

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA, PHOENIX DIVISION**

Federal Trade Commission,	)	CV- No. 00-1210 PHX SMM
	)	
Plaintiff,	)	<b>STIPULATED FINAL JUDGMENT</b>
	)	<b>AND ORDER FOR PERMANENT</b>
v.	)	<b>INJUNCTION AS TO</b>
	)	<b>DEFENDANTS MICHAEL K.</b>
YP.Net, Inc., et al.,	)	<b>BLOOMQUIST, AND JOSEPH T.</b>
	)	<b>CARLSON</b>
Defendants.	)	
	)	

Plaintiff, Federal Trade Commission ("FTC" or "Commission"), having filed its Complaint for permanent injunction and other relief in this matter, pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a) and 53(b), and the parties having agreed to settle this action without adjudication or admission of any issue of fact or law, therefore, pursuant to stipulation of the parties, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

**FINDINGS**

1. This Court has jurisdiction of the subject matter of this case and of the parties hereto.
2. Venue is proper as to all parties in the District of Arizona under 15 U.S.C. § 53(b), and 28 U.S.C. §§ 1391(b) and (c).
3. The alleged activities of Defendants (as "Defendants" are defined below) are in or

affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.

4. The Complaint states a claim upon which relief may be granted against Defendants under Sections 5(a) and 13(b) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 53(b). There have been no findings or admissions of any wrongdoing by the Defendants.
5. The Commission and Defendants, by and through their counsel, have agreed that the entry of this Order resolves all matters arising from the allegations of the Complaint in this action. This Order supersedes all prior Orders in this matter.
6. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order.
7. Entry of this Order is in the public interest.

## **ORDER**

### **Definitions**

1. **“Defendants”** means Michael K. Bloomquist, and Joseph T. Carlson
2. **“Document”** is equal in scope and synonymous in meaning 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 any other data compilations from which information can be obtained.
3. **“Solicitation check”** means any check that, if deposited or cashed by the consumer, signs the consumer up for any Internet-related goods or services, sold

by Defendants.

## **PROHIBITED CONDUCT**

### **I.**

#### **INJUNCTION AGAINST MISREPRESENTATIONS**

**IT IS THEREFORE ORDERED** that, in connection with the advertising, promotion, offering for sale, sale or provision of any goods or service, Defendants are hereby permanently restrained and enjoined from making or assisting in the making of, expressly or by implication, orally or in writing, any false or misleading statement or representation of material fact, including, but not limited to, representations that:

- A. Consumers can obtain a monetary rebate or payment from Defendants without incurring any obligations to Defendants; and
- B. Defendants have a prior or ongoing business relationship with consumers.

### **II.**

#### **INJUNCTION AGAINST USING REBATE CHECKS TO SOLICIT CUSTOMERS**

**IT IS FURTHER ORDERED** that Defendants are hereby permanently restrained and enjoined from sending consumers any solicitation check that uses the term “rebate,” or any term that represents that Defendants have a prior or ongoing relationship with consumers, if that is not the case.

## **GENERAL REQUIREMENTS**

### **III.**

#### **ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that, within five (5) business days after receipt by Defendants of this Order as entered by the Court, each Defendant shall submit to the Commission a truthful sworn statement, in the form shown on Attachment A to this Order, that shall acknowledge receipt of this Final Order.

### **IV.**

#### **DISTRIBUTION OF ORDER BY DEFENDANTS**

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

A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt, or proof of service, from each officer, director, and each individual serving in a management capacity, whether designated as employees, consultants, independent contractors, or otherwise, immediately upon employing or retaining any such persons, for any business where:

(1) A Defendant is the majority owner of the business or directly or indirectly manages or controls the business; and where

(2) The business uses solicitation checks; and

B. Maintain and upon reasonable notice, make available to representatives of the

Commission, the original signed and dated acknowledgments of the receipt, or proof of service, of copies of this Order, as required in Subsection (A) of this Paragraph.

V.

**RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of this Order, Defendants, in connection with any business where:

- (1) A Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where
- (2) The business uses solicitation checks

are hereby restrained and enjoined from failing to create, and from failing to retain for a period of three (3) years following the date of such creation, unless otherwise specified:

- A. Books, records, and accounts that, in reasonable detail, accurately and fairly reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Records accurately reflecting: the name, address, and telephone number of each person employed by such business, including independent contractors; 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 businesses subject to this Paragraph shall retain such records for any terminated employee for a period of two (2) years following the date of termination;
- C. Records containing the names, addresses, phone numbers, dollar amounts paid,

quantity of items and services purchased, and description of the items and services purchased, for all consumers to whom such business sold, invoiced, or shipped any goods and services;

- D. Records that reflect, for every consumer complaint or refund request received:
1. The consumer's name, street address, telephone number, and dollar amount paid by the consumer;
  2. The complaint or refund request, if any, and the date of the complaint or refund request;
  3. The basis of the complaint, if any, including the name of any salesperson complained against, and the nature and result of any investigation conducted concerning the complaint;
  4. Each response by Defendant 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 the denial; and
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials used by Defendants; *provided* that copies of all sales scripts, training materials, advertisements, or other marketing materials utilized shall be retained for three (3) years after the last date of dissemination of any such materials.

## VI.

### **COMPLIANCE REPORTING BY DEFENDANTS**

**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, each Defendant shall notify the Commission of the following:

1. Any changes in Defendant's business address, mailing addresses, and telephone numbers, within twenty (20) days of the date of such change;
2. Any changes in the employment status (including self-employment) of any individual Defendant, within ten (10) days of such change. Such notice shall include the name and address of each business that the individual Defendant is employed by, owns or operates, 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;
3. Any change in the structure of each Defendant, such as creation, incorporation, dissolution, assignment, sale, merger, dissolution of subsidiaries, filing of a bankruptcy petition, or change in the corporate name or address, or any other change that may affect compliance obligations arising out of this Order, within thirty (30) days of the effective date of any change;

B. Within one hundred eighty (180) days after the date of entry of this Order, each 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 it has complied and is

complying with this Order. This report shall include, but not be limited to:

1. Each individual Defendant's then current employment and business address, mailing addresses, and telephone numbers; the individual Defendant's title and responsibilities for each such employer or business;
  2. Each corporate Defendant's then current business addresses and telephone numbers, a description of the business activities of each such employer or business, including a description of its marketing methods and goods and services sold, and a list of the names of all current officers and managers;
  3. A copy of each acknowledgment of receipt of this Order obtained by each Defendant pursuant to Section IV of this Order;
  4. A statement describing the manner in which each Defendant has complied and is complying with the injunctive provisions of this Order;
- C. Upon written reasonable request by a representative of the Commission, each Defendant shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) days notice with respect to any conduct subject to this Order;
- D. For the purposes of this Order, each 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, Room 238



600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580  
Re: FTC v. YP.Net, Inc., et al., CV- No. 00-1210 PHX SMM

- E. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with Defendants unless or until a Defendant informs the Commission that the Defendant is represented by counsel and would prefer that the Commission communicate directly with the Defendant's counsel.

## VII.

### **COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

**IT IS FURTHER ORDERED** that the Commission is authorized to monitor Defendants' compliance with this Order by all lawful means, including, but not limited to, the following:

- A. For a period of three (3) years from the date of entry of this Order, 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, and the Local Rules of this Court, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring Defendants' compliance with any provision of this Order;
- B. The Commission is authorized to use representatives posing as consumers or suppliers to Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part by Defendants, without the necessity of

identification or prior notice, as allowed by federal law; and

- C. 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 and 57b-1, to determine whether Defendants have violated any provision of this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

## VIII.

### ACCESS TO BUSINESS PREMISES

**IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, Defendants shall permit representatives of the Commission, within four (4) business days of receipt of written notice from the Commission:

- A. Access during normal business hours to any office, or facility storing documents, of any business where:

- (1) A Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where
- (2) The business uses solicitation checks.

In providing such access, Defendants shall permit representatives of the Commission to inspect and copy all unprivileged documents relevant to any matter contained in this Order; and shall permit Commission representatives to remove such documents relevant to any matter contained in this Order for a period not to exceed two (2) business days so that the documents may be inspected, inventoried,

and copied; and

- B. To interview the owners, officers, directors, and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which Subsection (A) of this Paragraph applies, concerning matters relating to compliance with the terms of this Order. The person interviewed may have counsel present, and counsel for Defendants may be present as well.

**IX.**

**COSTS**

**IT IS FURTHER ORDERED** that each party shall bear its own costs and attorneys' fees incurred in connection with this action.

**X.**

**RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for the purpose of enabling the parties to apply to the Court at any time for such further orders and directives as may be necessary or appropriate for the interpretation or

modification of this Order, for the enforcement of compliance therewith, or for the punishment of violations thereof.

**XI.**

**COMPLETE SETTLEMENT**

The parties hereby consent to entry of the foregoing Order which shall constitute a final judgment and order in this matter. The parties further stipulate and agree that the entry of the foregoing Order shall constitute a full, complete and final settlement of this action. Defendants waive any rights they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412.

**SO ORDERED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2000, at \_\_\_\_\_

\_\_\_\_\_  
United States District Judge

**FOR DEFENDANTS**

\_\_\_\_\_  
Defendant Michael K. Bloomquist

**FOR THE COMMISSION**

\_\_\_\_\_  
Tracey L. Brown  
Michael P. Mora  
Attorneys for the Plaintiff  
Federal Trade Commission

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Allen Bickart  
Counsel for Michael K. Bloomquist

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Defendant Joseph T. Carlson

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James Mueller  
Counsel for Joseph T. Carlson

**ATTACHMENT A**

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA, PHOENIX DIVISION**

Federal Trade Commission,	)	
	)	CV- No. 00-1210 PHX SMM
Plaintiff,	)	
	)	<b>DECLARATION OF</b>
v.	)	<b>DEFENDANT</b>
	)	
YP.Net, Inc., et al.,	)	
	)	
Defendants.	)	
	)	

I, \_\_\_\_\_, hereby state and affirm as follows:  
          [Name]

1. My name is \_\_\_\_\_, and I am a defendant in  
FTC v. YP.Net, Inc., et al., which has been filed in the District of Arizona.

2. On \_\_\_\_\_, I received a copy of the Order, which was signed by  
the Honorable \_\_\_\_\_ and entered by the Court on \_\_\_\_\_  
2001.

A true and correct copy of the Order I received is appended to this Declaration.

I declare under penalty of perjury under the laws of the United States that the foregoing is  
true and correct.

\_\_\_\_\_  
Signature