

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Civ. No.: H-06-1980

WEBSOURCE MEDIA, L.L.C., *et al.*,

Defendants.

**STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION
AGAINST JAMES E. McCUBBIN, JR.**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed its Amended Complaint for a permanent injunction and other equitable relief in this matter pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 53(b) charging the Defendants WebSource Media, L.L.C., WebSource Media L.P., BizSitePro, L.L.C.,

James E. McCubbin, Jr., in this action. The Commission and Defendant James E. McCubbin, Jr., have consented to entry of this Final Judgment and Order without trial or adjudication of any issue of law or fact herein and without Defendant James E. McCubbin, Jr., admitting liability for any of the violations alleged in the Amended Complaint.

Being fully advised in the premises and acting upon the joint motion of the parties to

enter this Final Judgment and Order,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

equitable relief, including but not limited to attorneys' fees, indemnity, and contribution.

DEFINITIONS

For the purpose of this Final Judgment and Order, the following definitions shall apply:

A. "Assets" means any legal or equitable interest in, right to, or claim to, any real and

personal property, including but not limited to "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes" (as these terms are defined in the Uniform Commercial Code), and all chattel, leaseholds, contracts, mail or other deliveries, shares of stock, ~~lists of consumer names, accounts, credits, premises, receivables, funds, and cash, wherever~~

and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations stored in any medium 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.

E. **“Telemarketing”** means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written

but not limited to: design, hosting and maintenance of web pages and websites, providing

Internet access or e-mail accounts, and establishing domain names and virtual domain names.

I. **“Authorized Purchaser”** means any person who has the authority to bind the person who would be responsible for payment of any charges associated with the telemarketing

transaction.

J. **“Material terms of the offer”** means all terms material to an authorized purchaser’s decision to purchase, including, but not limited to:

1. the fact that the authorized purchaser will be billed unless the authorized purchaser takes affirmative action to cancel;
2. the account which will be billed if the authorized purchaser does not cancel;

“signed” shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

L. **“Express oral authorization”** means oral authorization which is audio-recorded

by an independent third party and made available to the consumer in a format that is accessible to the consumer.

ORDER

I. PROHIBITED MISREPRESENTATIONS

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that in connection

with the telemarketing, advertising, promotion, offering for sale, or sale of any Internet services, Defendant James E. McCubbin, Jr., his agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with him who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, affiliate, division, or other device, are hereby permanently restrained and enjoined from misrepresenting, expressly or by implication, any material fact, including, but not limited to, misrepresentation.

subsidiary, affiliate, division, or other device, are hereby permanently restrained and enjoined from, directly or indirectly, billing or receiving money, or assisting others in billing or receiving money, from any authorized purchaser without the authorized purchaser's express informed consent.

III. INJUNCTION AGAINST PROVIDING CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendant James E. McCubbin, Jr., 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 purchased services from the Named Defendants at any time prior to the date this Final Judgment and Order is entered. *Provided*, however, that Defendant James E. McCubbin, Jr., may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

IV. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment in the amount of TWENTY-FOUR MILLION, SEVEN HUNDRED THOUSAND DOLLARS (\$24,700,000) is entered against Defendant James E. McCubbin, Jr.:

provided, however, that upon the fulfillment of the payment obligations of Paragraphs IV.B. and IV.C. of this Final Judgment and Order by Defendant James E. McCubbin, Jr., this judgment

shall be suspended until such time as the Defendant has satisfied the obligations set forth in Paragraphs IV.B. and IV.C. of this Final Judgment and Order.

paying any attendant expenses of administration of any redress fund in the amount of ONE

WHEREFORE, I pray that the Court will grant my request for relief.

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 Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the Treasury of the United States as disgorgement.

Defendant James E. McCubbin, Jr., shall have no right to challenge the Commission's choice of remedies under this Section.

F Defendant James E. McCubbin, Jr. shall have no right to contest the manner of

Judgment and Order for the sole purpose of allowing the Commission to modify the monetary

liability of Defendant James E. McCubbin, Jr. If the Court finds that Defendant James E.

McCubbin, Jr. failed to disclose any material asset, materially misrepresented the value of any

asset, or made any other material misrepresentation or omission in the above-referenced financial

statements and information, the Court shall appoint the named defendant as trustee of the

VI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Final Judgment and Order:

Within twenty (20) days of receipt of written notice from a representative of the

Commission, Defendant James E. McCubbin, Jr., shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in his

information relevant to the fair and accurate

meaning of 15 U.S.C. § 45(a)(1)).

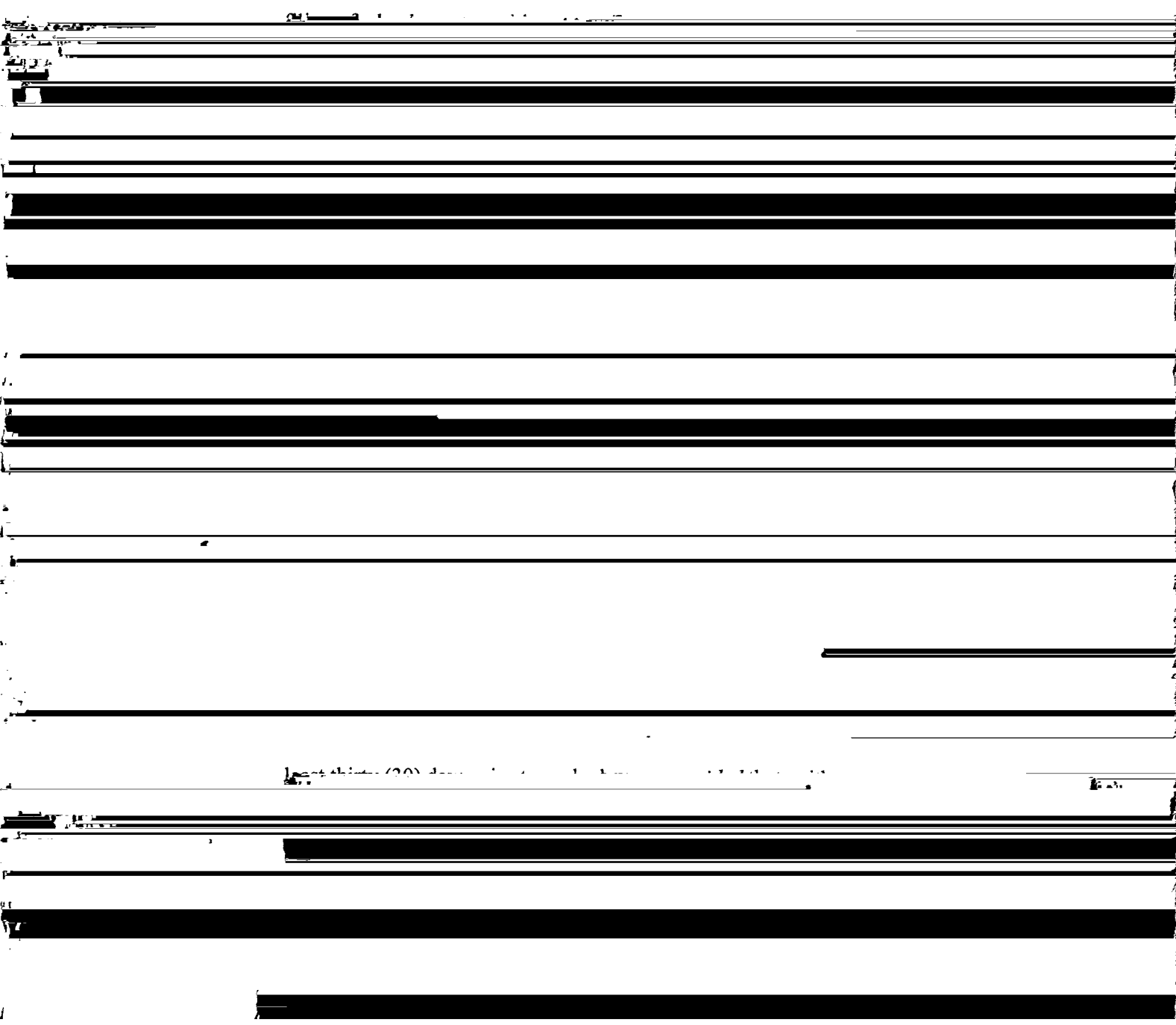
VII. COMPLIANCE REPORTING BY DEFENDANT

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

A. For a period of five (5) years from the date of entry of this Final Judgment and Order,

1. Defendant James E. McCubbin, Jr., shall notify the Commission of the following:

assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Final Judgment and Order; the



5. A list of all names under which Defendant James E. McCubbin, Jr., has conducted or currently conducts business since entry of this Final Judgment and Order;

6. A list of all entities through which Defendant James E. McCubbin, Jr., has conducted or currently conducts business since entry of this Final Judgment and Order;

of his businesses has submitted, directly or indirectly, billings, including, but not limited to, telephone Local Exchange Carriers, billing aggregators, and credit card

EXHIBIT

7. The names, addresses, and telephone numbers of all consumers who, after entry

VIII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Final Judgment and Order, Defendant James E. McCubbin, Jr., his agents, servants, employees and attorneys and all other persons or entities in active concert or participation with

result of any investigation conducted concerning the complaint or request; (5) each response and the date of such response to the complaint or request; (6) any final resolution of the complaint or request, and the date of such resolution; and (7) in the event of a denial of any resolution, the reason for the denial;

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

F. Copies of all contracts, including but not limited to:

[REDACTED]

Final Judgment and Order as directed below:

A. **Defendant James E. McCubbin, Jr., as control person:** For any business that

~~Defendant James E. McCubbin, Jr. controls, directs or is directed by, in violation of 18 U.S.C. § 1348,~~

XI. COOPERATION WITH COMMISSION COUNSEL

IT IS FURTHER ORDERED that Defendant James E. McCubbin, Jr., shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the Commission's Amended Complaint

filed in this action, cooperate in good faith with the Commission and appear at such places and times as the Commission shall reasonable request. after written notice. for interviews.

conferences, pretrial discovery, review of documents, and for such other matters as may be

reasonably requested by the Commission. If as requested in writing by the Commission, Defendant

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

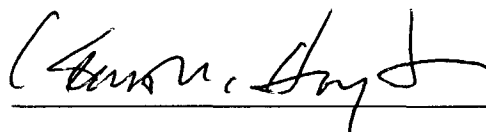
entered in this case on February 1, 2007, and the Order Amending Second Modified Preliminary Injunction, entered in this case on February 21, 2007, shall be lifted permanently as to Defendant

James F. McGibbon, Jr.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Final Judgment and Order.

IT IS SO ORDERED.

ENTERED this 17th day of July, 2007



UNITED STATES DISTRICT JUDGE

SO STIPULATED:

FOR THE PLAINTIFF:

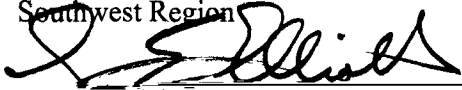
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ATTORNEYS FOR PLAINTIFF