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9 Attorneys for FEDERAL TRADE COMMISSION

10 UNITED STATES DISTRICT COURT  
11 DISTRICT OF NEVADA

12  
13 FEDERAL TRADE COMMISSION, )  
14 )  
15 Plaintiff, )  
16 v. )  
17 HEY DUDE INC., a corporation, )  
18 )  
19 Defendant. )  
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25 )

Case No. F Y  
STIPULATION AND [PROPOSED]  
ORDER FOR PERMANENT  
INJUNCTION, MONETARY  
JUDGMENT, AND OTHER RELIEF

26 Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its  
27 Complaint for Permanent Injunction, Monetary Relief, and Other Relief  
28 (“Complaint”), for a permanent injunction, monetary relief, and other relief in this

1 matter, pursuant to Sections 5(a), 13(b), and 19 of the Federal Trade Commission  
2 Act (“FTC Act”), 15 U.S.C. §§ 45(a), 53(b), and 57b. The Commission and  
3 Defendant stipulate to the entry of the Stipulated Order for Permanent Injunction,  
4 Monetary Judgment, and Other Relief (“Order”) to resolve all matters in dispute in  
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1           5.     Defendant waives any claim that it may have under the Equal Access  
2 to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through  
3 the date of this Order, and agrees to bear its own costs and attorney fees.

4           6.     Defendant and the Commission waive all rights to appeal or otherwise  
5 challenge or contest the validity of this Order.

6                               **DEFINITIONS**

7           For the purpose of this Order, the following definitions apply:

8           A.     “Clearly and Conspicuously” means that a required disclosure is  
9 difficult to miss (i.e., easily noticeable) and easily understandable by ordinary  
10 consumers, including in all of the following ways:

11                       1.     In any communication that is solely visual or solely audible, the  
12 disclosure must be made through the same means through which the  
13 communication is presented. In any communication made through  
14 both visual and audible means, such as a television advertisement, the  
15 disclosure must be presented simultaneously in both the visual and  
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5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.

6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

8. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.

B. “Defendant” means Defendant, Hey Dude Inc., formerly known as Happy One, LLC, on its own behalf and as successori63cdonnt cooicC,suke,T (C,)5op7.

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1 c) A statement from Defendant sent to the buyer  
2 acknowledging the cancellation of the order and representing  
3 that Defendant has not taken any action regarding the order  
4 which will access any of the buyer's funds.

5 G. "Shipment" means the act by which the merchandise is physically  
6 placed in the possession of the carrier.

7 H. "Telephone" refers to any direct or indirect use of the telephone to  
8 order merchandise, regardless of whether the telephone is activated by, or the  
9 language used is that of human beings, machines, or both.

10 I. "Time of Solicitation" of an order means that time when Defendant  
11 has: (1) Mailed or otherwise disseminated the solicitation to a prospective  
12 purchaser; (2) Made arrangements for an advertisement containing the solicitation  
13 to appear in a newspaper, magazine or the like or on radio or television which  
14 cannot be changed or cancelled without incurring substantial expense; or (3) Made  
15 arrangements for the printing of a catalog, brochure or the like which cannot be  
16 changed without incurring substantial expense, in which the solicitation in question  
17 forms an insubstantial part.

18 **ORDER**

19 **I. INJUNCTION CONCERNING MAIL, INTERNET, OR**  
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1 after Defendant first becomes aware of an inability to ship within the  
2 original Shipment date, but in no event later than the original  
3 Shipment date.

4 i) Any offer to the buyer of such an option must fully  
5 inform the buyer regarding the buyer's right to cancel the order  
6 and to obtain a Prompt Refund and provide a first definite  
7 revised shipping date, but where Defendant lacks a reasonable  
8 basis for providing such a first definite revised shipping date  
9 the notice must inform the buyer that Defendant is unable to  
10 make any representation regarding the length of the delay.

11 ii) Where Defendant has provided a first definite revised  
12 shipping date which is no more than 30 days later than the  
13 original Shipment date, the offer of said option must expressly  
14 inform the buyer that, unless Defendant receives, prior to  
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(A) Defendant has shipped the merchandise within 30 days of the original Shipment date, and has received no cancellation prior to Shipment; or

(B) Defendant has received from the buyer within 30 days of said applicable time, a response specifically consenting to said shipping delay. Where Defendant informs the buyer that it is unable to make any representation regarding the length of the delay, the buyer must be expressly informed that, should the buyer consent to an indefinite delay, the buyer will have a continuing right to cancel the buyer's order at any time after the original Shipment date and receive a Prompt Refund by so notifying Defendant prior to actual Shipment.

iv) Nothing in this Subsection shall prohibit Defendant from furnishing a definite revised shipping date pursuant to (B)(1)(i) of this Section, and requesting, simultaneously with or at the offer of an option pursuant to (B)(1) of this Section, the buyer's express consent to a further unanticipated delay beyond the definite revised shipping date in the form of a response from the

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1 be deemed to have rejected any further delay, and to have  
2 cancelled the order if Defendant is in fact unable to ship prior to  
3 the expiration of the old definite revised shipping date or any  
4 date superseding the old definite revised shipping date.

5 Provided, however, that where Defendant offers the  
6 buyer the option to consent to an indefinite delay, the offer  
7 must expressly inform the buyer that, should the buyer so  
8 consent to an indefinite delay, the buyer has a continuing right  
9 to cancel the buyer's order at any time and receive a Prompt  
10 Refund after the old definite revised shipping date or any date  
11 superseding the old definite revised shipping date.

12 iii) Subsection (B)(2) does not apply to any situation where  
13 Defendant, pursuant to (B)(1)(iv) of this Section, has previously  
14 obtained consent from the buyer to an indefinite extension  
15 beyond the first revised shipping date.

16 3. Wherever a buyer has the right to exercise any option under this  
17 provision or to cancel an order by so notifying Defendant prior to  
18 Shipment, failing to furnish the buyer with an adequate mechanism at  
19 the Defendant's expense, to exercise such option or to notify the  
20 Defendant regarding cancellation.

21 4. Nothing in this Section prevents Defendant, where it is unable  
22 to make Shipment within the original Shipment date or within a delay  
23 period consented to by the buyer, from deciding to consider the order  
24 cancelled and providing the buyer with notice of said decision within  
25 a reasonable time after becoming aware of said inability to ship, and  
26 with a Prompt Refund.

1 C. (with regard to failure to cancel:)

2 Failing to treat an order as cancelled and to make a Prompt Refund to the  
3 buyer whenever:

4 1. Defendant receives, prior to Shipment, notification from the  
5 buyer cancelling the order pursuant to any option, renewed option or  
6 continuing option under this Order;

7 2. Defendant has, pursuant to (B)(1)(iii), provided the buyer with  
8 a first definite revised shipping date which is more than 30 days later  
9 than the original Shipment date, or has notified the buyer that it is  
10 unable to make any representation regarding the length of the delay,  
11 and Defendant:

12 i) Has not shipped the merchandise within 30 days of the  
13 original Shipment date, and

14 ii) Has not received the buyer's express consent to said  
15 shipping delay within said 30 days;

16 3. Defendant is unable to ship within the applicable time set forth  
17 in (B)(2) of this Section, and has not received, within the said  
18 applicable time, the buyer's consent to the further delay;

19 4. Defendant has notified the buyer of an inability to make  
20 Shipment and has indicated the decision not to ship the merchandise;

21 5. Defendant fails to offer any option prescribed in this Section  
22 and have not shipped the merchandise within the original Shipment  
23 date; or

24 6. Defendant has provided the buyer with a first definite revised  
25 shipping date of 30 days or less than the original Shipment date, and  
26 Defendant has not shipped the merchandise or received the buyer's  
27 consent to a further delay by the first definite revised shipping date.  
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1 D. (with regard to compliance:)

2 In any action brought by the FTC alleging a violation of this Order, the  
3 failure of Defendant to have records or other documentary proof establishing its  
4 use of systems and procedures which assure, in the ordinary course of business, the  
5 Shipment of merchandise within any applicable time set forth in this Section and  
6 compliance with any other requirement of this Section will create a rebuttable  
7 presumption that Defendant failed to comply with said requirement.

8 **II. INJUNCTION TO PREVENT CERTAIN MERCHANDISE**  
9 **ORDER PRACTICES**

10 IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents,  
11 employees, and all other persons in active concert or participation with any of  
12 them, who receive notice of this Order, whether acting directly or indirectly, in  
13 connection with Mail, Internet, or Telephone Order Sales, are permanently  
14 restrained and enjoined from:

15 A. Making any representation, expressly or by implication, that the  
16 merchandise will be shipped faster than 30 days, without disclosing, Clearly and  
17 Conspicuously, and before payment, the date by which or number of days in which  
18 the merchandise will be shipped or received;

19 B. Failing to provide, and to Clearly and Conspicuously disclose, an  
20 adequate mechanism for the buyer to cancel any merchandise not received by such  
21 date or time period disclosed. The mechanism must not be difficult, confusing, or  
22 time consuming;

23 C. Where Defendant must offer a Prompt Refund, offering anything  
24 other than a Prompt Refund such as a gift card; and

25 D. Misrepresenting or assisting others in misrepresenting, expressly or by  
26 implication:

27 1. The date, time period, or speed by which the merchandise will  
28 be shipped or received;

2. The length of, or reason for, any shipping delay;
3. Any material aspect of any refund, return, or cancellation policy; or
4. Any other material fact.

**III. INJUNCTION CONCERNING MISREPRESENTATIONS  
REGARDING REVIEWS**

IT IS FURTHER ORDERED that Defendant's officers, agents, employees, and all other persons in active concert or participation with any of them, who receive notice of this Order, whether acting directly or indirectly, in connection with the advertising, promotion, offering for sale, or sale of any product must not make any misrepresentation, expressly or by implication, about product reviews or endorsements of the product, including any misrepresentation:

- A. That product reviews on Defendant's website accurately reflect the views of all purchasers who submitted reviews of Defendant's products on the website;
- B. That product reviews or endorsements of any products are unedited;
- C. That product reviews or endorsements of any products are presented regardless of the endorser's opinion or rating; or
- D. About how product reviews factor into any composite or overall rating of a product.

**IV. INJUNCTION CONCERNING DISPLAY OF PRODUCT REVIEWS**

IT IS FURTHER ORDERED that Defendant must display, on each of its websites displaying product reviews, all reviews related to products currently offered for sale that are or were submitted by consumers to such website, including all reviews related to Defendant's customer service, delivery, returns, or exchanges and all reviews that Defendant or its agents previously withheld from public view. Provided, however, that Defendant: (a) is not required to display reviews that contain (i) unlawful, profane, obscene, vulgar, or sexually explicit content, (ii)

1 content that is inappropriate with respect to race, gender, sexuality, or ethnicity,  
2 (iii) the personal information or likeness of another person; (iv) trade secrets or  
3 privileged or confidential commercial or financial information, so long as the  
4 criteria for withholding reviews are applied uniformly to all reviews submitted to  
5 such website; and (b) are not required to offer the opportunity to submit reviews  
6 for any or every product offered for sale on such website.

7 **V. MONETARY JUDGMENT**

8 IT IS FURTHER ORDERED that:

9 A. Judgment in the amount of One Million Nine Hundred Fifty-Three  
10 Thousand Nine Hundred Sixty-Seven Dollars and Eight Cents (\$1,953,967.08) is  
11 entered in favor of the Commission against Defendant as monetary relief.

12 B. Defendant is ordered to pay to the Commission One Million Nine  
13 Hundred Fifty-Three Thousand Nine Hundred Sixty-Seven Dollars and Eight  
14 Cents (\$1,953,967.08), which, as Defendant stipulates, its undersigned counsel  
15 holds in escrow for no purpose other than payment to the Commission. Such  
16 payment must be made within 7 days of entry of this Order by electronic fund  
17 transfer in accordance with instructions previously provided by a representative of  
18 the Commission.

19 **VI. ADDITIONAL MONETARY PROVISIONS**

20 IT IS FURTHER ORDERED that:

21 A. Defendant relinquishes dominion and all legal and equitable right,  
22 title, and interest in all assets transferred pursuant to this Order and may not seek  
23 the return of any assets.

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



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**VIII. ORDER ACKNOWLEDGMENTS**

IT IS FURTHER ORDERED that Defendant obtain acknowledgments of receipt of this Order:

A. 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 3 years after entry of this Order, Defendant must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and



1 Associate Director for Enforcement, Bureau of Consumer Protection, Federal  
2 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The

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1 depositions; and produce documents for inspection and copying. The Commission  
2 is also authorized to obtain discovery, without further leave of court, using any of  
3 the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including  
4 telephonic depositions), 31, 33, 34, 36, 45, and 69.

5 B. For matters concerning this Order, the Commission is authorized to  
6 communicate directly with Defendant. Defendant must permit representatives of  
7 the Commission to interview any employee or other person affiliated with  
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1 **SO STIPULATED AND AGREED:**

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3 **FOR FEDERAL TRADE COMMISSION:**

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Date: \_\_\_\_\_

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RICHARD BLACKSHAW

President

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Date: \_\_\_\_\_

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