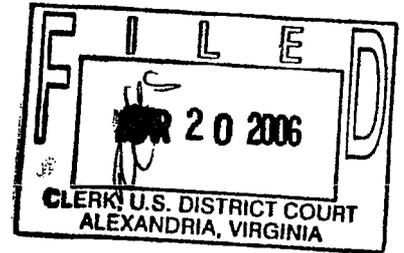


UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION



FEDERAL TRADE COMMISSION, )  
 )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 HISPANEXO, INC., )  
 )  
 )  
 RAFAEL VASQUEZ, and )  
 )  
 )  
 ERNESTO RAMIREZ, )  
 )  
 )  
 Defendants. )

Case No. 1:06cv424

**STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION**

Plaintiff, the Federal Trade Commission (“FTC”), has filed its complaint for permanent injunction and other relief pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and the Electronic Fund Transfer Act (“EFTA”), 15 U.S.C. §§ 1693-1693r, charging Defendants with violating Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and Section 907(a) of EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

The FTC and Defendants Hispanexo, Inc., Rafael Vasquez, and Ernesto Ramirez have agreed to the entry of this Stipulated Final Judgment and Order for Permanent Injunction (“Order”) by this Court to resolve all matters of dispute between the FTC and Defendants with respect to the conduct alleged in the complaint in this action.

## FINDINGS

By stipulation of the parties, the Court finds as follows:

1. The FTC has the authority under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and EFTA, 15 U.S.C. §§ 1693-1693r, to seek the relief it has requested.
2. This Court has jurisdiction of the subject matter of this case and has jurisdiction over Defendants. Venue in the Eastern District of Virginia is proper, and the Complaint states a claim upon which relief may be granted against Defendants. Defendants waive service of a summons.
3. The activities of Defendants are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
4. Defendants waive all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Each party shall bear its own costs and attorneys' fees. Defendants also waive all rights to seek judicial review of, or otherwise challenge or contest the validity of, this Order.
5. By entering into this Order, Defendants do not admit to the allegations set forth in the Complaint, other than the jurisdictional facts, and Defendants' consent to entry of this Order shall not be interpreted to constitute an admission by them that they have engaged in any violations of any law or regulations.
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, including both civil and criminal remedies.
7. Entry of this Order is in the public interest.

## DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. **“Defendants”** means Hispanexo, Inc. and its successors and assigns, Rafael Vasquez, and Ernesto Ramirez.
2. **“Assisting others”** means providing any of the following goods or services to any person or entity engaged in the sale of any instructional program or the telemarketing of any good or service: (a) performing customer service functions, including but not limited to receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any script, advertising, brochure, promotional material, or any other marketing material; or (c) acting as an officer or director of a business entity.
3. **“Billing Information”** means any data that enables any person to access a consumer’s account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.
4. **“Charge”** means any amount charged or debited to a consumer’s credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card, or any similar form of collecting money from a consumer.
5. **“Instructional program”** means any program, plan, product or service that teaches, educates, instructs, trains, assists, enables or purports to teach, educate, instruct, train, assist, or enable a consumer to learn or become proficient in any subject or field.
6. **“Negative Option Feature”** means, in an offer or agreement to sell or provide any good or service, a provision under which the consumer’s silence or failure to take an

affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer. Agreements with Negative Option Features include, but are not limited to: (i) free or introductory price trial offers in which the consumer receives a good or service for free or at a nominal or introductory price for an initial period and will incur an obligation to pay or pay a greater amount for the good or service if he or she does not take affirmative action to cancel, reject, or return the good or service before the end of that period; (ii) continuity plans in which, subsequent to the consumer's agreement to the plan, the seller or provider automatically ships goods to a consumer unless the consumer notifies the seller or provider within a certain time not to ship the goods; and (iii) automatic renewal plans in which the seller automatically renews the agreement and Charges the consumer unless the consumer cancels before the renewal.

7. **“Telemarketing”** means any plan, program or campaign (whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310) that is conducted to induce the purchase of goods or services or a charitable contribution by means of the use of one or more telephones.

## **ORDER**

### **PROHIBITED BUSINESS PRACTICES**

**I. IT IS THEREFORE ORDERED** that Defendants, and their officers, agents, employees, and all those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, in connection with the advertising, promoting, marketing, offering for sale, sale, or distribution of any instructional program or the telemarketing of any good or service, are hereby permanently restrained and enjoined from

misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact, including but not limited to:

A. That an instructional program or other good or service is offered at “no obligation” or for nominal charge or words of similar import, denoting or implying the absence of any obligation on the part of the recipient of the offer to affirmatively act in order to avoid charges or additional charges if, in fact, a charge or additional charge will be submitted for payment at the end of a trial period unless the consumer takes affirmative action to cancel;

B. (1) The amount that a consumer will be charged or billed for any instructional program or other good or service, (2) that a consumer will not be charged or billed for any instructional program or other good or service, (3) the timing or manner of any charge or bill, or (4) that a consumer will not be charged or billed without the consumer’s authorization; or

C. The length of any trial period for any instructional program or other good or service that consumers will receive before they are automatically charged or billed for such instructional program or other good or service.

### **PROHIBITED BUSINESS PRACTICES REGARDING REFUND POLICIES**

**II. IT IS FURTHER ORDERED** that Defendants, and their officers, agents, employees, and all those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, in connection with the advertising, promoting, marketing, offering for sale, sale, or distribution of any instructional program or the telemarketing of any good or service, are hereby permanently restrained and enjoined from:

A. Misrepresenting or assisting others in misrepresenting, expressly or by

implication, the terms and conditions of any policies and practices regarding cancellations and refunds;

B. Failing to disclose, clearly and conspicuously, before the consumer consents to any purchase, all material terms and conditions of any refund or cancellation policy, or, if there is no refund or cancellation policy, a statement of that fact;

C. With respect to any instructional program or other good or service offered with a money-back guarantee by Defendants, failing to provide, within seven (7) business days of a Defendant's receipt of a refund request, a full refund of the purchase price of the instructional program or other good or service, including any shipping costs, insurance, handling, or any other fee or charge paid by the consumer; **provided, however**, that Defendants may set terms and conditions for such money-back guarantee (such as a time limit within which consumers must request the money back, or a non-refundable shipping and handling charge) only if Defendants have disclosed such terms and conditions, clearly and conspicuously and in close proximity to the offer; **provided, further**, that Defendants must not, in connection with any money back guarantee or free or introductory price offer, set a term limiting a refund or cancellation only for unopened goods; and

D. Failing to honor any representations made by Defendants regarding refunds.

**PROHIBITED BUSINESS PRACTICES REGARDING SUBMISSION OF BILLING INFORMATION WITHOUT EXPRESS INFORMED CONSENT**

**III. IT IS FURTHER ORDERED** that Defendants, and their officers, agents, employees, and all those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, in connection with the advertising,

promoting, marketing, offering for sale, sale, or distribution of any instructional program or the telemarketing of any good or service, are hereby permanently restrained and enjoined from directly or indirectly causing billing information to be submitted for payment without the express informed consent of the consumer, which shall include express informed consent to be charged for the instructional program or other good or service and to be charged using a specified billing account. The following requirements must be met to evidence express informed consent:

A. Defendants must clearly and conspicuously disclose, before the consumer consents to any purchase, all material conditions, limitations and restrictions to purchase, receive, or use the instructional program or other good or service that are subject to the offer (including any promoted associated “free” or nominal cost instructional program or other good or service), including but not limited to the following:

1. the dollar amount of the first payment and when it will be charged or become due; the dates or frequency (*e.g.*, monthly, quarterly) of all subsequent charges or payment(s); and the dollar amount or range of costs of all subsequent charges or payments;

2. if a charge will be submitted for payment at the end of a trial period unless the consumer cancels: this fact; the length of the trial period; the specific steps in which a cancellation request must be submitted; and the date or time period by which a cancellation request must be received to avoid a charge; and

3. if the seller automatically ships an instructional program or other good or provides a service to a consumer on a periodic basis or automatically renews a membership, subscription or agreement for an instructional program or other good or service that is offered on a periodic basis, unless the consumer notifies the seller within a certain time not to ship or renew: this fact; the length of the subsequent renewal period; the manner in which a notice not to ship or

renew must be submitted; the date or time period by which a notice not to ship or renew must be received to avoid shipment or renewal (*e.g.*, two weeks after consumer advised of an upcoming shipment); and either a telephone number or address to which such a notice may be directed; and

B. In connection with the telemarketing of any instructional program or other good or service pursuant to an offer or agreement with a negative option feature:

1. Defendants must obtain the consumer's express written agreement to purchase the instructional program or other good or service and authorization to submit a charge on a specified billing account for payment, that includes: (1) all of the information required to be disclosed pursuant to Section III.A of this Order, and (2) the consumer's signature (the term "signature" includes a verifiable electronic or digital form of signature, to the extent such form of signature is recognized as a valid signature under applicable federal law or state contract law); or

2. Defendants must obtain the consumer's express oral authorization to purchase the instructional program or other good or service that are the subject of the telemarketing transaction and the consumer's authorization to submit a charge on a specified billing account for payment that is audio-recorded, as follows:

- (a) the recording must evidence that Defendants have complied with Section III.A of this Order and the disclosure requirements of the Telemarketing Sales Rule;
- (b) the recording must include the entirety of the transaction;
- (c) the recording can be identified and located by either the consumer's name or telephone number; and

- (d) a copy of the recording is provided upon request to the consumer, the consumer's bank, credit card company or other billing entity, state attorney general or consumer protection agency and the FTC.

#### **VIOLATIONS OF THE ELECTRONIC FUND TRANSFER ACT**

**IV. IT IS FURTHER ORDERED** that Defendants, and their officers, agents, employees, and all those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division or other device, are hereby permanently restrained and enjoined from:

A. In connection with any consumer who purchases any instructional program or other good or service with a negative option or recurring charge feature subsequent to the date of this Order and who uses a debit card or other means of electronic funds transfer,

1. failing to obtain written authorization for Preauthorized Electronic Fund Transfers from a consumer's account before initiating any Preauthorized Electronic Fund Transfer, as required by Section 907(a) of the Electronic Funds Transfer Act, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), as more fully set out in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205, Supp. I, or as it may hereafter be amended; and

2. failing to maintain procedures reasonably adapted to avoid an unintentional failure to obtain written authorization for a Preauthorized Electronic Fund Transfer, as required in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205, Supp. I, or as they may hereafter be amended; and

B. In connection with any consumer who purchased any instructional program or other good or service with a negative option or recurring charge feature prior to the date of this Order with a debit card and Defendants find that the card used is a debit card, failing to obtain written authorization for Preauthorized Electronic Fund Transfers from the consumer's account as soon as reasonably possible, or ceasing to debit the consumer's account, as required by Section 907(a) of the Electronic Funds Transfer Act, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), as more fully set out in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205, Supp. I, or as they may hereafter be amended.

#### **MAINTAINING ACCESSIBILITY TO TELEPHONE PERSONNEL**

V. **IT IS FURTHER ORDERED** that Defendants, and their officers, agents, employees, and all those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined, in connection with the advertising, promoting, marketing, offering for sale, sale, or distribution of any instructional program or the telemarketing of any good or service, from failing to take all reasonable steps necessary to ensure reasonable consumer accessibility to personnel manning any telephone number that Defendants provide to consumers for cancellation of trial periods or obtaining of refunds.

#### **RIGHT TO REOPEN**

VI. **IT IS FURTHER ORDERED** that

A. The FTC's agreement to this Order is expressly premised upon the truthfulness, accuracy and completeness of the materials contained in the sworn statements Defendants

provided to the FTC dated December 1, 2005, including the names of HispaNexo customers and the refunds paid to those customers. Such customer records and refund documents contain material information upon which the FTC relied in negotiating and agreeing to this Order.

B. If, upon motion by the FTC, this Court finds that any Defendant has made any material misstatement or omission in the documents described above, a judgment in the amount two million six hundred thousand dollars (\$2.6 million), representing the approximate amount of consumer injury, will become immediately due and payable. Interest computed at the rate prescribed in 28 U.S.C. § 1961 shall immediately begin to accrue on the balance. Any amount recovered pursuant to this Paragraph shall be deposited into a fund administered by the FTC or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. In the event that redress to purchasers is wholly or partially impracticable, or any funds remain after redress is completed, the FTC may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendant shall have no right to contest the FTC's choice of remedies under this Paragraph.

*Provided, however,* that in all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court; and, *provided further,* that proceedings instituted under this provision would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the FTC may initiate to enforce this Order. For purposes of this Section VI, Defendants waive any right to contest any of the allegations in the Complaint.

## **DISTRIBUTION OF ORDER**

**VII. IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of this Order,

A. Defendant Hispanexo, Inc. shall deliver a copy of this Order to all principals, officers, directors, and managers, and all employees, agents, and representatives who engage in conduct related to the subject matter of the Order.

B. Defendants Rafael Vasquez and Ernesto Ramirez, in connection with any business where (1) he controls, directly or indirectly, the business or has a majority ownership interest, and (2) the business engages in, or assists others engaged in, the advertising, promoting, marketing, offering for sale, sale, or distribution of any instructional program or the telemarketing of any good or service, shall each deliver (1) a copy of this Order to all principals, officers, directors, and managers of that business, and (2) a copy of this Order to all employees, agents, and representatives who engage in conduct related to the subject matter of the Order.

C. For any business where either Defendant Rafael Vasquez and Ernesto Ramirez is not a controlling person but otherwise engages in, or assists others engaged in, the advertising, promoting, marketing, offering for sale, sale or distribution of any instructional program or the telemarketing of any good or service, such Defendant shall delivery a copy of this Order to all principals and managers of such business before engaging in such conduct.

D. For current personnel, delivery required by this Section VII shall be within (5) days of service of this Order upon Defendants. For new personnel, delivery shall occur prior to them assuming their responsibilities. Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty days of delivery, from all persons receiving a copy of the Order pursuant to this Section VII.

## **RECORD-KEEPING PROVISIONS**

**VIII. IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry of this Order, each Defendant, in connection with any business where (1) such Defendant is the majority owner or otherwise controls, directly or indirectly, the business and (2) the business is engaged in or assists others engaged in the advertising, promoting, marketing, offering for sale, sale, or distribution of any instructional program or the telemarketing of any good or service, 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, are hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the cost of instructional programs, goods or services sold, revenues generated, and the disbursement of such revenues;

B. 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;

C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of goods or services purchased, and description of goods or services purchased, to the extent such information is obtained in the ordinary course of business;

D. Complaint and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests;

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials, and records that accurately reflect the time periods during which such materials were used and the persons and business entities that used such materials;

F. For each of Defendants' credit or debit card merchant processing accounts:

1. A copy of the contract providing the account;

2. Records that accurately reflect the name, address and telephone number of the acquirer bank, and its credit card processor(s),

3. Copies of correspondence from VISA, MasterCard, any similar entity, and any acquirer bank or credit card processor describing a finding by such entities that any Defendant has incurred excessive chargebacks on such account, or that any Defendant has engaged in any other fraud, abuse or questionable activity with respect to such account;

G. Copies of any contracts providing any Defendant with access to a billing and collection system, such as a credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card;

H. Each tape recording of a telemarketing call made pursuant to Section III of this Order;

I. Copies of each acknowledgement of receipt of Order required to be obtained pursuant to Section VII of this Order.

### **COMPLIANCE REPORTING**

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

A. For a period of five (5) years from the date of entry of this Order,

1. Defendants Rafael Vasquez and Ernesto Ramirez each shall notify the FTC of the following:

- (a) Any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
- (b) Any changes in his employment status (including self-employment) within ten (10) days of the date of such change. Such notice shall include the name and address of each business that he is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of his duties and responsibilities in connection with the business;
- (c) Any changes in his name or use of any aliases or fictitious names; and

2. Defendant HispaNexo, Inc. and its successors and assigns shall notify the FTC of the following:

- (a) Any changes in its mailing address, registered address, principal place of business, or any other address at which it conducts business in whole or in part, and corresponding telephone and facsimile numbers at each such address, within ten (10) days of the date of such change;
- (b) Any changes in its name or use of any aliases, fictitious names, or trade names;

3. Defendants shall notify the FTC of any changes in corporate structure 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 corporation; 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, however,** that, with respect to any proposed change in the corporation about which the Defendants learn less than thirty (30) days prior to the date such action is to take place, Defendants shall notify the FTC as soon as is practicable after obtaining such knowledge.

B. 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 they have complied and are complying with this Order. This report shall include, but not be limited to:

1. Any changes required to be reported pursuant to subsection A above; and
2. A copy of each acknowledgment of receipt of this Order obtained

pursuant to Section VII;

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

Associate Director for Enforcement  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington D.C. 20580  
Re: FTC v. Hispanexo, Inc.

D. For purposes of the compliance reporting required by this Section IX, the FTC is authorized to communicate directly with Defendants.

## COMPLIANCE MONITORING

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

A. Within fifteen (15) days of receipt of written notice from a representative of the FTC, Defendants 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 FTC 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: Defendants, their employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice;

**Provided, however,** that nothing in this Order shall limit the FTC'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)).

C. Defendants shall permit representatives of the FTC 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.

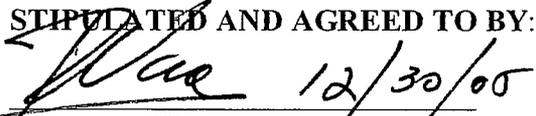
**ACKNOWLEDGMENT OF RECEIPT OF ORDER**

**XI. IT IS FURTHER ORDERED** that within five (5) business days after entry of this Order, each Defendant shall submit to the FTC a truthful sworn statement acknowledging receipt of this Order.

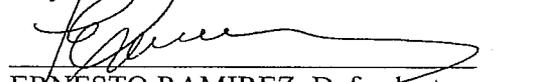
**RETENTION OF JURISDICTION**

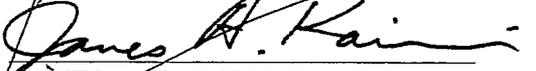
**XII. IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter, for purposes of construction, modification and enforcement of this Order.

**STIPULATED AND AGREED TO BY:**

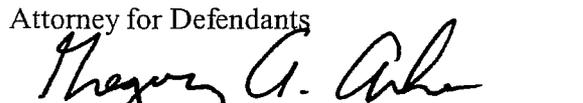
  
12/30/05  
HISPANEXO, INC., Defendant

  
12/30/05.  
RAFAEL VASQUEZ, Defendant

  
12/30/2005.  
ERNESTO RAMIREZ, Defendant

  
12/30/05  
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Federal Trade Commission  
600 Pennsylvania Ave., N.W., Room NJ-2122  
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Telephone: 202.326.3719 or .3495  
Facsimile: 202.326.2558

Attorneys for Plaintiff

IT IS SO ORDERED, this 20 day of April, 2006.

  
UNITED STATES DISTRICT JUDGE