

WILLIAM E. KOVACIC  
General Counsel  
BARBARA ANTHONY  
Regional Director  
Northeast Region

RONALD L. WALDMAN (RW 2003)  
DONALD G. D'AMATO (DG 3008)  
Federal Trade Commission  
1 Bowling Green, Suite 318  
New York, NY 10004  
(212) 607-2829

**CV-04-3618**  
FILED  
\* AUG 26 2004 \*  
BROOKLYN OFFICE

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

HURLEY, J.

LINDSAY, M.J.

FEDERAL TRADE COMMISSION,

Plaintiff

v.

JOEL GRANIK and JOSEPH LICHTER,  
individually and as officers of  
CYBERREBATE.COM, INC.,

Defendants.

Civil Number

**STIPULATED FINAL ORDER  
FOR PERMANENT  
INJUNCTION**

Plaintiff, the Federal Trade Commission (the "Commission"), filed a complaint for a permanent injunction and other equitable relief against Joel Granik and Joseph Lichter, individually and as officers

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of Cyberrebate.com ("Cyberrebate"), pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), alleging violations of Section 5 of the FTC Act, 15 U.S.C. §§ 45.

The Commission and Defendants have 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, the Commission 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 in the Eastern District of New York is proper.
2. On May 16, 2001, Cyberrebate filed a voluntary petition for relief under the reorganization provisions of Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "Code"), in the United States Bankruptcy Court for the Eastern District of New York, Case No. 01-16534 (CEC). This action is not subject to the automatic stay applicable to Cyberrebate under Section 362(a) of the Code. Cyberrebate is not named as a defendant in this complaint and the relief sought herein does not affect property of Cyberrebate or Cyberrebate's bankruptcy estate. In addition, the Commission's action is an exercise of the Commission's police or regulatory power as a governmental unit pursuant to Section 362(b)(4) of the Code and thus falls within an exception to the automatic stay.

3. The Complaint states a claim upon which relief can be granted, and the Commission has authority to seek the relief it has requested under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b).

4. 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.

5. 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.

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

7. Each party shall bear its own costs and attorneys’ fees.

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

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 the return of part or all of a payment in the form of 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 shall mean Joel Granik and Joseph Lichter.

## **CONDUCT PROHIBITIONS**

### **PERMANENT BAN**

#### **I.**

**IT IS THEREFORE ORDERED** that Defendants Joel Granik and Joseph Lichter, and their agents, servants, employees, salespersons, corporations, subsidiaries, affiliates, and other persons directly or indirectly under the control of any of the Defendants or in active concert or participation with any of the Defendants who receive actual notice of this Order by personal service, facsimile or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from, directly or indirectly, engaging, in whole or in part, in offering rebates for any business owned or controlled, directly or indirectly, by any defendant. This permanent ban provision does not apply when rebates are offered to purchasers by any entity or person that is unrelated to or unaffiliated with the Defendants and paid directly to purchasers by that unrelated or unaffiliated entity or person.

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**II.**

IT IS HEREBY ORDERED that Defendants Joel Granik and Joseph Lichter, directly 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

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- 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**

#### **III.**

#### **IT IS FURTHER ORDERED** that:

- A. Defendants shall pay to Plaintiff of a total of Forty Thousand (\$40,000) for equitable monetary relief in the form of disgorgement as follows: Ten Thousand Dollars (\$10,000) upon Defendants' signing of this Order, such payment shall be deposited upon signing into an escrow account held in the name of Heller, Horowitz & Feit, Counsel for Defendants; the remaining Thirty Thousand Dollars (\$30,000) shall be paid by the Defendants to Plaintiff as follows: (1) Ten Thousand Dollars (\$10,000) within 180 days from the date the Court signs this Order; (2) Ten Thousand Dollars (\$10,000) within 270 days from the date the Court signs this Order; and (3) Ten Thousand Dollars (\$10,000) within 365 days from the date the Court signs this Order. The \$10,000 payment held in

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escrow under this section shall be paid by Defendants to the Federal Trade Commission within three (3) business days of being served with a copy of this Order after it is signed by the Federal District Court Judge. Defendants may prepay any amounts due under this paragraph without any penalty.

B. Failure to Pay--If Defendants fail to pay any payment under Section III A of this Order within the time period prescribed, FTC shall proceed against the collateral and/or the Defendants shall pay monies owed from the escrow deposit described in paragraph C of this section herein unless the default is cured within seven (7) days after the payment in question was due. If any liquidation of collateral and escrow deposit yields proceeds in excess of any payment in arrears, the excess will be applied to any future payments under this section. If there are no future payments left under this section, any excess payments collected shall be refunded to the Defendants.

C. In order to secure the payment of Defendants' indebtedness to the Commission, within five business (5) days of the entry of this Order, Defendants shall cause to be transferred to the Commission a security interest in all shares of Schering Plough stock belonging to Joel Granik identified in his March 31, 2004 financial disclosure statement; and shall deposit into an interest bearing escrow account of Heller, Horowitz & Feit, P.C. the sum of \$22,000 (this sum is in addition to the previously set forth \$10,000 initial escrow payment). Defendants may make payments due to the FTC pursuant to Section III. A. (1)-(3) directly from the escrow account. All interest earned on the escrow deposit shall belong to Joseph Lichter. Within ten (10) days of the entry of this Order the Defendants shall perform all steps necessary to perfect the security interest granted to Plaintiff and shall make the escrow deposit under this Order. Defendants shall pay any preparation and filing fees necessary to perfect

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these security interests under the appropriate state laws. Defendants shall furnish to counsel for the Commission an executed sworn statement attesting to the steps taken to perfect the security interest and the escrow deposit along with copies of related documents. The FTC will release its security interest in this property and the escrow shall be terminated upon receipt of all payments required by this Part. Defendants make seek upon written notice to FTC to substitute alternate collateral equal to or greater than any specific collateral described in this paragraph. The alternate collateral will be substituted unless the FTC objects in writing to the proposed substitution within five (5) business days; Defendants shall execute a statement sufficient to perfect the filing and recording of security interests in the alternate collateral under the appropriate state laws.

D. Time is of the essence for the payment obligations specified above. If the liquidation of any collateral and the escrow deposit under Section III B is insufficient to pay any monetary relief owed pursuant to Section III A, then a Judgment in the amount of Forty-Four million Dollars (\$44,000,000) is hereby entered against Defendants, jointly and severally, for equitable monetary relief in the form of disgorgement, less any amounts Defendants have previously paid to Plaintiff.

Notwithstanding any other provision of this Order, Defendants agree that, if they fail to meet the payment obligations set forth in this Part, they waive any right to contest any of the allegations in the Commission's complaint, including, but not limited to, in connection a non-dischargeability complaint in any subsequent bankruptcy proceeding.

E. All funds paid to the Commission pursuant to this Order shall be deposited to the Treasury as disgorgement. No portion of any payments under the Judgment herein shall be

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deemed a payment of any fine, penalty, or punitive assessment.

F. 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 the Commission for purposes of settlement between Plaintiff and Defendants;

G. Defendants shall also furnish to the Plaintiff, 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**

#### **IV.**

IT IS FURTHER ORDERED that the Commission's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of Defendants Joel Granik's and Joseph Lichter's financial conditions as represented in their respective Financial Statements dated March 31, 2004, ("Financial Statement") which were provided to the Commission and contain material information and documents upon which the Commission relied in negotiating and agreeing to the terms of this Order, and which will be reaffirmed by Defendants pursuant to this Paragraph.

A. If, upon motion by the Commission, this Court finds that any of the Defendants filed a Financial Statement that failed to disclose any material asset, or materially misrepresented the value of any asset, or made any other material misrepresentation in or omission from any financial statement, the judgment herein shall be reopened for the purpose of increasing the amount Defendants shall pay the

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Commission pursuant to Part III above, to \$44,000,000 million dollars less any amounts previously paid, representing the approximate amount of consumer injury, and which will become immediately due and payable.

### COMPLIANCE MONITORING

#### V.

**IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating compliance with any provision of this Order,

A. Within twenty (20) days of receipt of written notice from a representative of the Commission, Joel Granik and Joseph Lichter each shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

- (1) obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;

(2) posing as consumers and suppliers to: Joel Granik and Joseph Lichter's employees, or any other entity managed or controlled in whole or in part by Joel Granik or Joseph Lichter, without the necessity of identification or prior notice;

C. Joel Granik and Joseph Lichter shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

#### **COMPLIANCE REPORTING BY DEFENDANT**

#### **VI.**

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

- A. For a period of four (4) years from the date of entry of this Order,
- (1) Each Individual Defendant shall notify the Commission of the following:
- (a) Any changes in residence, mailing addresses, and telephone numbers of Individual Defendants, within ten (10) days of the date of such change;

(b) Any changes in employment status (including self-employment) of Individual Defendant, and any change in the ownership of the Individual Defendant in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that the Individual Defendant is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of the Individual Defendant's duties and responsibilities in connection with the business or employment;

(c) Any changes in the Individual Defendant's name or use of any aliases or fictitious names; and

(2) Joel Granik and Joseph Lichter shall notify the Commission of any changes in corporate structure or any business entity that an Individual Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which the defendant learns less than thirty (30) days prior to the date such action is to take place, defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order, Joel Granik and Joseph Lichter each shall provide a written report to the FTC, 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) For each Individual Defendant:

a. The then-current residence address, mailing addresses, and telephone numbers of the Individual Defendant;

b. The then-current employment and business addresses and telephone numbers of the Individual Defendant, a description of the business

activities of each such employer or business, and the title and responsibilities of the Individual Defendant, for each such employer or business; and

c. Any other changes required to be reported under subparagraph (A) of this Section.

(2) For all Defendants:

a. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Paragraph VIII; and

b. Any other changes required to be reported under subparagraph A of this Section.

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

Regional Director for Northeast Region  
Federal Trade Commission  
1 Bowling Green, Suite 318  
New York, NY 10004  
Re: FTC v. Joel Granik and Joseph Lichter, Civil Action No. \_\_\_\_\_

D. For purposes of the compliance reporting and monitoring required by this Paragraph, the Commission is authorized to communicate directly with defendants Joel Granik and Joseph Lichter. The Defendants may have counsel participate in any communication under this paragraph.

### RECORD KEEPING PROVISIONS

#### VII.

**IT IS FURTHER ORDERED** that, for a period of seven (7) years from the date of entry of this Order, Joel Granik and Joseph Lichter 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, 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 other than a rebate offered to purchasers by any entity or person that is unrelated to or unaffiliated with the Defendants and paid directly to purchasers by that unrelated or unaffiliated entity or person, in connection with the advertising, promotion, offering for sale, are hereby restrained and enjoined from failing to create and retain the following records:

- A. all advertisements and promotional materials relating to any 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. complaint 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 DEFENDANT**

**VIII.**

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**IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of this Order, Defendants Joel Granik and Joseph Lichter shall deliver a copy of this Order as directed below:

**A Joel Granik and Joseph Lichter as Control Person:** For any business that Defendants Joel Granik or Joseph Lichter controls, directly or indirectly, or in which Defendants Joel Granik or Joseph Lichter have a majority interest, Defendants Joel Granik and Joseph Lichter must deliver a copy of this Order to all principals, officers, directors, members, managers of that business. Defendants Joel Granik and Joseph Lichter must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within (5) days of service of this Order upon Defendants Joel Granik and Joseph Lichter. For new personnel, delivery shall occur prior to them assuming responsibilities.

**B. Joel Granik and Joseph Lichter as employee or non-control person:** For any business where Defendant Joel Granik or Joseph Lichter is a not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, Joel Granik and Joseph Lichter must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

**C. Settling Defendants** must secure a signed and dated statement acknowledging receipt of the Final Judgment within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this paragraph.




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.

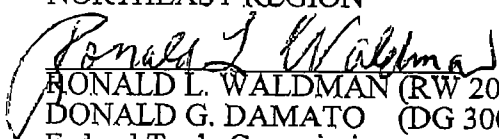
**RETENTION OF JURISDICTION**

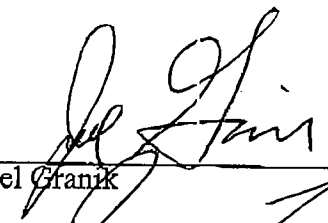
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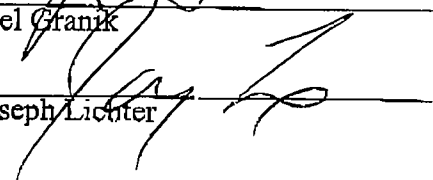
IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Order.

**SO STIPULATED:**

  
BARBARA ANTHONY  
REGIONAL DIRECTOR  
NORTHEAST REGION

  
RONALD L. WALDMAN (RW 2003)  
DONALD G. DAMATO (DG 3008)  
Federal Trade Commission  
1 Bowling Green, Suite 318  
New York, NY 10004  
(212) 607-2829  
Attorneys for the Plaintiff  
FEDERAL TRADE COMMISSION

  
Joel Granik

  
Joseph Lichter

**SO ORDERED**

DATED: \_\_\_\_\_

UNITED STATES DISTRICT JUDGE

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