

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

FEDERAL TRADE COMMISSION, : Hon. William H. Walls
: :
: Civil Action No. 99-5705
Plaintiff, : (WHW)
: :
v. : :
: :
Robert Stout : :
625 Blakeney Pl. : :
Rivervale, New Jersey 07675 : STIPULATED FINAL ORDER
individually and d/b/a : FOR PERMANENT INJUNCTION
GLOBAL INTERNET FEDERAL : AND OTHER RELIEF AS TO
REGISTRY, INC., : ALL DEFENDANTS
: :
GET OUT FROM UNDER.COM, INC. : :
625 Blakeney Pl., : :
Rivervale, New Jersey 07675, : :
: :
and : :
: :
Donald J. Lytle : :
625 Blakeney Pl., : :
Rivervale, New Jersey 07675, : :
individually and as an : :
officer and director of : :
GET OUT FROM UNDER.COM, INC. : :
: :
Defendants. : :

On December 8, 1999, plaintiff, the Federal Trade Commission ("FTC" or "Commission"), filed a verified complaint for permanent injunction and other relief pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b), against defendants Robert Stout, individually and doing business as Global Internet Federal Registry, Inc.; Get Out From Under.com, Inc.; and Donald J. Lytle, individually and as an officer and director of Get Out From Under.com, Inc.

(collectively "defendants"). The Commission and defendants hereby stipulate to the entry of this Final Order for Permanent Injunction and Other Relief ("Order"). The Court, being duly advised in the premises, finds:

1. This is an action by the Commission instituted under Section 13(b), 15 U.S.C. § 53(b). The Commission's verified complaint alleges that defendants have engaged in deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in connection with their alleged attempts to collect personal information, including credit card numbers and expiration dates, from consumers who used newsgroups and the Internet. The verified complaint seeks a permanent injunction and other relief.

2. The Court has jurisdiction over the subject matter of this case, and jurisdiction over defendants. Venue in the District of New Jersey is proper.

3. The verified complaint states a claim upon which relief can be granted as to defendants.

4. The Commission has the authority under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), to seek the relief it has requested against defendants.

5. The activities of the defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

6. Defendants, without admitting or denying the allegations of wrongdoing set forth in the Commission's verified complaint, stipulate and agree to entry of this Order under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b).

7. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendants waive any claim that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order.

8. Each party shall bear its own costs and attorneys' fees.

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

DEFINITIONS

A. "Defendants" shall refer inclusively to Robert Stout, individually and doing business as Global Internet Federal Registry; Get Out From Under.com, Inc.; and Donald J. Lytle, individually and as an officer and director of Get Out From Under.com, Inc., and any combination thereof, and other entities or persons directly or indirectly under their control, and all persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile or otherwise.

B. "Employment" includes any affiliation with any business or non-profit entity, including the performance of services as an officer, owner, manager, supervisor, employee, consultant, or independent contractor; and "Employer" includes any and all individuals or entities for whom defendants perform services as employees, consultants, or independent contractors.

C. A requirement that any defendant "notify the Commission" shall mean that the defendant shall send the necessary information via first class mail, costs prepaid, to the Associate Director for Advertising Practices, Federal Trade Commission, 601 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Attn: FTC v. Stout, et al., No. 99-5705 (WHW) (D.N.J.).

D. The terms "and" and "or" in this Order shall be construed conjunctively or disjunctively as necessary to make the applicable phrase or sentence inclusive rather than exclusive.

I. CONDUCT PROHIBITIONS

IT IS THEREFORE ORDERED that defendants and their officers, agents, servants, employees, and attorneys, in connection with the advertising, marketing, promotion, distribution, offering for sale, or sale via the Internet of any product or service, are hereby enjoined from:

- A. Misrepresenting, in any manner, directly or by implication, any material fact about any product or service;
- B. Misrepresenting, in any manner, directly or by implication, that consumers must register with any agency, organization, registry, entity or business in order to maintain access to newsgroups or to the Internet;
- C. Misrepresenting, in any manner, directly or by implication, that consumers need to provide personal information, including but not limited to, names, addresses, dates of birth, telephone numbers, credit card information or social security numbers, in order to obtain or qualify for any product or service or to maintain access to newsgroups or the Internet;
- D. Representing, in any manner, directly or by implication, that they or any corporation, partnership or other entity with which they are an officer, director, employee, consultant, independent contractor or agent, founded, established, helped found, helped establish, or is a member of, any organization or association that does not exist;
- E. Misrepresenting, in any manner, directly or by implication, that they or any corporation, partnership

or other entity with which they are an officer, director, employee, consultant, independent contractor or agent, are members of any organization or association that is recognized by experts or professionals in the fields purportedly within the purview of that organization or association;

- F. Misrepresenting, in any manner, directly or by implication, that they or any corporation, partnership or other entity of which they are an officer, director, owner, manager, supervisor, employee, consultant, independent contractor or agent are associated or affiliated with any federal, state or local governmental organization; and
- G. Collecting, using, selling or transmitting consumer personal identifying or credit card information obtained as a result of misleading representations.

II. NON-DISCLOSURE OF CONSUMER INFORMATION

IT IS FURTHER STIPULATED AND ORDERED that defendants, and their officers, agents, servants, employees, and attorneys, are permanently restrained and enjoined from using, selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, social security number, e-mail address, or other identifying information

of any person who supplied any such personal information to any defendant in this action, at any time prior to entry of this Order, in connection with or in response to messages, Web pages, and Web sites attributed to Global Internet Federal Registry. Provided, however, that defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

III. PRESERVATION OF RECORDS

IT IS FURTHER STIPULATED AND ORDERED that, except as provided in Part II herein with regard to the non-disclosure of consumer information, defendants and their officers, agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, in connection with any business or other activity conducted in whole or in part over the Internet, are hereby enjoined, for a period of five years from the date of entry of this Order, from:

A. Destroying, erasing, mutilating, concealing, altering, transferring or otherwise disposing of any correspondence to or from consumers or law enforcement authorities, personnel records, and exemplar copies of all Internet Web pages and sites, and written promotional materials; and

B. Failing to maintain and keep records about and transactions between (1) defendants, directly or indirectly, or through any business owned, managed or controlled by defendants, directly or indirectly, and (2) any customer, such records to include the following: the customer's name; his or her address; his or her telephone number; a description of the good, service, or interest purchased; the dollar amounts the customer paid; the sales agent; and the date of the sale.

C. Failing to make and keep books, records of cash disbursements and receipts, bank and other financial account statements, and accountants' reports that, in reasonable detail, accurately reflect the assets and liabilities, owners' equity, sources of revenue, expenses, and disposition of assets for all business entities owned, managed, or controlled by defendants, directly or indirectly.

D. Failing to make and keep records that accurately reflect: the name, address, and telephone number of each person employed in any capacity by defendants, directly or indirectly, or through any business owned, managed or controlled by defendants, directly or indirectly, 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. The parties subject to this

Section shall retain such records for any terminated employee for a period of two (2) years following the date of termination.

E. Failing to make and keep records that reflect, for every complaint or refund request by any customer of defendants, directly or indirectly, or by any customer of any business owned, managed or controlled by defendants, directly or indirectly, whether such complaint or refund request is received directly or indirectly or through any third party:

- (1) the customer's name, address, telephone number and the dollar amount paid by the customer;
- (2) the written complaint, if any, and the date of the complaint or refund request;
- (3) the basis of the complaint, including but not limited to the name of any salesperson or agent complained against, and the nature and result of any investigation conducted concerning the validity of the complaint;
- (4) each response and the date of the response;
- (5) any final resolution and the date of the resolution; and
- (6) in the event of a denial of a refund request, the reason for such denial, or if the complaint was cured, the basis for determining that the complaint was cured.

IV. MONITORING

IT IS FURTHER STIPULATED AND ORDERED, in order to monitor compliance with this Order, that:

A. Defendants Stout and Lytle shall each notify the Commission within five days of the entry of this Order, of (1) his residence address and mailing address; (2) his telephone number(s); (3) the name, address and telephone number of his employer; (4) the full names of his employer's principals; (5) if applicable, the names of his supervisors; and (6) a description of his employer's activities, and defendants Stout and Lytle's duties and responsibilities.

B. One hundred and twenty days (120) days after the date of entry of this Order, defendants Stout and Lytle shall each provide a written report to the Commission, signed under penalty of perjury, detailing their respective past and present efforts to comply with this Order;

C. For a period of three years from the date of entry of this Order, defendants Stout and Lytle shall each notify the Commission within ten days of any changes in their residence or mailing addresses or employment status. Notice of changes in employment status shall include: (1) the new employer's name, address and telephone number; (2) the full names of the employer's principals; (3) if applicable, the names of defendants Stout and Lytle's supervisors, and (4) a description of the

employer's activities, and defendants Stout and Lytle's duties and responsibilities;

D. For a period of three years from the date of entry of this Order, defendants shall each notify the Commission of any proposed change in the structure of any business entity owned or controlled by them, directly or indirectly, such as creation, incorporation, dissolution, assignment, sale, merger, creation or dissolution of subsidiaries, proposed filing of a bankruptcy petition, or change in the business or corporate name or address, or any other change that may affect compliance obligations arising out of this Order, thirty days prior to the effective date of any proposed change; *provided, however,* that, with respect to any proposed change in the business entity about which defendants learn less than thirty days prior to the date such action is to take place, defendant shall notify the Commission as soon as is practicable after learning of such proposed change.

E. For a period of three years from the date of entry of this Order, if either defendant Stout or Lytle becomes affiliated with any business entity as a builder or designer of Web sites on the Internet, or in the advertising, marketing, promotion, distribution, offering for sale, or sale of any product or service via the Internet, he shall:

- (1) provide a copy of this Order to such business entity, within ten days of beginning such affiliation;

- (2) provide a copy of this Order to all salespersons or other individuals or entities involved in any advertising, marketing, or promotional activities that are supervised by him, within ten days of beginning such supervision;
- (3) if either defendant Stout or defendant Lytle participates as a principal, director, officer, majority owner, partner, or other controlling party, in such business entity, he shall, within ten days of beginning his employment, provide a copy of this Order to any person whom he or the business employs (whether designated as an employee, independent contractor, consultant, or otherwise);
- (4) upon providing a copy of this Order as described in Sections IV(E)(1)-IV(E)(3), above, defendants Stout and Lytle shall obtain a signed statement from each recipient acknowledging receipt of the Order, and giving the recipient's residential address and telephone number. Defendants Stout and Lytle shall each maintain each such statement as part of his business records. Should any recipient fail or refuse to provide defendants Stout or Lytle with a signed statement, defendants Stout or Lytle shall prepare a signed statement that such recipient has been provided

a copy of this Order, and that provides the recipient's residential address and telephone number. Defendants Stout and Lytle shall maintain each such signed statement as part of his business records.

F. For a period of three years from the date of entry of this Order, defendants shall permit representatives of the Commission, within 48 hours of receipt of written notice from the Commission:

- (1) access during normal business hours to any office, or facility storing documents, of any business owned by defendants, or of which defendants are a principal, director, officer, partner, or other controlling party, and where the activities of the business include the advertising, marketing, promotion, distribution, offering for sale, or sale via the Internet of any product or service, to inspect and copy all documents belonging to such business or defendants, relating in any way to any matter subject to this Order; and shall permit Commission representatives to remove documents relating in any way to any matter subject to this Order for a period not to exceed five business days so that the documents may be inspected, inventoried, and copied. *Provided*, that defendants and their counsel may be present during the Commission's access to the

business premises pursuant to this Section, and *provided further*, that defendants may apply, with appropriate notice to the Commission, for a protective order limiting the Commission's access to documents pursuant to this Section based on privilege or other appropriate grounds.

(2) refrain from interfering with any duly authorized representatives of the Commission interviewing their employers, employees (whether designated as employees, consultants, independent contractors or otherwise), or agents, about any matter relating in any way to any matter subject to this Order;

(3) upon written request by any duly authorized representative of the Commission, submit written reports (under oath, in requested), and produce documents, on forty-eight hours notice, relating in any way to any matter subject to this Order.

G. The Commission is authorized to monitor the compliance of defendants with this Order by all lawful means, including but not limited to the following means:

(1) The Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-37, including the use of

compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating the compliance of defendants with this Order;

(2) The Commission is authorized to use representatives posing as consumers and suppliers to defendants, to the employees of defendants, or to any other entity managed or controlled in whole or in part by defendants, without the necessity of identification or prior notice;

(3) Nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether defendants have violated any provision of this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

H. For purposes of the compliance reporting required by this section, the Commission is authorized to communicate directly with defendants.

V. AFFIDAVITS AND RELIANCE ON DECLARATIONS

IT IS FURTHER STIPULATED AND ORDERED that within five business days from the date of entry of this Order, defendants Stout and Lytle shall each submit to the Commission a truthful sworn statement, in the form shown on Appendices A and B, that shall acknowledge receipt of this Order and shall reaffirm and attest to the truth, accuracy and completeness of the

declarations they each executed on December 15, 1999 (the "declarations"). The Commission's agreement to this Order is expressly premised on the truthfulness and accuracy of the declarations of defendants Stout and Lytle.

VI. RETENTION OF JURISDICTION

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

VII. ENTRY OF THIS JUDGMENT

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

SO STIPULATED:

JANET M. EVANS
DAVID P. FRANKEL
Attorneys for Plaintiff
Federal Trade Commission
Room S-4104
601 Penn. Ave., N.W.,
Washington, D.C. 20580
(202) 326-2125 (Evans)
(202) 326-2812 (Frankel)
(202) 326-3259 (facsimile)
JE-2404

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(973) 645-2839
MC-5483

Attorneys for Plaintiff
Federal Trade Commission

Sheldon Leibowitz, Esq.
15 Engle Street
Englewood, New Jersey 07631
Attorney for Defendants

ROBERT STOUT
Individually and d/b/a Global
Internet Federal Registry,
Inc.

DONALD J. LYTLE
Individually and as an officer
and director of Get Out From
Under.com, Inc.

GET OUT FROM UNDER.COM, INC.
By: Donald J. Lytle
Officer and Director

Defendants

IT IS SO ORDERED, this _____ day of _____, 2001.

WILLIAM H. WALLS
UNITED STATES DISTRICT JUDGE

JANET M. EVANS
DAVID P. FRANKEL
Attorneys for Plaintiff
Federal Trade Commission
Direct Messenger Address:
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Room 4104
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JE-2404

LOCAL COUNSEL:

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United States Attorney
By:
MICHAEL A. CHAGARES
Assistant U.S. Attorney
970 Broad Street -- 7th Floor
Newark, New Jersey 07102
(973) 645-2839
MC-5483

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

| | | |
|------------------------------|---|--------------------------|
| FEDERAL TRADE COMMISSION, | : | Hon. William H. Walls |
| | : | |
| | : | Civil Action No. 99-5705 |
| | : | (WHW) |
| Plaintiff, | : | |
| v. | : | |
| | : | |
| Robert Stout | : | |
| 625 Blakeney Pl. | : | |
| Rivervale, New Jersey 07675 | : | _____ |
| individually and d/b/a | : | AFFIDAVIT OF DEFENDANT |
| GLOBAL INTERNET FEDERAL | : | DONALD J. LYTLE, |
| REGISTRY, INC., | : | INDIVIDUALLY AND AS AN |
| | : | OFFICER AND DIRECTOR OF |
| GET OUT FROM UNDER.COM, INC. | : | GET OUT FROM UNDER.COM, |
| 625 Blakeney Pl., | : | INC. |
| Rivervale, New Jersey 07675, | : | _____ |
| | : | |
| and | : | |
| | : | |
| Donald J. Lytle | : | |
| 625 Blakeney Pl., | : | |
| Rivervale, New Jersey 07675, | : | |
| individually and as an | : | |
| officer and director of | : | |
| GET OUT FROM UNDER.COM, INC. | : | |
| | : | |
| Defendants. | : | |

Donald J. Lytle, being duly sworn, hereby states and affirms:

1. My name is Donald J. Lytle. I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the matters discussed in this affidavit and if called as a witness, I could and would competently testify as to the matters stated herein. I am a defendant in the above-captioned action.

2. On _____, 2001, I received a copy of the
(insert date)
Stipulated Final Order for Permanent Injunction and Other Relief as to All Defendants, which was signed by the Honorable William H. Walls, United States District Court Judge for the District of New Jersey. A true and correct copy of the Order that I received is appended to this Affidavit.

3. I hereby affirm and attest to the truthfulness, accuracy and completeness of the Declaration of Donald J. Lytle executed by me on December 15, 1999, and previously provided to the Federal Trade Commission.

I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on _____, at _____.
(insert date) (insert city, state)

Donald J. Lytle

STATE OF _____

COUNTY OF _____

BEFORE ME this day personally appeared _____, who being first duly sworn, deposes and says that he has read and understands the foregoing statement and that he has executed the same for the purposes contained therein.

SUBSCRIBED AND SWORN TO before me this _____ day of _____, _____, by _____
_____. He is personally known to me or has presented
(state identification) _____
_____ as identification.

Print Name

NOTARY PUBLIC,
STATE OF _____

Commission Number
Affix Seal

APPENDIX B

JANET M. EVANS
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MC-5483

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

: Hon. William H. Walls
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: Civil Action No. 99-5705
: (WHW)
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Robert Stout
625 Blakeney Pl.
Rivervale, New Jersey 07675
individually and d/b/a
GLOBAL INTERNET FEDERAL
REGISTRY, INC.,

:
:
: _____
: AFFIDAVIT OF DEFENDANT
: ROBERT STOUT,
: INDIVIDUALLY AND d/b/a
: GLOBAL INTERNET
: FEDERAL REGISTRY,
: INC.
:
: _____

GET OUT FROM UNDER.COM, INC.
625 Blakeney Pl.,
Rivervale, New Jersey 07675,

and

Donald J. Lytle
625 Blakeney Pl.,
Rivervale, New Jersey 07675,
individually and as an
officer and director of
GET OUT FROM UNDER.COM, INC.

Defendants.

Robert Stout, being duly sworn, hereby states and affirms:

1. My name is Robert Stout. I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the matters discussed in this affidavit and if called as a witness, I could and would competently testify as to the matters stated herein. I am a defendant in the above-captioned action.

2. On _____, 2001, I received a copy of the
(insert date)
Stipulated Final Order for Permanent Injunction and Other Reliefs to All Defendants, which was signed by the Honorable William H. Walls, United States District Court Judge for the District of New Jersey. A true and correct copy of the Order that I received is appended to this Affidavit.

3. I hereby affirm and attest to the truthfulness, accuracy and completeness of the Declaration of Robert Stout executed by me on December 15, 1999, and previously provided to the Federal Trade Commission.

I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on _____, at _____.
(insert date) (insert city, state)

Robert Stout

STATE OF _____

COUNTY OF _____

BEFORE ME this day personally appeared _____, who being first duly sworn, deposes and says that he has read and understands the foregoing statement and that he has executed the same for the purposes contained therein.

SUBSCRIBED AND SWORN TO before me this _____ day of _
_____, _____, by _____
_____. He is personally known to me or has presented
(state identification) _____
_____ as identification.

Print Name

NOTARY PUBLIC,
STATE OF _____

Commission Number
Affix Seal