

MEMORANDUM OF UNDERSTANDING ON MUTUAL ENFORCEMENT ASSISTANCE
IN CONSUMER PROTECTION MATTERS BETWEEN THE FEDERAL TRADE
COMMISSION OF THE UNITED STATES OF AMERICA AND HER MAJESTY'S
SECRETARY OF STATE FOR TRADE AND INDUSTRY AND THE DIRECTOR GENERAL
OF FAIR TRADING IN THE UNITED KINGDOM

The U.S. Federal Trade Commission ("FTC"), Her Majesty's Secretary of State for Trade and Industry ("the Secretary of State") and the Director General of Fair Trading in the United Kingdom ("DGFT"),

RECOGNISING the challenges posed by cross-border Internet fraud and deception, and desiring to improve the effectiveness of the enforcement of the Consumer Protection Laws of both countries;

RECOGNISING that the methods of enforcement of the Consumer Protection Laws differ substantially as between both countries, in particular as to the role played by local and/or regional enforcement authorities;

RECOGNISING that there is a need to ensure that appropriate local and/or regional enforcement authorities with whom Evidence is shared under this Memorandum are made fully aware of the terms of this Memorandum and are encouraged to cooperate with the Participants in so far as they are permitted to do so by their respective national laws, enforcement policies and other important interests, consistent with the terms of this Memorandum; and

RECOGNISING that the laws of both countries contain certain restrictions on international law enforcement assistance, including information disclosure, and that nothing in this Memorandum requires the Participants to provide assistance if such assistance is prohibited by their respective national laws, enforcement policies and other important interests,

HAVE REACHED THE FOLLOWING UNDERSTANDING:

I: Definitions

For the purposes of this Memorandum,

- A. "Consumer Protection Laws" means
1. in the case of the United States, prohibitions on "unfair or deceptive acts or practices" contained in laws enforced by the Federal Trade Commission, including section 5 of the Federal Trade Commission Act, and
 2. in the case of the United Kingdom, the provisions listed in Annex A to this Memorandum;

as well as any amendments thereto, and such other laws or regulations as the Participants may from time to time decide in writing to be a "Consumer

Protection Law” for purposes of this Memorandum. Consumer Protection Laws shall not include laws relating to competition and/or antitrust for purposes of this Memorandum. The FTC and the Secretary of State should promptly notify each other of any relevant amendments to their Consumer Protection Laws.

- B. “Evidence” means information, testimony, statements, documents or copies thereof, or other things, that are lawfully obtained in anticipation of or during the course of an investigation or proceeding under the Participants’ respective Consumer Protection Laws.
- C. “Participant” means
 - 1. in the case of the United States, the FTC; and
 - 2. in the case of the United Kingdom, the Secretary of State or the DGFT acting with respect to their respective enforcement responsibilities under the Consumer Protection Laws as here defined.
- D. “Person” means any natural person or legal entity, including corporations, unincorporated associations, partnerships, or bodies corporate existing under or authorised by the laws of either the United States, its States, or its Territories, the laws of the United Kingdom, or its Territories, or the laws of other sovereign states.
- E. “Request” means a request for assistance under this Memorandum.
- F. “Requested Participant” means the Participant from which assistance is sought under this Memorandum, or which has provided such assistance.
- G. “Requesting Participant” means the Participant seeking or receiving assistance under this Memorandum.

II: Object and Scope of Assistance

- A. The Participants have decided that it is in their common interests to share Evidence that will: facilitate effective enforcement of their respective Consumer Protection Laws; avoid unnecessary duplication; facilitate sequential or simultaneous investigations of breaches or suspected breaches of their respective Consumer Protection Laws; facilitate research and education; promote a better understanding by each of economic and legal conditions and theories relevant to enforcement of their respective Consumer Protection Laws and related activities;

and keep each other informed of developments in their respective countries having a bearing on this Memorandum.

- B. In furtherance of this common interest, subject to Paragraph IV, staff of the Participants intend to use best efforts to exchange and provide appropriate information in relation to: investigations and research; speeches, research papers, journal articles; compliance education programs; amendments to relevant legislation; and staffing and resource issues.
- C. Subject to Paragraph IV, the Participants intend to use best efforts to assist one another and to cooperate on a reciprocal basis
 - 1. in providing or obtaining Evidence that could assist in determining whether a Person has violated or is about to violate their respective Consumer Protection Laws; or
 - 2. in facilitating the administration or enforcement of such Consumer Protection Laws.
- D. Subject to Paragraph IV, staff of the Participants intend to use their best efforts to inform each other as soon as practicable about violations of Consumer Protection Laws occurring or originating in the territory of the other Participant, or that affect consumers or markets in the territory of the other Participant.
- E. Subject to Paragraph IV, assistance contemplated by this Memorandum includes, but is not limited to:
 - 1. disclosing, providing, exchanging, or discussing Evidence in the possession of any Participant;
 - 2. using best efforts to cooperate in the detection and investigation of violations of the Participants' Consumer Protection Laws;
 - 3. using best efforts to obtain, or arrange the obtaining of Evidence at the request of a Participant, including
 - a. taking the testimony or statements of Persons or otherwise obtaining information from Persons;
 - b. obtaining documents, records or other forms of documentary Evidence; or
 - c. locating or identifying Persons or things;

4. using best efforts to assist in execution of service of process;
 5. using best efforts to work towards the electronic sharing of appropriate consumer complaint information; and
 6. in appropriate cases, coordinating enforcement against trans-border violations of the Participants' respective Consumer Protection Laws.
- F. Nothing in this Memorandum is intended to prevent a Participant from seeking assistance from or providing assistance to another Participant pursuant to other agreements, treaties, arrangements, or practices.
- G. This Memorandum is intended to be used solely for the purpose of law enforcement assistance between the Participants. The provisions of this Memorandum are not intended to give rise to a right on the part of any private person to obtain, suppress, or exclude any Evidence.
- H. Nothing in this Memorandum is intended to compel a Person to provide Evidence in violation of any legally applicable right, privilege or restriction.
- I. Nothing in this Memorandum is intended to affect any right of a Participant to seek Evidence on a voluntary basis or otherwise lawful basis from a Person located in the territory of the other Participant, nor is it intended to preclude any such Person from voluntarily providing Evidence to a Participant.

III: Requests for Assistance

- A. Requests by the Secretary of State or the DGFT should be addressed to: Associate Director, Division of Planning and Information, FTC. Requests by the FTC should be addressed to the Director of the Consumer Affairs Division in the Office of Fair Trading, acting on behalf of the DGFT. The DGFT intends to pass Requests on to the Secretary of State if the Request relates to legislation for which the Secretary of State has enforcement responsibilities. If the DGFT passes on a Request to the Secretary of State in this way, the Secretary of State becomes the Requested Participant for the purposes of this Memorandum, and the DGFT should inform the FTC in writing that the Request has been passed on.
- B. Requests should include:
1. identification of the Persons subject to any investigation or proceeding;

2. a general description of the subject matter and nature of any investigation or proceeding to which the Request relates;
 3. where applicable, a description of the Evidence sought;
 4. where applicable, the identity and location of any Person who is to be served with process;
 5. where applicable, a description of the action that the Requesting Participant is requesting that the Requested Participant take;
 6. where applicable, a description of procedural or evidentiary requirements bearing on the manner in which the Requesting Participant desires the Request to be executed;
 7. requirements, if any, for confidential treatment of the Request or its contents; and
 8. any other information that the Requesting Participant believes would be helpful in facilitating review or execution of a Request.
- C. Staff of the Participants should consult with each other regarding a Request in order to work out details regarding the manner and timing of executing the Request.

IV: Limitations on Assistance

- A. Consistent with its national laws, international obligations, enforcement policies and other important interests, a Participant should use its best efforts to provide assistance in response to a Request. The Requested Participant may decline to provide assistance.
- B. Notwithstanding any other provision of this Memorandum, Participants should not communicate information to the other Participants if such communication is prohibited by the laws of the Participant possessing the information or would be incompatible with that Participant's important interests.
- C. Before denying a Request, the Requested Participant should consult with the Requesting Participant to determine whether assistance may be given in part, subject to specified terms and conditions. If a Request is denied, the Requested Participant should provide the Requesting Participant with a written explanation of the basis for refusal.

- D. The determination as to whether to grant a Request in whole or in part rests with the Associate Director, Division of Planning and Information, in the case of the FTC, and with either the Secretary of State (or a person acting on his behalf) or the DGFT (or a person acting on his behalf), dependent upon which of them is the Requested Participant in the case in question.

V: Confidentiality

- A. Unless otherwise decided by the communicating Participant, each Participant should, to the fullest extent possible and consistent with its laws, use its best efforts to maintain the confidentiality of any information communicated to it in confidence by the other Participant under this Memorandum. The receiving Participant may, however, subject to Paragraph IV, communicate such confidential information to other local and/or regional law enforcement agencies (having first obtained assurances that best efforts will be used to ensure the maintenance of confidentiality) for the purpose of Consumer Protection Law enforcement, unless requested to keep the information confidential by the Participant originally in possession of the information.
- B. Each Participant should use its best efforts to oppose, to the fullest extent possible consistent with its laws, any application by a third party for disclosure of such confidential information.
- C. Unless otherwise decided by the Participants, notifications and consultations pursuant to Paragraphs II and III of this Memorandum and other communications between the Participants in relation thereto should be deemed to be confidential.
- D. Nothing in this Memorandum prevents disclosure to third parties if such disclosure is required by the law of the receiving Participant. The receiving Participant should use its best efforts to notify the communicating Participant at least ten days in advance of any such proposed disclosure, or, if such notice cannot be given because of a court order, then as promptly as possible.

VI: Changes in Consumer Protection Law

In the event of a significant modification to a Participants' Consumer Protection Laws, the Participants should use their best efforts to consult promptly, and if possible prior to the entry into force of such enactments, to determine whether this Memorandum should be amended.

VII: Return of Evidence

The Requesting Participant should use its best efforts to keep Evidence shared until the conclusion of the investigation or proceeding specified in the Request and should use its best efforts to return such Evidence at that time if the Requested Participant makes a written request for the retention and return of such Evidence at the time the Evidence is shared.

VIII: Costs

Unless otherwise decided by the Participants, the Requested Participant should pay all costs of executing a Request. Where the costs of providing or obtaining information under this Memorandum are substantial, the Requested Participant may require the Requesting Participant to undertake to pay those costs as a condition of proceeding with the Request. In such an event the relevant Participants intend to consult on the issue at the request of either Participant.

IX: Duration of Cooperation

- A. This Memorandum will come into effect on the date of signature.
- B. Assistance under this Memorandum should be available in investigations or proceedings under the Participants' Consumer Protection Laws concerning conduct or transactions occurring before as well as after this Memorandum takes effect.
- C. Each Participant can end its cooperation under this Memorandum with 30 days written notice. However, prior to ending this Memorandum, each Participant should use its best efforts to consult with the other Participants.
- D. On cessation of this Memorandum, the Participants will use their best efforts, in accordance with Paragraph V, to maintain the confidentiality of any Request and Evidence communicated to them in confidence by the other Participant under this Memorandum prior to its termination; and to return, in accordance with the provisions of Paragraph VII, any Evidence obtained from the other Participant under this Memorandum.

X: Review of Memorandum

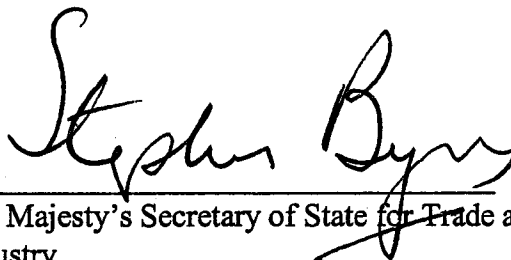
The Participants intend to consult and review the Memorandum on an annual basis regarding the cooperation, coordination and enforcement assistance undertaken between the Participants for the prior 12 month period.

Approved on this 31st day of October 2000, in duplicate

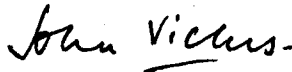


Robert Pitofsky

Chairman
Federal Trade Commission



Her Majesty's Secretary of State for Trade and Industry



Director General of Fair Trading

Annex A

Consumer Protection Laws, in relation to the United Kingdom, means

1 Those laws relating to:

- a) unfair terms in consumer contracts
- b) misleading and comparative advertising
- c) trade descriptions
- d) price indications and price marking
- e) auctions and mock auctions of goods and services
- f) hallmarking

2 The subject matter of:

- a) the Unsolicited Goods and Services Acts 1971 and 1975
- b) Parts II, III and XI of the Fair Trading Act 1973
- c) the Consumer Credit Act 1974
- d) the Estate Agents Act 1979
- e) the Timeshare Act 1992
- f) the Package Travel, Package Holidays and Package Tours Regulations 1992
- g) the Property Misdescriptions Act 1991
- h) the Weights and Measures Act 1985
- i) the Consumer Protection (Distance Selling) Regulations 2000

and any regulations made under the legislation listed in paragraph 2 above.