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2 Federal Trade Commission
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6
7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION
11

12 FEDERAL TRADE COMMISSION,)
13)

14 Plaintiff,)

15 v.)

16 MARK ALAN CONWAY a.k.a)
ALAN CONWAY, individually and)
17 d.b.a HOMELIFE CREDIT SERVICES,)
and)
18 WILLIAM ANDERSON, individually and)
d.b.a HOMELIFE CREDIT SERVICES)

19 Defendant(s).)
20)

CV No. 00-06154 CM (Ex)

**STIPULATED FINAL
JUDGMENT AND [PROPOSED]
ORDER FOR PERMANENT
INJUNCTION**

21
22 Plaintiff, the Federal Trade Commission (“Commission”), on June 8, 2000, filed its
23 Complaint for permanent injunction and other relief pursuant to sections 13(b) and 19 of the
24 Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing
25 and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. § 6101 *et seq.*,
26 charging defendant(s) One or More Unknown Persons Doing Business as HomeLife Credit
27 Services with engaging in unfair or deceptive acts or practices in violation of Section 5 of the FTC
28 Act, 15 U.S.C. § 45, and the FTC’s Telemarketing Sales Rule, 16 C.F.R. Part 310. On

1 4. This Court has jurisdiction over the subject matter of this case and has jurisdiction over
2 defendant Conway. Venue in the Central District of California is proper.

3 5. The activities of defendant Conway are in or affecting commerce, as commerce is defined
4 in 15 U.S.C. § 44.

5 6. Defendant Conway waives all rights to seek judicial review or otherwise challenge or
6 contest the validity of this Order. Defendant Conway also waives any claim that he may
7 hold under the Equal Access to Justice Act, 28 U.S.C. § 2412 (as amended), concerning
8 the prosecution of this action to the date of this Order.

9 7. Entry of this Order is in the public interest.

10 8. This Order is remedial in nature and shall not be construed as the payment of a fine,
11 penalty, punitive assessment, or forfeiture.

12 13 **DEFINITIONS**

14 For purposes of this Final Judgment and Order for Permanent Injunction and Monetary
15 Relief, the following definitions shall apply:

16 1. "**Telemarketing**" means a plan, program or campaign which is conducted to induce the
17 purchase of goods or services by use of one or more telephones and which involves more
18 than one interstate telephone call.

19 2. "**Person**" means any individual, group, unincorporated association, limited or general
20 partnership, corporation, or other business entity.

21 3. "**Defendant**" means Defendant Mark Alan Conway and his agents, servants, employees,
22 attorneys, and all persons or entities directly or indirectly under his control, and all other
23 persons or entities in active concert or participation with him who receive actual notice of
24 this Order by personal service or otherwise, and each such person.

25 4. "**Assets**" means all real and personal property of any defendant, or held for the benefit of
26 any defendant, including but not limited to "goods," "instruments," "equipment,"
27 "fixtures," "general intangibles," "inventory," "checks," or "notes," (as these terms are
28 defined in the Uniform Commercial Code), lines of credit, and all cash, wherever located.

1 5. "**Document**" is synonymous in meaning and equal in scope to the usage of the term in
2 Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs, charts,
3 photographs, audio and video recordings, computer records, and other data compilations
4 from which the information can be obtained and translated, if necessary, through detection
5 devices into reasonably usable form. A draft or non-identical copy is a separate document
6 within the meaning of the term.

7 6. "**Assisting others**" means knowingly providing any of the following goods or services to
8 another entity: (1) performing customer service functions, including, but not limited to,
9 receiving or responding to consumer complaints; (2) formulating or providing, or
10 arranging for the formulation or provision of, any telephone sales script or any other
11 marketing material; (3) providing names of, or assisting in the generation of, potential
12 customers; or (4) performing marketing services of any kind.

13
14 **ORDER**

15 **I.**

16 **PERMANENT BAN.**

17 **IT IS THEREFORE ORDERED** that Defendant Conway, whether acting directly or through
18 any corporation, limited liability company, subsidiary, division or other device, is hereby
19 permanently restrained and enjoined from engaging in, receiving any remuneration of any kind
20 whatsoever from, or holding any ownership interest, share, or stock in, or serving as an officer,
21 director, trustee, or general manager of, any business entity engaged, in whole or in part, in
22 advertising, marketing, promoting, telemarketing, offering for sale, or sale of any credit-related
23 goods or services, or assisting others engaged in the same.

24
25 **II.**

26 **PROHIBITED BUSINESS ACTIVITIES**

27 **IT IS FURTHER ORDERED** that, in connection with the advertising, promotion,
28 telemarketing, offering for sale, or sale of services relating to credit cards, loans, or other

1 extensions of credit, Defendant Mark Alan Conway and his successors, assigns, directors,
2 officers, agents, servants, employees, attorneys, and all other persons or entities in active concert
3 or participation with them who receive actual notice of this Order by personal service or
4 otherwise, whether acting directly or through any corporation, subsidiary, division, or other
5 device, are hereby permanently restrained and enjoined from:

6 A. Misrepresenting, expressly or by implication, that consumers who pay a required
7 advance fee can reasonably expect to receive a credit card, loan, or other extension
8 of credit;

9 B. Misrepresenting, expressly or by implication, that defendant Conway has
10 connections with sources that are likely to result in the provision of credit cards,
11 loans, or other extensions of credit; and

12 C. Misrepresenting, expressly or by implication, any fact material to a consumer's
13 decision to purchase services relating to credit cards, loans, or other extensions of
14 credit from any defendant;

15 **IT IS FURTHER ORDERED** that, with respect to the advertising, marketing, promoting,
16 offering for sale, or sale of any good or service, defendant Conway, and his successors, assigns,
17 directors, officers, agents, servants, employees, attorneys, and all other persons or entities in
18 active concert or participation with them who receive actual notice of this Order by personal
19 service or otherwise, whether acting directly or through any corporation, subsidiary, division, or
20 other device, are hereby permanently restrained and enjoined from misrepresenting, expressly or
21 by implication, any fact material to a consumer's decision to purchase defendants' products or
22 services; and

23 **IT IS FURTHER ORDERED** that defendant Mark Alan Conway, and his successors, assigns,
24 directors, officers, agents, servants, employees, attorneys, and all other persons or entities in
25 active concert or participation with them who receive actual notice of this Order by personal
26 service or otherwise, whether acting directly or through any corporation, subsidiary, division, or
27 other device, are hereby permanently restrained and enjoined from violating or assisting others in
28 violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, including but not

1 limited to:

- 2 A. stating that consumers have a high likelihood of obtaining a credit card, such as a
- 3 Visa or MasterCard, in return for the payment in advance of a one-time fee; and
- 4 B. requesting or receiving payment of any fee or consideration in advance of
- 5 obtaining or arranging an extension of credit when they have guaranteed or
- 6 represented a high likelihood of success in obtaining or arranging an extension of
- 7 credit.

8 *Provided, however,* that nothing in this Section shall be construed to nullify the prohibitions set
9 forth in Section I above.

10
11 **III.**

12 **SUSPENDED JUDGMENT**

13 **IT IS FURTHER ORDERED** that judgment is hereby entered against Defendant Conway in the
14 amount of \$338,940.00 (THREE HUNDRED THIRTY-EIGHT THOUSAND NINE
15 HUNDRED FORTY DOLLARS); provided, however, that this judgment shall be suspended
16 subject to the conditions set forth in Section IV of this Order.

17
18 **IV.**

19 **RIGHT TO REOPEN AND TERMINATE SUSPENSION**

20 **IT IS FURTHER ORDERED** that the Commission's agreement to, and the Court's approval of,
21 this Order is expressly premised upon the truthfulness, accuracy, and completeness of the financial
22 statements provided by defendant Conway to counsel for the Commission and the sworn
23 testimony given by defendant Conway in his deposition on July 11, 2000 which contain material
24 information relied upon by the Commission in negotiating and agreeing to the terms of this Order.

25
26 **IT IS FURTHER ORDERED** that if the Commission should have evidence that the
27 above-referenced financial statements and information failed to disclose any material asset the
28 value of which exceeds \$1,000, materially misrepresented the value of any asset, or made any

1 other material misrepresentation or omission, the Commission may move that the Court reopen
2 this Order for the sole purpose of allowing the Commission to modify the monetary liability of
3 defendant Conway. If the Court finds that defendant Conway failed to disclose any material asset,
4 materially misrepresented the value of any asset, or made any other material misrepresentation or
5 omission in the above-referenced financial statements and information, the Court shall enter
6 judgment against defendant Conway, in favor of the Commission, in the amount of, \$338,940.00
7 (THREE HUNDRED THIRTY-EIGHT THOUSAND NINE HUNDRED FORTY DOLLARS)
8 which defendant Conway and the Commission stipulate is the amount of consumer injury caused
9 by defendant Conway and HomeLife Credit Services, less any redress amounts previously paid.
10 Should this judgment be modified as to the monetary liability of defendant Conway, this Order, in
11 all other respects, shall remain in full force. Any proceedings instituted under this Paragraph shall
12 be in addition to and not in lieu of any other proceedings the Commission may initiate to enforce
13 this Order. Solely for the purposes of reopening or enforcing this Paragraph, defendant Conway
14 waives any right to contest any of the allegations set forth in the Complaint filed in this matter.

15
16 **V.**

17 **CUSTOMER LISTS**

18 **IT IS FURTHER ORDERED** that defendant Conway, and his successors, assigns, directors,
19 officers, agents, servants, employees, attorneys, and all other persons or entities in active concert
20 or participation with them who receive actual notice of this Order by personal service or
21 otherwise, whether acting directly or through any corporation, subsidiary, division, or other
22 device, are permanently restrained and enjoined from selling, renting, leasing, transferring, or
23 otherwise disclosing the name, address, telephone number, credit card number, bank account
24 number, e-mail address, or other identifying information of any person whom defendant Conway
25 charged a fee for arranging for the provision of a credit card, loan, or other extension of credit.
26 *Provided* that defendant Conway may disclose such identifying information to a law enforcement
27 agency or as required by any law, regulation, or court order.

28

1 VI.

2 CEASE COLLECTIONS, NOTICES TO CONSUMERS

3 **IT IS FURTHER ORDERED** that defendant Conway, and his successors, assigns, directors,
4 officers, agents, servants, employees, attorneys, and all other persons or entities in active concert
5 or participation with them who receive actual notice of this Order by personal service or
6 otherwise, whether acting directly or through any corporation, subsidiary, division, or other
7 device, shall:

- 8 A. Cease all collection efforts on accounts arising from contracts, agreements, or
9 understandings between defendant Conway and credit card clients, including but
10 not limited to directing all third parties engaged in collection efforts regarding
11 such accounts to cease all such collection activities and to cease furnishing any
12 negative information to any consumer reporting agencies;
- 13 B. Within twenty (20) days after the date this Order is entered, return to credit card
14 clients all uncashed checks or other negotiable instruments, including checks
15 totaling over \$500.00, in defendant Conway's possession that have been received
16 by defendant Conway, directly or indirectly, on accounts arising from contracts,
17 agreements, or understandings between defendant Conway and his clients. Include
18 with each such returned check or other negotiable instrument a notice to the client
19 stating that, as a result of an agreement between defendant Conway and the
20 Federal Trade Commission settling allegations regarding defendant Conway's
21 ability to obtain credit cards, those clients' contracts are rescinded; and
- 22 C. Within sixty (60) days after the date this Order is entered, provide the names and
23 addresses of those clients to whom checks or other negotiable instruments were
24 returned pursuant to Subparagraph B above to: Jennifer Larabee, Federal Trade
25 Commission, 10877 Wilshire Blvd., Suite 700, Los Angeles, California 90024.

1 **VII.**

2 **RECORD KEEPING PROVISIONS**

3 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this
4 Order, defendant Conway, and his successors, assigns, directors, officers, agents, servants,
5 employees, attorneys, and all other persons or entities in active concert or participation with them
6 who receive actual notice of this Order by personal service or otherwise, whether acting directly
7 or through any corporation, subsidiary, division, or other device, in connection with any business
8 involving telemarketing, or the offer or sale of credit cards for an advance fee, where defendant
9 Conway is the majority owner of the business or directly or indirectly manages or controls the
10 business, are hereby restrained and enjoined from failing to create, and from failing to retain for a
11 period of three (3) years following the date of such creation, unless otherwise specified:

- 12 A. Books, records and accounts that, in reasonable detail, accurately and fairly reflect
13 the cost of goods or services sold, revenues generated, and the disbursement of
14 such revenues;
- 15 B. Records accurately reflecting: the name, address, and telephone number of each
16 person employed in any capacity by such business, including as an independent
17 contractor; that person's job title or position; the date upon which the person
18 commenced work; and the date and reason for the person's termination, if
19 applicable. The businesses subject to this Paragraph shall retain such records for
20 any terminated employee for a period of three (3) years following the date of
21 termination;
- 22 C. Records containing the names, addresses, phone numbers, dollar amounts paid,
23 quantity of items or services purchased, and description of items or services
24 purchased, for all consumers to whom such business has sold, invoiced or shipped
25 any goods or services, or from whom such business accepted money or other items
26 of value;
- 27 D. Records that reflect, for every consumer complaint or refund request, whether
28 received directly or indirectly or through any third party:

- 1 (1) the consumer's name, address, telephone number and the dollar amount
2 paid by the consumer;
- 3 (2) the written complaint or refund request, if any, and the date of the
4 complaint or refund request;
- 5 (3) the basis of the complaint, including the name of any salesperson
6 complained against, and the nature and result of any investigation
7 conducted concerning any complaint;
- 8 (4) each response and the date of the response;
- 9 (5) any final resolution and the date of the resolution; and
- 10 (6) in the event of a denial of a refund request, the reason for the denial; and
- 11 E. Copies of all sales scripts, training materials, advertisements, or other marketing
12 materials utilized; *provided* that copies of all sales scripts, training materials,
13 advertisements, or other marketing materials utilized shall be retained for (3) years after
14 the last date of dissemination of any such materials.

15
16 **VIII.**

17 **DISTRIBUTION OF ORDER BY DEFENDANT CONWAY**

18 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this
19 Order, defendant Conway shall:

- 20 A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of
21 receipt of same from, each officer or director, each individual serving in a
22 management capacity, all personnel involved in responding to consumer
23 complaints or inquiries, and all sales personnel, whether designated as employees,
24 consultants, independent contractors or otherwise, immediately upon employing or
25 retaining any such persons, for any business involving telemarketing, or the offer
26 or sale of credit cards for an advance fee, where defendant Conway is the majority
27 owner of the business or directly or indirectly manages or controls the business.
- 28 B. Maintain for a period of three (3) years after creation, and upon reasonable notice,

1 make available to representatives of the Commission, the original signed and dated
2 acknowledgments of the receipt of copies of this Order, as required in Section A of
3 this Paragraph.
4

5 **IX.**

6 **COMPLIANCE REPORTING BY DEFENDANT CONWAY**

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

9 A. For a period of five (5) years from the date of entry of this Order, defendant
10 Conway shall notify the Commission of the following:

- 11 1. Any changes in such defendant Conway's residence, mailing addresses, and
12 telephone numbers, within ten (10) days of the date of such change;
- 13 2. Any changes in such defendant Conway's employment status (including
14 self-employment) within ten (10) days of such change. Such notice shall
15 include the name and address of each business that defendant is affiliated
16 with or employed by, a statement of the nature of the business, and a
17 statement of defendant's duties and responsibilities in connection with the
18 business or employment; and
- 19 3. Any proposed change in the structure of any business entity owned or
20 controlled by defendant Conway such as creation, incorporation,
21 dissolution, assignment, sale, merger, creation, dissolution of subsidiaries,
22 proposed filing of a bankruptcy petition, or change in the corporate name
23 or address, or any other change that may affect compliance obligations
24 arising out of this Order, thirty (30) days prior to the effective date of any
25 proposed change; *provided*, however, that, with respect to any proposed
26 change in the corporation about which such defendant learns less than
27 thirty (30) days prior to the date such action is to take place, such
28 defendant shall notify the Commission as soon as is practicable after

1 learning of such proposed change;

2 B. One hundred eighty (180) days after the date of entry of this Order, defendant
3 Conway shall provide a written report to the FTC, sworn to under penalty of
4 perjury, setting forth in detail the manner and form in which defendant Conway has
5 complied and is complying with this Order. This report shall include but not be
6 limited to:

- 7 1. Defendant's then current residence addresses and telephone numbers;
- 8 2. Defendant's then current employment, business addresses and telephone
9 numbers, a description of the business activities of each such employer, and
10 individual defendant's title and responsibilities for each employer;
- 11 3. A copy of each acknowledgment of receipt of this Order obtained by
12 defendant Conway pursuant to Paragraph VIII of this Order, and
- 13 4. A statement describing the manner in which defendant has complied and is
14 complying with the injunctive provisions in Paragraphs I and II of the
15 Order;

16 C. Upon written request by a representative of the Commission, defendant shall
17 submit additional written reports (under oath, if requested) and produce
18 documents on fifteen (15) days' notice with respect to any conduct subject to this
19 Order;

20 D. For the purposes of this Order, defendant shall, unless otherwise directed by the
21 Commission's authorized representatives, mail all written notifications to the
22 Commission to:

23 Regional Director
24 Federal Trade Commission
25 10877 Wilshire Blvd., Suite 700
26 Los Angeles, California 90024

27 Re: FTC v. Mark Alan Conway d/b/a HomeLife Credit Services, et al.
28 Civ. Act. No. 00-06154 CM (Ex)

E. For the purposes of this Paragraph, "employment" includes the performance of
services as an employee, consultant, or independent contractor; and "employers"

1 includes any individual or entity for whom defendant performs services as an
2 employee, consultant, or independent contractor; and

3 F. For purposes of the compliance reporting required by this Paragraph, the
4 Commission is authorized to communicate directly with defendant Conway.

5
6 **X.**

7 **COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

8 **IT IS FURTHER ORDERED** that the Commission is authorized to monitor defendant
9 Conway's compliance with this Order by all lawful means, including but not limited to, the
10 following means:

- 11 A. The Commission is authorized, without further leave of court, to obtain discovery
12 from any person in the manner provided by Chapter V of the Federal Rules of Civil
13 Procedure, Fed. R. Civ. P. 26-37, including the use of compulsory process
14 pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating
15 defendant's compliance with any provision of this Order;
- 16 B. The Commission is authorized to use representatives posing as consumers and
17 suppliers to defendant, defendant's employees, or any other entity managed or
18 controlled in whole or in part by defendant, without the necessity of identification
19 or prior notice; and
- 20 C. Nothing in this Order shall limit the Commission's lawful use of compulsory
21 process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. § § 49 and 57b-
22 1, to investigate whether defendant has violated any provision of this Order or
23 Section 5 of the FTC Act, 15 U.S.C. § 45.
- 24 D. For purposes of the compliance reporting required by this Paragraph, the
25 Commission is authorized to communicate directly with defendant Conway.

26
27 **XI.**

28 **ACCESS TO BUSINESS PREMISES**

1 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry
2 of this Order, for the purpose of further determining compliance with this Order, defendant
3 Conway shall permit representatives of the Commission, within three (3) business days of receipt
4 of written notice from the Commission:

5 A. Access during normal business hours to any office, or facility storing documents,
6 of any business involving telemarketing, or the offer or sale of credit cards for an
7 advance fee, where such defendant is the majority owner of the business or directly
8 or indirectly manages or controls the business. In providing such access, such
9 defendant shall permit representatives of the Commission to inspect and copy all
10 documents relevant to any matter contained in this Order; and shall permit
11 Commission representatives to remove documents relevant to any matter
12 contained in this Order for a period not to exceed five (5) business days so that the
13 documents may be inspected, inventoried, and copied;

14 B. To interview the officers, directors, and employees, including all personnel
15 involved in responding to consumer complaints or inquiries, and all sales
16 personnel, whether designated as employees, consultants, independent contractors
17 or otherwise, of any business to which Section A of this Paragraph applies,
18 concerning matters relating to compliance with the terms of this Order. The
19 person interviewed may have counsel present, and

20 C. For purposes of the access request permitted by this Paragraph, the Commission is
21 authorized to communicate directly with defendant Conway.

22 *Provided* that, upon application of the Commission and for good cause shown, the Court may
23 enter an *ex parte* order granting immediate access to defendant's business premises for the
24 purposes of inspecting and copying all documents relevant to any matter contained in this Order.

25 //

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XII.

1 **ENTRY BY CLERK**

2 There being no just reason for delay, the Clerk of the Court is hereby directed to enter this
3 Order.

4 **SO STIPULATED:**

5
6 _____
7 JENNIFER LARABEE
8 BARBARA CHUN
9 Attorneys for Plaintiff Federal Trade Commission
10 phone: (310) 824-4343

11 Dated: _____, 2001

12 _____
13 Mark Alan Conway
14 Defendant

15 **APPROVED AS TO FORM**

16 Dated: _____, 2001

17 _____
18 Donald Beskin, Esq.
19 Attorney for
20 Defendant Mark Alan Conway

21 **IT IS SO ORDERED.**

22 Dated: _____

23 _____
24 United States District Judge

1 JENNIFER LARABEE, CA. Bar No. 163989
BARBARA CHUN, CA Bar No. 186907
2 Federal Trade Commission
10877 Wilshire Boulevard, Suite 700
3 Los Angeles, California 90024
phone: (310) 824-4343
4 fax: (310) 824-4380

5 Attorneys for Plaintiff
Federal Trade Commission
6

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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12 FEDERAL TRADE COMMISSION,)
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15 MARK ALAN CONWAY a.k.a)
16 ALAN CONWAY, individually and)
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18 WILLIAM ANDERSON, individually and)
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19 Defendant(s).)
20

CV No. 00-06154 CM (Ex)

**AFFIDAVIT OF DEFENDANT
MARK ALAN CONWAY
ACKNOWLEDGING SERVICE
OF FINAL JUDGMENT AND
ORDER**

21
22 **AFFIDAVIT OF [NAME OF DEFENDANT]**

23 Mark Alan Conway, being duly sworn, hereby states and affirms as follows:

24 1. My name is Mark Alan Conway. My social security number is _____.

25 My current residence address is _____

26 _____ I am a citizen of

27 the United States and am over the age of eighteen. I have personal knowledge of the facts set

28 forth in this Affidavit.

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2. I am a defendant in FTC v. Mark Alan Conway et al., Civil Action No. 00-99CV1746-G in the United States District Court for the Central District of California, Western Division.

3. On _____, 2001, I received a copy of the Stipulated Final Judgment and Order for Permanent Injunction and Monetary Relief, which was signed by the Honorable Carlos Moreno and entered by the Court on _____, 2001. A true and correct copy of the Order I received is attached to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on _____, 2001, at _____.

Mark Alan Conway

State of _____, City of _____

Subscribed and sworn to before me
this ____ day of _____, 2001.

Notary Public
My Commission Expires:
