

MAY 20 2004

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FILED
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U.S. DISTRICT COURT E.D.N.Y.
MAY 18 2004
BROOKLYN OFFICE

ATTORNEYS FOR PLAINTIFF
FEDERAL TRADE COMMISSION

CV 04 2086

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SIFTON, J

FEDERAL TRADE COMMISSION,

Plaintiff

CV No.

CHREIN, J.

_____, a minor,

parent _____

Defendant.

~~[Proposed]~~

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

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), filed its Complaint for Permanent Injunction and Other Equitable Relief ("Complaint") pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and Section 522(a) of the Gramm-Leach-Bliley Act ("GLB Act"), 15 U.S.C. § 6822(a), charging Defendant _____

[REDACTED], minor ("Defendant"), by his parent [REDACTED], with [REDACTED] lations Section 5(of
th FTC Act. U. (i), and ection the GLB A U.

The parties ha greed the try this tipulated inal udgm and Order for
ermanent Injunction and Other Equitable Relief ("Order") by this Court to olve all matters of
dispute betw th in this THEREFORE the laintiff and
Defendan **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** fo

FINDINGS

This Co ha urisdic th subject matter and th arti
enne proper all parties the Eastern District Ne York under
U. C § (b) and U. C 3(b)

Defendan has prop ly red.

The Complaint claim upon which relief may be granted against Defendant
under Sections 5(i and 3(b) of the FTC Act, U. C § 15(i and (b) and Sections 52
522 th GLB A, U. § and 2(i).

The activities of Defendant affecting commerce, commerce
defined Section th FTC Act, U. 44

Entry of thi Order the

Defendant has entered into this Order freely and without coercion, and both he
and hi parent, [REDACTED] have read and understand th pro this Order

Defendant any and all ghts concernin the prosecution of this acti that
may arise under the Equal Access to Justice Act, U. C § 24 2, and Defendant further waives
an and al ghts to attorneys fe that may under said pro of

9. The Commission and Defendant 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.

10. The Commission and Defendant waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order, and Defendant further waives and releases any claim against the Commission or its employees, agents, or representatives.

11. This Order is for settlement purposes only and is not an admission by Defendant that he has engaged in violations of any law or regulation, including but not limited to violations of the FTC Act, or, except as provided in Section VIII.F. of this Order, that the facts alleged in the Complaint are true.

ORDER

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

Definitions

- A. "Defendant" means [REDACTED], a minor until May 2004.
- B. "Plaintiff" means Federal Trade Commission.
- C. "Person" means any natural person, organization, or other legal entity, including but not limited to a corporation, partnership, proprietorship, association, cooperative, or any other group or combination acting as an entity.
- D. "Document" is synonymous in meaning with, and equal in scope 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 other data compilations from which information can be obtained and translated, if necessary, into reasonably usable form

through detecti devi A draft or iden cal eparate documen within the meaning of the term.

Customer information of financial institution synonymo meaning with, and equal cod to the usag of the term ecti (2 of the GLB Act. U.S.C.

682 (2), hich encompasses information maintained by or for financial institution which di ed from th relationship etw the financial instituti and tomer of financial institution and identified with the customer including but limited to credit card numbers debi card numbers, credit card limits, personal identificati numbers ("PIN numbers"), three- digi card ficati numbers th hack credit and/ de cards ("CID, CV V/IS numbers"), bank account numbers, bank account routing numbers, PayPal access information.

'Uj cited commercial email means electroni mail (' mail') message tha consists or contains a communication advertising, promoting, ffering, offering sell any product or service or soliciting onsumers personal or financial informati and that not requested by the addressee recipient or sent pursuant to pre-existing busin or personal relationship between the sender and the addressee recipient of the email

Gr Th ords and" 'or" shall be understood to ha both onjuncti and disjunctive meanings

I.

BAN REQUIREMENTS

IT IS THEREFORE ORDERED that connection with the solicitation of consumers for ersonal finan ial informa the promotion, adverti ing, mark sal offe

age of

for sale of any product or service in commerce, Defendant is hereby permanently restrained and enjoined from the sending of unsolicited commercial email

II.

INJUNCTION AGAINST MISREPRESENTATIONS

IT IS FURTHER ORDERED that in connection with the solicitation of consumers for personal or financial information or in the promotion, advertising, marketing, sale, or offering for sale of any product or service in commerce, Defendant, his agents, assigns, servants, and employees, and all other persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from making, or assisting in the making of, any statement or representation of material fact that is false or misleading, whether directly or by implication, orally or in writing, including but not limited to any false or misleading representation that:

A. Defendant or his agents are affiliated with, are agents of, or are authorized to act on behalf of, or with the endorsement of, any person or entity, including but not limited to any representation that Defendant or his agents are affiliated with, are agents of, or are authorized to act on behalf of, or with the endorsement of, any Internet service provider, online payment service provider, online merchant, online auction service, financial institution, or company affiliated with any of these businesses;

B. A consumer has an account or any other pre-existing relationship with Defendant or his agents;

C. Information submitted by a consumer to a web page or website operated by Defendant or his agents will be received by an entity with whom the consumer has an account or

any other pre-existing relationship, including but not limited to such consumer's Internet service provider, online payment service provider, online merchant, online auction service, financial institution, or a company affiliated with any of these businesses;

D. Information previously supplied by a consumer to an entity with whom the consumer has an account or any other pre-existing relationship, including but not limited to such consumer's Internet service provider, online payment service provider, online merchant, online auction service, financial institution, or a company affiliated with any of these businesses has expired, failed authorization, or needs to be validated, confirmed, verified, updated, renewed, or provided again;

E. A consumer's failure to respond to any communication initiated by Defendant or his agents, including but not limited to any request or demand for personal and/or financial information, will result in the revocation, termination, and or cancellation of an account or any other pre-existing relationship with any entity, including but not limited to such consumer's Internet service provider, online payment service provider, online merchant, online auction service, financial institution, or a company affiliated with any of these businesses;

F. A web page or website operated by Defendant or his agents uses encryption or other security measures to protect information submitted via such web page or website;

G. Information submitted to a web page or website operated by Defendant or his agents will be transmitted securely;

H. Defendant or his agents have authorization to place orders for goods or services using a credit card, debit card, and/or other financial information;

I. Defendant or his agents have authorization to establish any credit card, debit card, or other financial account; and

J. Defendant or his agents have authorization to modify or change in any way the address (whether physical address or email address) to which any bill or periodic statement should be sent for a credit card, debit card, or other financial account.

III.

INJUNCTION AGAINST OTHER DECEPTIVE PRACTICES

IT IS THEREFORE ORDERED that in connection with the solicitation of consumers for personal or financial information or in the promotion, advertising, marketing, sale, or offering for sale of any product or service in commerce, Defendant, his agents, assigns, servants, and employees, and all other persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from:

A. Sending or causing to be sent any email or other electronic message via the Internet that misrepresents the identity of the sender by any means, including but not limited to using false information in the “from” line of an email, or that misrepresents the subject of the message by any means, including but not limited to using false information in the “subject” line of the email; and

B. Creating, registering, promoting, operating, posting, and/or maintaining any web page, website, chat room, Internet Relay Chat Channel, or other source of information on the Internet that misrepresents the identity of its host, sponsor, creator, or operator.

IV.

INJUNCTION AGAINST UNFAIR PRACTICES

IT IS FURTHER ORDERED that in connection with the solicitation of consumers for personal or financial information or in the promotion, advertising, marketing, sale, or offering for sale of any product or service, Defendant, his agents, assigns, servants, and employees, and all other persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from:

- A. Using, gaining access to, and/or logging into any Internet account of another person without that person's express authorization;
- B. Charging or debiting any consumer's credit card, debit card, bank, online payment services account, or other financial account or causing charges to be incurred to any such account without the consumer's express authorization; and
- C. Opening, creating or initiating any line of credit, including but not limited to any credit card, debit card, bank, online payment services account, or other financial account in the name of a consumer without the consumer's express authorization.

V.

INJUNCTION AGAINST GLB ACT PRETEXTING VIOLATIONS

IT IS FURTHER ORDERED that in connection with the solicitation of consumers for personal or financial information or in the promotion, advertising, marketing, sale, or offering for sale of any product or service, Defendant, his agents, assigns, servants, and employees, and all other persons or entities in active concert or participation with him who receive actual notice of

this Order by personal service or otherwise are hereby permanently restrained and enjoined from obtaining, attempting to obtain, or disclosing any customer information of any financial institution by making false, fictitious, or fraudulent statements or representations to the financial institutions or their customers of financial institutions.

VI.

COOPERATION PROVISIONS

IT IS FURTHER ORDERED that Defendant hereby agrees to cooperate fully and truthfully and completely with the Commission in the identification and location of individual or entities involved in the acts and practices alleged in the Commission's Complaint. This cooperation includes but is not limited to, the production of such information and documents as will allow the Commission to identify and locate those individuals, entities and determine the extent of their involvement.

VII.

NON-DISCLOSURE OF INFORMATION AND CLOSURE OF ACCOUNTS

IT IS FURTHER ORDERED that

A. Defendant, his agents, partners, agents, and employees, and all other persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise are hereby permanently restrained and enjoined from directly or indirectly using, selling, giving, transferring, or otherwise disclosing any personal or financial information, including but not limited to any name, address, telephone number, mother's maiden name, social security number, date of birth, driver's license number, email address, password, bank name, bank telephone number, bank account number, bank routing number, credit or debit

card number, credit card limit, PIN numbers, CID/CVV/ISC numbers, or PayPal access information of any person other than Defendant that was in Defendant's possession at any time prior to the entry of this Order as a result of any misrepresentation or unlawful act.

PROVIDED, however, that Defendant shall transfer a true, correct, and complete copy of all such personal or financial information in his or his agents' possession to the Commission within five (5) business days after receipt of this Order as entered by the Court and may also transfer a true, correct, and complete copy of such identifying information to other law enforcement agencies as permitted or required by any law, regulation, judicial process, or court order.

B. Defendant shall destroy all originals and all copies in his or his agents' possession of such personal or financial information described in Section VII.A. of this Order, no later than five (5) business days after receipt of this Order as entered by the Court.

C. Defendant shall cancel all email accounts, on-line payment accounts, domain name registrations, and web hosting agreements used or associated with the acts and practices alleged in the Complaint, including but not limited to:

1. Email accounts and/or on-line payment accounts associated with the addresses budoner@cheerful.com, budoner@accountant.com, and/or rowall913@hotmail.com; and

2. Domain registrations and/or web hosting agreements associated with the following web pages: <http://www.aocreditupdate.com>; <http://www.cyberturf.com/aacrep0057/index.html>; <http://aacreditupdate.7p.com>; <http://aaaupdate.g2gm.com>; <http://updatecentral.g2gm.com>; <http://aacreditupdate.9f.com>; <http://registrationaccess.com>; <http://acctinfo.freesevers.com>;

http://update.g2gm.com; http://aolservice.deafhomepages.com; and http://paypalservice.deafhomepages.com.

PROVIDED, further, that Defendant hereby surrenders any and all of his rights to the email accounts, on-line payment accounts, domain registrations, and/or web hosting agreements listed above and authorizes the entities servicing these email accounts, on-line payment accounts, domain registrations, and/or web hosting agreements, to cancel such accounts and agreements and destroy all content retained therein.

VIII.

EQUITABLE MONETARY RELIEF

IT IS FURTHER ORDERED that:

A. Judgment is hereby entered against Defendant and in favor of Plaintiff in the amount of One Hundred and Twenty-Five Thousand Dollars (\$125,000.00), for consumer redress. However, the judgment shall be stayed and the Commission shall consider this judgment satisfied provided that the financial statements set forth in Section VIII.B., are truthful, accurate, and complete.

B The Commission's agreement to this Order providing that Defendant not have to pay the judgment amount is expressly, reasonably, and materially premised upon the truthfulness, accuracy, and completeness of the financial statements submitted by Defendant to the Commission on or about January 13, 2004, and affirmed and signed under penalty of perjury by Defendant and by [REDACTED], in her capacity as Defendant's mother, on February 12, 2004.

C. If, upon motion by the Commission, this Court finds that Defendant has failed to disclose any material asset or materially misrepresented the value of any asset, or has made any

other material misrepresentation or omission, in the financial statements described in this Section, the stay shall be lifted and Defendant [REDACTED] shall immediately pay the full redress amount of One Hundred and Twenty-Five Thousand (\$125,000.00).

D Any 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. In the event that direct redress to consumers is wholly or partially impracticable or that funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Defendant's practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited into the United States Treasury as disgorgement. Defendant shall have no right to challenge the Commission's choice of remedies under this Section.

E. In accordance with U.S.C. 7701 Defendant is hereby required, unless he has done so already, to furnish to the Commission all his taxpayer identifying numbers, including his Social Security and employer identification numbers, which shall be used for purposes of collecting and reporting any delinquent amount arising out of Defendant's relationship with the government.

F. Defendant agrees that the facts as alleged in the Complaint filed in this action and the amount of consumer harm represented by the amount of the consumer redress award in this Section 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 non-dischargeability complaint.

arising in any bankruptcy case to which Defendant is a party, and Defendant expressly waives any and all rights to contest such allegations in such litigation.

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 that the Commission may initiate to enforce this Order.

IX.

COMPLIANCE REPORTING BY DEFENDANT

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

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

- 1 Any changes in Defendant's residence, mailing address(es), and telephone number(s), within ten (10) days of the date of such change;
 - 2 Any changes in Defendant's employment status (including self-employment) within ten (10) days of the date of such change. Such notice shall include the name and address of each business that Defendant is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of Defendant's duties and responsibilities in connection with the business;
 - 3 Any changes in Defendant's name or use of any aliases or fictitious names;
- and
- 4 Any new Internet service provider account, email account, domain registration, instant messaging account, or web hosting account established by Defendant. Such

notice shall include all registration information, including the real name(s), address(es), and email address(es) of the account holder; the name and address of the entity with whom such account was registered; and any screen name(s) or user name(s) associated with the account.

B. One hundred eighty (180) days after the date of entry of this Order, 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 he has complied and is complying with this Order. This report shall include, but not be limited to:

1. Any changes required to be reported pursuant to Section IX.A. of this Order;
2. A copy of each acknowledgment of receipt of this Order obtained by Defendant pursuant to Section XI; and
3. A list of all email or instant message addresses he has created, registered, or used since the entry of this Order and all web pages, websites and/or domain names he has registered, created, posted or maintained since the entry of 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, N.W., H-238
Washington, D.C. 20580
RE: FTC v. [REDACTED], a minor.

D. For purposes of the compliance reporting required by this Section, the Commission is authorized to communicate directly with Defendant so long as a courtesy notice is sent to Defendant's counsel:

Vincent Bianco
Ginsberg & Bianco
114 Old Country Road, Suite 116A
Mineola, New York 11501
Fax No. 516-742-7748.

X.

RECORD-KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, Defendant and his agents, assigns, servants, and employees, and all other persons or entities 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 for any business or enterprise: (i) of which Defendant is the majority owner or otherwise controls, and (ii) that offers for sale, sells, promotes, or markets any product or service or solicits information from consumers:

A. Accounting records that reflect the cost of goods or services sold, any 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, 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. Records containing the names, addresses, phone numbers of persons purchasing any items or services, any dollar amounts paid, the quantity of any items or services purchased, and a 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) and any responses to those complaints or requests;

E. Domain registration, web page and/or website registration records accurately reflecting: all domain names, web pages and/or websites registered or maintained, and the name and address of the Domain Name Registrars and/or the companies hosting such web pages and/or websites; and

F. Records relating to all ventures undertaken that involve the sale of goods or services on the Internet and/or the solicitation of consumers for personal and/or financial information on the Internet, including but not limited to copies of all contracts or agreements with any sales company, Internet service provider, web hosting company, telephone company, or any person or entity that advertises or promotes goods or services, as well as copies of all advertisements, web pages, websites, commercial email, or promotional materials utilized in such ventures.

XI.

DISTRIBUTION OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendant shall deliver a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of this Order from i) his supervisor or manager, and ii) each agent or

employee under Defendant's direct control, for any business that employs or contracts with Defendant where such employment or contractual relationship permits Defendant to have access to any customer information, whether personal or financial. Defendant shall secure from each such person a signed and dated statement acknowledging receipt of this Order within thirty (30) days after the date of service of this Order or the commencement of the employment relationship. Defendant shall maintain for a period of five (5) years after creation, and upon reasonable notice make available to representatives of the Commission, the original signed and dated acknowledgments of receipt of copies of this Order, as required in this Section.

XII.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

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

XIII.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order or effectuating the equitable monetary relief provisions contained herein:

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 provide entry during normal business hours to any business location in Defendant's possession or control to

inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Order and to effectuate its equitable monetary relief provisions 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: 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;

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)).

C. Defendant 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.

XIV.

AFFECT OF EXPIRATION OF PARTS OF THE ORDER

IT IS FURTHER ORDERED that the expiration of any requirement imposed by this Order shall not affect any other obligation arising under this Order.

XV.

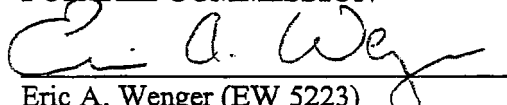
RETENTION OF JURISDICTION

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

The parties hereby stipulate and agree to the terms and conditions of the Order, as set forth above, and consent to the entry thereof.

Dated: 5/17/04

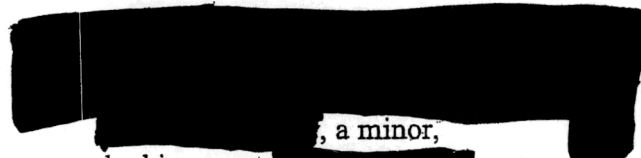
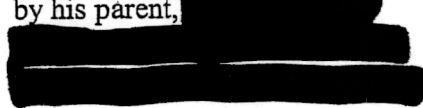
FOR THE COMMISSION


Eric A. Wenger (EW 5223)
Patricia Poss (PP 0485)

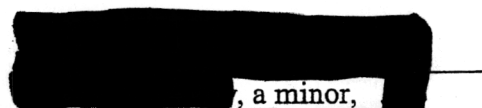
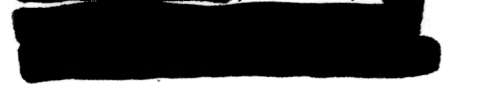
FEDERAL TRADE COMMISSION
600 Pennsylvania Ave. NW, Room H-238
Washington, D.C. 20580
Telephone: (202) 326-2310; 2413
Facsimile: (202) 326-3395

Dated: 4/9/04

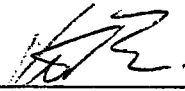
FOR DEFENDANT




, a minor,
by his parent,


Dated: 4/9/04



, a minor,


Dated: 4-12-04.



Vincent Bianco, Esq.
Ginsberg & Bianco
114 Old Country Road – Suite 116A
Mineola, New York 11501
Telephone: (516) 742-7747
Attorney for Defendant  and
his parent 

SO ORDERED,
this 19th day of May 2004.



United States District Judge