

8/15/01



**FILED**

AUG 15 2001

LARRY W. PROPE, CLERK  
CHARLESTON, SC

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

**FEDERAL TRADE COMMISSION,**  
  
**Plaintiff,**  
  
v.  
  
**HILLARY SHEINKIN,**  
**a/k/a Hillary Perse, a/k/a Honey Smith,**  
**d/b/a Witchy's Web, Inc., Honeybun, Inc.,**  
**Free Sugar, Inc.,**  
  
**Defendant.**

**Civil Action No. 2-00-3636 18**

**STIPULATED FINAL  
ORDER FOR PERMANENT  
INJUNCTION AND  
JUDGMENT**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), has filed its complaint for permanent injunction and other relief pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging Defendant Hillary Sheinkin, a/k/a Hillary Perse, a/k/a Honey Smith, d/b/a Witchy's Web, Inc., Honeybun, Inc, and Free Sugar, Inc., with violating Section 5 of the FTC Act.

The parties have agreed to the entry of this Stipulated Final Order for Permanent Injunction and Judgment ("Order") by this Court to resolve all matters of dispute between them in this action. THEREFORE, on the joint motion of Plaintiff and Defendant, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:



## FINDINGS

- A. This Court has jurisdiction over the subject matter and the parties.
- B. Venue is proper as to all parties in the District of South Carolina.
- C. Defendant has been properly served.
- D. The Complaint states a claim upon which relief may be granted against Defendant under §§ 5(a)(1) and 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a)(1) and 53(b).
- E. The activities of Defendant are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
- F. Entry of this Order is in the public interest.
- G. Defendant has waived any and all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, *amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).
- H. Plaintiff and Defendant, by and through their counsel, have agreed that the entry of this Order resolves all matters of dispute between them arising from the Complaint in this action, up to the date of entry of this Order.
- I. Plaintiff and Defendant waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Defendant further waives and releases any claim she may have against the Commission, its employees, agents, or representatives.
- J. This Order is for settlement purposes only and does not constitute and shall not be interpreted to constitute an admission by Defendant that she has engaged in violations of any law or regulations including but not limited to the Federal Trade Commission Act, or that the facts alleged in the Complaint, other than the jurisdictional facts, are true.

## ORDER

### Definitions

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

1. "Local Exchange Carrier" or "LEC" means the local telephone company from which a line-subscriber receives his or her telephone bill.
2. "Line-subscriber" means an individual or entity who has arranged with a LEC to obtain local telephone service provided through an assigned telephone number, and to be billed for such service on a monthly (or other periodic) basis.
3. "Dialer program" means any computer program, software, or executable file that results, directly or indirectly, in a telephone line-subscriber being charged for any product or service through the line-subscriber's telephone bill, unless Defendant has obtained from the line-subscriber express, verifiable authorization for the charge.
4. "Defendant" includes, but is not limited to, Defendant's use of the aliases "Hillary Perse" and "Honey Smith" and the following names under which Defendant does business, "Honeybun, Inc.," "Free Sugar, Inc.," and "Witchy's Web."
5. "Telephone bill" means an invoice or other demand for payment related to a telephone number or numbers, whether sent or made by a LEC or by any other source.
6. "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: electronic mail, the World Wide Web, newsgroups, Internet Relay Chat, and file transfer protocols.

7. A "Web site" is a set of electronic documents, usually a home page and subordinate pages, readily viewable on a computer by anyone with access to the Internet, standard software, and knowledge of the Web site's location or address.

**I.**  
**Conduct Prohibitions**

**IT IS THEREFORE ORDERED** that Defendant, and her assigns, agents, servants, employees, salespersons, corporations, all other persons or entities directly or indirectly under her control, and all other persons or entities in active concert or participation with her, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby restrained and enjoined from sending, or causing to be sent, any telephone bill or any portion thereof to any telephone line-subscriber for any product or service without first obtaining express, verifiable authorization that the telephone line-subscriber being charged has agreed to be charged for the product or service in the amount and in the manner set forth in the bill which Defendant has sent or caused to be sent to that line-subscriber.

**II.**

**IT IS FURTHER ORDERED** that Defendant, and her assigns, agents, servants, employees, salespersons, corporations, all other persons or entities directly or indirectly under her control, and all other persons or entities in active concert or participation with her, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby restrained and enjoined from advertising, promoting, offering for sale, selling or providing, directly or in concert with others, individually or through any business entity or other device, any dialer program.

### III.

**IT IS FURTHER ORDERED** that Defendant, and her assigns, agents, servants, employees, salespersons, corporations, all other persons or entities directly or indirectly under her control, and all other persons or entities in active concert or participation with her, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are restrained and enjoined from making or assisting in the making of, expressly or by implication, directly or indirectly, orally or in writing, any false or misleading statement or any misrepresentations of material fact during the advertisement, promotion, offering for sale, sale or provision of any product or service on the Internet, including but not limited to:

- A. Misrepresentations that photographic, video or other images or text will be provided for “free”;
- B. Misrepresentations that Internet “chat” services, or other similar services, will be provided for “free”;
- C. Representations that computer programs, software, executable files or other devices are “free” when such computer programs, software, executable files or other devices, when used, may result in a charge to a consumer or to any telephone line-subscriber unless the charge or potential charge for use of such device is disclosed in a clear and conspicuous manner adjacent to any representation that the device itself is free;

- D. Representations that a telephone line-subscriber is liable for payment for a telephone call to an international destination when all or a portion of the charge relates to the provision of entertainment or information services; or
- E. Representations that consumers are legally obligated to pay for goods or services that the consumer or the consumer's agent did not authorize.

**IV.**

**IT IS FURTHER ORDERED** that Defendant, and her assigns, agents, servants, employees, salespersons, corporations, all other persons or entities directly or indirectly under her control, and all other persons or entities in active concert or participation with her who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are restrained and enjoined from:

- A. Operating a Web site unless the publicly available registration information for such Web site lists her legal name or the name of a legal entity under her control as the "registrant" for such Web site's domain name; and
- B. Representing to the public that Defendant is operating through a corporation unless such corporation is legally incorporated and in good standing.

V.

**Monetary Judgment and Redress**

**IT IS FURTHER ORDERED** that:

A. Defendant hereby waives all claims to, and assigns to the Commission all her rights, title and interest in, all funds contained in the account that is listed in the May 9, 2001 Declaration of Hillary Sheinkin (Attachment A to this Order). The funds contained in the account described in Attachment A are hereby deemed the property of the Federal Trade Commission, and shall be released to the FTC forthwith. The asset freeze instituted by this Court's Stipulated Preliminary Injunction is hereby lifted.

B. All funds paid pursuant to this Section shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. If the Commission determines, in its sole discretion, that redress to purchasers is wholly or partially impracticable, any funds not so used shall be paid to the United States Treasury as disgorgement. Defendant shall have no right to contest the manner of distribution chosen by the Commission. The Commission, in its sole discretion, may use a designated agent to administer consumer redress.

C. The Commission's agreement to this Order, requiring that the Defendant be liable for less than the full amount of consumer injury, is expressly premised upon the truthfulness, accuracy and completeness of the Defendant's May 9, 2001 Declaration regarding compliance with the Stipulated Preliminary Injunction(Attachment A), and Individual Financial Statement, and related documents, dated December 12, 2000 and provided by Defendant to the Commission. Such documents contain material information upon which the Commission relied in negotiating

and agreeing to this Order. If, upon motion by the Commission, this Court finds that Defendant has failed to disclose any material asset or materially misstated the value of any asset in the financial statements and related documents described above, or has made any other material misstatement or omission in the financial statements and related documents described above, the Court shall enter judgment in the amount of \$100,000 (representing the total amount of consumer redress that Plaintiff could obtain at trial) against such Defendant. For the purposes of this Section, the Defendant waives any right to contest any of the allegations in the Complaint filed in this action.

D. Defendant shall cooperate fully with the Commission and its agents in all attempts to collect the amount due pursuant to Section V. Defendant further authorizes the Commission to verify all information provided on her financial disclosure forms with all appropriate third parties, including but not limited to financial institutions.

E. In accordance with 31 U.S.C. § 7701, the Defendant is hereby required, unless she has done so already, to furnish to the FTC taxpayer identifying numbers (social security number or employer identification number) which shall be used for purposes of collecting and reporting on any delinquent amount arising out of the Defendant's relationship with the government.

F. Defendant agrees that the facts as alleged in the Complaint filed in this action shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy proceeding.



G. Proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

**VI.**  
**Cooperation with the Commission**

**IT IS FURTHER ORDERED** that Defendant shall cooperate fully, truthfully, and completely with the Commission in its ongoing investigation of deceptive and unfair billing practices substantially similar to those described in the complaint filed herein. This cooperation includes, but is not limited to, meeting with Commission investigators and attorneys, assisting in the preparation of testimony, producing Defendant's business and financial records relevant to the business activities described in the complaint filed in this matter, and testifying fully, truthfully, and completely at any investigational hearing, deposition, hearing or trial related to this investigation, if called upon to do so, without the necessity of service of process upon her.

Nothing contained in this Order shall limit the Commission from seeking modification of this Order should counsel for the Commission determine that Defendant has not complied with any provision of this Order.

**VII.**  
**General Requirements**

**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, Defendant shall notify the Commission of any changes in Defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;

B. Upon written request by a representative of the Commission, 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;

C. For the purposes of this Order, 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  
600 Pennsylvania Avenue  
Room H-238  
Washington, DC 20580

and,

F. For purposes of the compliance reporting required by this Section, the Commission is authorized to communicate directly with Defendant.

#### VIII.

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

A. The Commission is authorized for a period of three (3) years from the date of entry of this Order, 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 - 34 and 36 - 37, and the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating Defendant's compliance with any provision of this Order;

B. The Commission is authorized to use representatives posing as consumers or suppliers to: Defendant, Defendant's employees, or any other entity managed or controlled in whole or in part by defendant, without the necessity of identification or prior notice; 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, 57b-1, to investigate whether Defendant has violated any provision of this Order, or Section 5 of the FTC Act, 15 U.S.C. § 45.

### IX.

**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, Defendant shall permit representatives of the Commission, within five (5) 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) Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business is engaged in the advertising, promotion, offering for sale, sale or provision of any goods or services on the Internet, or in assisting others engaged in such business. In providing such access, Defendant shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Order, and shall either make arrangements for immediate copying of documents by Commission representative on the premises or permit Commission representatives to remove 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 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 sub-Paragraph A, above, applies, concerning matters relating to compliance with the terms of this Order. The person interviewed may have counsel present.

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

**X.**

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

A. For any business where (1) Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business is engaged in the advertising, promotion, offering for sale, sale or provision of any goods or services on the Internet that result in a charge on a telephone bill, or in assisting others engaged in such business, provide a copy of this Order, and obtain a signed and dated acknowledgment of receipt of same from each officer or director, each individual serving as a manager or supervisor, and all present personnel, whether designated as employees, consultants, independent contractors or otherwise, and immediately upon employing or retaining any such persons, involved in a) responding to consumer complaints or inquiries, and b) sales; and

B. Maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Order, as required in sub-Paragraph A, above.

**XI.**

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

**XII.**

**Record-keeping Provisions**

**IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of this Order, in connection with any business that Defendant directly or indirectly manages, controls or has a majority ownership interest in, that is engaged in the advertisement, promotion, offering for sale, sale or provision of any product or service on the Internet, or assisting others engaged in these activities, Defendant, and her assigns, agents, servants, employees, salespersons, corporations, all other persons or entities directly or indirectly under her control, and all other persons or entities in active concert or participation with her, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby restrained and enjoined from failing to create and maintain for a period of three (3) years following the date of their 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 containing the name, address, telephone number and social security number of each person employed by any Defendant in any capacity, 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; *provided, however*, that the businesses subject to this requirement shall retain such records during the employment of any person, and for a period of two (2) years after the date of their termination; and

C. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized, including copies of all web sites and web pages, which shall be retained for three (3) years after the last date of their dissemination or use.

**XIII.**

**IT IS FURTHER ORDERED** that this Court will retain jurisdiction of this matter for the purpose of enabling any of the parties to this Order to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Order, for the enforcement of compliance therewith or the punishment of violations thereof.

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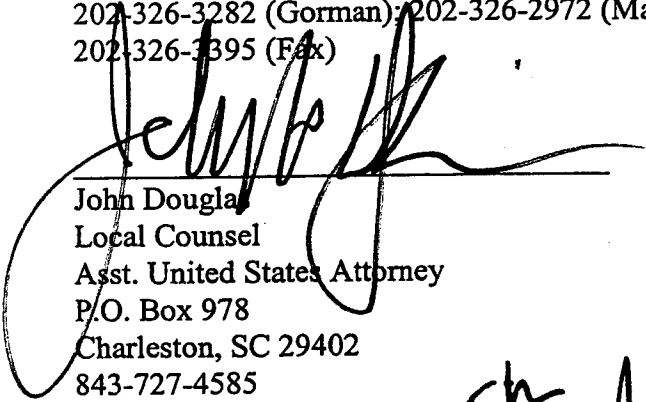
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The parties, by their respective counsel or *pro se*, hereby consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof.

**FOR THE COMMISSION**

  
Frank Gorman  
April Major  
Federal Trade Commission, Room 238  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580  
202-326-3282 (Gorman); 202-326-2972 (Major);  
202-326-3395 (Fax)

  
John Douglas  
Local Counsel  
Asst. United States Attorney  
P.O. Box 978  
Charleston, SC 29402  
843-727-4585

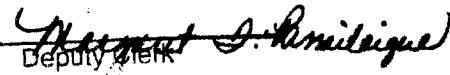
**FOR DEFENDANT**

  
Hillary Sheinkin, *Pro Se*  
~~131 Alwyn Boulevard~~ 107 UNDERWOOD CT  
~~Ladson, SC 29456~~ GOOSE CREEK, SC  
843-824-2048 29445

SO ORDERED, this 15<sup>th</sup> day of August, 2001, at Charleston, South Carolina.

  
The Honorable David C. Norton  
United States District Judge

A TRUE COPY  
Attest: Larry W. Propes, Clerk

By:   
Deputy Clerk

ATTACHMENT A


Declaration of Hillary Sheinkin Pursuant to 28 U.S.C. § 1746

A. My name is Hillary Sheinkin. I am over 18 years of age.

B. I have complied with the terms of the Stipulated Order for Preliminary Injunction dated December 12, 2000.

- (i) Acct. No. \_\_\_\_\_ was established at Navy Federal Credit Union  
Telephone # 800-914-9494
- (ii) That as of November 12, 2000 all funds received in connection with the use of dialer programs referred to in the stipulated order have been placed in Acct. No. \_\_\_\_\_
- (iii) That I have not made any withdrawals from that account since inception.
- (iv) That I hereby assign a transfer for all rights, title and interest I may have in the funds held in said account to the U.S. Federal Trade Commission.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this 9th day of May, 2001 in North Charleston, South Carolina.

  
Hillary Sheinkin