

**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**FEDERAL TRADE COMMISSION,**

Plaintiff,

v.

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

Defendants.

**Civ. No.: H-06-1980**

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

U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

[REDACTED]

[REDACTED]

Smith in this action. The Commission and Defendant Marc R. Smith, 1

this Final Judgment and Order without trial or adjudication of any issue of law or fact herein and without Defendant Marc R. Smith admitting liability for any of the violations alleged in the Amended Complaint.

Done at New York, New York, this 17th day of July, 2007.

claims it may have against any other Named Defendant for any other legal and/or equitable relief

[REDACTED]

[REDACTED]

and include written demands for the return of the property.

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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.

“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



**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 Marc R. Smith, 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, misrepresenting:

- A. That a free trial service will be cancelled automatically if the authorized purchaser does not affirmatively approve the continuation of the service;
- B. That a verification recording is being made for any purpose other than to document the authorized purchaser's express informed consent; and
- C. That an authorized purchaser is obligated to pay any charge for which the authorized purchaser has not given express informed consent.

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.

**INJUNCTION AGAINST PROSECUTING SUITS**

[REDACTED]

[REDACTED]

[REDACTED]

**IT IS FURTHER ORDERED** that Defendant Marc D. Smith is hereby permanently [REDACTED]

[REDACTED]



expenses of administration of any redress fund in the amount of FIFTEEN THOUSAND

Within ten (10) days of entry of this Final Judgment and Order, the Defendant shall

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 Marc R. Smith shall have no right to challenge the Commission's choice of remedies under this Section.

F. Defendant Marc R. Smith shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payments under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.

V. FINANCIAL STATEMENTS

**IT IS FURTHER ORDERED** that:

A. The Commission's agreement to and the Court's approval of this Final Judgment

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

A. Within twenty (20) days of receipt of written notice from a representative of the Commission, Defendant Marc R. Smith 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 possession or under his direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Final Judgment and Order by all other lawful means, including, but not limited to, the following:

1. Obtaining discovery from any person who is a contact of Defendant Marc R. Smith.

the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;

2. Posing as consumers and suppliers to Defendant Marc R. Smith, his

employees, or the employees of any entity he manages or controls in whole

or in part, without the necessity of identification or notification.

**VII. COMPLIANCE REPORTING BY DEFENDANT**

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this

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

1. Defendant Marc R. Smith shall notify the Commission of the following:

a. Any changes in his residence, mailing address, and/or telephone number.

engages in any acts or practices subject to this Final Judgment and Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided that*, with respect to any proposed change in the corporation about which Defendant Marc R. Smith learns less than thirty (30) days prior to the date such action is to take place, he shall notify the Commission as soon as is practicable.

[REDACTED]

businesses has submitted, directly or indirectly, billings, including, but not limited

to, telephone Local Exchange Carriers, billing aggregators, and credit card

processors;

of this Final Judgment and Order, have made complaints to, and/or requested  
refunds from, Defendants Marc R. Smith and each of his businesses; and

8. A list of all domain names and web page addresses Defendant Marc R. Smith has registered or used in connection with telemarketing or marketing through the Internet.

C. For the purposes of this Final Judgment and Order, the Defendant Marc R. Smith shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, division, affiliate, or other device, in connection with any business which involves telemarketing or the advertising, promotion,

~~offerings for sale or other services, and the advertising, promotion, or other activity~~

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, and the date of hire and date of termination of each such person.



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

F. Copies of all contracts or agreements with telephone companies;

G. Copies of all contracts or agreements with \_\_\_\_\_

H. Copies of all contracts or agreements with billing aggregators;

I. Records reflecting contracts with customers regarding \_\_\_\_\_

managers of that business. He must also deliver copies of this Final Judgment and Order to

employees, agents, and representatives of that business who engage in conduct related to the subject matter of this Final Judgment and Order. For current personnel, delivery shall be within five (5) days of service of this Final Judgment and Order upon Defendant. For personnel of [REDACTED]



purposes of construction, modification and enforcement of this Final Judgment and Order.

**IT IS SO ORDERED.**

ENTERED, this <sup>th</sup> 17 day of July, 2007.



**FOR THE PLAINTIFF,**

**WILLIAM DE FIMONTI**

