

United States Courts  
Southern District of Texas  
ENTERED

MAY 24 2004

Michael N. Milby, Clerk of Court

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
Houston Division

United States Courts  
Southern District of Texas  
FILED

MAY 18 2004

Michael N. Milby, Clerk

Federal Trade Commission,	)	
	)	
Plaintiff	)	CV No. H-03-5537
	)	
v.	)	
	)	<b>STIPULATED</b>
Zachary Keith Hill,	)	<b>FINAL JUDGMENT</b>
	)	<b>AND ORDER FOR PERMANENT</b>
Defendant.	)	<b>INJUNCTION AND OTHER</b>
	)	<b>EQUITABLE RELIEF</b>

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 Zachary Keith Hill ("Defendant") with violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and Section 521(a) of the GLB Act, 15 U.S.C. § 6821(a). This Court granted Plaintiff's Motion for Temporary Restraining Order with Asset Freeze, Order to Show Cause, and Other Relief pursuant to Rule 65 of the Federal Rules of Civil Procedure on December 4, 2003. The parties agreed to entry of a Stipulated Order for Preliminary Injunction with Asset Freeze and Other Equitable Relief, which this Court issued on December 17, 2003.

The parties have agreed to the entry of this Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief ("Permanent Order") by this Court to resolve all matters of dispute between them in this action.

29

THEREFORE, on the joint motion of Plaintiff and Defendant, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

**FINDINGS**

- 1 This Court has jurisdiction over the subject matter and the parties.
- 2 Venue is proper as to all parties in the Southern District of Texas under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b).
- 3 Defendant has been properly served.
- 4 The Complaint states a claim upon which relief may be granted against Defendant under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b), and Sections 521 and 522(a) of the GLB Act, 15 U.S.C. §§ 6821 and 6822(a).
- 5 The activities of Defendant are in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
- 6 Entry of this Permanent Order is in the public interest.
- 7 Defendant has entered into this Permanent Order freely and without coercion, and he has read and understood the provisions of this Permanent Order.
- 8 Defendant waives any and all rights concerning the prosecution of this action that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, and Defendant further waives any and all rights to attorneys’ fees that may arise under said provision of law.
- 9 The Commission and Defendant have agreed that the entry of this Permanent Order resolves all matters of dispute between them arising from the Complaint in this action, up to the date of entry of this Permanent Order.

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

### **ORDER**

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

#### **Definitions**

- A. “Defendant” means Zachary Keith Hill.
- 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 detection devices. A draft or non-identical copy is a separate document within the meaning of the term.
- E. “Customer information of a financial institution” is synonymous in meaning with, and equal in scope to, the usage of the term in Section 527(2) of the GLB Act, 15 U.S.C. § 6827(2), which encompasses any information maintained by or for a financial institution which is derived from the relationship between the financial institution and a customer of a financial

institution and is identified with the customer, including but not limited to credit card numbers, debit card numbers, credit card limits, personal identification numbers ("PIN numbers"), three-digit card verification numbers on the back of credit and/or debit cards ("CID/CVV/ISC numbers"), bank account numbers, bank account routing numbers, PayPal access information.

F. "Unsolicited commercial email" means an electronic mail ("email") message that consists of contains communication advertising, promoting, offering, offering to sell any product or service, or soliciting consumers personal or financial information, and that is not requested by the addressee recipient sent pursuant to pre-existing business or personal relationship between the sender and the addressee recipient of the email.

G. The words "and" and "or" shall be understood have both conjunctive and disjunctive meanings.

## I.

### BAN REQUIREMENTS

**IT IS THEREFORE ORDERED** that in connection with the solicitation of consumers for personal financial information in the promotion, advertising, marketing, sale, offering 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 financial information in the promotion, advertising, marketing, sale, 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 Permanent 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

red. failed authorization, needs to be validated, firmed, fied, updated, renewed, provided again

F. A consumer failure respond any communication initiated by Defendant his agents, including but limited req est deman fo person ial information, the revocation, termination, and or cancellation an account oth re-ex sting onship with any entity ud ted to such consumer Internet service provider onli payment service provider, merchant, onli uc servi financial institution or company affiliated th any these businesses, web page website operated by Defendant or hi agents uses ryp other security measures to protect information submitted via such web page website:

G. Info submitted to page ite operated by D end or his agents be transm itted securely;

H. Defendant or hi agen hav authorization to lac rders for goods credi card, debit card, and/ other financial formati

Defendant his agents have authorization establish credi card, debi rd, or ther finan ial accoun and

Defendant his agents have authorization to modify change way the address hether physical addr email address fo hi ill or periodic tatement shoul be for credit card debi card, other financial account.

### III

#### INJUNCTION AGAINST OTHER DECEPTIVE PRACTICES

T THEREFORE ORDERED that connection with the licitati 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 Permanent 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 Permanent Order by personal service or otherwise, are hereby permanently restrained and enjoined from:

A. Using gaining access to and/or logging into Internet account of another person without that person's express authorization

B. Charging or debiting any consumer 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 credit card, debit card, bank account, online payment services account or other financial account in the name of the 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 the promotion, advertising, marketing, sale, 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 Permanent Order by personal service or otherwise, are hereby permanently restrained and enjoined from obtaining or attempting to obtain customer information of financial institutions by making false, fictitious or fraudulent statements or representations to their financial institutions or 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 individuals



entities involved in the acts and practices alleged in the Commission 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 and entities and to determine the extent of their involvement.

## VII.

### NON-DISCLOSURE OF INFORMATION AND CLOSURE OF ACCOUNTS

**IT IS FURTHER ORDERED** that:

A. Defendant, his agents, assigns, servants, and employees, and all other persons and entities in active concert or participation with him who receive actual notice of this Permanent Order by personal service or otherwise, are hereby permanently restrained and enjoined from directly or indirectly using, selling, leasing, transferring, or otherwise disclosing any personal financial information, including but not limited to any home address, telephone number, mother maiden name, social security number, date of birth, driver 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, PayPal information of any person other than Defendant that was in Defendant's possession at any time prior to the entry of this Permanent 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 financial information in his or his agents' possession to the Commission within five (5) business days after receipt of this Permanent Order entered by the Court and may also transfer a true, correct, and complete copy of such identifying information to other la

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 Permanent Order, no later than five (5) business days after receipt of this Permanent 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://paypal.service.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 statement set forth in Section VIII.B. is truthful, accurate, and complete.

B. The Commission's agreement to this Permanent 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 statement submitted by Defendant to the Commission on or about February 20, 2004, and affirmed and signed under penalty of perjury by Defendant Zachary Keith Hill on February 9, 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 statement described in this Section, the stay shall be lifted and Defendant 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 31 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 on 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 Permanent Order, including but not limited to a 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 Permanent Order.

**IX.**

**COMPLIANCE REPORTING BY DEFENDANT.**

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

A. For a period of five (5) years from the date of entry of this Permanent 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 Permanent 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 Permanent Order. This report shall include, but not be limited to:

1 Any changes required to be reported pursuant to Section IX.A. of this Permanent Order;

2 A copy of each acknowledgment of receipt of this Permanent 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 Permanent Order and all web pages, websites and/or domain names he has registered, created, posted or maintained since the entry of this Permanent Order.

C. For the purposes of this Permanent 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. Zachary Keith Hill.

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

**X.**

**RECORD-KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry of this Permanent Order, Defendant, when acting in an individual capacity, or in connection with

any entity in which Defendant has an ownership interest, or is a director, officer (or comparable position with a non-corporate entity), or is a person who formulates policies or procedures, in connection with the offering for sale, sale, promotion, or marketing of any product or service, or the solicitation of information from consumers, is 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, 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 PERMANENT ORDER BY DEFENDANT**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Permanent Order, Defendant shall deliver a copy of this Permanent Order to, and obtain a signed and dated acknowledgment of receipt of this Permanent Order from i) his supervisor or manager, and ii) each agent or employee under Defendant's 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 Permanent Order within thirty (30) days after the date of service of this Permanent 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 Permanent Order, as required in this Section.



**ACKNOWLEDGMENT OF RECEIPT OF PERMANENT ORDER**

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

**XIII.**

**COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating compliance with any provision of this Permanent 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 direct or indirect control to inspect the business operation.

B. In addition, the Commission is authorized to monitor compliance with this Permanent 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.

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 Permanent Order. The person interviewed may have counsel present.

*PROVIDED, however*, that nothing in this Permanent 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)).

**AFFECT OF EXPIRATION OF PARTS OF THE PERMANENT ORDER**

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

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

Dated: 5/17/04

FOR THE COMMISSION

Eric A. Wenger

Eric A. Wenger, Attorney-in-charge (*pro hac vice*)  
D.D.C. Bar No. 441849; MD Bar No. 132585223  
Patricia Poss, of Counsel (*pro hac vice*)  
N.D. IL Bar No. 6244754; IL Bar No. 6244754

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

Dated: 3-4-04

FOR DEFENDANT

Zachary Keith Hill

Zachary Keith Hill  
DEFENDANT  
16179 Golden Sands Drive  
Houston, TX 77095  
281-855-6763

Dated: 3-4-04

Victor R. Blaine

Victor R. Blaine  
ATTORNEY FOR DEFENDANT  
1010 Lamar, Suite 1320  
Houston, TX 77002  
713-222-6681

SO ORDERED,

this 21<sup>st</sup> day of May, 2004.

Ewing Werlein, Jr.

EWING WERLEIN, JR.  
United States District Judge