

and collection system, such as a credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card.

4. "Charge" means any amount charged or debited to a consumer's credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card, or any similar form of collecting money from a consumer.
5. With respect to advertisements and promotional and marketing materials, "clear(ly) and conspicuous(ly)" means:
 - a. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive electronic media such as software, the Internet and online services), the disclosure must be presented simultaneously in both the audio and visual portions of the advertisement; **provided, however,** that in any advertisement presented solely through visual or audio means, the disclosure may be made through the same means in which the advertisement is presented; **provided further,** that in any advertisement disseminated by means of an interactive electronic medium such as software, the Internet, or online services, a disclosure made through the use of a hyperlink will not be deemed "clear and conspicuous" unless the hyperlink itself is clear and conspicuous, is clearly identified as a hyperlink, is labeled to convey the nature and relevance of the information it leads to, is on the same Web page, online service page, or other electronic page and proximate to the triggering representation, and takes the consumer directly to the disclosure on the click-through electronic page or other display window or panel. The audio disclosure must be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual disclosure

must 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; and

- b. In a print advertisement or any print promotional or marketing material, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, and in print that contrasts with the background against which it appears.

The disclosure must be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement, promotional or marketing material.

6. "Membership service" means any arrangement whereby persons who purportedly agree to the arrangement (often called "members") receive specified benefits over a period of time, including but not limited to, travel benefits, health benefits, home protection, credit card protection, legal services and discounts on goods and services.
7. An offer or agreement with a "negative option" feature means an offer or agreement to sell or provide any goods or services under which (a) a consumer must take an affirmative action to reject goods or services or cancel the agreement, and (b) the consumer's silence or failure to reject goods or services or to cancel the agreement is interpreted by the seller or provider as acceptance or continuing acceptance of the goods or services. Agreements with negative option features include, but are not limited to, agreements in which the consumer, subsequent to agreeing to the offer, will automatically be billed or charged at the end of a trial period (whether or not there is a fee for the trial period) unless the consumer cancels, and continuity plans in which, subsequent to the consumer's agreement to the plan, the seller or provider automatically

ships goods to a consumer unless the consumer notifies the seller or provider within a certain time not to ship the goods.

8.

entity owned or controlled by Defendants.

NOTE: Each of the following Order provisions applies to Defendants, and their officers, agents, employees, and attorneys, and all those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device. The effective date of the Order is the date the Order was entered by the Court.

**PROHIBITED BUSINESS PRACTICES
PART II OF THE ORDER**

Defendants are permanently restrained and enjoined from making, or causing or assisting others to make, expressly or by implication, any false or misleading representation in connection with the advertising, promoting, marketing, offering for sale, sale, or distribution of any goods or services, including but not limited to:

- A. Falsely representing, through, *inter alia*, mailings, email, billings, credit card charges and checking account debits, that a consumer purchased or agreed to purchase goods or services, or that a transaction has been authorized by a consumer;
- B. Falsely representing (1) the amount that a consumer will be charged or billed for any goods or services, (2) that a consumer will not be charged or billed for any goods or services, (3) the timing or manner of any charge or bill, or (4) that a consumer will not be charged or billed without the consumer's authorization;
- C. Making any representation that a consumer will receive a trial membership, or that any information kit, good or service is offered "free," "risk-free," with "no 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 information kit, good or service or to take

affirmative action to avoid incurring payment obligations, without disclosing clearly and conspicuously, and in close proximity to such representation, prior to requesting the consumer's authorization to be charged or billed for the offered trial membership, information kit, good or service, or any other goods or services:

1. Any obligation of the consumer associated with accepting the offered trial membership, information kit, good or service (including, but not limited to, payment of shipping and handling fees, the obligation to purchase other goods or services, the obligation to accept a trial membership or trial period, and the obligation to cancel or take other affirmative action to avoid incurring payment obligations and the manner in which such a cancellation request may be submitted);
2. The amount and number of payments (if more than one) that will or may be required, and the circumstances under which additional payments may be required; and
3. All conditions, limitations and restrictions on the ability of the consumer to use the offered trial membership, information kit, good or service; and

D. Making any representation that a consumer who accepts an offer for goods or services will receive an additional good or service for "free" or with "no obligation," or as discounted or reduced in price, or words of similar import, without disclosing clearly and conspicuously, and in close proximity to such representation, prior to requesting the consumer's authorization to be charged or billed for the goods or services with which the purportedly free or discounted good or service is offered, all conditions, limitations

and restrictions on the ability of the consumer to use any such purportedly free or discounted good or service.

**VIOLATIONS OF TELEMARKETING SALES RULE
PART III OF THE ORDER**

Defendants are permanently restrained and enjoined from violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, as in effect now or as it may be amended.

**PROHIBITED FAILURES TO DISCLOSE
PART IV OF THE ORDER**

Defendants are permanently restrained and enjoined from failing to disclose, clearly and conspicuously, before obtaining the consumer's express authorization to bill or charge the consumer for any such goods or services, all material terms and conditions for the purchase of any such goods or services, including but not limited to:

A.

charge the consumer for such additional good or service; and **provided further**, that, in connection with the advertising, promoting, marketing, offering for sale, sale, or distribution of any goods or

Part IV of this Order, prior to the consumer's express authorization (*e.g.*, during the express automated electronic authorization referenced in Subpart B.4 of this Part, such disclosures must be made prior to the time the consumer inputs the personal identification number);

2. All of the disclosures set forth in Subparts A, B, E, F and G of Part IV of this Order, prior to the consumer's express authorization, **provided, however**, for purposes of this Subpart, the express verifiable authorization may evidence, if true, that such disclosures have previously been disclosed to the consumer, clearly and conspicuously, in a print advertisement or print promotional or marketing material;
3. To the extent not already disclosed pursuant to Subpart A.1 of this Part, the consumer's specific billing information, including the name of the account and the account number, that will be used to collect payment for the goods or services that are the subject of the sales offer; and
4. A telephone number for consumer inquiry that is answered during normal business hours;

B. For the sale of any goods or services by means of telemarketing, the consumer's express authorization will be deemed verifiable only if one of the following means is employed:

1. Express written authorization by the consumer, which includes the consumer's signature (the term "signature" includes a verifiable electronic or digital form of signature, to the extent such form of signature is recognized as a valid signature

under applicable federal law or state contract law);

2. Express oral authorization that is verified by an independent third party verifier (“TPV”) that meets the requirements of Part VI of the Order;
3. Express oral authorization that is tape recorded, and meets the following criteria:
 - a. For telemarketing conducted by Defendants and any entities owned or controlled, in whole or in part, directly or indirectly, or managed, by Defendants, and their officers, agents, and employees, the tape recording must include the entire telephone call during which the consumer gave oral authorization;
 - b.

**LIMITATION ON DISSEMINATING OR OBTAINING
CONSUMER'S INFORMATION
PART VII OF THE ORDER**

Defendants are permanently restrained and enjoined from:

- A. Providing or disclosing to any third party, whether or not in exchange for payment or other consideration, any of the following information relating to a consumer:
1. Billing information;
 2. Unique identifying information, such as social security number, date of birth, place of birth and mother's maiden name;
 3. Credit information;
 4. Income information; and
 5. Asset and liability information;

provided, however, that this Subpart A will not apply to the disclosure by Defendants, or any entity managed or controlled in whole or in part, directly or indirectly, by Defendants, of consumer information: (1) necessary to effectuate or administer a transaction for which Defendants have obtained the consumer's express verifiable authorization; (2) pursuant to Section 623 of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681s-2, to a "consumer reporting agency" as defined by Section 603(f) of the FCRA, 15 U.S.C. § 1681a(f); or (3) to a law enforcement agency either voluntarily, or as required by any law, regulation, or court order; and

- B. Entering into any agreement or arrangement pursuant to which any third party provides or discloses to Defendants, whether or not in exchange for payment or other consideration, any of the following information relating to a consumer:

1. Billing information;
2. Unique identifying information, such as social security number, date of birth, place of birth and mother's maiden name;
3. Credit information;
4. Income information; and
5. Asset and liability information;

unless Defendants have taken steps adequate to ensure that: (1) such third party has clearly and conspicuously disclosed to such consumer what information the third party proposes to provide or disclose, the intended use of the information, and that the third party proposes to provide or disclose the information to Defendants; and (2) the consumer has expressly authorized the third party to provide or disclose such information to Defendants; **provided, however,** that this Subpart B will not apply to any agreement or arrangement pursuant to which a bona fide "consumer report" is provided by a "consumer reporting agency" (as those terms are defined in

prior to the effective date of this Order, without first obtaining from the consumer, within sixty (60) days prior to the date on which the consumer is charged or billed for such renewal, express verifiable authorization of such renewal that complies with the requirements of this Part.

**RECORD-KEEPING PROVISIONS
PART XIV OF THE ORDER**

For a period of ten (10) years from the date of entry of this Order, Defendants are 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 by such business;
- B. Each tape recording of a telemarketing call made pursuant to Part V of the Order;
- C. Records that accurately reflect the name, address, and telephone number of each person employed or retained in any capacity by such business, whether such person is designated as an employee, consultant, independent contractor or otherwise; 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;
- D. Records that accurately reflect the names, addresses, phone numbers, dollar amounts paid, quantity of goods or services purchased, and description of goods or services purchased, for all consumers to whom such business has sold, invoiced, billed, or shipped any goods or services;
- E. For every consumer complaint or refund request, whether received directly or indirectly or through any third party, records that accurately reflect:

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. A tape recording of each complaint received by telephone;
 4. 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;
 5. Each response and the date of the response;
 6. Any final resolution and the date of the resolution; and
 7. In the event of a denial of a refund request, the reason for the denial;
- F. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized, and records that accurately reflect the time periods during which such materials were used and the persons and business entities that used such materials; **provided** that these marketing materials and records must be retained for three (3) years after the last date of dissemination of any such marketing materials;
- G. For each of Defendants' credit card merchant processing accounts:
1. A copy of the contract providing the account;
 2. Records that accurately reflect the name, address and telephone number of the acquirer bank, and its credit card processor(s),
 3. Copies of correspondence from VISA, MasterCard, any similar entity, and any acquirer bank or credit card processor describing a finding by such entities that

