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FILED
CLERK, U.S. DISTRICT COURT
MAR 16 2006
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

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CLERK, U.S. DISTRICT COURT
MAR 17 2006
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

15 FEDERAL TRADE COMMISSION,

16 Plaintiff,

17 v.

18 CASHIER MYRICKS JR. d/b/a
19 MP3DOWNLOADCITY.COM,

20 Defendant.

Case No. CV-05-7013 CAS (FMOx)

21 **STIPULATED FINAL ORDER
FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF**

22 THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

23 On September 27, 2005, Plaintiff, the Federal Trade Commission ("FTC" or
24 "Commission") filed a Complaint for Permanent Injunction and Other Equitable
25 Relief ("Complaint") against Defendant Cashier Myricks Jr. d/b/a
26 MP3DownloadCity.com pursuant to Section 13(b) of the Federal Trade
27 Commission Act ("FTC Act"), 15 U.S.C. § 53(b). Defendant does not admit
28 liability for the allegations in the Complaint, except jurisdictional facts, but agrees

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DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES
BY [Signature]

1 to the entry of the following Stipulated Final Order for Permanent Injunction and
2 Other Equitable Relief ("Order"). The Court, being advised in the premises, finds
3 as follows:

4 FINDINGS

5 1. In its Complaint, the Commission alleged that Defendant violated
6 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). The Commission sought
7 permanent injunctive relief for alleged deceptive acts or practices by Defendant in
8 connection with the advertising, marketing, and sale of peer-to-peer file-sharing
9 program tutorial and referral services.

10 2. This Court has jurisdiction over the subject matter of this case and
11 jurisdiction over all parties. Venue in the Central District of California is proper.

12 3. The Complaint states a claim upon which relief can be granted, and
13 the Commission has the authority to seek the relief it has requested.

14 4. The acts and practices of Defendant were and are in or affecting
15 commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

16 5. Defendant waives all rights to seek judicial review or otherwise
17 challenge or contest the validity of this Order. Defendant also waives any claims
18 he holds under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the
19 prosecution of this action through the date of this Order.

20 6. The action and the relief awarded herein are in addition to, and not in
21 lieu of, other remedies as may be provided by law.

22 7. The sections and paragraphs of this Order shall be read as the
23 necessary requirements for compliance and not as alternatives for compliance and
24 no section or paragraph serves to modify any section or paragraph unless expressly
25 so stated.

26 8. Each party shall bear its own costs and attorneys' fees.

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

28

ORDER

DEFINITIONS

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

1. Unless otherwise specified, "Defendant" shall mean Cashier Myricks Jr.

2. "Covered product or service" shall mean (1) any peer-to-peer file-sharing program tutorial or referral service; or (2) any computer software program.

3. "Clearly and conspicuously" shall mean:

a. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services and software), the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement.

Provided, however, that in any advertisement presented solely through visual or audio means, the disclosure may be made through the same means in which the ad is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual disclosure shall be of a font size and shade, with a degree of contrast to the background against which it appears, and shall appear on the screen for a duration and in a location, sufficiently noticeable for an ordinary consumer to read and comprehend it; and

b. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a font size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

4. "Commerce" shall mean as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

5. "Endorsement" shall mean as defined in 16 C.F.R. § 255.0(b).

1 significant monetary damages, fines, and even criminal
2 penalties; and
3 2. that, if true, persons who subscribe to Defendant's
4 MP3DownloadCity service do not thereby obtain a license to
5 download copyrighted music, movies, or games.
6

7 **II.**

8 **IT IS FURTHER ORDERED** that Myricks and his successors, assigns,
9 officers, agents, servants, employees, and attorneys, and those persons or entities
10 in active concert or participation with him who receive actual notice of this Order
11 by personal service or otherwise, whether acting directly or through any
12 corporation, subsidiary, division, or other device, are hereby permanently
13 restrained and enjoined from misrepresenting, or assisting others in
14 misrepresenting, expressly or by implication, any fact material to a consumer's
15 decision to buy or accept any good or service.
16

17 **III.**

18 **CONSUMER REDRESS**

19 **IT IS FURTHER ORDERED** that:

20 A. Within thirty (30) days after entry of this order, Defendant shall
21 provide a full and complete refund to every consumer who purchased a
22 membership in MP3DownloadCity during the time period March 1, 2005 through
23 October 31, 2005. Defendant shall make such refund payments in the following
24 manner:

25 1. Defendant shall attempt to obtain a credit for each consumer on
26 the consumer's credit card, debit card, or Paypal account that
27 was used to purchase a membership in MP3DownloadCity;
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1 2. In the event that Defendant, despite reasonable efforts, is
2 unable to procure a credit on a consumer's credit card, debit
3 card, or Paypal account that was used to purchase a
4 membership in MP3DownloadCity, Defendant shall set aside
5 the refund amount into an account to be turned over to the
6 Commission;

7 B. Within sixty (60) days after entry of this Order, Defendant shall:

- 8 1. pay to the Commission all of the funds set aside in the account
9 required by Paragraph III.A.2 above; and
10 2. furnish to the Commission a list of the names and email
11 addresses of consumers whose debit, credit, or Paypal accounts
12 were credited pursuant to Paragraph III.A.1, as well as the
13 amount of each refund;

14 C. All funds paid to the Commission pursuant to Paragraph III.B shall be
15 deposited into a fund administered by the Commission or its agent to be used for
16 equitable relief, including but not limited to consumer redress and any attendant
17 expenses for the administration of any redress fund. In the event that direct
18 redress to consumers is wholly or partially impracticable or funds remain after
19 redress is completed, the Commission may apply any remaining funds for such
20 other equitable relief (including consumer information remedies) as it determines
21 to be reasonably related to the Defendant's practices alleged in the Complaint.
22 Any funds not used for such equitable relief shall be deposited to the Treasury as
23 disgorgement. The Commission shall have full and sole discretion to:

- 24 1. Determine the criteria for participation by individual claimants
25 in any consumer redress program implemented pursuant to this
26 Order;

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1 2. Determine the manner and timing of any notices to be given to
2 consumers regarding the existence and terms of such programs;
3 and

4 3. Delegate any and all tasks connected with such redress
5 program to any individual, partnerships, or corporations; and
6 pay reasonable fees, salaries, and expenses incurred thereby
7 from the payments made pursuant to this Order;

8 E. Myricks expressly waives his rights to litigate the issue of
9 disgorgement. Myricks acknowledges and agrees that all money paid pursuant to
10 this Order is irrevocably paid to the Commission for purposes of settlement
11 between Plaintiff and Myricks;

12 F. Myricks shall have no right to challenge the Commission's choice of
13 remedies under this Section; and

14 G. For purposes of this Section, and any subsequent proceedings to
15 enforce payment, including but not limited to a non-dischargeability complaint
16 filed in a bankruptcy proceeding, Myricks waives any right to contest any of the
17 allegations set forth in the Complaint filed in this matter.

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IV.

RELIANCE ON DISCLOSURES

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IT IS FURTHER ORDERED that:

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A. The Commission's agreement to this Order is expressly premised
upon the truthfulness, accuracy, and completeness of (1) data obtained from
Defendant's payment processor and provided by Myricks and (2) Myricks's
financial condition, as represented in Myricks's financial statements dated
November 7, 2005, including documents submitted by Myricks as listed in
Attachment A to this Order. Such data constitute material information relied upon
by the Commission in negotiating and agreeing to the terms of this Order.

1 B. If, upon motion by the Commission to the Court, the Court finds that
 2 Myricks made any material misrepresentation in or omitted material information
 3 from the data provided, or failed to disclose material information to the
 4 Commission, this matter shall be reopened to allow Plaintiff to show that
 5 additional relief, including but not limited to additional equitable monetary relief,
 6 consumer restitution, or disgorgement of ill-gotten gains should be entered against
 7 Defendant. Plaintiff shall have the right to engage in reasonable discovery for this
 8 purpose. Upon a sufficient showing by Plaintiff, the Court shall enter a revised
 9 Order against Defendant, which will become immediately due and payable, in
 10 addition to such other ancillary relief the Court deems proper.

11 C. In the event this matter is reopened pursuant to this Section IV,
 12 Defendant shall have no right to seek modification or abrogation of this Order, and
 13 all other Sections of this agreement and Order shall remain in full force and effect
 14 unless otherwise ordered by this Court.

15 D. Any proceedings instituted under this Section IV are in addition to,
 16 and not in lieu of, any other civil or criminal remedies as may be provided by law,
 17 including any other proceedings that the FTC may initiate to enforce this Order.

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V.

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REQUIRED NOTICE TO PURCHASERS

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IT IS FURTHER ORDERED that Defendant, within thirty (30) days of
 the date of entry of this Order, shall send by electronic mail, a copy of the notice
 attached hereto as Attachment B to each person who purchased Defendant's peer-
 to-peer file-sharing software services on or after March 1, 2005 through the date
 of this Order. The mailing shall not include any other information or documents.
 The costs of this mailing shall be borne by Defendant. Within ten (10) days after
 the date this mailing is completed, Defendant shall provide to the FTC a list of all

1 persons to whom Attachment B was sent, together with each person's electronic
2 mail address.

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4 **VI.**

5 **CUSTOMER LISTS**

6 **IT IS FURTHER ORDERED** that Defendant, in connection with any
7 business involved in the advertising, marketing, promotion, offer for sale, sale, or
8 distribution of any covered product or service, or where Defendant is a majority
9 owner of the business or directly or indirectly manages or controls such a business,
10 and his agents, employees, officers, corporations, successors, and assigns, and
11 those persons in active concert or participation with them who receive actual
12 notice of this Order by personal service or otherwise, are hereby restrained and
13 enjoined from selling, renting, leasing, transferring, or otherwise disclosing the
14 name, address, telephone number, electronic mail address, credit card number,
15 bank account number, or other identifying information of any person who paid any
16 money to Defendant, at an time prior to entry of this Order, in connection with the
17 advertising, promotion, offering for sale, sale, or distribution of any computer
18 software program or computer software program service, including any peer-to-
19 peer file-sharing software program or program service. Provided, however, that
20 such identifying information may be disclosed to a law enforcement agency or as
21 required by law, regulation, or court order.

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23 **VII.**

24 **ACKNOWLEDGMENT AND RECEIPT OF ORDER**

25 **IT IS FURTHER ORDERED** that within five (5) business days of receipt
26 of this Order as entered by the Court, Defendant shall execute and submit to the
27 Commission a truthful sworn statement, in the form shown as Attachment C,
28 acknowledging receipt of this Order.

1 **DISTRIBUTION OF ORDER BY DEFENDANT**

2 **VIII.**

3 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the
4 date of entry of this Order, Defendant shall deliver copies of the Order as directed
5 below:

6 **A. Defendant as Control Person:** For any business that Defendant
7 controls, directly or indirectly, or in which Defendant has a majority ownership
8 interest, Defendant must deliver a copy of this Order to all principals, officers,
9 directors, and managers of that business. Defendant must also deliver copies of
10 this Order to all employees, agents, and representatives of that business who
11 engage in conduct related to the subject matter of this Order. For current
12 personnel, delivery shall be within five (5) days of service of this Order upon
13 Defendant. For new personnel, delivery shall occur prior to them assuming their
14 position or responsibilities.

15 **B. Defendant as Employee or Non-Control Person:** For any business
16 where Defendant is not a controlling person of the business but otherwise engages
17 in conduct related to the subject matter of this Order, Defendant must deliver a
18 copy of this Order to all principals and managers of such business before engaging
19 in such conduct.

20 **C.** Defendant must secure a signed and dated statement acknowledging
21 receipt of the Order, within thirty (30) days of delivery, from all persons receiving
22 a copy of the Order pursuant to this Section.

23
24 **COMPLIANCE REPORTING**

25 **IX.**

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

28 **A.** For a period of three (3) years from the date of entry of this Order,

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1. Defendant shall notify the Commission of the following:
 - a. Any changes in residence, mailing addresses, and telephone numbers of the Defendant, within ten (10) days of such change;
 - b. Any changes in employment status (including self-employment) of the Defendant, and any change in the Defendant's ownership in any business entity, within ten (10) days of such change. Such notice shall include the name and address of each business that the 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 the Defendant's duties and responsibilities in connection with the business or employment; and
 - c. Any changes in the Defendant's name or use of any aliases or fictitious names; and
2. Defendant shall notify the Commission of any changes in corporate structure of any business entity that Defendant directly or indirectly control(s), or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, 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 the Defendant learns

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

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

- 9 1. The then-current residence addresses, mailing addresses, and
10 telephone numbers of Defendant;
- 11 2. The then-current employment and business addresses and
12 telephone numbers of Defendant; a description of the business
13 activities of each such employer or business, and the title and
14 responsibilities of the Defendant, for each such employer or
15 business; and
- 16 3. A copy of each acknowledgment of receipt of this Order
17 obtained pursuant to Section VIII.C; and
- 18 4. Any other changes required to be reported under Paragraph A
19 of this Section.

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

23 Associate Director for Enforcement
24 Federal Trade Commission
25 600 Pennsylvania Ave., NW, Washington, DC 20580
26 Re: FTC v. Cashier Myricks (C.D. Cal.)
27 Case No. CV-05-7013 CAS (FMOx)

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

COMPLIANCE MONITORING

X.

IT IS FURTHER ORDERED that, for the purposes of monitoring and investigating compliance with any provision of this Order:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendant shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45; and
2. Posing as consumers and suppliers to Myricks, his employees, or any other entity that he manages or control in whole or in part, without the necessity of identification or prior notice; and

C. Defendant shall permit representatives of the Commission to interview any employer, consultant, affiliate, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided however, that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

RECORD KEEPING PROVISIONS**XI.**

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendant, in connection with any business involved in the advertising, marketing, promotion, offer for sale, sale, or distribution of any covered product or service, or where Defendant is a majority owner of the business or directly or indirectly manages or controls such a business, and his agents, employees, officers, corporations, successors, 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;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

D. Complaints and refund requests (whether received directly, indirectly or through any third party), including but not limited to reports of adverse incidents claimed to be associated with the use of any covered product or service, and any responses to those complaints or requests;

E. Copies of all advertisements, promotional materials, sales scripts, training materials, websites, or other marketing materials utilized in the

1 advertising, marketing, promotion, offering for sale, sale, or distribution of any
2 covered product or service;

3 F. All materials that were relied upon in making any representations
4 contained in the materials identified in Paragraph E of this Section, including all
5 documents evidencing or referring to the accuracy of any claim therein or to the
6 efficacy of any covered product or service, including, but not limited to, all tests,
7 reports, studies, demonstrations, or other evidence that confirm, contradict,
8 qualify, or call into question the accuracy or efficacy of each such product or
9 service;

10 G. Copies of all contracts concerning the advertising, marketing,
11 promotion, offering for sale, sale, or distribution of any covered product or
12 service; and

13 H. All records and documents necessary to demonstrate full compliance
14 with each provision of the Order, including but not limited to, copies of
15 acknowledgments of receipt of this Order required by Section VIII.C and all
16 reports submitted to the FTC pursuant to this Order.

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RETENTION OF JURISDICTION

XII.

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

SO STIPULATED:

**PLAINTIFF:
FEDERAL TRADE COMMISSION**

Dated: March 16, 2006

Jennifer Brennan
Jennifer Brennan
Raymond E. Mckown
Matthew Daynard
Attorneys for Plaintiff

DEFENDANT:

Dated: March 16, 2006

Cashier Myricks Jr
Cashier Myricks Jr

SO ORDERED:

Dated: March 16, 2006

Christina A. Snyder
UNITED STATES DISTRICT JUDGE

ATTACHMENT A

1. Financial Statement of Individual Defendant, dated 12/7/05 and signed under penalty of perjury by Cashier Myricks Jr.
2. Copy of 2003 U.S. Individual Income Tax Return for Cashier Myricks Jr.
3. Business records obtained by Cashier Myricks Jr. from Clickbank, a division of Click Sales, Inc. and MP3DownloadCity's payment processor, dated 12/8/05 and reflecting all MP3DownloadCity.com sales and refund transactions from January 2005 through November 2005.

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ATTACHMENT C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

FEDERAL TRADE COMMISSION,
Plaintiff,
v.
CASHIER MYRICKS JR. d/b/a
MP3DOWNLOADCITY.COM,
Defendant.

Case No. CV-05-7013 CAS
(FMOx)

**AFFIDAVIT OF DEFENDANT
CASHIER MYRICKS JR.**

Cashier Myricks Jr., being duly sworn, hereby states and affirms:

1. My name is Cashier Myricks Jr. I live in Los Angeles, CA. I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am the defendant in FTC v. Cashier Myricks Jr. d/b/a MP3DownloadCity.com, Case No. CV-05-7013 CAS (FMOx), United States District Court for the Central District of California.)

3. On _____, 2006 I received a copy of the Stipulated Final Judgment and Order for Permanent Injunction and Other

1 Equitable Relief, which was signed by the Honorable Christina A. Snyder, United
2 States District Court Judge for the Central District of California and entered by the
3 Court on _____, 2006. A true and correct copy of the Order I received
4 is appended to this Affidavit.

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I declare under penalty of perjury under the laws of the United States that
the foregoing is true and correct. Executed on _____, 2006 at
_____, California.

Cashier Myricks Jr.

STATE OF _____
COUNTY OF _____

BEFORE ME this day personally appeared _____, who
being first duly sworn, deposes and says that he has received, read and
understands the foregoing statement and that he has executed the same for the
purposes contained therein.

SUBSCRIBED AND SWORN TO before me this _____ day of _____,
2006 by _____. He is personally
known to me or has presented (state identification)
_____ as identification.

(print name)
NOTARY PUBLIC
Commission Number
My Commission Expires: _____
Affix Seal