

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA, PHOENIX DIVISION**

Federal Trade Commission,)	
)	CV- No. 00-1210 PHX SMM
Plaintiff,)	
)	STIPULATED FINAL JUDGMENT
v.)	AND ORDER FOR PERMANENT
)	INJUNCTION AND OTHER
Simple Access, Inc.,)	EQUITABLE RELIEF
a corporation,)	AS TO SIMPLE ACCESS, INC.,
)	DIAL UP SERVICES, INC., AND
Dial Up Services, Inc.,)	ISP MARKETING, INC.
a corporation, dba Simple.Net;)	
)	
ISP Marketing, Inc.,)	
a corporation,)	
)	
Defendants.)	
)	

Plaintiff, Federal Trade Commission ("FTC" or "Commission"), having filed its Complaint for permanent injunction and other relief in this matter, pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a) and 53(b), and the parties having agreed to settle this action without adjudication or admission of any issue of fact or law, therefore, pursuant to stipulation of the parties, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter of this case and of the parties hereto.

2. Venue is proper as to all parties in the District of Arizona under 15 U.S.C.

§ 53(b), and 28 U.S.C. §§ 1391(b) and (c).

3. The alleged activities of Defendants (as “Defendants” are defined below) are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
4. The Complaint states a claim upon which relief may be granted against Defendants under Sections 5(a) and 13(b) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 53(b). There have been no findings or admissions of any wrongdoing by the Defendants.
5. The Commission has alleged that the Defendants are controlled by Gregory Crane, one of the Defendants named in the companion case, FTC v. YP.Net, Inc., et al, CV- No. 00-1210 PHX SMM. Both Crane and these Defendants deny that allegation. Nevertheless, Crane and Defendants stipulated to be bound by the Court’s July 14, 2000 Preliminary Injunction Order, and the Defendants have appeared in this action, agreed to waive service of process, and by and through their counsel, have agreed that the entry of this Order resolves all matters arising from the allegations of the Complaint in this action. This Order supersedes all prior Orders in this matter.
6. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order.
7. Entry of this Order is in the public interest.

ORDER

Definitions

1. **“Defendants”** means Simple Access, Inc.; Dial Up Services, Inc., dba Simple.Net; and ISP Marketing, Inc.
2. **“Document”** is equal in scope and synonymous in meaning to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and any other data compilations from which information can be obtained.
3. **“Internet”** means a worldwide system of linked computer networks that use a common protocol (TCP/IP) to deliver and receive information. The “Internet” includes, but is not limited to, the following forms of electronic communication: file transfers, electronic mail, the World Wide Web, newsgroups, Internet Relay Chat, audio, and video.
4. **“LEC” or “local exchange carrier”** means the local telephone company from which a consumer or entity receives its telephone bill.
5. **“Solicitation check”** means any check that, if deposited or cashed by the consumer, signs the consumer up for any goods or services sold by Defendants.
6. **“Web site”** is a set of electronic documents, usually a home page and subordinate pages, readily viewable on computer by anyone with access to

the Internet, standard software, and knowledge of the web site's location or address.

7. **“Web page”** is a single electronic file or document displayed on the World Wide Web that includes at least the following elements: copy, graphics, layout, and internal technical design.
8. **“Internet-related Services”** means any product or service that assists persons to access, use, browse, advertise on, communicate through, or do business on the Internet, including, but not limited to: design, hosting and maintenance of web pages and web sites, providing Internet access or e-mail accounts, and establishing domain names and virtual domain names.
9. **“Receiver”** means the former Temporary Receiver, Lawrence J. Warfield, and his authorized representatives, agents and assistants.

PROHIBITED CONDUCT

I.

INJUNCTION AGAINST MISREPRESENTATIONS

IT IS THEREFORE ORDERED that, in connection with the advertising, promotion, offering for sale, sale or provision of any goods or service, Defendants are hereby permanently restrained and enjoined from making or assisting in the making of, expressly or by implication, orally or in writing, any false or misleading statement or representation of material fact, including, but not limited

to, representations that:

- A. A solicitation check is a refund, rebate, receivable, or other payment for services based on a prior or ongoing business relationship;
- B. Consumers can obtain a monetary rebate from Defendants without incurring any obligations to Defendants; and
- C. Defendants have a prior or ongoing business relationship with consumers.

II.

REQUIRED DISCLOSURES

IT IS FURTHER ORDERED that in connection with the advertising, promotion, offering for sale, sale or provision of any goods or service, Defendants are permanently restrained and enjoined from failing to disclose, clearly and conspicuously:

- A. On the front of any solicitation check, or on the front of any stub attached to the check, a statement that notifies the payee that the check is part of a “solicitation” or that by cashing the check, the payee will become obligated to pay for a good or service;
- B. On the back of the solicitation check, and above the endorsement line, a statement that notifies the payee of the amount and frequency of the charge that Defendants will impose if the payee deposits or endorses the check; and
- C. In a letter or statement attached to or enclosed with the solicitation check,

all the material terms associated with depositing or endorsing the solicitation check, including: 1) a statement that Defendants will impose a charge if the payee deposits or endorses the check; 2) the amount, billing method, and frequency of the charge; 3) a description of the goods or services provided for the charge; and 4) an explanation of how to cancel and obtain a full refund within ninety (90) days of depositing the check, including a customer service telephone number for inquiries and/or cancellations.

III.

REQUIRED CONFIRMATIONS AND CANCELLATIONS

IT IS FURTHER ORDERED that Defendants shall send all consumers who deposit solicitation checks from Defendants after the date of this Order, a written communication, sent by mail, confirming their agreement to purchase Defendants' services. Defendants shall send this communication within sixty (60) days after the date that a consumer deposited the solicitation check. The communication shall clearly and conspicuously state: 1) the good or service purchased; the billing method and price; 3) the procedures for cancelling and obtaining a full refund within ninety (90) days of depositing the solicitation check; and 4) information on how to access Defendants' services.

IV.

CUSTOMER NOTICES

IT IS FURTHER ORDERED that:

A. Defendants shall, within thirty (30) days of the entry of this Order, mail a written notice to all customers, not previously notified pursuant to the Preliminary Injunction, that purportedly signed up for Defendants' services by cashing a solicitation check sent by Defendants before the date of this Order.

B. The notice described in Paragraph (A), above, shall clearly and conspicuously notify the consumers that: 1) they are signed up for Defendants' Internet access services; and 2) they have a right to cancel and receive a full refund for any charges incurred through the date of the notice, or within ninety (90) days of depositing the solicitation check, whichever is later. The notice must also detail the procedures for cancelling and obtaining a full refund for any incurred charges.

GENERAL REQUIREMENTS

V.

Acknowledgment of Receipt of Order by Defendants

IT IS FURTHER ORDERED that, within five (5) business days after receipt by Defendants of this Order as entered by the Court, each Defendant shall submit to the Commission a truthful sworn statement, in the form appended as Attachment A to this Order, that shall acknowledge receipt of this Final Order.

VI.

Distribution of Order by Defendants

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, each Defendant shall:

A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt, or proof of service, from each officer and director, and each individual serving in a management capacity, whether designated as employees, consultants, independent contractors, or otherwise, immediately upon employing or retaining any such persons, for any business where:

(1) A Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where

(2) The business uses solicitation checks; and

B. Maintain and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt, or proof of service, of copies of this Order, as required in Subsection (A) of this Paragraph.

VII.

Record Keeping Provisions

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, Defendants, in connection with any business where:

(1) A Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where

(2) The business uses solicitation checks

are hereby restrained and enjoined from failing to create, and from failing to retain for a period of three (3) years following the date of such creation, unless otherwise specified:

A. Books, records, and accounts that, in reasonable detail, accurately and fairly reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Records accurately reflecting: the name, address, and telephone number of each person employed by such business, including independent contractors; 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. The businesses subject to this Paragraph shall retain such records for any terminated employee for a period of two (2) years following the date of termination;

C. Records containing the names, addresses, phone numbers, dollar amounts paid, quantity of items and services purchased, and description of the items and services purchased, for all consumers to whom such business sold, invoiced, or shipped any goods and services;

D. Records that reflect, for every consumer complaint or refund request received:

1. The consumer's name, street address, telephone number, and dollar amount paid by the consumer;

2. The complaint or refund request, if any, and the date of the complaint or refund request;
3. The basis of the complaint, if any, including the name of any salesperson complained against, and the nature and result of any investigation conducted concerning the complaint;
4. Each response by Defendant and the date of the response;
5. Any final resolution and the date of the resolution; and
6. In the event of a denial of a refund request, the reason for the denial;
and

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials used by Defendants; *provided* that copies of all sales scripts, training materials, advertisements, or other marketing materials utilized shall be retained for three (3) years after the last date of dissemination of any such materials.

VIII.

Compliance Reporting by Defendants

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

A. For a period of three (3) years from the date of entry of this Order, each Defendant shall notify the Commission of the following:

1. Any changes in Defendant's business address, mailing addresses, and telephone numbers, within twenty (20) days of the date of such change;
2. Any changes in the employment status (including self-employment) of any individual Defendant, within ten (10) days of such change. Such notice shall include the name and address of each business that the individual Defendant is employed by, or operates, a statement of the nature of the business, and a statement of the individual Defendant's duties and responsibilities in connection with the business or employment;
3. Any change in the structure of each Defendant, such as creation, incorporation, dissolution, assignment, sale, merger, dissolution of subsidiaries, filing of a bankruptcy petition, or change in the corporate name or address, or any other change that may affect compliance obligations arising out of this Order, within thirty (30) days of the effective date of any change;

B. Within one hundred eighty (180) days after the date of entry of this Order, each Defendant shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which it has complied and is complying with this Order. This report shall include, but not be limited to:

1. Each individual Defendant's then current employment and business

address, mailing addresses, and telephone numbers; the individual Defendant's title and responsibilities for each such employer or business;

2. Each corporate Defendant's then current business addresses and telephone numbers, a description of the business activities of each such employer or business, including a description of its marketing methods and goods and services sold, and a list of the names of all current officers and managers;

3. A copy of each acknowledgment of receipt of this Order obtained by each Defendant pursuant to Section VI of this Order;

4. A statement describing the manner in which each Defendant has complied and is complying with this Order;

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

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

Associate Director
Division of Marketing Practices
Federal Trade Commission, Room 238
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: FTC v. Simple.Net, et al.

E. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with Defendants unless or until a Defendant informs the Commission that the Defendant is represented by counsel and would prefer that the Commission communicate directly with the Defendant's counsel.

IX.

Commission's Authority to Monitor Compliance

IT IS FURTHER ORDERED that the Commission is authorized to monitor Defendants' compliance with this Order by all lawful means, including, but not limited to, the following:

- A. For a period of three (3) years from the date of entry of this Order, the Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-37, and the Local Rules of this Court, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring Defendants' compliance with any provision of this Order;
- B. The Commission is authorized to use representatives posing as consumers or suppliers to Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part by Defendants, without the necessity of identification or prior notice, as allowed by federal law; and

C. 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 and 57b-1, to determine whether Defendants have violated any provision of this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

X.

Access to Business Premises

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

A. Access during normal business hours to any office, or facility storing documents, of any business where:

- (1) A Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where
- (2) The business uses solicitation checks.

In providing such access, Defendants shall permit representatives of the Commission to inspect and copy all unprivileged documents relevant to any matter contained in this Order; and shall permit Commission representatives to remove such documents relevant to any matter contained in this Order for a period not to exceed two (2) business days so that the documents may be inspected, inventoried, and copied; and

B. To interview the owners, officers, directors, and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which Subsection (A) of this Paragraph applies, concerning matters relating to compliance with the terms of this Order. The person interviewed may have counsel present, and counsel for Defendants may be present as well.

XI.

RETURN OF DOCUMENTS

IT IS FURTHER ORDERED that the Receiver shall return to Defendants all documents removed from Defendants' premises, and any copies thereof.

XII.

COSTS

IT IS FURTHER ORDERED that each party shall bear its own costs and attorneys' fees incurred in connection with this action.

XIII.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the purpose of enabling the parties to apply to the Court at any time

for such further orders and directives as may be necessary or appropriate for the interpretation or modification of this Order, for the enforcement of compliance therewith, or for the punishment of violations thereof.

XIV.

COMPLETE SETTLEMENT

The parties hereby consent to entry of the foregoing Order which shall constitute a final judgment and order in this matter. The parties further stipulate and agree that the entry of the foregoing Order shall constitute a full, complete and final settlement of this action. Defendants waive any rights they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412.

SO ORDERED, this _____ day of _____, 2000, at _____

United States District Judge

FOR DEFENDANTS

DeVal Johnson
President
for Defendant Simple.Net

FOR THE COMMISSION

Tracey L. Brown
Michael P. Mora
Attorneys for the Plaintiff

Joseph McDaniel
Counsel for Defendant Simple.Net

DeVal Johnson
President
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DeVal Johnson
President
for Defendant ISP Marketing, Inc.

Joseph McDaniel
Counsel for Defendant ISP Marketing, Inc.

ATTACHMENT A

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA, PHOENIX DIVISION

_____)
Federal Trade Commission,)
) CV- No.
)
Plaintiff,)
) **DECLARATION OF**
) **DEFENDANT**
)
v.)
)
Simple.Net,)
a joint venture)
)
Simple Access, Inc.,)
a corporation;)
)
Dial Up Services, Inc.,)
a corporation,)
)
ISP Marketing, Inc.,)
a corporation;)
Defendants.)
_____)

I, _____, hereby state and affirm as follows:
[Name]

1. My name is _____, and I am an
officer of _____, a defendant in FTC v.
[Name of Corporate Defendant]

Simple.Net, et al., which has been filed in the District of Arizona.

2. On _____, I received a copy of the Order, which

was signed by the Honorable _____ and entered by the
Court on _____ 2001.

A true and correct copy of the Order I received is appended to this Declaration.

I declare under penalty of perjury under the laws of the United States that
the foregoing is true and correct.

[Signature]