

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

BRYAN J. KRUCHTEN, doing business as
PAGE CREATORS d/b/a PAGECREATORS.NET;

and

TRINITY HOST, LLC d/b/a TRINITYHOST.COM,)

Defendants.

Case No. 01-523 ADM/RLE

**STIPULATED FINAL JUDGMENT AND ORDER FOR
PERMANENT INJUNCTION AND CONSUMER REDRESS**

Plaintiff Federal Trade Commission (“Commission” or “FTC”) having filed its Complaint for a permanent injunction and other relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), respectively, and the parties having conferred through counsel, and having agreed to settle this action without adjudication or admission of any issue of fact or law and without Defendants admitting liability for any of the violations alleged in the Complaint or for any wrongdoing whatsoever, therefore, on the joint motion of the parties, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

FINDINGS

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

consenting hereto.

2. Venue is proper as to all parties in the Northern District of Illinois under 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. § 53(b).

3. The activities of Defendants are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.

4. The Complaint states a claim upon which relief may be granted against defendants under Section 5 of the Federal Trade Commission Act (the “FTC Act”), 15 U.S.C. § 45(a).

5. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. They also waive any claim that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Each settling party shall bear its own costs and attorneys’ fees.

6. This Order does not constitute, and shall not be interpreted to constitute, an admission by any defendant that such defendant has engaged in violations of the FTC Act or any other law, nor does it constitute evidence against, or an admission by, any Defendant with respect to any issue of law or fact herein or any alleged in the Complaint.

7. This Order resolves all matters arising from the allegations in the Complaint.

8. All Attachments to this Order are part of this Order and are incorporated herein, whether or not specifically referred to.

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

DEFINITIONS

1. “Defendants” means Bryan J. Kruchten, doing business as Page Creators d/b/a pagecreators.net and Trinity Host LLC d/b/a trinityhost.com.

2. “Material” means likely to affect a person’s choice of, or conduct regarding, goods or services.

3. “Internet” means a worldwide system of linked computer networks that use a common protocol (TCP/IP) to deliver and receive information. The “Internet” includes but is not limited to the following forms of electronic communication: electronic mail and email mailing lists, the World Wide Web, Web sites, newsgroups, Internet Relay Chat, and file transfers protocols thereon, and remote computer access from anywhere in the world thereto.

CONDUCT PROVISIONS

I.

IT IS THEREFORE ORDERED that Defendants are hereby restrained and enjoined from making, or assisting in the making of, expressly or by implication, orally or in writing any false or misleading statement or representation of material fact:

- A. that consumers owe money for the use of excess bandwidth or other non-standard services;
- B. that consumers are legally obligated to pay for any Internet-related services that they did not authorize; and
- C. relating to a consumer’s decision to purchase or use Defendants’ services or products.

II.

IT IS FURTHER ORDERED that in connection with the advertising, promotion, offering or sale of goods or services in commerce, Defendants are hereby restrained and enjoined from billing or

receiving money, or assisting others in billing or receiving money, from consumers without authorization, including but not limited to charging or debiting consumers' credit card or debit card accounts without consumers' authorization.

PROHIBITION AGAINST DISTRIBUTION OF CUSTOMER LISTS

III.

IT IS FURTHER ORDERED that Defendants, and their officers, agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other information of any person who submitted information in conjunction with Defendants' business practices, *provided, however*, that Defendants may disclose such information to a law enforcement agency, to Plaintiff, or as required by any law, regulation, or court order.

MONETARY RELIEF

IV.

IT IS FURTHER ORDERED that:

A. Defendants shall relinquish all rights to five thousand nine hundred thirty-two dollars and eighteen cents (\$5,932.18) presently held in the receivership trust account #4416376 by the Receivers.

B. Defendants shall transfer all rights of ownership in the personal property identified in Appendix A of this Order and the financial statements dated March 30, 2001 and April 2, 2001, to the

section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by

B. The Bond shall be deemed continuous and remain in full force and effect at all times during which such Defendant owns or controls, whether directly or indirectly, any business that handles consumers' credit card or debit card accounts, or the information therefrom, for at least two (2) years after such Defendants have ceased to engage or participate in any manner in any such activity;

C. The Bond required pursuant to this Section is in addition to, and not in lieu of, any other bond required by federal, state or local law;

D. Defendants shall provide the executed original of the Bond or Bonds required by this Part to the Director of the Midwest Region of the Federal Trade Commission at least ten (10) days before commencing the event precipitating the requirement of obtaining the bond;

E. Defendants shall not disclose the existence of the Performance Bond to any consumer without disclosing clearly and conspicuously, at the same time: "AS REQUIRED BY ORDER OF THE U.S. DISTRICT COURT IN SETTLEMENT OF CHARGES THAT [NAME OF

VII.

IT IS FURTHER ORDERED that the appointment of B. Todd Jones and Becky R. Thorson as Receivers for the business activities of Defendants pursuant to this Court's Preliminary Injunction Order entered on April 24, 2001, is hereby continued as modified by this section.

The Receivers shall proceed to:

A. pay to the Commission the amount of five thousand nine hundred thirty-two dollars and eighteen cents (\$5,932.18) presently held in the receivership trust account #4416376 within ten (10) days of entry of this Order. This money shall be used for equitable monetary relief, including but not limited to, consumer redress as discussed in Section IV(C) of this Order. For purposes of administration, all payments required under this Section to be made to the Commission shall be made by certified check or other guaranteed funds payable to and delivered to the Commission, or by wire transfer in accord with directions provided by the Commission;

B. liquidate the assets of Defendants identified in Section IV(B) of this Order. Upon liquidation of those assets, the Receivers shall submit their report and application for fees and expenses, and upon approval of the same, shall pay:

1. the amounts allowed by the Court pursuant to the Receivers' application for fees and expenses, including but not limited to, professional fees and auctioneers' fees; and
2. to the extent that funds remain, to the Commission as set forth in subsection A.

Upon filing of the Receiver's final report, the Court's approval of the same, and the Receiver's fulfillment of their payment obligations under this section, the Receivership over Defendants' business activities pursuant to this Court's Preliminary Injunction Order of April 24, 2001, shall be terminated and the provisions of that Preliminary Injunction Order, as amended by the Court's Order of May 10, 2001, relating to the appointment of the Receivers shall be dissolved. Defendants shall indemnify and hold harmless the Receivers for any claim made against them arising out of their activities pursuant to this Stipulated Order or previous orders of this Court.

LIFTING OF ASSET FREEZE AND TRANSFER OF FUNDS

VIII.

IT IS FURTHER ORDERED that the freeze against the assets of Defendants ordered by the Court on March 27, 2001, and extended thereafter, shall remain in effect until such time as the Commission and Receivers receive payment of all equitable relief, Court-approved fees and expenses set forth in Sections IV and VII of this Order and thereupon shall be lifted permanently.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

IX.

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

DISTRIBUTION OF ORDER BY DEFENDANTS

X.

IT IS FURTHER ORDERED that, for a period of four (4) years from the date of entry of this Order, Defendants 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 that handles consumers' credit card or debit card accounts, or the information therefrom which Defendant Bryan J. Kruchten owns or controls, whether directly or indirectly;

B. Maintain for a period of four (4) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Order, as required in Subsection A of this Section.

MONITORING BY DEFENDANTS

XI.

IT IS FURTHER ORDERED that, in connection with any business that handles consumers' credit card or debit card accounts, or the information therefrom which Defendant Bryan J. Kruchten owns or controls, whether directly or indirectly, Defendants are hereby permanently restrained and enjoined from:

A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Sections I-III of this Stipulated Order;

B. Failing to investigate promptly and fully any consumer complaint received by any business to which this Section applies; and

C. Failing to take corrective action with respect to any sales person whom Defendants determine are not complying with this Stipulated Order, which may include training, disciplining, and/or terminating such sales person.

RECORD KEEPING persons 1/30/0 T. pci tis 03326 T. S the 0/0 Jsa

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Personnel 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;

C. Customer files containing the names, addresses, telephone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

D. Complaint and refund requests (whether received directly, indirectly or through any third party), and any responses to those complaints or requests; and

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials.

COMPLIANCE REPORTING BY DEFENDANTS

XIII.

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

A. For a period of four (4) years from the date of entry of this Order, Defendants shall notify the Commission of the following:

- (1) Any changes in Defendant Bryan J. Kruchten's residence, mailing address, or telephone numbers, within ten (10) days of the date of such change;
- (2) Any changes in any 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 such 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 any business entity owned or controlled by any Defendant, such as creation, incorporation, dissolution, assignment, sale, merger, creation or dissolution of subsidiaries, proposed filing of a bankruptcy petition, or change in the corporate name or address, or any other change that could affect co -0.3036 0 TD -0.3762toeoratnimerptsolution,

(2)

E. For purposes of this Section, “employment” includes the performance of services as an employee, consultant, or independent contractor; and “employees” include any individual or entity for whom Defendant Bryan J. Kruchten performs services as an employee, consultant, or independent contractor.

F. For purposes of the compliance reporting required by this Section, the Commission shall communicate to Defendants through Matthew P. Franzese, Esq., Leuthner Law Office, 1311 Broadway, Suite 2, Alexandria, MN 56308.

COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE

XIV.

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

A. The Commission is authorized, without further leave of Court, to obtain discovery from

C. Nothing in this Order shall limit the Commission'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 Defendants have violated any provision of this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

ACCESS TO BUSINESS PREMISES

XV.

IT IS FURTHER ORDERED that, for a period of four (4) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, Defendants shall permit representatives of the Commission, within ten (10) business days of receipt of written notice from the Commission:

A. Access during normal business hours to any office, or facility storing documents, of any business that handles consumers' credit card or debit card accounts, or the information therefrom, which Defendant Bryan J. Kruchten owns or controls, whether directly or indirectly. In providing such access, Defendants shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Order; and shall permit Commission representatives to

remove documents relevant to any matter contained in this Order for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and

B. To interview the officers, directors, and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as

employees, consultants, independent contractors or otherwise, of any business to terms of this Order.

The persons interviewed may have counsel present.

Dated: _____

TRINITY HOST LLC
by Bryan P. Kruchten

Dated: _____

B. TODD JONES
Receiver for Defendants

Dated: _____

BECKY R. THORSON
Receiver for Defendants

IT IS SO ORDERED.

Dated: _____

ANN D. MONTGOMERY
United States District Judge

APPENDIX B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

FEDERAL TRADE COMMISSION,)
)
)
 Plaintiff,)
)
 v.) Case No. 01-523 ADM/RLE
)
)
 BRYAN J. KRUCHTN7CEoT. 028RL983/di523 ADM/ -0.246 Tc

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

Executed on: _____, _____

[Date]

Bryan J. Kruchten

APPENDIX C

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

FEDERAL TRADE COMMISSION,)
)
)
 Plaintiff,)
)
 v.) Case No. 01-523 ADM/RLE
)
 BRYAN J. KRUCHTEN, doing business as)
 PAGE CREATORS d/b/a PAGECREATORS.NET;)
)
 and)
)
 TRINITY HOST, LLC d/b/a TRINITYHOST.COM,)
)
 Defendants.)

AFFIDAVIT OF BRYAN J. KRUCHTEN

I, Bryan J. Kruchten, being duly sworn, hereby states and affirms as follows:

1. My name is Bryan J. Kruchten. My current residence address is

_____. 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. Bryan J. Kruchten, et al.*, (United States District Court for the District of Minnesota).

3. On _____, I received a copy of the Stipulated Final Judgment and Order for Permanent Injunction and Consumer Redress which was signed by the Honorable _____, and entered by the Court on _____. A true and 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 _____, _____.

Bryan J. Kruchten

State of Illinois
County of Cook

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

Notary Public
My Commission Expires:

