

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

_____	)	
In the Matter of	)	
	)	
PRODIGY SERVICES	)	FILE NO. 952-3332
CORPORATION,	)	
a successor corporation	)	AGREEMENT
to Prodigy Services	)	CONTAINING
Company, a general	)	CONSENT ORDER
partnership.	)	
	)	
_____	)	

The Federal Trade Commission has conducted an investigation of certain acts and practices of Prodigy Services Company, a general partnership, which has been succeeded by Prodigy Services Corporation, a corporation (“proposed Respondent” or “Prodigy”). Proposed Respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the draft complaint. Therefore,

**IT IS HEREBY AGREED** by and between Prodigy Services Corporation, by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed Respondent Prodigy Services Corporation is a Delaware corporation, with its principal office or place of business at 445 Hamilton Avenue, White Plains, New York 10601. Prodigy Services Corporation is a successor corporation to Prodigy Services Company, a partnership comprised of two equal partners: International Business Machines Corporation and Sears, Roebuck and Company.
2. Proposed Respondent admits all the jurisdictional facts set forth in the draft complaint.
3. Proposed Respondent waives:
  - (a) Any further procedural steps;
  - (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

- (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered into pursuant to this agreement.

4. This agreement and any related complaint shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of sixty (60) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute, for the purpose of this agreement or for any other purpose, any admission by proposed Respondent that any law has been violated as alleged in the draft complaint, or that any facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed Respondent, (1) issue its complaint corresponding in form and substance to the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed Respondent by any means specified in Section 4.4 of the Commission's Rules shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order or the agreement.

7. Proposed Respondent has read the draft complaint and consent order. Proposed Respondent understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

## ORDER

### DEFINITIONS

For purposes of this order, the following terms shall have the meanings set forth below, unless specifically stated otherwise:

1. “Account” means a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held either directly or indirectly by a Financial Institution, as defined below, and established primarily for personal, family, or household purposes.
2. “Financial Institution” means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an Account belonging to a Consumer.
3. “Consumer” means a natural person or other entity that may be billed for online services; provided that, for purposes of Paragraphs IV and VI of this order, “Consumer” shall only mean a natural person.
4. “Electronic Fund Transfer,” as defined by the Electronic Fund Transfer Act, 15 U.S.C. § 1693a(6), means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephone, or computer or magnetic tape so as to order, instruct, or authorize a Financial Institution to debit or credit an Account, except that it does not mean a transaction made using a debit card or debit card account which a consumer has identified as a credit card or credit card account.
5. “Online Service” shall mean a Respondent-Controlled access, information, communication, or transaction service which is made available to Consumers as a paid service via connection by computers, modems, or other means, to a proprietary or non-proprietary network of telecommunication or computer facilities.
6. Unless otherwise specified, “Respondent” shall mean Prodigy Services Corporation, its successors and assigns, and its officers, agents, servants, divisions, and employees.
7. “Respondent-Controlled” shall mean Respondent makes the management decisions affecting compliance with the provisions of this order.
8. “In or affecting 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 Respondent-Controlled corporation, subsidiary or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any Online Service in or affecting commerce, shall not misrepresent, expressly or by implication, the terms or conditions of any trial offer of any Online Service.

## II.

IT IS FURTHER ORDERED that Respondent, directly or through any Respondent-Controlled corporation, subsidiary, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any Online Service in or affecting commerce, shall not represent, expressly or by implication, that the Online Service is offered “free,” “without risk,” “without charge,” “without further obligation,” or words of similar import denoting or implying the absence of any obligation on the part of the recipient of such offer to pay for the Online Service unless Respondent discloses clearly and prominently any obligation of the recipient to cancel or take other affirmative action to avoid charges for use of the Online Service.

Provided, that for purposes of this Paragraph II, “clearly and prominently” shall mean with respect to any representation, described in the foregoing paragraph and made in Respondent’s detailed instructional materials (*e.g.*, starter kits, guidebooks) distributed to Consumers, a disclosure in a type size and in a location that are sufficiently noticeable so that an ordinary Consumer could notice, read, and comprehend it.

Provided, further, that for purposes of this Paragraph II, “clearly and prominently” shall mean, as to any representation described above in this Paragraph, apart from any representation covered by the preceding proviso, and made in the context of any advertisement or promotion of the Online Service through any media, including radio, television or other broadcast media, direct mail, interactive network (except as provided in Paragraph IV below), or print media (including promotion packages attached thereto), a statement directing Consumers to a location where the disclosure required herein will be available (*e.g.*, “For conditions and membership details,” followed by: “load up trial software” or “see registration process” or words of similar effect.) In the case of an audio statement, the statement shall be delivered in a volume and cadence sufficient for an ordinary Consumer to notice, hear, and comprehend it. In the case of a video statement, the statement shall be of a size and shade and shall appear for a duration sufficient for an ordinary Consumer to notice, read, and comprehend it. In the case of print media, the statement shall be in a type size and in a location sufficient for an ordinary Consumer to notice, read, and comprehend it.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be permitted.

## III.

IT IS FURTHER ORDERED that Respondent, directly or through any Respondent-Controlled corporation, subsidiary, or other device, in connection with the advertising, promotion, offering for sale, sale, distribution of, or billing for any Online Service in or affecting commerce, shall disclose, clearly and prominently, during the final registration process, and prior to the Consumer incurring any financial obligation



205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205, Supp. I.

V.

IT IS FURTHER ORDERED that Respondent, directly or through any Respondent-Controlled corporation, subsidiary, or other device, shall, for five (5) years after the last date of dissemination of any representation covered by Paragraphs I-III of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying business records demonstrating compliance with the terms and provisions of this order, except as provided for in Paragraph VI of this order, including, but not limited to:

- A. All advertisements, promotional materials, and instructional materials distributed or accessible to Consumers containing the representation;
- B. For five (5) years after the date of receipt or generation, all written complaints from Consumers, governmental or consumer protection organizations and responses thereto; provided, however, that in lieu of maintaining all electronic mail or similar communications, Respondent may comply with this provision by maintaining a representative sample of such communications.

VI.

IT IS FURTHER ORDERED that Respondent, directly or through any Respondent-Controlled corporation, subsidiary, or other device, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a parent or Respondent-Controlled subsidiary or Respondent-Controlled affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. 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.

IX.

IT IS FURTHER ORDERED that Respondent, directly or through any Respondent-Controlled corporation, subsidiary, or other device, 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 it has complied with this order.

X.

This order will terminate twenty (20) years from the date of its issuance, 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.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

PRODIGY SERVICES CORPORATION:

By:

\_\_\_\_\_  
MARC JACOBSON, ESQ.  
Vice President and General Counsel  
Prodigy Services Corporation

\_\_\_\_\_  
RICHARD KURNIT, ESQ.  
Frankfurt, Garbus, Klein & Selz, P.C.  
Attorney for Respondent  
Prodigy Services Corporation

FEDERAL TRADE COMMISSION:

\_\_\_\_\_  
STEVEN D. SILVERMAN

\_\_\_\_\_  
NINA CHANG

Counsel for the Federal Trade  
Commission



APPROVED:

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LUCY MORRIS  
Assistant Director  
Division of Credit Practices

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DAVID MEDINE  
Associate Director  
Division of Credit Practices

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JOAN Z. BERNSTEIN  
Director  
Bureau of Consumer Protection

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

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\_\_\_\_\_) )  
In the Matter of )  
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PRODIGY SERVICES )  
CORPORATION, )  
a successor corporation ) DOCKET NO.  
to Prodigy Services )  
Company, a general )  
partnership. )  
 )  
\_\_\_\_\_) )

**COMPLAINT**

The Federal Trade Commission, having reason to believe that Prodigy Services Company, a general partnership, which has been succeeded by Prodigy Services Corporation, a corporation, has violated the provisions of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 41-58, as amended, as well as the Electronic Fund Transfer Act (“EFTA”), 15 U.S.C. §§ 1693-1693r, as amended, and its implementing Regulation E, 12 C.F.R. § 205, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Prodigy Services Company was a New York general partnership comprised of two equal partners: International Business Machines Corporation and Sears, Roebuck and Company. Prodigy Services Corporation, a Delaware corporation with its principal office or place of business at 445 Hamilton Avenue, White Plains, New York 10601, is a successor corporation to Prodigy Services Company, a general partnership. Prodigy Services Company, a general partnership, and Prodigy Services Corporation, a successor corporation, shall be hereinafter collectively referred to as “Prodigy.”
2. Prodigy has developed, advertised, offered for sale, sold, and distributed to the public its online service for personal computer users. Through its online service, Prodigy has provided consumers with a range of options including electronic mail, interactive magazines and newspapers, transactional services, and access to the Internet.
3. Prodigy has been and is now engaged in the regular practice of making “electronic fund transfer[s]” from “consumer” “account[s]” as those terms are defined in the Electronic Fund Transfer Act and its implementing Regulation E.

4. The acts and practices of Prodigy alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

**PRODIGY'S COURSE OF BUSINESS**

5. Prodigy has disseminated, or has caused to be disseminated, advertisements for its online service through various media including, but not limited to, print, television, the Internet, direct mail, promotional materials, and instructional materials. These advertisements include, but are not limited to, the attached Exhibits A and B, which contain the following statements:

Exhibit A

10 free\* hours  
...  
10 free hours\* of prodigy to surf the internet  
...  
Free Trial!  
...  
FREE PRODIGY SOFTWARE\*  
...  
FREE 1ST MONTH'S MEMBERSHIP  
...  
FREE 10 HOURS  
to explore PRODIGY in your first month

The advertisement contains a statement at the bottom of the back panel, in fine print, that provides:

\* This trial offer includes the first month's membership fee and 10 free hours of trial usage the first month. Usage beyond the trial offer will result in extra fees, even during the first month. 10 free hours will not carry over into future billing months and may not be used for certain features. Some features may be charged for separately.

Offer details available during online enrollment. . . .

Exhibit B

Get 10 free hours\* of Prodigy  
with easy Internet access!  
...  
Get 10 free hours to explore the Internet

...

To get free software and 10 free hours  
CALL US AT 1-800-PRODIGY

...

After your 10 free hours, Prodigy is only \$9.95  
a month for 5 hours, with no extra charge for  
Internet access.

The advertisement contains a statement at the bottom of the front panel, in fine print, that provides:

\*This offer includes first month's membership fee and 10 free hours of usage in the first month. Usage beyond the trial offer will result in extra fees. Some features charged for separately. . . .

6. Consumers choosing to participate in the free trial offer do so by connecting to the Prodigy service through a telecommunication modem attached to their personal computers. Upon their initial connection to the service, consumers view a series of enrollment screens which request identification and billing information, prompt them to select passwords for future access to the online service, and provide basic information about the online service.

7. At times relevant to this Complaint, the online enrollment process included a "Welcome" screen, attached as Exhibit C, that provides, in part:

Exhibit C

Welcome to the PRODIGY service.

There's never been a better time to connect with the PRODIGY service. Live on PRODIGY, right now, you can have instant access to investment advice, sports scores, business news, travel tips, games, an encyclopedia, and so much more!

To continue with the enrollment process, consumers next must choose one of three icons or "buttons" arrayed vertically on the right side of the "Welcome" screen. These buttons provide, in descending order, the following three options: "Enroll Now," "Plan Details," and "Guarantee." The "Enroll Now" button has a flashing border.

- a. When consumers select the “Enroll Now” button from the “Welcome” screen, the enrollment process continues without display of either the “Plan Details” screen or the “Guarantee” screen.
- b. The “Plan Details” button leads to a screen that provides:

8. In the course of the enrollment process, Prodigy requires consumers to choose a billing method. Consumers must provide a credit, charge, or debit card number. Alternatively, consumers may choose an automatic checking account debiting program called AutoPay. Prodigy requires consumers choosing AutoPay to submit a written

13. Prodigy's aforesaid practices violate Sections 907(a) and (b) of the Electronic Fund Transfer Act, 15 U.S.C. §§ 1693e(a) and (b), and Sections 205.10(b) and (d) of

## ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Prodigy Services Corporation (“Prodigy”).

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

The complaint alleges that Prodigy’s advertisements and statements online to consumers violated the Federal Trade Commission Act (“FTC Act”). Section 5 of the FTC Act prohibits false, misleading, or deceptive representations or omissions of material information. See 15 U.S.C. §§ 45-58, as amended. The complaint also alleges that Prodigy’s billing practices violated the Electronic Fund Transfer Act (“EFTA”) and its implementing Regulation E. Sections 907(a) of the EFTA and 205.10(b) of Regulation E permit preauthorized electronic transfers from consumer accounts only if such transfers are authorized by consumers in writings that are signed or similarly authenticated. See 15 U.S.C. § 1693e(a); 12 C.F.R. § 205.10(b). Sections 907(b) of the EFTA and 205.10(d) of Regulation E require advance written notice to consumers of preauthorized transfers varying in amount from previous preauthorized transfers. See 15 U.S.C. § 1693e(b); 12 C.F.R. § 205.10(d).

The complaint alleges that Prodigy represented that consumers who participate in its free trial offer will not be charged, provided only that they use the ten hours of allotted trial time within one month of their initial sign-on and do not exceed ten hours of online use. This representation is false, according to the complaint, because consumers who participate in Prodigy’s free trial offer and use less than ten hours of online time during the month following their initial sign-on, but who fail to cancel their memberships during the trial period, incur charges. The complaint also alleges that Prodigy failed to disclose adequately to consumers that, upon completion of ten hours of online use or one month from the date of initial sign-on, whichever is earlier, consumers who fail to cancel are treated as members of Prodigy and are charged a monthly membership fee plus applicable usage fees. These fees continue until the consumers affirmatively cancel their memberships. These practices, according to the complaint, constitute deceptive practices in violation of Section 5 of the FTC Act.

The complaint also alleges that, because Prodigy has debited consumers’ accounts via their debit cards without their authorization, it violated Sections 907(a) of the EFTA and 205.10(b) of Regulation E. In addition, the complaint alleges that Prodigy failed to provide consumers with advance written notice of transfers from their accounts varying in amount from previous transfers, thereby violating Sections 907(b) of the EFTA and 205.10(d) of Regulation E.



The proposed consent order contains provisions designed to remedy the violations charged and to prevent Prodigy from engaging in similar acts and practices in the future. Specifically, Paragraph I of the proposed order prohibits Prodigy, in connection with advertising, promoting, selling, or distributing any online service, from misrepresenting the terms or conditions of any trial offer of such online service.

Paragraph II of the proposed consent order prohibits Prodigy, in connection with advertising, promoting, selling, or distributing any online service, from representing that the online service is “free,” “without risk,” “without charge,” “without further obligation,” or words of similar effect unless Prodigy discloses, “clearly and prominently,” any obligation to cancel or take other affirmative action to avoid charges for use of the Online Service.

Paragraph II also contains two provisos that set out the requirements of a “clear and prominent” disclosure. First, with respect to a covered representation made by Prodigy in detailed instructional materials distributed to consumers (*e.g.*, starter kits and guidebooks), the disclosure must be in a type size and in a location that are sufficiently noticeable so that an ordinary consumer could notice, read, and comprehend it. Second, as to representations made through other media, Prodigy must provide a statement directing consumers to a location where the required disclosure will be available (*e.g.*, “For conditions and membership details,” followed by: “load up trial software” or “see registration process” or words of similar effect). Audio statements shall be delivered in a volume and cadence sufficient for an ordinary consumer to notice, hear, and comprehend them. Video statements shall be of a size and shade and shall appear for a duration sufficient for an ordinary consumer to notice, read, and comprehend them. In the case of print media, the statement shall be in a type size and in a location sufficient for an ordinary consumer to notice, read, and comprehend it.

Paragraph III supplements Paragraph II. It provides that Prodigy, in connection with advertising, promoting, selling, or distributing any online service, shall disclose, “clearly and prominently,” during the final registration process, and prior to consumers incurring any financial obligation or liability, the terms of all mandatory financial obligations that will be incurred by consumers as a result of using such online service. Specifically, subparagraph III.A. requires Prodigy to disclose the financial terms and conditions of any plan (*e.g.*, trial offer) by which consumers enroll in or renew enrollment in the online service. Moreover, if such plan exists, Prodigy must disclose, “clearly and prominently,” any obligation to cancel or take other affirmative action to avoid charges and provide at least one reasonable means by which consumers may effectively cancel their enrollment. Subparagraph III.B. requires Prodigy to disclose any mandatory membership, enrollment, or usage fees (*e.g.*, monthly or hourly usage charges).

For purposes of Paragraph III, a disclosure is “clearly and prominently” made if it is of a size and shade, and appears for a duration sufficient for an ordinary consumer to notice, read, and comprehend it. The disclosure shall not be avoidable by consumers.

Paragraph IV requires Prodigy, in connection with an electronic fund transfer from a consumer account, to obtain authorization for the transfer, as required by Section 907(a)

of the EFTA and Section 205.10(b) of Regulation E. In addition, Prodigy must provide advance notice of electronic fund transfers from consumer accounts that vary in amount from previous transfers, as required by Section 907(b) of the EFTA and Section 205.10(d) of Regulation E.

Paragraphs V through IX contain provisions generally found in Commission consent orders, including record-keeping requirements, distribution requirements, notice requirements, and a requirement that Prodigy submit a report setting forth the manner in