

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

PAYBASICS, INC., a corporation, also d/b/a
Livewire Commerce,

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants participated in unfair or deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and the FTC's Trade Regulation Rule entitled Telemarketing Sales Rule ("TSR" or "Rule"), 16 C.F.R. Part 310, by its involvement in a credit card laundering scheme where they helped set up merchant accounts linked to shell companies that were used to process transactions for other entities.
3. Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction.

business organization or financial institution that has authority from an organization that operates or licenses a credit card system (Visa, MasterCard, American Express, and Discover) to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

3. “Chargeback” means a procedure whereby an acquiring bank or other financial institution charges all or part of an amount of a Person’s credit or debit card transaction back to the acquiring or merchant bank.

4. “Chargeback Rate” means the proportion (expressed as a percentage) of chargebacks out of the total number of credit or debit card sales transactions, calculated separately for each payment card association (e.g., American Express, Discover Card, MasterCard, or Visa).

5. “Client” means any Person (a) who obtains, directly or indirectly, from any Defendant a Merchant Account; or (b) for whom Defendant acts as a Sales Agent, either directly or indirectly.

6. “Corporate Defendant” means PayBasics, Inc., also doing business as Livewire Commerce, and its successors and assigns.

7. “Credit Card Laundering” means:
(a) Presenting or depositing into, or causing or allowing another to present or deposit into, the credit card system for payment, a Credit Card Sales Draft generated by a transaction that is not the result of a credit card transaction.

14. "Money Making Opportunities" means any good or service represented to enable or to assist consumers in: (a) earning income through a work-from-home business opportunity; (b) obtaining training or education on how to establish a business or earn money or other consideration through a business; (c) obtaining employment without a fee; or (d) obtaining government grants or other such government income, benefits, or scholarships.

The term "Money Making Opportunities" does not include services provided by accredited colleges, universities, and vocational schools.

15. "Negative Option Feature" means, in an offer or agreement to sell or provide any product or service, a provision under which the consumer's silence or failure to take an affirmative action to reject products or services is interpreted by the Client, seller, or merchant as an acceptance of the offer. Offers or agreements with Negative Option Features include, but are not limited to: (a) free or introductory price trials in which the consumer receives a product or service for free or at a nominal introductory price for an initial period and will incur an obligation to pay or pay a greater amount for the product or service if he or she does not take affirmative action to cancel, reject, or return the product or service before the end of that period; (b) continuity plans in which, subsequent to the consumer's agreement to the plan, the seller or provider automatically ships products to a consumer unless the consumer notifies the seller or provider within a certain time not to ship the products; and (c) automatic renewal plans in which the seller or provider automatically renews the agreement and charges the consumer unless the consumer cancels before the renewal.

The term "Negative Option Feature" does not include gym, health club, or spa

memberships, newspaper or periodical subscriptions, radio, television, or cable subscriptions, or food (other than dietary supplements), or flower delivery clubs.

16. "Outbound Telemarketing" means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution in which the telephone calls are initiated by a Person engaged in telemarketing proposed to the customer or donor.

17. "Payment Processor" means any Person providing Payment Processing services in connection with another Person's sale of goods or services or in connection with any charitable contribution.

18. "Payment Processing" means providing a Person, directly or indirectly, with the means used to charge or debit accounts through the use of any payment mechanism, including, but not limited to, Remotely Created Payment Orders, Remotely Created Checks, ACH Debits, or debit, credit, prepaid, or stored value cards. Whether accomplished through the use of software or

20. "Remotely Created Check means a check that is not created by the I 0 -1d <005

attempted ACH Debit, RCC or RCP transactions that are returned for any reason, whether before or after payment, out of the total number of attempted transactions, calculated separately for each transaction type.

I.

PROHIBITION ON PAYMENT PROCESSING
OR ACTING AS AN ISO

IT IS ORDERED that Defendants, whether acting directly or through an intermediary, are hereby permanently restrained and enjoined from Payment Processing or acting as an ISO.

II.

list themselves or through an ISO Payment Processor, acquiring bank, or other financial institution.

III.

PROHIBITION AGAINST CREDIT CARD LAUNDERING

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly in connection with a Merchant Account are permanently restrained and enjoined from Credit Card Laundering.

IV.

REASONABLE SCREENING OF PROSPECTIVE CLIENTS

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly are permanently restrained and enjoined from acting as a Sales Agent for prospective Client without first engaging in a reasonable screening of the prospective Client to determine whether the prospective Client's business practices are, or are likely to be, deceptive or unfair within the meaning of Section 5 of the FTC Act. Such reasonable screening shall include, but not be limited to:

- A. Obtaining from each prospective Client:
 - 1. A description of the nature of the prospective Client's business, including describing the nature of the goods and services sold which the prospective Client seeks Payment Processing services;

b.the subject of a complaint filed by the Commission or any other state or federal law enforcement agency;

B. Taking reasonable steps to assess the accuracy of the information provided pursuant to Section IV.A of this Order, including reviewing the Internet websites used by the prospective Client to market its goods or services, and obtaining and

C. Individual Defendant Hatch shall promptly take all necessary steps to sell the Range Rover SUV identified on his Financial Statement signed on July 15, 2015, and amended on September 30, 2015 ("Hatch Personal Property") for fair market value to a third-party buyer, and shall transfer any net proceeds of that sale in excess of \$5,000, after the payment of all Hatch Personal Property-related priority liens and encumbrances, to the Commission by electronic funds transfer in accordance with the instructions provided by counsel for the Commission.

D. Upon completion of the requirements in Subsections V.B. and V.C. above, the remainder of

5. the additional documentation submitted by email from Defendants' counsel Beth Fancsali to Commission counsel September 30, 2015, attaching PayBasics, Inc. 2014 Tax Return and K-1s.

F. The suspension of the judgment will be lifted as to any Defendant if, upon motion by the Commission, the Court finds that Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any material misstatement or omission in the Financial Representation identified above.

G. If the suspension of the judgment is lifted, the judgment becomes immediately due as to that Defendant in the amount specified in Subsection A above (which the parties stipulate only for purposes of this Section represents the consumer injury alleged in the Complaint), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

H. Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and make good the return of any assets.

I. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission in any proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

J. The facts alleged in the Complaint establish the elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have a collateral estoppel effect for such purposes.

K. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Defendants previously submitted to the Commission, may be used for collecting and repaying any delinquent amount arising out of this Order, in accordance with 31 U.S.C. §7701.

L. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that redress to consumers is wholly or partially impracticable or money remains after redress is completed, with the Court's approval, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint, or deposit funds not used for such equitable relief to the U.S. Treasury as disgorgement. Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

VI.

PROHIBITION ON USE OF CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants and Defendants' officers, agents, and employees, and all other persons in active concert

that enables access to a customer's account (including a credit card, bank account, or other financial account), that any Defendant obtained prior to entry of this Order in connection with providing Payment Processing services for JC Enters, LLC and Marble Base, Inc.; and

B. failing to destroy such customer information in all forms in their possession, custody, or control within 30 days after entry of this Order.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a governmental agency or required by law, regulation, or court order.

VII.

ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants shall acknowledge receipt of this Order:

A. Each Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 10 years after entry of this Order, each individual Defendant for any business that such Defendant, individually or collectively with any other Defendant, is the majority owner or controls directly or indirectly, and Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current

personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

VIII.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants' timely submissions to the Commission:

A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:

1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods or services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Individual Defendants must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, each Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all

business activities, including any business for which Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 10 years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Defendant must report any change (a) any designated point of contact; or (b) the structure of Corporate Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, each Individual Defendant must report any change in: (a) name, including aliases or fictitious names, or residence address; or (b) title, role in any business activity, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 days

declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supply

D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

X.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance with this Order, including any failure to transfer any assets as required by this Order:

A. Within 14 days of receipt of a written request from a representative of the Commission, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its

XI.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court ~~retains~~ jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED this 19th day of January, 2016.

HON. MATTHEW F. KENNELLY
UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:

FOR PLAINTIFF:

FEDERAL TRADE COMMISSION

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FOR DEFENDANTS: