**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

05-60037 CR-COHN MAGISTRATE JUDGE SNOW

CASE NO. _____

**18 U.S.C. § 371**
**18 U.S.C. § 401(3)**
**18 U.S.C. § 2**

**UNITED STATES OF AMERICA**

**vs.**

**STEVEN MARC MISHKIN,**

**Defendant.**

_____/

# INFORMATION

The United States Attorney charges that:

## GENERAL ALLEGATIONS

At various times relevant to this Information:

1. AmeriP.O.S. Inc. ("AmeriP.O.S.") was a Florida corporation incorporated in or around August 2002. AmeriP.O.S.'s principal place of business was located in Broward County at 1250 E. Hallandale Beach Boulevard, Suite 505, Hallandale, Florida.

2. AmeriP.O.S. engaged in the sale of point-of-sale ("P.O.S.") terminal business opportunities. For a minimum purchase price of approximately $12,000, potential purchasers were told they would receive several P.O.S. terminals, along with assistance in establishing, maintaining, and operating a P.O.S. terminal business. According to defendant **STEVEN MARC MISHKIN** and his co-conspirators, a business opportunity purchaser, known as a "distributor," would earn

substantial profits when members of the public purchased products, such as pre-paid debit cards, pre-paid phone cards, and pre-paid Internet services, from the distributor's P.O.S. terminals.

3. **STEVEN MARC MISHKIN** and co-conspirators founded and thereafter managed AmeriP.O.S.

4. The Federal Trade Commission (the "FTC") is a federal agency that seeks to ensure that the nation's markets function competitively and are free of acts or practices that are unfair or deceptive. On or about September 29, 1998, the FTC began a civil lawsuit in the United States District Court for the Southern District of Florida against **STEVEN MARC MISHKIN** and others in a case styled *Federal Trade Commission v. Stephen I. Tashman, et al.*, Case No. 98-7058-CIV-RYSKAMP.

5. On or about June 14, 2000, the District Court in Case No. 98-7058-CIV-RYSKAMP issued a clear and specific court order (the "Order") that, among other things, commanded the following in Section I:

> "**IT IS THEREFORE ORDERED** that Defendant Mishkin and his successors, assigns, agents, servants, employees, and those persons in active concert or participation with him who receive actual notice of this Final Judgment and Order, by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, trust, investment, or other device, are hereby permanently restrained and enjoined from engaging or assisting others in the sale of business opportunities."

a. For purposes of the Order, the term "Business Opportunity" was defined as:

> "[A]ny written or oral business arrangement, however denominated, . . . which consists of the payment of any consideration for:
>
> A. The right or means to offer, sell, or distribute goods or services . . . ; and
>
> B. Assistance to any person or entity in connection with or incident to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business."

**COUNT 1**
**(Conspiracy to Commit Mail Fraud: 18 U.S.C. § 371)**

1. Paragraphs 1 through 5 of the General Allegations section of this Information are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around June 2002, through in or around May 2004, in Broward County, in the Southern District of Florida, and elsewhere, the defendant,

**STEVEN MARC MISHKIN,**

did knowingly and willfully combine, conspire, confederate and agree with others, known and unknown to the United States Attorney, to commit an offense against the United States, that is: to knowingly and willfully devise and intend to devise a scheme and artifice to defraud and to obtain money and property from others by means of materially false and fraudulent pretenses, representations, and promises, knowing that they were false and fraudulent when made, and knowingly causing to be delivered certain mail matter by a private and commercial interstate carrier, according to the directions thereon, for the purpose of executing the scheme, in violation of Title 18, United States Code, Section 1341.

## PURPOSE OF THE CONSPIRACY

3. It was the purpose of the conspiracy for **STEVEN MARC MISHKIN** and his co-conspirators to unlawfully enrich themselves by misappropriating monies from business opportunity purchasers by making materially false representations, omitting to state material facts, and concealing material facts concerning, among other things, expected profits, the services provided to distributors, and the authenticity of AmeriP.O.S. references.

## MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which **STEVEN MARC MISHKIN** and his co-conspirators sought to accomplish the object and purpose of the conspiracy included, among others, the following:

4. **STEVEN MARC MISHKIN** and his co-conspirators, directly and indirectly, incorporated AmeriP.O.S. in August 2002. Thereafter, they placed advertisements on television, on the Internet, and in other media across the country, misrepresenting the profits that could be earned by purchasing an AmeriP.O.S. distributorship, and urging consumers to telephone a number that appeared in the advertisements.

5. Individuals who telephoned AmeriP.O.S. in response to its advertisements ("potential purchasers") were placed in touch with salesmen. **STEVEN MARC MISHKIN** and his co-conspirators used salesmen called "fronters" as the first point of contact with potential purchasers. **MISHKIN** and his co-conspirators, directly and indirectly, instructed fronters on what to say to potential purchasers, as described below.

6. Fronters outlined the opportunity and determined whether the potential purchaser "qualified" to purchase an AmeriP.O.S. business opportunity and thereby become a "distributor." Fronters claimed that AmeriP.O.S. previously placed P.O.S. terminals in tremendously successful locations. Fronters said that AmeriP.O.S. wanted to set up terminals across the country with the help of distributors. Fronters further explained that potential purchasers would receive several P.O.S. terminals.

7. According to the fronters, AmeriP.O.S. found store locations in the distributor's geographic area to place the terminals. The machines would then sell prepaid debit cards, pre-paid phone cards, pre-paid Internet services, and many other products and services. The AmeriP.O.S. distributor would receive commissions based upon sales from those terminals.

8. Potential purchasers were transferred to another AmeriP.O.S. salesperson known to **STEVEN MARC MISHKIN** and his co-conspirators as a "closer." The conspirators instructed closers on what to say, as described below.

9. The closer generally identified himself to potential purchasers as a "Territory Director" who was responsible for setting up distributors in the potential purchasers' geographic area. In reality, a closer did not specialize in any particular area of the country and took calls from any place in the United States. The closer and potential purchaser scheduled an appointment to speak at a time after the potential purchaser received the AmeriP.O.S. brochure and spoke with AmeriP.O.S.'s references, as described below.

10. Using Fedex, **STEVEN MARC MISHKIN** and his co-conspirators sent potential purchasers professional-looking, glossy brochures. The brochures represented that, in addition to the terminals themselves, AmeriP.O.S. "provid[es] our distributors with many retail outlets to sell a variety of pre-paid products at no additional cost."

11. **STEVEN MARC MISHKIN** and his co-conspirators enclosed in the brochures a document entitled "Business Forecast/Daily Statistics." This document, which changed over time, purportedly described the performance of AmeriP.O.S. terminals. From in or around October 2002, through in or around September 2003, this document purported to state what a "Below Average Performing Terminal" earned, and what an "Average Performing Terminal" earned. In or around October 2003, AmeriP.O.S. changed the "Business Forecast/Daily Statistics" page of the brochure to state that the forecasts were "examples." AmeriP.O.S. salesmen, however, continued to represent that the examples were typical of actual terminal performance.

12. **STEVEN MARC MISHKIN** and his co-conspirators, directly and indirectly, provided potential purchasers with the names of references who claimed both to have had success operating AmeriP.O.S. terminals and who vouched for the support and assistance that AmeriP.O.S. provided. After the potential purchaser received the brochure by Fedex and spoke with references, the AmeriP.O.S. closer made an extended sales pitch to the potential purchaser. During this sales pitch, the closer made a number of representations about the AmeriP.O.S. business opportunity, earnings projections, earnings of prior purchasers, and the help and support AmeriP.O.S. provided.

13. **STEVEN MARC MISHKIN** and his co-conspirators used a transaction called "Back-from-the-Dead," or "BFD," to attempt to resurrect any deal that the closer failed to close. If the closer was unsuccessful, another salesman called the potential purchaser back within a few days or weeks in an attempt to resurrect the deal. This BFD salesman falsely represented that another person had cancelled a large order of terminals for personal reasons and that, as a result, AmeriP.O.S. could offer these terminals to the potential purchaser for a substantially reduced rate.

14. **STEVEN MARC MISHKIN** and his co-conspirators used a transaction called a "load" to induce individuals who purchased the AmeriP.O.S. business opportunity to purchase more. If a closer was successful at closing a sale, another salesperson, known to the conspirators as a "loader," would contact the distributor within a few days or weeks for the purpose of soliciting an additional investment. Like the BFD salesman, the loader falsely claimed that another person had cancelled a large order of terminals for personal reasons and that, as a result, AmeriP.O.S. could offer these terminals to the distributor for a substantially reduced rate.

15. To fraudulently induce others to purchase business opportunities, **STEVEN MARC MISHKIN** and his co-conspirators provided and made, and caused others to provide and make, numerous materially false statements, and **MISHKIN** and his co-conspirators concealed and omitted, and caused others to conceal and omit, material facts from potential purchasers, including, among others, the following:

**Materially False Statements**

a. That AmeriP.O.S. would secure high-traffic, profitable locations for distributors to place their terminals in the distributor's respective local areas, when, in truth and in fact, AmeriP.O.S. was frequently unsuccessful at providing its distributors with local terminal locations, much less high-traffic locations;

b. That AmeriP.O.S. had already found locations for placement of distributors' terminals that would be available to a distributor as soon as he or she paid the initial investment when, in truth and in fact, AmeriP.O.S. did not have locations for the purchaser's terminals at the time he or she invested;

c. That the number of distributors AmeriP.O.S. established in a given geographic territory was limited when, in truth and in fact, the only limitation to the willingness of **STEVEN MARC MISHKIN** and his co-conspirators to accept a person as a distributor was whether he or she had enough money to pay the purchase price;

d. That the tables listed on the "Business Forecast" sheet of AmeriP.O.S. brochures accurately represented the commissions earned by a below-average and an average AmeriP.O.S. terminal when, in truth and in fact, below-average and average AmeriP.O.S. terminals, respectively, earned substantially less money than the amounts shown in the brochures; and

e. That references provided to prospective purchasers were, in fact, "singers" who did not own successful distributorships, and sometimes did not own any terminals at all, but were paid to misrepresent their success to potential purchasers. Neither **STEVEN MARC MISHKIN** nor the references disclosed to potential purchasers that the references were not, in fact, successful distributors;

**Omission and Concealment of Material Facts**

f. That **STEVEN MARC MISHKIN** was a defendant in a civil lawsuit, *Federal Trade Commission v. Stephen I. Tashman, et al.*, Case No. 98-7058-CIV-RYSKAMP (S.D. Fla.), in which the FTC alleged, among other matters, that **MISHKIN** had misrepresented the earnings potential, exclusivity of territorial rights, and availability of prime locations for pre-paid telephone card vending machines; and

g. That **STEVEN MARC MISHKIN** was banned by a court order issued in *Federal Trade Commission v. Stephen I. Tashman, et al.,* Case No. 98-7058-CIV-RYSKAMP (S.D. Fla.) from selling business opportunities.

**OVERT ACT**

In furtherance of the conspiracy and to achieve the object and purpose thereof, at least one of the co-conspirators committed, or caused to be committed, in the Southern District of Florida, and elsewhere, the following overt act, among others:

1. In or around February 2004, **STEVEN MARC MISHKIN** caused a commercial interstate carrier to send a package from AmeriP.O.S. in Hallandale, Florida to a potential purchaser in Chatsworth, California.

**COUNT 2**
**(Criminal Contempt: 18 U.S.C. §§ 401(3) and 2)**

1. Paragraphs 1 through 5 of the General Allegations of this Information are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around June 2002, through in or around May 2004, in Broward County, in the Southern District of Florida, and elsewhere, the defendant,

**STEVEN MARC MISHKIN,**

did knowingly and willfully disobey and resist a lawful order, decree, and command of the United States District Court for the Southern District of Florida, namely Section I of the Order issued against **STEVEN MARC MISHKIN** in connection with the case of *Federal Trade Commission v. Stephen I. Tashman, et al.*, Case No. 98-7058-CIV-RYSKAMP, as more fully set forth in Paragraph 5 of the General Allegations of this Information and incorporated herein, in that **STEVEN MARC MISHKIN** engaged in the sale of business opportunities.

All in violation of Title 18, United States Code, Sections 401(3) and 2.

MARCOS DANIEL JIMENEZ
UNITED STATES ATTORNEY

for
RICHARD N. GOLDBERG
TRIAL ATTORNEY
U.S. DEPARTMENT OF JUSTICE

for
STEPHEN GURWITZ
SPECIAL ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

CASE NO. 05-60037 CR-COHN

vs.

**Steven Marc Mishkin,**

**Defendant.**

_____/

# CERTIFICATE OF TRIAL ATTORNEY*

**Superseding Case Information:**

New Defendant(s) Yes ____ No ____
Number of New Defendants ____
Total number of counts ____

**Court Division:** (Select One)

___ Miami ___ Key West
_X_ FTL ___ WPB ___ FTP

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.

2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) _No_
List language and/or dialect _____

4. This case will take _0_ days for the parties to try.

5. Please check appropriate category and type of offense listed below:

| (Check only one) | | | (Check only one) | |
|---|---|---|---|---|
| I | 0 to 5 days | _X_ | Petty | ____ |
| II | 6 to 10 days | ____ | Minor | ____ |
| III | 11 to 20 days | ____ | Misdem. | ____ |
| IV | 21 to 60 days | ____ | Felony | _X_ |
| V | 61 days and over | ____ | | |

6. Has this case been previously filed in this District Court? (Yes or No) _No_
If yes:
Judge: _____ Case No. _____
(Attach copy of dispositive order)
Has a complaint been filed in this matter? (Yes or No) _No_
If yes:
Magistrate Case No. _____
Related Miscellaneous numbers: _____
Defendant(s) in federal custody as of _____
Defendant(s) in state custody as of _____
Rule 20 from the _____ District of _____

Is this a potential death penalty case? (Yes or No) _No_

7. Does this case originate from a matter pending in the U.S. Attorney's Office prior to April 1, 2003? ____ Yes _X_ No

8. Does this case originate from a matter pending in the U. S. Attorney's Office prior to April 1, 1999? ____ Yes _X_ No
If yes, was it pending in the Central Region? ____ Yes ____ No

9. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? ____ Yes _X_ No

10. Does this case originate from a matter pending in the Narcotics Section (Miami) prior to May 18, 2003? ____ Yes _X_ No

Stephen Gurwitz
Special Assistant United States Attorney
Court No. A550379

*Penalty Sheet(s) attached

REV.1/14/04

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

PENALTY SHEET

05-60037CR-COHN

MAGISTRATE JUDGE SNOW

**Defendant's Name:** STEVEN MARC MISHKIN **Case No:** _____

Count #: 1

Conspiracy to commit mail fraud.

18 U.S.C. § 371

***Max Penalty:** 5 years' imprisonment

Count #: 2

Criminal Contempt

18 U. S. C. § 401(3)

***Max Penalty:** No statutory maximum.

Count #:

***Max Penalty:**

Count #:

***Max Penalty:**

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**