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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION and
THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiffs,

v.

UrbanQ, a limited liability company, and Daniel
Greenberg, Michael Konig, and Steven Krausman,
individually and as members of URBANQ.COM,
LLC.,

Defendants.

Civil Number

**STIPULATED FINAL ORDER
FOR PERMANENT
INJUNCTION**

Plaintiffs, the Federal Trade Commission (the "Commission"), and the People of the State of

New York by the Attorney General of New York, (collectively “Plaintiffs”) having filed their Complaint for a permanent injunction and other relief in this matter pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), alleging violations of Sections 5 of the FTC Act, 15 U.S.C. §§ 45, and pursuant to New York’s Executive Law (NY Exec. Law) §63 (12) and General Business Law (NY GBL) Article 22-A, §§ 349 and 350, respectively, and the parties having conferred through counsel, and having agreed to the entry of this Stipulated Final Order for Permanent Injunction (“Order”) and have requested that the Court enter the same to resolve all matters of dispute between them in this action without trial or adjudication of any issue of law or fact herein.

NOW, THEREFORE, Plaintiffs and Defendants having requested this Court to enter this Order, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter of this action and of the Defendants. Venue is proper as to all parties in the Eastern District of New York.
2. The Complaint states a claim upon which relief can be granted against the defendants under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b) and NY Exec. Law § 63(12) and NY GBL §§ 349 and 350.
3. The acts and practices of the Defendants were or are in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. Defendants waive all rights to seek judicial review of, or otherwise challenge or contest the validity of this Order. Defendants also 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.

5. Plaintiffs and defendants settle and resolve all matters in connection with the acts and practices alleged in the complaint, freely and without trial or final adjudication of any issue of fact or law, and thereby stipulate and agree to entry of the Final Judgment and Order for Permanent Injunction against defendants.

6. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty, forfeiture, or punitive assessment and no provision of this Order shall be construed as an admission or finding that any Defendant has engaged in violations of the FTC Act, NY Exec. Law, NY GBL, or any other law.

7. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law.

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

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

DEFINITIONS

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

1. "Rebate" shall mean cash, credit towards future purchases, merchandise, services, or any other consideration offered to consumers who purchase products or services from any Defendant, which is provided subsequent to the purchase.

2. "Mail Order Rule" shall mean the Federal Trade Commission's Trade Regulation Rule Concerning Mail or Telephone Order Merchandise, 16 C.F.R. Part 435, or as the Rule may hereafter

be amended.

3. “Defendants” means the individual defendants, Daniel Greenberg, Michael Konig, and Steven Krausman and corporate defendant, UrbanQ.com, individually or collectively, and includes their officers, agents, servants, employees, and attorneys and those persons in active participation with them.

4. “Plaintiffs” mean the Federal Trade Commission and the People of the State of New York by the Attorney General of New York.

CONDUCT PROHIBITIONS

I.

IT IS HEREBY ORDERED that Defendants, directly or indirectly, or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, shall not:

- A. misrepresent, in any manner, expressly or by implication, the terms or conditions of any rebate offer including but not limited to the time in which any rebate in the form of cash or credit towards future purchases will be mailed, or otherwise provided to purchasers;
- B. fail to provide any rebate within the time specified, or, if no time is specified, within thirty (30) days;
- C. offer a rebate without having a reasonable basis or ability to pay it;
- D. violate any provision of the Mail Order Rule in connection with any rebate in the form of merchandise, including failing to provide the rebate within the time specified, or, if no time is specified, within thirty (30) days, unless respondent offers to the purchaser the

option of either:

1. consenting to the delay; or
2. canceling the rebate request and promptly receiving reasonable cash compensation instead of the rebate originally offered; or

E. fail to provide any rebate in the form of services or any other consideration (other than cash, credit towards future purchases, or merchandise) within the time specified, or, if no time is specified, within thirty days, unless respondent offers to the purchaser the option of either:

1. consenting to the delay; or
2. canceling the rebate request and promptly receiving reasonable cash compensation instead of the rebate originally offered; or

F. misrepresent, in any manner, expressly or by implication, any material terms of any rebate program, including the status of or reasons for any delay in providing any rebate.

MONETARY RELIEF

II.

IT IS FURTHER ORDERED that:

A. Suspended Judgment–Defendants are jointly and severally liable for \$789,838. However, this judgment shall be suspended upon the payment of \$600,000 as set forth in paragraph B herein and subject to the right to reopen conditions set forth in Paragraph III of this Order.

B. Defendants shall pay to Plaintiffs as consumer redress the sum of \$600,000 as follows: \$250,000 upon Defendants' signing of this Order, such payment shall be deposited into a redress fund

escrow account, to be established by the Commission in consultation with the New York Attorney General for the purpose of receiving payment due under this Order; the remaining \$350,000 shall be paid by the Defendants to Plaintiffs within 30 days after the entry of this Order or 120 days after the Defendants' sign this Order, whichever is later.

C. All funds paid pursuant to this Paragraph shall be deposited into a fund administered by the Plaintiffs or their agent to be used for consumer redress and other equitable relief as the Commission and the New York Attorney General's Office deem appropriate. Defendants shall pay for all *reasonable* attendant expenses for the administration of any redress fund within 15 days after receiving a bill setting forth the amount of said expenses. Defendants will cooperate fully to assist Plaintiffs in making the redress fund available to individual consumers including providing Plaintiffs with purchaser identifying information. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, any funds not used for the administration or payment of consumer redress shall be divided equally for (1) payment to the United States Treasury as disgorgement or costs or such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Defendants' practices alleged in the complaint and (2) payment to the State of New York as disgorgement or costs. Plaintiffs, in their sole discretion, may use a designated agent to administer consumer redress.

D. Defendants shall also furnish to the Plaintiffs, in accordance with 31 U.S.C. § 7701, their taxpayer identification numbers (social security number, social insurance number, or employer identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of each Defendant's relationship with the government.

RIGHT TO REOPEN

III.

IT IS FURTHER ORDERED that the Plaintiffs' agreement to, and the Court's approval of this Order is expressly premised upon the truthfulness, accuracy, and completeness of the financial statements provided by Defendants UrbanQ, including but not limited to the statement dated September 4, 2002, and Daniel Greenberg's financial statement provided on February 24, 2003, to counsel for Plaintiffs, which contain material information upon which the Plaintiffs relied in negotiating and agreeing to the terms of this Order.

A. If, upon motion by the Plaintiffs, the Court finds that either Defendant UrbanQ or Daniel Greenberg failed to disclose any material asset, or materially misrepresented the value of any asset, or made any other material misrepresentation in or omission from the above-referenced financial statements and information, the suspension of the monetary judgment in paragraph II (B) will be terminated and the entire judgment of \$789,838, will be immediately due and payable less any amounts Defendants have previously paid to Plaintiffs. Should this judgment be modified as to the monetary liability of Defendants UrbanQ and Daniel Greenberg, this Order, in all other respects, shall remain in full force. Any proceedings instituted under this Paragraph shall be in addition to, and not in lieu of, any other proceedings the Plaintiffs may initiate to enforce this Order. Solely for the purposes of reopening this judgment or enforcing this Paragraph, Defendants UrbanQ and Daniel Greenberg waive any right to contest any of the allegations set forth in the Complaint filed in this matter or the monetary judgment referenced above.

B. Defendants expressly waive their rights to litigate the issue of disgorgement. Defendants

acknowledge and agree that all money paid pursuant to this Order is irrevocably paid to Plaintiffs for purposes of settlement between Plaintiffs and Defendants.

PERFORMANCE BOND

IV.

IT IS FURTHER ORDERED that Defendants are permanently restrained and enjoined from engaging in, or assisting others engaged in offering rebates unless they first obtain a performance bond in the principal amount of not less than five hundred thousand dollars (\$500,000).

A. The bond shall be conditioned upon compliance with the provisions of this Order. The bond shall be deemed continuous and remain in full force and effect as long as Defendants engage in offering rebates and for at least three (3) years thereafter. The bond shall cite this Order as the subject matter of the bond, and shall provide surety thereunder against financial loss due, in whole or part, to any violation of the provisions of this Order. This provision does not apply to rebates offered by parties other than the individual Defendants or UrbanQ directly to a purchaser.

B. The bond shall be an insurance agreement providing surety for financial loss issued by a surety company that is admitted to do business in each of the states in which Defendants are doing business and that holds a Federal Certificate of Authority as Acceptable Surety on Federal Bond and Reinsuring. Such bond shall be in favor of both (1) the Commission and the New York Attorney General's Office, for the benefit of any consumer injured as a result of any violation of Section 5(a) of

the FTC Act, 15 U.S.C. § 45(a) or NY Exec. Law § 63(12) or NY GBL §§ 349 and 350 or the provisions of this Order, made while engaging in offering rebates, and (2) any consumer so injured.

C. The bond required by this Paragraph shall be in addition to and not in lieu of any other bond required by law.

D. Defendants shall provide a copy of the bond required by this Paragraph to the Regional Director of the Northeast Region of the Federal Trade Commission and to the Chief, Internet Bureau, Office of the Attorney General, 120 Broadway, New York, NY 10271 at least ten (10) days prior to the commencement of any activity or business for which the bond is required.

E. Defendants shall not disclose the existence of the performance bond to any consumer without also disclosing clearly and prominently, at the same time,

“AS REQUIRED BY ORDER OF THE U.S. DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK IN
SETTLEMENT OF CHARGES URBANQ, DANIEL
GREENBERG, MICHAEL KONIG, AND STEVEN KRAUSMAN
AND URBANQ.COM ENGAGED IN FALSE AND
MISLEADING REPRESENTATIONS IN CONNECTION WITH
OFFERING REBATES TO CONSUMERS.”

F. The bond shall be executed in favor of the Plaintiffs if either Plaintiff demonstrates to this Court, or to a Magistrate thereof, by a preponderance of the evidence that, after the effective date of this Order, any Defendant on whose behalf a bond has been secured has, individually or through any other person or entity, violated any condition of the bond.

G. Proceedings instituted under this Paragraph shall be in addition to and not in lieu of any other civil or criminal remedies as may be provided by law, including any other proceedings the Commission and/or the New York Attorney General may initiate to enforce this Order.

RECORD KEEPING

V.

IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of this Order, Defendants UrbanQ, Daniel Greenberg, Michael Konig, and Steven Krausman, and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, shall, for any business where: (1) any Defendant is the majority owner of the business or directly or indirectly manages or controls the business; and (2) the business offers a rebate in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, are hereby restrained and enjoined from failing to create and retain the following records:

- A. all advertisements and promotional materials relating to the rebate;
- B. accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues; amount of consumer rebates submitted, paid, and rejected;
- C. personnel 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;
- D. customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, information on whether a rebate was paid or rejected, and rebate forms and related

submissions submitted by consumers, to the extent such information is obtained in the ordinary course of business;

E. complaints and refund requests (whether received directly, indirectly, or through any third party) and any responses to those complaints or requests; and

F. copies of all sales scripts, training materials, advertisements, or other marketing materials.

DISTRIBUTION OF ORDER BY DEFENDANTS

VI.

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

A. Defendant UrbanQ shall deliver a copy of this Order to all principals, officers, directors, managers, employees, agents, and representatives having responsibilities with respect to the subject matter of this Order, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. Defendant UrbanQ shall deliver this Order to current personnel within thirty (30) days after the date of service of this Order, and to new personnel within thirty (30) days after the person assumes such position or responsibilities.

(B) Defendants Daniel Greenberg, Michael Konig, and Steven Krausman, shall deliver a copy of this Order to the principals, officers, directors, managers and employees under Defendants Daniel Greenberg's, Michael Konig's, and Steven Krausman's control for any business that (a) employs or contracts for personal services from Daniel Greenberg, Michael Konig, and Steven Krausman and (b) has responsibilities with respect to the subject matter of this Order. Defendants

Daniel Greenberg, Michael Konig, and Steven Krausman shall secure from each such person a signed and dated statement acknowledging receipt of the Order within thirty (30) days after the date of service of the Order or the commencement of the employment relationship.

COMPLIANCE REPORTING BY DEFENDANTS

VII.

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 Daniel Greenberg, Michael Konig, and Steven Krausman shall notify Plaintiffs of the following:
 - a. any changes in defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change; and
 - b. any changes in defendant's employment status (including self-employment) within ten (10) days of such change. Such notice shall include the name and address of each business that each individual defendant is affiliated with or 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;
 - c. any changes in defendant's name or use of any aliases or fictitious

names; and

2. Defendants UrbanQ, Daniel Greenberg, Michael Konig, and Steven Krausman shall notify Plaintiffs of any proposed change in the in corporate structure of UrbanQ and any business entity owned or controlled by Defendant Daniel Greenberg, Michael Koning, or Steven Krausman where the business is engaged in offering a rebate, such as creation, incorporation, dissolution, assignment, sale, creation or dissolution of subsidiaries, 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 corporation; 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 which the Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify the Plaintiffs as soon as is practicable after obtaining such knowledge;

B. Sixty (60) days after the date of entry of this Order Defendants shall provide a written report to the Commission and the New York State Attorney General, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include but not be limited to:

1. Any changes required to be reported pursuant to subparagraph (A) above;
2. A copy of each acknowledgment of receipt of this Order obtained by any Defendant pursuant to Paragraphs VI and IX.
3. A copy of any performance bond obtained by defendant pursuant to Paragraph

IV.

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 Regional Director, Northeast Region, Federal Trade Commission, 1 Bowling Green, Suite 318, New York, NY 10004, and to Chief, Internet Bureau, Office of the Attorney General, 120 Broadway, New York, NY 10271--Re: FTC v. UrbanQ, et al., Civil Action No._____.

D. For purposes of the compliance reporting required by this Paragraph, the Commission and the New York Attorney General shall contact counsel at Fulbright & Jaworski if Plaintiffs needs information or documents from any of the Defendants. If Fulbright & Jaworski do not represent one or more of the Defendants, Plaintiffs may contact said Defendant(s) directly.

COMPLIANCE MONITORING

VIII.

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 or the New York Attorney General, Defendants UrbanQ, Daniel Greenberg, Michael Konig, and Steven Krausman 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, Plaintiffs are authorized to monitor compliance with this Order by all other

lawful means, including but not limited to the following:

1. the Commission and the New York State Attorney General are authorized, without further leave of court, to obtain 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. the Commission and the New York State Attorney General are authorized to use representatives posing as consumers and suppliers to Defendants UrbanQ, Daniel Greenberg, Michael Konig, and Steven Krausman, Defendants UrbanQ, Daniel Greenberg, Michael Konig, and Steven Krausman employees, or any other entity managed or controlled in whole or in part by Defendants, without the necessity of identification or prior notice;

Provided 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) Defendants UrbanQ, Daniel Greenberg, Michael Konig, and Steven Krausman shall permit representatives of the Commission and the New York Attorney General 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.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IX.

IT IS FURTHER ORDERED that each Defendant, within five (5) business days of receipt of

this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

RETENTION OF JURISDICTION

X.

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

SO STIPULATED:

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DONALD G. DAMATO (DD 3008)
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(212) 607-2829
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PEOPLE OF THE STATE OF NY

DANIEL GREENBERG,
individually and on behalf of UrbanQ

MICHAEL KONIG,
individually and on behalf of UrbanQ

STEVEN KRAUSMAN,
individually and on behalf of UrbanQ

Signed by the Defendants on the 12th day of April, 2003

SO ORDERED

DATED: _____

UNITED STATES DISTRICT JUDGE