

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Robert Pitofsky, Chairman
Mary L. Azcuenaga
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle

In the Matter of

COMPUSERVE, INC., a corporation.

DOCKET NO. C-3789

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and

For purposes of this order, the following terms shall have the meanings set forth below, unless specifically stated otherwise:

1. "Account" means a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held either directly or indirectly by a Financial Institution, as defined below, and established primarily for personal, family, or household purposes.
2. "Financial Institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an Account belonging to a Consumer.
3. "Consumer" means a natural person or other entity that may be billed for online services; provided that, for purposes of Paragraphs IV and VI of this order, "Consumer" shall only mean a natural person.
4. "Electronic Fund Transfer," as defined by the Electronic Fund Transfer Act, 15 U.S.C. § 1693a(6), means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephone, or computer or magnetic tape so as to order, instruct, or authorize a Financial Institution to debit or credit an Account, except that it does not mean a transaction made using a debit card or debit card account which a consumer has identified as a credit card or credit card account.
5. "Online Service" shall mean a Respondent-Controlled access, information, communication, or transaction service which is made available to Consumers as a paid service via connection by computers, modems, or other means, to a proprietary or non-proprietary network of telecommunication or computer facilities.
6. Unless otherwise specified, "Respondent" shall mean CompuServe, Inc., its successors and assigns, and its officers, agents, servants, divisions, and employees.
7. "Respondent-Controlled" shall mean Respondent makes the management decisions affecting compliance with the provisions of this order.
8. "In or affecting commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that Respondent, directly or through any Respondent-Controlled corporation, subsidiary or other device, in connection with the advertising, promotion, offering for tdrson m

Provided, that for purposes of this Paragraph II, "clearly and prominently" shall mean with respect to any representation, described in the foregoing paragraph and made in

ordinary Consumer's failure to read it.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be permitted.

IV.

IT IS FURTHER ORDERED that Respondent, directly or through any Respondent-Controlled corporation, subsidiary, or other device, in connection with any Electronic Fund Transfer from any Consumer Account, shall not:

A. Fail to obtain Consumer authorization before initiating any Electronic Fund Transfer from any Consumer Account as required by Section 907(a) of the Electronic Fund Transfer Act, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), as more fully set out in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205, Supp. I.

B. Fail to provide any Consumer with advance notice of Electronic Fund Transfers from the Consumer's Account varying in amount from previous transfers as required by Section 907(b) of the Electronic Fund Transfer Act, 15 U.S.C. § 1693e(b), and Section 205.10(d) of Regulation E, 12 C.F.R. § 205.10(d), as more fully set out in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205, Supp. I.

V.

IT IS FURTHER ORDERED that Respondent, directly or through any Respondent-Controlled corporation, subsidiary, or other device, shall, for five (5) years after the last date of dissemination of any representation covered by Paragraphs I - III of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying business records demonstrating compliance with the terms and provisions of this order, except as provided for in Paragraph VI of this order, including, but not limited to:

A. All advertisements, promotional materials, and instructional materials distributed or accessible to Consumers containing the representation;

B. For five (5) years after the date of receipt or generation, all written complaints from Consumers, governmental or consumer protection organizations and responses thereto; provided, however, that in lieu of maintaining all electronic mail or similar communications, Respondent may comply with this provision by maintaining a representative sample of such communications.

VI.

IT IS FURTHER ORDERED that Respondent, directly or through any Respondent-Controlled corporation, subsidiary, or other device, shall, for two (2) years after the date of issuance of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying all business records which demonstrate Respondent's compliance with Paragraph IV of this order; provided, however, that in lieu of maintaining all electronic mail or similar communications, Respondent may comply with this provision by maintaining a representative sample of such

communications.

VII.

IT IS FURTHER ORDERED that Respondent, and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, senior managers (e.g., vice-presidents or above), and agents (including, without limitation, advertising agencies) having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent, and its successors and assigns, shall prepare a summary of this order, and shall distribute a copy of that summary to all current and future managers with responsibilities or duties affecting compliance with the terms of this order.

VIII.

IT IS FURTHER ORDERED that Respondent, directly or through any Respondent-Controlled corporation, subsidiary, or other device, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a parent or Respondent-Controlled subsidiary or Respondent-Controlled affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

IX.

IT IS FURTHER ORDERED that Respondent, directly or through any Respondent-Controlled corporation, subsidiary, or other device, shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

X.

This order will terminate on March 16, 2018, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner Azcuenaga not participating.

Donald S. Clark
Secretary

SEAL

ISSUED: March 16, 1998