

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	Case No. 04C 3022
v.)	
)	Judge Marvin E. Aspen
GLOBAL WEB PROMOTIONS PTY LTD.,)	
)	Magistrate Judge Sidney I. Schenkier
MICHAEL JOHN ANTHONY VAN ESSEN, and)	
)	
LANCE THOMAS ATKINSON,)	
)	
Defendants.)	
)	

**DEFAULT JUDGMENT AND ORDER FOR PERMANENT INJUNCTION AND
MONETARY RELIEF AS TO DEFENDANTS GLOBAL WEB PROMOTIONS PTY
LTD., MICHAEL JOHN ANTHONY VAN ESSEN AND LANCE THOMAS ATKINSON**

On April 28, 2004, Plaintiff Federal Trade Commission (“Commission” or “FTC”), pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (“CAN-SPAM”), 15 U.S.C. § 7706(a), filed a Complaint for Injunctive and Other Equitable Relief against Defendants Global Web Promotions Pty Ltd. (“GWP”), Michael John Anthony Van Essen (“Van Essen”) and Lance Atkinson (“Atkinson”).

All of the Defendants were properly served in Australia with the Complaint and a copy of the summons. Defendants Van Essen and Atkinson did not appear in this action. Defendant GWP appeared in this action through counsel, but, on May 19, 2005, the Court granted the motion of GWP’s counsel to withdraw.

On August 26, 2004, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, the Court entered a default against Defendants Van Essen and Atkinson. On May 19, 2005, upon counsel for Defendant GWP's withdrawal from this matter, the Court entered a default against GWP.

The FTC now has moved for entry of a default judgment on all counts of the Complaint against Defendants GWP, Van Essen and Atkinson, pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure. The FTC's Motion for Entry of Default Judgment Against Defendants is hereby granted, and **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and the parties hereto.
2. Venue and service of process are proper.
3. Defendants have engaged in activities in or affecting commerce, as "commerce" is defined in 15 U.S.C. § 44.
4. This action was instituted by the FTC under Sections 5, 12, 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45, 52, 53(b), 57b and CAN-SPAM, 15 U.S.C. § 7706(a). The Commission seeks permanent injunctive relief and monetary and other equitable relief for deceptive acts or practices by Defendants in connection with the sale of diet patches and human growth hormone ("HGH") products and the initiation of commercial e-mail messages in violation of CAN-SPAM. Pursuant to Sections 13(b) and 19, 15 U.S.C. §§ 53(b) and 57b, the FTC has the authority to seek the relief it has requested.

5. The Complaint states a claim upon which relief may be granted against Defendants under Sections 5, 12, 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45, 52, 53(b) and 57b.

6. Defendants were served with the Complaint and Summons as required by Rule 4(f) and 4(h) of the Federal Rules of Civil Procedure.

7. Defendant GWP was served by registered mail by the Clerk's Office for the Northern District of Illinois pursuant to Rule 4(f)(2)(C)(ii). On May 19, 2004, the Clerk's Office for the Northern District of Illinois received a return of the registered mail receipt of the summons issued as to GWP. On May 4, 2004, the registered agent for Defendant GWP was also served in Australia with copies of the summons, complaint and other documents relevant to this case.

8. On May 10, 2004, Defendant Van Essen was personally served in Australia with copies of the summons, complaint and other documents relevant to this case. On May 20, 2004, the Clerk's Office for the Northern District of Illinois additionally received a return of the registered mail receipt of the summons issued as to Van Essen pursuant to Rule 4(f)(2)(C)(ii). The receipt was executed by Van Essen on May 11, 2004.

9. On May 20, 2004, Defendant Atkinson was personally served in Australia with copies of the summons, complaint and other documents relevant to this case.

10. Defendants Van Essen and Atkinson failed to file an answer to the Complaint within the time set forth by Rule 12(a) of the Federal Rules of Civil Procedure, or to otherwise defend this action.

11. Default was entered against Defendants Van Essen and Atkinson on August 26, 2004. The FTC is therefore entitled to a default judgment pursuant to Rule 55(b) of the Federal Rules of Civil Procedure.

12. Defendant GWP appeared in this matter through counsel. On July 28, 2004, GWP filed its answer to the FTC's Complaint. Thereafter, on April 4, 2005, counsel for the GWP moved to withdraw. The Court granted the motion of GWP's counsel to withdraw on May 19, 2005.

13. Default was entered against Defendant GWP on May 19, 2005. The FTC is therefore entitled to a default judgment pursuant to Rule 55(b) of the Federal Rules of Civil Procedure.

14. The Court now finds that, in connection with the advertising, marketing and sale of diet patches, Defendants violated Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, by falsely representing, expressly or by implication, that their diet patches:

- (A) cause substantial weight loss, including as much as six pounds per week;
- (B) increase metabolism, decrease appetite, and reduce food cravings, thereby enabling users to lose substantial weight; and/or
- (C) cause permanent weight loss.

15. The Court further finds that, in connection with the advertising, marketing and sale of diet patches, Defendants violated Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, by making representations, expressly or by implication, that their diet patches enable users to lose substantial weight, cause permanent weight loss, work for all users, and reduce

cholesterol levels when Defendants did not possess and rely upon a reasonable basis that substantiated the representations.

16. The Court further finds that, in connection with the advertising, marketing, and sale of HGH products, Defendants violated Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, by falsely representing, expressly or by implication, that their HGH products:

- (A) contain a form of Human Growth Hormone and/or produce effects similar in nature to any form of Human Growth Hormone;
- (B) will turn back or reverse the aging process, including, but not limited to, causing such effects as: (i) lower blood pressure, (ii) cellulite reduction, (iii) improved vision, (iv) new hair growth and hair color restoration, (v) improved sleep, (vi) emotional stability, and (vii) increased sexual potency and frequency; and/or
- (C) can maintain a user's appearance and biological age for 10-20 years.

17. The Court further finds that, in connection with the advertising, marketing, and sale of HGH products, Defendants violated Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, by making representations, expressly or by implication, that their HGH products:

- (A) produce effects similar in nature to a form of Human Growth Hormone;
- (B) will turn back or reverse the aging process, including, but not limited to, causing such effects as: (i) lower blood pressure, (ii) cellulite reduction, (iii) improved vision, (iv) new hair growth and hair color restoration, (v) improved sleep, (vi) emotional stability, and (vii) increased sexual potency and frequency; and/or

(C) can maintain a user's appearance and biological age for 10-20 years, when Defendants did not possess and rely upon a reasonable basis that substantiated the representations.

18. The Court further finds that in numerous instances, Defendants have initiated the transmission, to protected computers, of commercial e-mail messages that contained, or were accompanied by, header information that is materially false or materially misleading in violation of Section 5(a)(1) of CAN-SPAM, 15 U.S.C. § 7704(a)(1).

19. The Court further finds that in numerous instances, Defendants have initiated the transmission of commercial e-mail messages to protected computers that fail to provide:

(A) clear and conspicuous notice of the opportunity to decline to receive further commercial electronic mail messages from the sender; and/or

(B) a valid physical postal address of the sender,

in violation of Section 5(a)(5)(A) of CAN-SPAM, 15 U.S.C. § 7704(a)(5)(A).

20. The Court further finds that Defendant Van Essen is a director of GWP, and Defendant Atkinson is a shareholder of GWP. Defendants Van Essen and Atkinson formulated, directed, controlled or participated in the acts or practices set forth above. Defendants are thus individually liable for the violations attributed to them as described above. *See FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 573-74 (7th Cir. 1989).

21. It is proper in this case to issue a permanent injunction prohibiting Defendants from making, or assisting in making, false or misleading statements or representations with the advertising, marketing, offering for sale, or sale of any good or service, or from further violations

of CAN-SPAM. *See FTC v. Febre*, 128 F.3d 530, 534 (7th Cir. 1997); *Amy Travel*, 875 F.2d at 572.

22. It is proper in this case to enter a monetary judgment against Defendants for restitution for consumer injury caused by Defendants' violations of the FTC Act for the deceptive sale of diet patches and HGH products. *See Febre*, 128 F.3d at 534 (court may "order repayment of money for consumer redress as restitution or rescission"). The Court finds that the total amount of consumer injury for the sales of diet patches and HGH products is \$490,280.

23. It is proper in this case to enter a monetary judgment against Defendants for equitable disgorgement of ill-gotten gain causally connected to Defendants' violations of the CAN-SPAM Act. *See Febre*, 128 F.3d at 534 (court may order disgorgement of ill-gotten gains to "prevent[] the defendant from being unjustly enriched by the fraud"). The Court finds that the total amount of ill-gotten gains caused by Defendants' violations of the CAN-SPAM Act is \$1,700,982.74.

24. Entry of this Order is in the public interest.

DEFINITIONS

1. **"Affirmative Consent"** with respect to a commercial email message, means that "the recipient expressly consented to receive the message, either in response to a clear and conspicuous request for such consent or at the recipient's own initiative;" and "if the message is from a party other than the party to which the recipient communicated such consent, the recipient was given clear and conspicuous notice at the time the consent was communicated that the recipient's electronic mail address could be transferred to such other party for the purposes of initiating commercial electronic mail messages." 15 U.S.C. § 7702(1).

2. **“Assisting others”** means: (1) performing customer service functions including, but not limited to, receiving or responding to consumer complaints, receiving identifying and financial information from consumers, and communicating with consumers; (2) developing, providing, or arranging for the development or provision of marketing materials, including, but not limited to, Web site and commercial electronic message content; (3) providing names of, or arranging for the provision of, names of potential customers; (4) performing marketing services of any kind; or (5) acting as an officer or director of a business entity.

3. **“Clear and conspicuous”** or **“clearly and conspicuously”** with regard to the display of a notice means that the information shall be presented in writing, in a type size, color, and location sufficient for an ordinary consumer to read and comprehend it, and shall be disclosed in a manner that would be easily recognizable and understandable in language and syntax to an ordinary consumer. If the information is contained in a multi-page print document, the disclosure shall appear on the first page.

4. **“Commercial electronic mail message”** (or **“commercial email”**) “means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website for a commercial purpose).” 15 U.S.C. § 7702(2)(A).

5. **“Competent and reliable scientific evidence”** means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

6. **“Defendant”** or **“Defendants”** means Global Web Promotions Pty Ltd., Michael John Anthony Van Essen and Lance Thomas Atkinson, or each of them, by whatever names each may be known.

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

8. **“Electronic mail address”** “means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the ‘local part’) and a reference to an Internet domain (commonly referred to as the ‘domain part’), whether or not displayed, to which an electronic mail message can be sent or delivered.” 15 U.S.C. § 7702(5).

9. **“Header information”** “means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person initiating the message.” 15 U.S.C. § 7702(8).

10. **“HGH products”** shall refer to any products that are advertised, marketed, promoted, offered for sale, distributed, or sold with express or implied representations that the product contains any form of Human Growth Hormone or may produce effects similar in nature

to any form of Human Growth Hormone, and include, but are not limited to, “HGH” and “Natural HGH,” or any other substantially similar products.

11. **“Initiate,”** “when used with respect to a commercial email message, means to originate or transmit such message or procure the origination or transmission of such message.” 15 U.S.C. § 7702(9).

12. **“Material”** means likely to affect a person’s choice of, or conduct regarding, goods or services.

13. **“Procure,”** when used with respect to the initiation of a commercial email message, means “intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one’s behalf.” 15 U.S.C. § 7702(12).

14. **“Protected computer”** means a computer which is used in interstate or foreign commerce or communication, including a computer located outside the United States that is used in a manner that affects interstate or foreign commerce or communication of the United States. 15 U.S.C. § 7702(13); 18 U.S.C. § 1030(e)(2)(B).

15. **“Sender”** means a person who initiates a commercial electronic mail message and whose product, service, or Internet Web site is advertised or promoted by the message. 15 U.S.C. § 7702(16).

16. **“Weight-loss products”** shall refer to any products that are advertised, marketed, promoted, offered for sale, distributed, or sold with express or implied representations that the product will or may cause weight loss in humans, including, but not limited to, “Herbal-RX Weight Loss Patch” and “Med Diet Patch,” or any other substantially similar products.

I.

PROHIBITIONS AGAINST PRODUCT MISREPRESENTATIONS

IT IS THEREFORE ORDERED that Defendants, and their officers, agents, servants, employees and attorneys, 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:

- A. Making, or assisting others in making, expressly or by implication, including through the use of a trade name or endorsement, any false or misleading oral or written statement or representation in connection with the marketing, advertising, promotion, offering for sale, sale or provision of any weight-loss products, HGH products, or any other products or services, including, but not limited to:
1. Representing that “Herbal-Rx Weight Loss Patch,” “Med Diet Patch,” or any other substantially similar product, causes weight loss;
 2. Representing that “HGH,” “Natural HGH,” or any other substantially similar product, contains a form of Human Growth Hormone and/or produces effects similar in nature to any form of Human Growth Hormone;
 3. Misrepresenting that any product, or any ingredient contained in it:
 - a. increases metabolism, decreases appetite, and/or reduces food cravings;
 - b. causes permanent weight loss;
 - c. will turn back or reverse the aging process by causing effects that

include, but are not limited to, (i) lower blood pressure, (ii) cellulite reduction, (iii) improved vision, (iv) new hair growth and hair color restoration, (v) improved sleep, (vi) emotional stability, and (vii) increased sexual potency and frequency; and/or

d. can maintain a user's appearance and biological age for 10-20 years.

4. Misrepresenting that any product, or any ingredient contained in it is effective in the diagnosis, cure, mitigation, treatment, or prevention of any disease;
5. Making any representation about the health benefits, performance, efficacy, or safety of any product unless, at the time of making such representation, Defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation; and
6. Misrepresenting any other fact material to a consumer's decision to purchase any product.

B. Assisting others who violate any provision of Section I.A of this Order.

II.

PROHIBITIONS AGAINST VIOLATIONS OF CAN-SPAM

IT IS FURTHER ORDERED that Defendants and their officers, agents, servants, employees, and attorneys, 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 violating CAN-SPAM, including by initiating the transmission of a commercial email that:

- A. Contains, or is accompanied by, materially false or materially misleading header information, including but not limited to:
 - 1. an originating electronic mail address, domain name, or Internet Protocol address when the access to such originating electronic mail address, domain name or Internet Protocol address was obtained by means of false or fraudulent pretenses or representations; or
 - 2. a “from” line (the line identifying or purporting to identify the person initiating the messages) that does not accurately identify any person who initiated the message;
- B. Contains a subject heading likely to mislead recipients, acting reasonably under the circumstances, about material facts regarding the contents or subject matter of the message;
- C. Does not include a clear and conspicuous notice of the recipient’s opportunity to decline to receive further commercial electronic mail messages from the sender at the recipient’s electronic mail address and describes the means by which the recipient can decline to receive future commercial email messages from the sender;
- D. Does not include a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that a recipient can use to submit a reply electronic mail message or other form of Internet-based

communication requesting not to receive future commercial electronic mail messages from the sender at the electronic mail address where the message was received, and that remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message;

- E. Does not include the sender's valid physical postal address; and/or
- F. Is sent to a recipient's email address, more than 10 business days after the sender receives a request from that email recipient not to receive future commercial electronic mail messages from the sender at the recipient's electronic mail address.

III.

MONETARY RELIEF

IT IS FURTHER ORDERED that

- A. Judgment is hereby entered against Defendants, jointly and severally, in the amount of \$490,280.00 as restitution for consumers for Defendants' violations of the FTC Act.
- B. Judgment is hereby entered against Defendants, jointly and severally, in the amount of \$1,700,982.74 constituting ill-gotten gain causally connected to violations of the CAN-SPAM Act.
- C. The amounts set forth in Sections III.A and III.B of this Order shall become immediate due and payable by Defendants upon entry of this Order, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance;

D. Any and all funds paid pursuant to this Section shall be deposited into a fund administered by the FTC 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. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the FTC may apply any remaining funds for other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Defendants' practices alleged in the Complaint. Defendants shall have no right to challenge the FTC's choice of remedies under this Subsection. The Commission, in its sole discretion, may use a designated agent to administer consumer redress; and

E. The judgment entered pursuant to this Section for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.

IV.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose 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, Defendants each 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 such 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;
 2. posing as consumers and suppliers to Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice; and
- C. Defendants shall permit representatives of the Commission to interview any employer, consultant, 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)).

V.

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,

1. Defendants Michael John Anthony Van Essen and Lance Thomas Atkinson shall notify the FTC of the following:
 - (a) Any changes in residence, mailing addresses and telephone numbers, within ten (10) days of the date of such change;
 - (b) Any changes in employment status (including self-employment) within ten (10) days of such change. Such notice shall include the name and address of each business the Defendant is affiliated with or employed by, 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. Defendants shall notify the Commission of any changes in corporate structure or any business that Defendants Michael John Anthony Van Essen and Lance Thomas Atkinson directly or indirectly control, or have 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 what the defendant learns less than thirty (30) days prior to the date such action is to take place, defendants shall notify the Commission as soon as is practicable after obtaining such knowledge.

- B. One hundred eighty (180) days after the date of entry of this Order, Defendants shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which each Defendant has complied and is complying with this Order. This report shall include, but not be limited to:
1. For each individual Defendant:
 - (a) The then-current residence address, mailing address, and telephone numbers of the individual Defendant;
 - (b) The then-current employment and business addresses and telephone numbers of the individual Defendant, a description of the business activities of each such employer or business, and the title and responsibilities of the individual Defendant, for each such employer or business; and
 - (c) Any other changes required to be reported under subparagraph A of this Section.
 2. For all Defendants:

- (a) A copy of each acknowledgment of receipt of this Order obtained by Defendants pursuant to Section VII; and
- (b) Any other changes required to be reported under subparagraph A of this Section.

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

Federal Trade Commission
Director, Midwest Region
55 East Monroe Street, Suite 1860
Chicago, Illinois 60603
Re: FTC v. Global Web Promotions;

D. For purposes of the compliance reporting required by this Section, the Commission is authorized to communicate directly with Defendant, unless Defendant indicates that he is represented by counsel and provides the name and address of such counsel to the Commission.

VI.

MONITORING COMPLIANCE WITH SALES PERSONNEL

IT IS FURTHER ORDERED that Defendants, in connection with any business in which: (1) any Defendant is a majority owner of the business or directly or indirectly manages or controls the business; and (2) the business is engaged in, or assists others in engaging in, the offering for sale or sale of any product or service over the Internet, are hereby permanently restrained and enjoined from:

- A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Sections I and II of this Order;
- B. Failing to investigate promptly and fully any consumer complaint received by any business to which this Section applies; and
- C. Failing to take corrective action with respect to any sales person whom any Defendant determines is not complying with this Order, which may include training, disciplining, and/or terminating such sales person.

VII.

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, Defendants shall deliver a copy of this Order as directed below:

- A. **Corporate Defendant:** Defendant Global Web Promotions must deliver a copy of this Order to all of its principals, officers, directors, and managers. Defendant Global Web Promotions must also deliver copies of this Order to all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.
- B. **Individual Defendants as Control Person:** For any business that Defendant Van Essen or Defendant Atkinson controls, directly or indirectly, or in which Defendant Van Essen or Defendant Atkinson has a majority ownership interest,

the Defendant must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Such Defendant must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon the defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

- C. **Defendants as employee or non-control person:** For any business where Defendant Van Essen or Defendant Atkinson is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, the Defendant must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.
- D. Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty days of delivery, from all persons receiving a copy of the Order pursuant to this Section VII.

VIII.

RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, in connection with any business in which Defendant Van Essen or Defendant Atkinson is the majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business is engaged in, or assists others in engaging in, the offering for sale or sale of any product or service over the Internet, the Defendant and his agents, officers,

corporations, successors, and assigns, and those persons in active concert or participation with him 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. 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, telephone 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. Complaint and refund requests (whether received directly, indirectly, or through any third party), and any responses to those complaints or refund requests; and
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials.

IX.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that each Defendant, within five (5) business days after receipt by this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of the Order.

X.

ENTRY OF THIS JUDGMENT

IT IS FURTHER ORDERED that, as there is no just reason for delay of entry of this judgment, pursuant to Fed. R. Civ. P. 54(b), the clerk shall enter this Order immediately.

XI.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction over this matter for all purposes.

IT IS SO ORDERED, this 16th day of June, 2005



Honorable Marvin E. Aspen
United States District Judge

Respectfully submitted by:



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William J. Hodor
Jason K. Bowler
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