

THE STATE OF TEXAS	§	IN THE 57 <sup>TH</sup> JUDICIAL
Plaintiff	§	
	§	
v.	§	
	§	
iMERGENT, INC.,	§	DISTRICT COURT OF
STORESONLINE, INC. d/b/a	§	
STORESONLINE.COM, INC.	§	
f/k/a GALAXY MALL,	§	
BRANDON LEWIS,	§	
DONALD DANKS,	§	
Defendants	§	BEXAR COUNTY

**FINAL JUDGMENT AND  
AGREED PERMANENT INJUNCTION**

On this \_\_\_\_ day of \_\_\_\_\_, 2005, came on for hearing the above entitled and numbered cause, in which the State of Texas is Plaintiff and iMERGENT, INC., STORESONLINE, INC. d/b/a STORESONLINE.COM, INC f/k/a GALAXY MALL, BRANDON LEWIS, and DONALD DANKS, are Defendants. Through their respective attorneys of record, the parties wish to make the following stipulations and agree to the entry of this final judgment.

It is stipulated that the parties have compromised and settled Plaintiff's claim for damages, court costs and penalties.

It is stipulated that Plaintiff and Defendants agree to and do not contest the entry of this judgment.

The court proceeded to read the pleadings and stipulations of the parties, and it appearing to the court that all parties agree to the entry of this judgment and that they have approved its entry as shown by their signatures below. It also appears to the court that both Plaintiff and Defendants agree to the entry of this Final Judgment and Agreed Permanent injunction restraining Defendants from engaging in certain practices alleged to be unlawful. Imergent, Inc. and all Defendants have denied and continue to deny the allegations as set forth in Plaintiff's Original Petition, but in the interest of avoiding the time, expense, and uncertainty of litigation, the State of Texas and

Defendants desire to settle and compromise their mutual disputes and differences regarding OAG's allegations.

It further appears to the court that by virtue of this agreement, Plaintiff is entitled to the permanent injunction as hereinafter granted, without bond, same being within its allegations and prayer.

#### I. INJUNCTIVE TERMS

IT IS THEREFORE ORDERED, ADJUDGED and DECREED by this court that the clerk of this court shall issue a Writ of Permanent Injunction, WITHOUT BOND, applicable in the State of Texas against the following-named with the following force and effect:

TO: iMERGENT, INC., STORESONLINE, INC. d/b/a STORESONLINE.COM f/k/a GALAXY MALL, BRANDON LEWIS, and DONALD DANKS, their officers, agents, servants, employees and any other person in active concert or participation with them who receive actual notice of this injunction by personal service or otherwise,

YOU AND EACH OF YOU ARE HEREBY PERMANENTLY ENJOINED WITHIN THE STATE OF TEXAS FROM:

- A. Representing, expressly or implicitly, directly or indirectly, that coaching or mentoring services are included in the price of the StoresOnline product or services if they are not so included;
- B. Failing to specifically describe and distinguish between customer support services which are included in the price of the StoresOnline software package and coaching/mentoring services (hereafter coaching services) provided by Professional Marketing International (PMI) or some other third party and which are not included in the StoresOnline software package, provided however that if coaching and mentoring services are specifically included in the price of the software package, that such inclusion is specifically and expressly described ;
- C. Representing that a consumer need not have a computer or Internet access to purchase and use Defendants' product or services or effectively communicate with the Defendants' on-line customer support services or coaching services;

- D. Representing that Imergent live telephone or chat support services (as opposed to e-mail services) are “24 x 7,” unless there are sufficient personnel available, twenty four hours per day, seven days per week, to normally respond substantively to standard questions from an Imergent consumer support representative within five minutes of the time the request or question is sent by the consumer, and thereafter failing to substantially comply with those time representations;
- E. Failing to clearly disclose the time availability of e-mail support services and the response time for responses to e-mail communications from customers, and thereafter failing to substantially comply with those time representations;
- F. Misrepresenting in any way, the relationship between Imergent Inc. and PMI and any other coaching service, including but not limited to: failing to describe the contractual or other relationship between Imergent and PMI and other coaching companies and failing to indicate that a wholly separate company from Defendant Imergent, Inc. will provide the coaching services;
- G. Using testimonials and awards from Defendants’ family members, officers, employees, or agents or family members of the Defendants’ officers, employees or agents, or employees, officers, or family members of any other business entity associated with Defendants’ products and services, without disclosing in such a testimonial or advertisement, the family or business relationship;
- H. Using any testimonial after September 15, 2005, from any person who has not submitted a signed letter under penalty of perjury, to be kept on file at Defendant’s home office, which shall include:
  - 1. the name, address, and telephone number of the person providing the testimonial
  - 2. a statement indicating that the information provided in the testimonial or to be provided live at a presentation:
    - a. is not misleading,
    - b. is accurate and is based on the actual experience of the person providing the testimonial,

- c. does not misrepresent any facts relating to the use of the Defendants' products or services, and
  - d. does not misrepresent, directly or indirectly, the income made from using Defendants' products and services to sell the products being sold by the person providing the testimonial or making the statement.
- I. Using any testimonial that does not conform to the "Guides Concerning Use of Endorsements and Testimonials in Advertising", 16 C.F.R. Part 255 (2205);
  - J. Providing a financial incentive, benefit, or anything of value to anyone, directly or indirectly, in exchange for the testimonial which advertises or promotes any of Defendants' services or products, without disclosing in that testimonial, the benefit or incentive provided;
  - K. Causing or allowing speakers or sales agents to use any deceptive scheme or artifice or make any deceptive or misleading representation in the sale of Imergent software or licenses, including, but not limited to, representing that a speaker or sales agent: (1) owns their own website when in fact, the speaker or sales agent does not own a website or has borrowed or rented a website simply to claim its ownership, (2) has used the Imergent software to develop their own website when in fact the speaker or sales agent has not personally developed and marketed a website using the Imergent software, or (3) has been profitable with a website when in fact, the gross income from the website is not greater than the total of all of the costs and business expenses necessary to generate the alleged profit.
  - L. Deleting any part of, or in any way altering or editing, any audio tape which Defendants are ordered to make and maintain pursuant to paragraph II(L) of this order.
  - M. Knowingly selling faulty, non-working, defective, or otherwise inoperable software;
  - N. Failing to refund the full purchase price of software, license, or product to a consumer who for any technical or other reason has been sold faulty, non-working, defective, or otherwise inoperable software;
  - O. Referring any personal information about any Imergent customer to any other business, entity, or person unless the consumer has signed a written consent form authorizing the referral of his/her personal information to any other business, entity, or person;

- P. Making any statement expressed or implied, which misrepresents the terms of this order or its attachments.

## **II. MANDATORY RELIEF**

It is further ORDERED, ADJUDGED and DECREED that Defendants iMERGENT, INC., STORESONLINE, INC. d/b/a STORESONLINE.COM f/k/a GALAXY MALL, BRANDON LEWS and DONALD DANKS, shall, within the State of Texas:

- A. Provide to all consumers a written disclosure notice as set out in Attachment “A” at the initial Imergent preview shop and then again provide another copy at the all day seminar several days later which is to be attached and signed as a separate attachment immediately after the notice of the three-day-right-to-cancel attached to the purchase contract;
- B. Provide to all consumers a full and detailed description of the products or services that the Defendants’ will sell, showing each corresponding price of the product or service as shown in Attachment “B”, to be signed by the consumer and attached or incorporated into the purchase contract;
- C. Obtain the consumer’s written consent, at the time of sale, authorizing the solicitation of additional purchases, by having the consumer sign the “opt-in consent” form shown as Attachment “C”, prior to any additional solicitations from the Defendant(s) or any other party, entity, or person, associated with the Defendants’ products or services;
- D. Obtain the consumer’s signature on Attachment C prior to sending any of the consumer’s personal information to any other business, entity, or person;
- E. Provide consumers with a written contract for products or services sold to consumers, with Attachments A and C attached to it and the language of Attachment B attached or incorporated into it, at the time of sale, so that consumers will know precisely what they are buying and how much they are paying for these products or services;
- F. Disclose that the coaching services are provided by PMI or any other third-party and are not included in the initial StoresOnline basic product/service package;
- G. Disclose the contractual relationship between SOL and PMI and any other business or entity which contracts with Imergent for support services and that Defendants will refer the

consumer's name to PMI or other third party for solicitation of additional purchases if the consumer consents to further solicitation by signing the "opt-in consent" form shown in Attachment C;

- H. Disclose at seminars and workshops, as well as in Attachment B, that the coaching services are provided by PMI or any other third-party and are not included in the initial StoresOnline basic product/service package;
- I. Require any coaching service or other business selling support for Defendants' products and services to provide in writing to the consumer:
  - 1. the exact amount of time contracted for service and support,
  - 2. the specific areas of service and support which are covered,
  - 3. the number of allowable visits,
  - 4. the exact times of contact and availability,
  - 5. the specific areas of technical expertise, and
  - 6. a detailed description of the refund policy for the coaching service fees.
- J. Disclose to the Office of Attorney General, by certified-mail-return-receipt-requested, to the address shown below, the times, dates, and locations of all of the Defendants' planned workshops and seminars in Texas, at least twenty one ( 21) days in advance of the preview workshops and seven (7) days in advance of the all day seminars, for any workshops and seminars commencing after August 15<sup>th</sup> 2005;
- K. Provide, within ten (10) days of the date of this order, a copy of this order to all of Defendants' sales employees, sales agents, partners, contractors, and consultants.
- L. Tape audible audio recordings from each live presentation, workshop, or seminar given by the Defendants in Texas and maintain and archive them for no less than six (6) months from the date of the original recording;
- M. Preserve all complaints from Texas consumers, including, but not limited to, email, written complaints, business records, and incident reports for a period of two years;
- N. Honor the three (3) day right of rescission set out in 16 C.F.R. § 429 and/or Tex. Bus. & Comm. Code § 30.002, *et seq.*;

- O. Agree to the refund to all consumers who have purchased Defendants products or services in Texas and who have filed a completed Refund Request Questionnaire, the full amount actually paid by the consumer to Imergent, including all credit card charges, used to pay for any service or software purchased on or after February 23, 2003 from Defendants and/or their agent for coaching, plus any interest or finance charges for any funds borrowed from a credit card company in order to pay for the software and coaching, as set out in the “Procedures for Refunds” outlined in Attachment D;
- P. Tender Four Hundred Thousand Dollars (\$400,000) to the Office of Attorney General which shall be placed into an “Imergent Refund and Attorney Fee Account” which shall be used to refund all approved claims from consumers indicated in paragraph II.(O) above and to pay the Office of Attorney General its attorney fees, expenses, and costs of litigation;
- Q. Send sufficient funds to all financing companies, (excluding the credit card companies), who have financed the purchases of the consumers of all approved claims from consumers indicated in paragraph II.(O) above in order to pay off any remaining balances which consumers may owe on the funds they borrowed to make the purchases from Imergent and any of the coaching and mentoring companies which provided services to these consumers to teach them to use the Imergent software; and
- R. Send a letter to all consumer credit reporting agencies which the consumer has reported to Imergent, and to any of Imergent’s contractors who have provided services to Imergent’s customers, regarding all consumers indicated in paragraph II.(O) above and for whom refund requests have been approved and paid, indicating that any remaining balances previously claimed as owed by these consumers have been satisfactorily resolved because of a rescission of the transaction with the consumer, thereby clearing and nullifying any and all negative credit history which may have been attributed to such a consumer as a result of their transactions with Imergent, Inc. and their contractors.

### III. ADDITIONAL TERMS

It is further ORDERED that the State of Texas recover from Defendants the amount of Sixty Thousand Dollars (\$60,000) to reimburse the State for attorney fees, expenses and costs of litigation.

It is further ORDERED that interest at the rate of six and seventy five hundredths per cent (6.75%) per year will accrue on all sums owing from the date of judgment.

It is further ORDERED that after all approved refund requests have been paid from the Imergent Refund and Attorney Fee Account, the Office of Attorney General is to take out of the remaining funds, its \$60,000 for attorney fees and thereafter apply any funds remaining in this account, at its sole discretion, to law school clinics or to consumer education projects. In the event that there are insufficient funds remaining in the refund account to pay for all the attorney fees for the Office of Attorney General, Imergent IS FURTHER ORDERED to pay additional funds into the refund pool to make up the difference so that all approved refund requests and the attorney fees for the Office of Attorney General are paid, such that the total of all refunds and attorney fees are capped at no more than Four Hundred and Sixty Thousand Dollars (\$460,000.00).

It is further ORDERED that Defendants are assessed all costs herein.

It is further ORDERED that Defendants will pay for retaining and paying the Settlement Administrator and for all mailing and incidental costs in connection with the refund procedures set out in Attachment D.

It is further ORDERED that the State of Texas have all writs of execution and other process necessary to enforce this judgment.

All relief not granted herein is hereby denied.

Signed and entered this \_\_\_\_ day of \_\_\_\_\_, 2005.

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JUDGE PRESIDING

APPROVED AS TO FORM AND SUBSTANCE:

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