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1 WILLIAM BLUMENTHAL
General Counsel
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ENTERED

CLERK. US. DISTRICTCOURT : JS-2iJS-3 - Scan Only-

1 7 2006

PLAINTIFF
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UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA WESTERN DIVISION

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is-= . 5' %E~~&L~RADECOMMISSION,
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- :u 7- c.1 -'!., G v.

Case No. CV-05-70 13 CAS (FMOX)

STIPULATED FINAL ORDER l8 CASHIER MYRICKS JR. d/b/a
MP3DOWNLOADCITY.COM,

FOR PERMANENT INJUNCTION

AND OTHER EQUITABLE RELIEF
20 Defendant. [HIS co~sTl'ruTESNOTICE OF ENTRY
2 1 AS REQUIRED BY FRCP, RULE77kb

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23 On September 27,2005, Plaintiff, the Federal Trade Commission ("FTC" or 24 "Commission") filed a Complaint for Permanent Injunction and Other Equitable 25 Relief ("Complaint") against Defendant Cashier Myricks Jr. d/b/a
26 MP3DownloadCity.com pursuant to Section 13@) of the Federal Trade
27 Commission Act ("FTC Act"), 15 U.S.C. $ 53(b). Defendant does not admit 2 8 liability for the allegations in the Complaint, except jurisdictionaI facts, but agrees

to the entry of the following Stipulated Final Order for Permanent Injunction and Other Equitable Relief ("Order"). The Court, being advised in the premises, finds as follows:
FINDINGS

1. In its Complaint, the Commission alleged that Defendant violated
Section 5(a) of the FTC Act, 15 U.S.C. 8 45(a). The Commission sought permanent injunctive relief for alleged deceptive acts or practices by Defendant in connection with the advertising, marketing,

ORDER
DEFINITIONS

For purposes of this Order, the following definitions shall apply:
1. Unless otherwise specified, "Defendant" shall mean Cashier Myricks
Jr.

2. "Covered product or service" shall mean (1) any peer-to-peer file-
sharing program tutorial or referral service; or (2) any computer software program.
3. "Clearly and conspicuously" shall mean:
a. In an advertisement communicated through an electronic
medium (such as television, video, radio, and interactive media such as the Internet, online services and software), the disclosure shall 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 ad is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual disclosure shall be of a font size and shade, with a degree of contrast to the background against which it appears, and shall appear on the screen for a duration and in a location, sufficiently noticeable for an ordinary consumer to read and comprehend it; and
b. In a print advertisement, promotional material, or instructional
manual, the disclosure shall be in a font size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.
4. "Commerce" shall mean as defined in Section 4 of the FTC Act, 15
U.S.C. 5 44.
5. "Endorsement" shall mean as defined in 16 C.F.R. 5 255.0(b).

6. "Full and Complete Refund" means a refund of any unrefunded lmount paid for membership in MP3Downloadcity.com.
7. "Material" means likely to affect a person's choice of, or conduct :egarding, goods or services.

CONDUCT PROHIBITIONS
I.

IT IS HEREBY ORDERED that Defendant, directly or through any ~orporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, representatives, employees, and all persons or zntities in active concert or participation with him who receive actual notice of this Order, by personal service or otherwise, in connection with the advertising, promotion, offering for sale, sale, or distribution of any covered product or service are hereby permanently restrained and enjoined from:
A. Misrepresenting, in any manner, expressly or by implication,
including through the use of a trade name or endorsement, the legality of the possession, installation, or use of any such product or service;
B. Misrepresenting, in any manner, expressly or by implication,
including through the use of a trade name or endorsement, the legality of acquiring any product or material through the use of any such program or service; and
C. Failing to clearly and conspicuously disclose, prior to the time that a consumer purchases any such product or service from Defendant, all material information relating to the consumer's decision to purchase any such program or service, including, where applicable:
1. that persons who download copyrighted material, or who make
it available to others, without the copyright owner's permission,
may be liable for copyright infringement, which can result in

significant monetary damages, fines, and even criminal
penalties; and
2. that, if true, persons who subscribe to Defendant's MP3DownloadCity service do not thereby obtain a license to
download copyrighted music, movies, or games.

11.

IT IS FURTHER ORDERED that Myricks and his successors, assigns, officers, agents, servants, employees, and attorneys, and those 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, are hereby permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting,

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1 2. In the event that Defendant, despite reasonable efforts, is unable to procure a credit on a consumer's credit card, debit
card, or Paypal account that was used to purchase a
membership in MP3DownloadCity, Defendant shall set aside
the refund amount into an account to be turned over to the
Commission;
B. Within sixty (60) days after entry of this Order, Defendant shall:
1. pay to the Commission all of the funds set aside in the account required by Paragraph III.A.2 above; and
2. furnish to the Commission a list of the names and email
addresses of consumers whose debit, credit, or Paypal accounts
were credited pursuant to Paragraph III.A.1, as well as the
amount of each refund;
C. All funds paid to the Commission pursuant to Paragraph IILB shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Defendant's practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. The Commission shall have full and sole discretion to:
1. Determine the criteria for participation by individual claimants
in any consumer redress program implemented pursuant to this
Order;

2. Determine the manner and timing of any notices to be given to consumers regarding the existence and terms of such programs;
and

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1 B. If, upon motion by the Commission to the Court, the Court finds that
2 Myricks made any material misrepresentation in or omitted material information

3 I1 from the data provided, or failed to disclose material information to the
4 Commission, this matter shall be reopened to allow Plaintiff to show that
5 additional relief, including but not limited to additional equitable monetary relief, 6 consumer restitution, or disgorgement of ill-gotten gains should be entered against

7 11 Defendant. Plaintiff shall have the right to engage in reasonable discovery for this
8 purpose. Upon a sufficient showing by Plaintiff, the Court shall enter a revised
9 Order against Defendant, which will become immediately due and payable, in

10 I1 addition to such other ancillary relief the Court deems proper,
11 C. In the event this matter is reopened pursuant to this Section IV,
12 Defendant shall have no right to seek modification or abrogation of this Order, and 13 all other Sections of this agreement and Order shall remain in full force and effect 14 unless otherwise ordered by this Court.
15 D. Any proceedings instituted under this Section IV are in addition to,

16 11 and not in lieu of, any other civil or criminal remedies as may be provided by law, 17 I1 including any other proceedings that the FTC may initiate to enforce this Order.

19 V.
20 REQUIRED NOTICE TO PURCHASERS
2 1 IT IS FURTHER ORDERED that Defendant, within thirty (30) days of
22 the date of entry of this Order, shall send by electronic mail, a copy of the notice 23 attached hereto as Attachment B to each person who purchased Defendant's peer- 24 to-peer file-sharing software services on or after March I, 2005 through the date 25 of this Order. The mailing shall not include any other information or documents. 26 The costs of this mailing shall be borne by Defendant. Within ten (10) days after

27 I1 the date this mailing is completed, Defendant shall provide to the FTC a list of all

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persons to whom Attachment B was sent, together with each person's electronic mail address.

VI.

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11 CUSTOMER LISTS

DISTRIBUTION OF ORDER BY DEFENDANT VIII.

IT IS FURTHER ORDERED that, for a period of three (3) years from the jate of entry of this Order, Defendant shall Orde

1. Defendant shall notify the Commission of the following: a. Any changes in residence, mailing addresses, and telephone numbers

less than thirty (30) days prior to the date such action is to take
place, the Defendant shall notify the Commission as soon as is
practicable after obtaining such knowledge.
B. One hundred and eighty (1 80) days after the date of entry of this
Order, Defendant shall provide a written report to the Commission, sworn to under

6 11 penalty of perjury, setting forth in detail the manner and form in which he has
complied and is complying with this Order. This report shall include, but not be
limited to:

1 11 1. The then-current residence addresses, mailing addresses, and
telephone numbers of Defendant;
2. The then-current employment and business addresses and

telephone numbers of Defendant; a description of the business I I2 I1
activities of each such employer or business, and the title and
responsibilities of the Defendant, for each such employer or
business; and
3. A copy of each acknowledgment of receipt of this Order
obtained pursuant to Section V1II.C; and
4. Any other changes required to be reported under Paragraph A
of this Section.
C. For the purposes of this Order, Defendant shall, unless otherwise directed by the Commission's authorized representatives, mail all written

22 11 notifications to the Commission to:
Associate Director for Enforcement
Federal Trade Commission

1 COMPLIANCE MONITOFUNG

I 2 X.
I 3 IT IS FURTHER ORDERED that, for the purposes of monitoring and 4 investigating compliance with any provision of this Order:
5 A. Within ten (10) days of receipt of written notice from a representative
6 of the Commission, Defendant shall submit additional written reports, sworn to
7 under penalty of perjury;

RECORD KEEPING PROVISIONS XI.

IT IS FURTHER ORDERED that, for a period of five (5) years from the
date of entry of this Order, Defendant, in connection with any business involved in the advertising, marketing, promotion, offer for sale, sale, or distribution of any covered product or service, or where Defendant is a majority owner of the business or directly or indirectly manages or controls such a business, and his agents, employees, officers, 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, are hereby restrained and enjoined from failing to create and retain the following records:
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, phone 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. Complaints and refund requests (whether received directly, indirectly
or through any third party), including but not limited to reports of adverse
incidents claimed to be associated with the use of any covered product or service,
and any responses to those complaints or t3sb2 0ess; o <</MCID 9 >>BDC �BT�/T1_0ityTf�-0.10

advertising, marketing, promotion, offering for sale, sale, or distribution of any covered product or service;
F. All materials that were relied upon in making any representations contained in the materials identified in Paragraph E of this Section, including all documents evidencing or referring to the accuracy of any claim therein or to the efficacy of any covered product or service, including, but not limited to, all tests, reports, studies, demonstrations, or other evidence that confirm, contradict, qualify, or call into question the accuracy or efficacy of each such product or service;
G. Copies of all contracts concerning the advertising, marketing,
promotion, offering for sale, sale, or distribution ofany covered product or service; and
H. All records and documents necessary to demonstrate full compliance with each provision of the Order, including but not limited to, copies of acknowledgments of receipt of this Order required by Section V1II.C and all reports submitted to the FTC pursuant to this Order.
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RETENTION OF JURISDICTION

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ITIS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, arid enforcement of this

Or&er.

PLAINTrn:
FEDEW TRADE COMMISSION

Dated: Jnarch lb ,200-6 +-
Jennifer Brennan .
Raymond E. Mckown
Matthew Daynard
Attorneys for Plaintiff

DEFENDANT:

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Dated: (hr[h [L,200 h

SO ORDERED:

Dated: 16,Jon6

ATTACHMENT A

Financial Statement of Individual Defendant, dated 12/7/05 and signed
under penalty of perjury by Cashier Myricks Jr.

Copy of 2003 U.S. Individual Income Tax Return for Cashier Myricks Jr.

Business records obtained by Cashier Myricks Jr. from Clickbank, a
division of Click Sales, Inc. and MP3DownloadCity's payment processor,
dated 12/8/05 and reflecting all MP3DownloadCity.com sales and refund
transactions from JanuTj�1.682.144 0a3io7 30035.715 0 n 0 0M <</MCI JughTj�-0.0097 Tc 3

ATTACHMENT B

NOTICE TO PURCHASERS

[To be emailed from netcom3ceo@yahoo.com]

Subject: Potential Illegality of Downloading Copyrighted Material

Dear [purchaser's name]:

On 2Cashier Myricks Jr., doing business as MP3DownloadCity.com, entered into a settlement with the Federal Trade Commission regarding allegedly
false claims for our peer-to-peer ("P2P) file-sharing program tutorial and referral
services. Although we do not admit that we violated the law, we have agreed to
contact our customers to warn them of the serious risks of using P2P file-sharing
programs in conjunction with our services.

When you signed up for our services, we told you that using the P2P file-loading 8mr89e33.3206

Equitable Relief, which was signed by the Honorable Christina A. Snyder, United States District Court Judge for the Central District of California and entered by the Court on ,2006. A true and correct copy of the Order I received is appended to this Acdavit.

I declare under penalty of perjury under the laws of the United States that
the foregoing is true and correct. Executed on ,2006 at ,California.

Cashier Myricks Jr.

STATE OF
COUNTY OF

BEFORE ME this day personally appeared ,who being first duly sworn, deposes and says that he has received, read and understands the foregoing statement and that he has executed the same for the purposes contained therein.
SUBSCRIBED AND SWORN TO before me this day of J 2006 by .