

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CLIFTON W. CROSS,
individually and doing business as
BUILD-IT-FAST,

Defendant.

CIVIL ACTION NO. M099CA018

**STIPULATED ORDER FOR
PERMANENT INJUNCTION**

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and over the parties consenting hereto.

2. This is an action by Plaintiff instituted under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 410(b) of the Credit Repair Organizations Act, 15 U.S.C. § 1679h(b). Pursuant to these sections, Plaintiff has authority to seek the relief it has requested.

3. On February 1, 1999, Plaintiff filed its complaint for a permanent injunction and other equitable relief in this matter, and moved for a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65.

4. The Complaint states a claim upon which relief may be granted against Defendant under Sections 5 and 19 of the FTC Act, 15 U.S.C. §§ 45 and 57b, and the Credit Repair Organizations Act, 15 U.S.C. §§ 1679 *et seq.*

5. Entry of this Order is in the public interest.

6. Defendant has waived all rights to seek appellate review of, or otherwise challenge or contest the validity of, this Order.

7. This Order does not constitute and shall not be interpreted to constitute an admission by Defendant that he has engaged in violations of the FTC Act or the Credit Repair Organizations Act.

8. Defendant has waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412.

DEFINITIONS

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

1. “Material” means likely to affect a person’s choice of, or conduct regarding, goods or services;
2. “Defendant” means defendant Clifton W. Cross and his successors, assigns, agents, servants, employees, attorneys, and all persons or entities directly or indirectly under his control or under common control with him, and all other persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device;
3. “Plaintiff” means the Federal Trade Commission;
4. “Document” is synonymous in meaning and equal in scope to the usage of the term in Federal Rules of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, audio, and video recordings, computer records, and other data compilations from which the information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

I. PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that, Defendant, in connection with the sale of any

including but not limited to the use of Employer Identification Numbers ("EINs"), Taxpayer Identification Numbers ("TINs"), or alternative Social Security Numbers in lieu of the consumers' own Social Security Numbers;

B. Representing that the building of a new credit record by applying for credit using an EIN, a TIN, or an alternate social security number instead of a consumer's own

III. PROHIBITED PAYMENTS

IT IS FURTHER ORDERED that Defendant is hereby permanently restrained and enjoined from charging or receiving any money or other consideration for services which Defendant has agreed to perform for the purpose of improving any consumer's credit record, credit history, or credit report before all such services have been fully performed.

IV. CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendant is hereby permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, social security number, or other identifying information of any person who paid any money to Defendant, at any time prior to the date that this Order is entered, in connection with the sale of the products or services referenced in the complaint. Provided, however, that Defendant may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

V. ACCURACY OF FINANCIAL INFORMATION

IT IS FURTHER ORDERED that, within three (3) business days after the date of entry of this Consent Decree, defendant shall submit to the Commission a truthful sworn statement, in the form shown on Appendix A to this Consent Decree, that shall reaffirm and attest to the truthfulness, accuracy, and completeness of the defendant's financial statement that was executed on February 19, 1999, and the related documents previously submitted to the Commission (together designated the "Financial Statement"). The Commission's agreement to this Consent Decree is

expressly premised upon the truthfulness, accuracy, and completeness of defendant's financial condition as represented in the Financial Statement referenced above, which contains material information upon which the Commission relied in negotiating and agreeing to the terms of the Consent Decree. If, upon motion by the Commission, this Court finds that the defendant failed to file the sworn statement required by this Paragraph, or filed a Financial Statement that failed to disclose any material asset, or materially misrepresented the value of any asset, or made any other material misrepresentation in or omission from the Financial Statement, the Judgment herein shall be reopened and the Court may issue an appropriate order, including an order for consumer redress; provided, however, that in all other respects this Judgment shall remain in full force and effect unless otherwise ordered by the Court; and provided further, that proceedings instituted under this Paragraph are in addition to and not in lieu of any other civil or criminal remedies as may be provided by law, including any other proceedings the Commission may initiate to enforce this Consent Decree. Solely for purposes of reopening or enforcing this Paragraph, defendant waives any right to contest any of the allegations in the Complaint.

VI. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, within five (5) business days after receipt by Defendant of this Order as entered by the Court, Defendant shall submit to the FTC a truthful sworn statement, in the form shown on Appendix B, that shall acknowledge receipt of this Final Order.

VII. DISTRIBUTION OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendant shall:

A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, each officer or director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such persons, for any business where: (1) Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business is engaged in performing any credit-related function for consumers, including but not limited to improving consumers' credit reports or profiles, consolidating debt, obtaining or arranging a loan, or obtaining or arranging any extension of credit, or assisting others engaged in these activities;

B. Maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the FTC, the original signed and dated acknowledgments of the receipt of copies of this Order, as required in Subsection (A) of this Paragraph.

VIII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendant and Defendant's agents, employees, officers, and servants, corporations, successors, and assigns, and those persons in active concert or participation with them who

receive actual notice of this Order by personal service or otherwise, in connection with any business where: (1) Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business engages in performing any credit-related function for consumers, including but not limited to improving consumers' credit reports or profiles, consolidating debt, obtaining or arranging a loan, or obtaining or arranging any extension of credit, or assisting others engaged in these activities, are hereby restrained and enjoined from failing to create, and from failing to retain for a period of three (3) years following the date of such creation, unless otherwise specified:

A. Books, records and accounts that, in reasonable detail, accurately and fairly reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable. The businesses subject to this Paragraph shall retain such records for any terminated employee for a period of two (2) years following the date of termination;

C. Records containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, for all consumers to whom such business has sold, invoiced or shipped any goods or services;

D. Records that reflect, for every consumer complaint or refund request, whether received directly or indirectly or through any third party:

- (1) the consumer's name, address, telephone number and the dollar amount paid by the consumer;
- (2) the written complaint or refund request, if any, and the date of the complaint or refund request;
- (3) the basis of the complaint, including the name of any salesperson complained against, and the nature and result of any investigation conducted concerning any complaint;
- (4) each response and the date of the response;
- (5) any final resolution and the date of the resolution; and
- (6) in the event of a denial of a refund request, the reason for the denial; and

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized; provided that copies of all sales scripts, training materials, advertisements, or other marketing materials utilized shall be retained for (3) years after the last date of dissemination of any such materials.

IX. COMPLIANCE REPORTING BY DEFENDANT

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

A. For a period of five (5) years from the date of entry of this Order, Defendant shall notify the FTC of the following:

- (1) Any changes in Defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
- (2) Any changes in Defendant's employment status (including self-employment) within ten (10) days of such change. Such notice shall include the name and address of each business that Defendant is affiliated with or employed by, a statement of the nature of the business, and a statement of Defendant's duties and responsibilities in connection with the business or employment;
and
- (3) Any proposed change in the structure of Defendant or of any business entity owned or controlled by Defendant, such as creation, incorporation, dissolution, assignment, sale, merger, creation, dissolution of subsidiaries, proposed filing of a bankruptcy petition, or change in the corporate name or address, or any other change that may affect compliance obligations arising out of this Order, thirty (30) days prior to the effective date of any

setting forth in detail the manner and form in which the Defendant has complied and is complying with this Order. This report shall include but not be limited to:

- (1) Defendant's then current residence address and telephone number;
- (2) Defendant's then current employment, business addresses and telephone numbers, a description of the business activities of each such employer, and Defendant's title and responsibilities for each employer;
- (3) A copy of each acknowledgment of receipt of this Order obtained by Defendant pursuant to Paragraph VIII; and
- (4) A statement describing the manner in which Defendant has complied and is complying with Paragraphs I through VI of this Order;

C. Upon written request by a representative of the FTC, Defendant shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) days' notice with respect to any conduct subject to this Order;

D. For the purposes of this Order, Defendant shall, unless otherwise directed by the FTC's authorized representatives, mail all written notifications to the FTC to:

Regional Director
Federal Trade Commission
55 East Monroe, Suite 1860
Chicago, Illinois 60603
Re: FTC v. Clifton W. Cross, et al.

E. For the purposes of this Paragraph, "employment" includes the performance of services as an employee, consultant, or independent contractor; and

"employers" include any individual or entity for whom Defendant performs services as an employee, consultant, or independent contractor.

F. For purposes of the compliance reporting required by this Paragraph, the FTC is authorized to communicate directly with Defendant.

X. FTC'S AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that the FTC is authorized to monitor Defendant's compliance with this Order by all lawful means, including but not limited to the following means:

A. The FTC is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26 - 37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating Defendant's compliance with any provision of this Order;

B. The FTC is authorized to use representatives posing as consumers and suppliers to Defendant, Defendant's employees, or any other entity managed or controlled in whole or in part by Defendant, without the necessity of identification or prior notice;

C. Nothing in this Order shall limit the FTC's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether Defendant has violated any provision of this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

XI. ACCESS TO BUSINESS PREMISES

Provided that, upon application of the FTC and for good cause shown, the Court may enter an *ex parte* order granting immediate access to Defendant's business premises for the purposes of inspecting and copying all documents relevant to any matter contained in this Order.

XII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for all purposes.

The parties agree and stipulate to entry of the foregoing Order as a Final Judgment in this action.

FEDERAL TRADE COMMISSION

Dated: _____ By: _____
John C. Hallerud, Attorney
Federal Trade Commission
55 East Monroe, Suite 1860
Chicago, IL 60603
Phone: (312) 960-5615
Facsimile: (312) 960-5600

Dated: _____
Bert Smith, Esq.
1504 North Main Street
Andrews, TX 79714
Attorney for Defendant Clifton W. Cross

CLIFTON W. CROSS

Dated: _____
Clifton W. Cross
308 S.W. 11th Street
Andrews, TX 79714

SO ORDERED, this _____ day of _____, 2000.

Honorable W. Royal Furgeson, Jr.
United States District Judge

APPENDIX A
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	CIVIL ACTION NO. M099CA018
)	
v.)	AFFIRMATION OF ACCURACY
)	OF FINANCIAL STATEMENT
)	
CLIFTON W. CROSS,)	
individually and doing business as)	
BUILD-IT-FAST,)	
)	
Defendant.)	
)	

I, Clifton W. Cross, hereby state that, to the best of my knowledge and belief, the information contained in the "Financial Statement of Individual Defendant" for Clifton W. Cross, that was dated February 19, 1999 and provided to the Federal Trade Commission, was true, accurate, and complete at such time.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

Clifton W. Cross

APPENDIX B
**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	CIVIL ACTION NO. M099CA018
)	
v.)	ACKNOWLEDGMENT OF RECEIPT OF STIPULATED ORDER FOR PERMANENT INJUNCTION
)	
CLIFTON W. CROSS,)	
individually and doing business as)	
BUILD-IT-FAST,)	
)	
Defendant.)	

Clifton W. Cross, being duly sworn, hereby states and affirms as follows:

1. My name is Clifton W. Cross. My current residence address is 4568 Singleton Drive, Tallahassee, Florida 32310. I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am a defendant in FTC v. Clifton W. Cross, Civil Action No. M099CA018, United States District Court for the Western District of Texas.

3. On _____, I received a copy of the Stipulated Order for Permanent Injunction and Consumer Redress, which was signed by the Honorable W. Royal Furgeson, Jr.,
[Date]

U.S. District Judge, and entered by the Court on _____. A true and
[date of entry of Order]
correct copy of the Order I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is
true and correct.

Executed on _____, at _____.
[Date] [City and State]

Clifton W. Cross

State of Texas
County of Andrews

Subscribed and sworn to before me this ____ day of _____, 2000.

Notary Public
My Commission Expires:
