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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

BIGMAILBOX.COM, INC.,
a corporation, and

NOLAN QUAN,
individually and as an officer of the
corporation,

Defendants.

Civil Action No. 01-605-A

CONSENT DECREE AND ORDER
FOR CIVIL PENALTIES,
INJUNCTIVE, AND OTHER RELIEF

WHEREAS plaintiff, the United States of America, has commenced this action by filing the Complaint herein; defendants have waived service of the Summons and Complaint; the parties have been represented by the attorneys whose names appear hereafter; and the parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law and without defendants admitting liability for any of the matters alleged in the Complaint;

THEREFORE, on the joint motion of plaintiff and defendants, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. This Court has jurisdiction over the subject matter and of the parties.
2. The Complaint states a claim upon which relief may be granted against the defendants under Sections 1303(c) and 1306(d) of the Children’s Online Privacy Protection Act of 1998 (“COPPA”), 15 U.S.C. §§ 6501-6506, 6502(c), and 6505(d), and Sections 5(a)(1), 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 41-58, 45(a)(1), 45(m)(1)(A), 53(b), and 56(a).

DEFINITIONS

3. For the purposes of this Consent Decree, the term “Rule” means the Federal Trade Commission's Children’s Online Privacy Protection Rule, 16 C.F.R. Part 312, or as the Rule may hereafter be amended.

4. For purposes of this Consent Decree, the terms “child,” “collects,” “collection,” “Commission,” “delete,” “disclosure,” “Internet,” “online contact information,” “operator,” “parent,” “person,” “personal information,” “third party,” “verifiable consent,” and “website or online service directed to children,” are defined as those terms are defined in Section 312.2 of the Rule, 16 C.F.R. § 312.2.

5. Unless otherwise specified, “defendants” shall mean Bigmailbox.com, Inc. and its officers; Nolan Quan, individually and as an officer of the corporation; and each of the above’s successors and assigns, agents, representatives, and employees.

INJUNCTION

6. Defendants, their successors and assigns, and their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with any one or more of them who receive actual notice of this Consent Decree by personal service or otherwise, are hereby enjoined from violating, directly or through any corporation, subsidiary, division, website, or other device, any provision of the Rule as promulgated and as it may be modified in the future. A copy of the current Rule is attached hereto as “Appendix A” and incorporated herein as if fully set forth verbatim.

7. Defendants, their successors and assigns, and their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with any one or more of them who receive actual notice of this Consent Decree by personal service or otherwise, are hereby enjoined, in connection with the operation of any website or other online service, from making any misrepresentation in the website's privacy policy or elsewhere about the website's collection, use or disclosure of children’s personal information, or about the website's procedures to maintain the confidentiality, security, or integrity of children’s personal information.

CONSUMER EDUCATION REMEDY

8. For a period of five (5) years from the date of entry of this Consent Decree, defendants, and their successors and assigns, in connection with the operation of any website or online service directed in whole or in part to children, shall place a clear and conspicuous notice (1) within the privacy policy required to be posted on their website(s) by Section 312.4(b) of the Rule, 16 C.F.R.

§ 312.4(b); (2) within the direct notice required to be sent to parents by Section 312.4(c) of the Rule, 16 C.F.R. § 312.4(c); and (3) at each location on their website(s) where personal information is collected, which states as follows in bold typeface:

NOTICE: Visit www.ftc.gov/kidzprivacy for information from the Federal Trade Commission about protecting children's privacy online.

Where the above notice is posted on a website or delivered via email or other electronic service, it shall be in the form of a hyperlink to www.ftc.gov/kidzprivacy. The Federal Trade Commission may change the hyperlink/URL upon thirty (30) days prior written notice to defendants, their successors or assigns.

CIVIL PENALTY

9. Defendants Bigmailbox.com, Inc. and Nolan Quan, and their successors and assigns, shall pay to plaintiff a civil penalty, pursuant to Section 5(m)(1)(A) of the Federal Trade Commission Act, 15 U.S.C. § 45(m)(1)(A), in the amount of thirty-five thousand dollars (\$35,000). Defendants are jointly and severally responsible for paying the penalty.

10. Defendants shall make the payment required by Paragraph 9 on the date of entry of this Consent Decree by certified or cashier's check made payable to the Treasurer of the United States and delivered to: the Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, D.C. 20530, for appropriate disposition.

11. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the entire unpaid penalty, together with interest, as computed

pursuant to 28 U.S.C. § 1961, from the date of default to the date of payment, shall immediately become due and payable.

COMPLIANCE

12. Defendants, and their successors and assigns, shall delete all personal information collected from children through www.bigmailbox.com prior to the date of entry of this Consent Decree.

13. Defendants, and their successors and assigns, within thirty days from the date of entry of this Consent decree, shall provide a copy of this Consent Decree and the Federal Trade Commission compliance guide entitled *How to Comply with the Children's Online Privacy Protection Rule* (Nov. 1999) ("compliance guide") (attached hereto as "Appendix B") to each of their current principals, officers, directors, and managers, and to all current employees, agents, representatives, and attorneys having responsibilities related to the operation of any website or online service subject to the Rule, and secure from each such person a signed statement acknowledging receipt of a copy of this Consent Decree and the compliance guide, and shall, within ten (10) days of complying with this paragraph, submit to the Commission a signed statement setting forth the fact and manner of defendants' compliance, including the name and title of each person to whom a copy of the Consent Decree and compliance guide has been provided. For purposes of complying with this Paragraph, defendants shall be permitted to redact the dollar amount of the civil penalty (set forth in Paragraph 9 above) from the copy of the Consent Decree provided to any such person.

14. Defendants, and their successors and assigns, shall provide a copy of this Consent Decree and the compliance guide to each of their future principals, officers, directors, and managers, and to all future employees, agents, representatives, and attorneys having responsibilities related to the operation of any website or online service subject to the Rule, and secure from each such person a signed and dated statement acknowledging receipt of a copy of this Consent Decree and the compliance guide, within thirty (30) days after the person assumes such position or responsibilities. Defendants shall maintain copies of the signed statements, as well as other information regarding the fact and manner of their compliance, including the name and title of each person to whom a copy of the Consent Decree and compliance guide has been provided and, upon request, shall make the statements and other information available to the Federal Trade Commission. For purposes of complying with this Paragraph, defendants shall be permitted to redact the dollar amount of the civil penalty (set forth in Paragraph 9 above) from the copy of the Consent Decree provided to any such person.

15. Within sixty (60) days after entry of this Consent Decree, defendants, and their successors and assigns, shall file with the Commission a written report setting forth in detail the manner and form in which they have complied and are complying with this Consent Decree. This report shall include but not be limited to:

- a. a statement setting forth in detail the process by which www.bigmailbox.com registers new email accounts, and a copy of each different screen or page providing or collecting registration information;

- b. a copy of each different privacy notice for www.bigmailbox.com and for any other of defendants' websites or online services subject to the Rule;
- c. a statement setting forth in detail each place where the privacy notice is located on www.bigmailbox.com and on any other of defendants' websites or online services subject to the Rule, and a copy of each different screen or page on which the website collects personal information;
- d. a copy of each different privacy notice to parents;
- e. a statement setting forth in detail when and how notices to parents are provided;
- f. a statement setting forth in detail the methods used to obtain verifiable parental consent prior to any collection, use, and/or disclosure of personal information from children;
- g. a statement setting forth in detail the means provided for parents to review the personal information collected from their children and to refuse to permit its further use or maintenance;
- h. a statement setting forth in detail why each type of information collected is reasonably necessary for the provision of the particular related activity; and

- i. a statement setting forth in detail the procedures used to protect the confidentiality, security, and integrity of personal information collected from children.

16. For a period of five years from the date of entry of this Consent Decree, defendants, and their successors and assigns, shall maintain and make available to the Federal Trade Commission for inspection and copying within seven (7) days of the date of receipt of a written request, a print or electronic copy in HTML format of all documents demonstrating compliance with the terms and provisions of this Consent Decree, including, but not limited to, a sample copy of every different information collection form, web page, or screen, and a sample copy of each different document containing any representation regarding defendants' collection, use, and disclosure practices pertaining to personal information. Each web page copy shall be accompanied by the URL of the Web page where the material was posted online. Electronic copies shall include all text and graphics files, audio scripts, and other computer files used in presenting information on the Internet. Provided, however, that defendants shall not be required by this paragraph to retain a document for longer than two years after the document is created; or retain a print or electronic copy of any amended web page or screen to the extent that the amendment does not affect defendants' compliance obligations under this Consent Decree.

17. Defendants, and their successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the business of defendant Bigmailbox.com, Inc. that may affect

compliance obligations arising under this Consent Decree, including, but not limited to, any merger, incorporation, dissolution, assignment, sale, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporations about which defendants, their successors and assigns, learn less than thirty (30) days prior to the date such action is to take place, they shall notify the Commission as soon as is practicable after obtaining such knowledge.

18. For a period of three (3) years from the date of entry of this Consent Decree, defendant Nolan Quan shall notify the Commission of the discontinuance of his current business or employment, or of his employment with, direction or control of, or ownership interest of at least 5% in, any Internet-related business or service involving the collection of personal information online. The notice shall include defendant's new business address and telephone number, and a description of the nature of the business or employment and his duties and responsibilities.

19. Defendants are hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Federal Trade Commission each of their taxpayer identifying numbers (social security number or employer identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of their relationship with the government.

20. All reports, submissions, and notices required by Paragraphs 12 - 19 of this Consent

Decree shall be sent by certified mail to:

Associate Director, Division of Advertising Practices
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Attention: United States v. Bigmailbox, Inc., et al.

CONTINUING JURISDICTION

21. This Court shall retain jurisdiction of this matter for the purposes of enabling any of the parties to this Consent Decree to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Consent Decree, for the enforcement of compliance therewith, or for the punishment of violations thereof.

JUDGMENT IS THEREFORE ENTERED in favor of plaintiff and against defendants, pursuant to all the terms and conditions recited above.

Dated this _____ day of _____, 2001.

UNITED STATES DISTRICT JUDGE

The parties, by their respective counsel, hereby consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof. Defendants waive any rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the investigation and prosecution of this action.

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FOR THE DEFENDANTS:

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