

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 06-20168 - CIV

U.S. District Judge Altonaga / U.S. Magistrate Judge Turnoff

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**REMOTE RESPONSE CORPORATION,
et. al.,**

Defendants.

**AMENDED¹ STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION AND
MONETARY JUDGMENT AS TO DEFENDANT JOSEPH BENSABAT**

The Federal Trade Commission (the “Commission” or “FTC”) filed this action, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, against Remote Response Corporation (also doing business as Amerikash,

Case No. 06-20168-CIV-ALTONAGA/Turnoff

Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101 *et seq.*; the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310; the Electronic Fund Transfer Act (“EFTA”), 15 U.S.C. §§ 1693-1693r; and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b) (“Regulation E”).

Case No. 06-20168-CIV-ALTONAGA/Turnoff

IT IS THEREFORE STIPULATED, AGREED, AND ORDERED AS FOLLOWS:

FINDINGS

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

Case No. 06-20168-CIV-ALTONAGA/Turnoff

6. This order is remedial in nature and shall not be construed as the payment of a fine, penalty, punitive assessment, or forfeiture.
7. The entry of this Order, as set forth below, is in the public interest, and there being no just reason for delay, the Clerk of the Court is directed to enter final judgment immediately.
8. This Order shall not be construed as an admission of liability by Defendant Bensabat for the unfair or deceptive trade practices or other violations of law alleged in the First Amended Complaint.
9. Defendant Bensabat has waived all rights to seek judicial review or otherwise challenge or contest the validity of this Order, and further waives and releases any claim he may have against the FTC, its employees, and agents, including any claims that may arise for attorneys' fees or other costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, *as amended*.
10. The parties shall each bear their own costs and attorneys' fees incurred in this action.

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. "Advance fee credit card" means a credit card offered for sale in exchange for a fee or similar payment by the purchaser prior to issuance of a credit card or account.
2. "Assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.

Case No. 06-20168-CIV-ALTONAGA/Turnoff

Case No. 06-20168-CIV-ALTONAGA/Turnoff

3. Be able to cancel the free-to-pay conversion offer during the time period and in the manner prescribed;
4. Not be charged for the products or services if they cancel the free-to-pay conversion offer during the time period and in the manner prescribed;
5. Not be charged for the products or services if they initially decline the free-to-pay conversion offer; and
6. Not be charged for the products or services other than in the amounts, manner, and frequency to which consumers agree, if they accept the free-to-pay conversion offer and do not cancel during the time period and in the manner prescribed.

III.

IT IS FURTHER ORDERED that, in connection with the advertising, promotion, offering for sale, or sale of products or services as part of a free-to-pay conversion, Defendant Bensabat, and his assigns, agents, attorneys, servants, employees, salespersons, independent contractors, and all other persons or entities in active concert or participation with them who

Case No. 06-20168-CIV-ALTONAGA/Turnoff

- A. After a consumer declines or rejects an offer or agreement to sell such product or service;
- B. Prior to receipt by a consumer of any product, service, or information about such product or service represented to be received by a consumer before billing;
- C. Prior to expiration of any stated free-trial period;
- D. After a consumer has cancelled; and/or
- E. After a consumer has been, directly or indirectly, inhibited or thwarted in his or her ability to cancel.

PROHIBITION REGARDING PREAUTHORIZED ELECTRONIC FUND TRANSFERS

IV.

IT IS FURTHER ORDERED that, in connection with the sale of products or services to consumers, Defendant Bensabat and his assigns, agents, attorneys, servants, employees, salespersons, independent contractors, 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, whether acting individually or directly or indirectly through any corporation, limited liability company, partnership, subsidiary, division, trust, or other device, are hereby permanently restrained and enjoined from making or assisting others in making preauthorized electronic fund transfers from a consumer's bank account without obtaining the consumer's written and signed or similarly authenticated authorization and providing a copy to the consumer.

Case No. 06-20168-CIV-ALTONAGA/Turnoff

provided, however, that Defendant Bensabat may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

MONETARY RELIEF

VI.

IT IS FURTHER ORDERED that judgment in the amount of \$4,163,558.35, which is the amount paid by approximately 30,674 consumers for the Amerikash Master Card, other incentive items, and the Amerikhealth discount health plan that are the subject of the First Amended Complaint, is hereby entered against Defendant Bensabat, jointly and severally, as equitable monetary relief, as follows:

A. Defendant Bensabat shall have no right, title, and interest to any assets frozen pursuant to the First or Second Preliminary Injunctions;

B. To the extent that the amount of frozen assets is insufficient to satisfy the judgment in full, there being no just reason for delay, the remaining portion of the judgment shall be immediately due and payable. Interest shall be computed at the rate prescribed under 28 U.S.C. § 1961, as amended, which shall be due from the date of entry of this Order3(f)13(i)18(c5(g)-35(me)-28(n)

Case No. 06-20168-CIV-ALTONAGA/Turnoff

D. Defendant Bensabat shall take no deduction, capital loss, write-off, or any other tax benefit on any federal or state tax return, amended tax return, IRS Form 1045, or any other tax filing, for all or any part of any payment (whether cash or non-cash) to the Commission toward satisfaction of the judgment. Defendant Bensabat's federal or state tax returns, amended returns, IRS Form 1045's, and other tax filings for tax years 2005 through 2008 not already submitted to federal or state tax authorities shall be prepared and signed by an independent CPA, and a copy of any such document, complete with all attachments, shall be submitted to the Commission at the same time it is submitted to the federal or state tax authority, by delivering it to: Associate Director, Federal Trade Commission, Division of Enforcement, 600 Pennsylvania Ave., NW, Mail Drop NJ-2122, Washington, D.C. 20580, by overnight delivery or facsimile at 202-326-2558;

E. The Commission and Defendant Bensabat acknowledge and agree that: (1) the judgment herein for equitable monetary relief is solely remedial in nature and no portion of any payments under such judgment shall be deemed a payment of any fine, penalty, punitive assessment, or forfeiture, and (2) any proceedings instituted under Paragraph VI are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order;

F. Defendant Bensabat agrees that the facts as alleged in the First Amended Complaint filed in this action shall be taken as true, without further proof, in any subsequent litigation filed by the Commission to collect any unpaid amount or otherwise enforce its rights

Case No. 06-20168-CIV-ALTONAGA/Turnoff

COOPERATION WITH THE RECEIVER

VII.

IT IS FURTHER ORDERED that:

A. Defendant Bensabat and all other persons or entities served with a copy of this Order shall fully cooperate with and assist the Remote Response Receiver in taking possession, custody, or control of the assets of the Receivership Defendant. This cooperation and assistance shall include, but not be limited to: providing information to the Remote Response Receiver that he deems necessary in order to exercise his authority and to discharge his responsibilities as the Remote Response Receiver under the First and Second Preliminary Injunctions and this Order; providing any password required to access any computer, electronic file, or telephonic data in any medium; and advising all persons who owe money to the Receivership Defendant that all debts must be paid directly to the Remote Response Receiver;

B. Upon service of a copy of this Order, or other notice, all entities that hold assets of, or records related to, the Receivership Defendant, shall cooperate with all reasonable requests of the Remote Response Receiver relating to implementation of the First and Second Preliminary Injunctions and this Order, including transferring funds at the Remote Response Receiver's direction and producing records related to the assets and sales of the Receivership Defendant. The entities obligated to cooperate with the Remote Response Receiver under this provision include, but are not limited to, banks, broker-dealers, savings and loans, escrow agents, title der;

Case No. 06-20168-CIV-ALTONAGA/Turnoff

carriers, and other telecommunications companies, that have transacted business with the Receivership Defendant; and

C. Unless directed by the Remote Response Receiver, Defendant Bensabat is hereby restrained and enjoined from directly or indirectly:

1. Interfering with the Remote Response Receiver's ability to manage, or take custody, control, or possession of, the assets or documents subject to the Receivership;
2. Transacting any of the business of the Receivership Defendant;
3. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, the Receivership Defendant or the Remote Response Receiver; and
4. Failing to cooperate with the Remote Response Receiver or his duly authorized agents in the exercise of their duties or authority under any order of this Court.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

VIII.

IT IS FURTHER ORDERED that, Defendant Bensabat, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful, sworn statement, acknowledging receipt of this Order.

Case No. 06-20168-CIV-ALTONAGA/Turnoff

Case No. 06-20168-CIV-ALTONAGA/Turnoff

COMPLIANCE REPORTING BY DEFENDANT

X.

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

A. For a period of five (5) years from the date of entry of this Order, Defendant Bensabat shall notify the Commission of the following:

1. Any changes in residence, mailing addresses, and telephone numbers of Defendant, within ten (10) days of the date of such change;
2. Any changes in employment status (including self-employment) of Defendant, and any change in the ownership of Defendant in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that Defendant is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of Defendant's duties and responsibilities in connection with the business or employment;
3. Any changes in Defendant's name or use of any aliases or fictitious names; and
4. Any changes in the corporate structure of Remote Response or any business entity that Defendant Bensabat directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including, but not limited to, a dissolution, assignment,

Case No. 06-20168-CIV-ALTONAGA/Turnoff

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 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 learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge;

B. One hundred eighty (180) days after the date of entry of this Order, Defendant Bensabat shall provide a written report to the FTC, sworn to under 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. The then-current residence address, mailing addresses, and telephone numbers of Defendant Bensabat;
2. The then-current employment and business addresses and telephone numbers of Defendant Bensabat, a description of all business activities of each such employer or business, and the title and responsibilities of Defendant Bensabat, for each such employer or business;
3. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Paragraph IX. C.; and

Case No. 06-20168-CIV-ALTONAGA/Turnoff

4. Any other changes required to be reported under Paragraph X. A;

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

Associate Director
Bureau of Consumer Protection
Division of Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W. Mail
Drop NJ-2122
Washington, D.C. 20580
Re: *FTC v. Remote Response Corp.*, Civil Action No.
06cv20168 (S.D. Fla. 2006)

D. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Defendant Bensabat.

RECORD KEEPING PROVISIONS

XI.

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, Defendant Bensabat, in connection with any business that he directly or indirectly manages, controls, or has a majority ownership interest in, and his agents, employees, 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;

Case No. 06-20168-CIV-ALTONAGA/Turnoff

COMPLETE SETTLEMENT

XIII.

IT IS FURTHER ORDERED that entry of the foregoing Order shall constitute a final judgment and order in this matter. The entry of the foregoing order shall constitute a full, complete, and final settlement of this action.

SEVERABILITY

XIV.

IT IS FURTHER ORDERED that the provisions of this Order are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining

Case No. 06-20168-CIV-ALTONAGA/Turnoff

JAMES A. PRUNTY
600 Pennsylvania Ave., NW
Washington, D.C. 20850
(202) 326-2842 (Bak)
(202) 326-3147 (Rodriguez)
(202) 326-2438 (Prunty)
(202) 326-2558 (facsimile)
pbak@ftc.gov (e-mail)
erodriguez@ftc.gov (e-mail)
jprunty@ftc.gov (e-mail)
Counsel for Plaintiff

JUDGMENT IS THEREFORE ENTERED pursuant to all the terms and conditions recited above.

DONE AND ORDERED in Chambers at Miami, Florida this 22nd day of August, 2007.


CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: Magistrate Judge William C. Turnoff
counsel of record