address, telephone number, and social security number of each person employed by any such business in any capacity;

E. The name, address, and telephone number of each person whom respondent has recruited to participate in any marketing plan or program, or to whom respondent has sold any good or service;

F. All complaints and other communications between respondent and any consumer or any governmental or consumer protection organization; and

G. All documents relating in any way to any conduct subject to this Final Order.

IV.

IT IS FURTHER ORDERED that respondent Calvin P. Schmidt shall deliver a copy of this order to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

IT IS FURTHER ORDERED that respondent Calvin P. Schmidt, for a period of seven (7) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VI.

IT IS FURTHER ORDERED that Calvin P. Schmidt shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this order.

VII.

This order will terminate on November 3, 2018, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Donald S. Clark
Secretary

ISSUED: November 3, 1998