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THE HONORABLE MARSHA J. PECHMAN

FEB - 9 2007

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY



05-CV-01607-ORD

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MYFREEMEDICINE.COM, LLC, a California limited
liability corporation, and

GEOFFREY J. HASLER, individually and as a
member of Myfreemedicine.com, LLC,

Defendants.

Civil No. 05-1607 MJP

**STIPULATED PERMANENT
INJUNCTION AND FINAL
JUDGMENT**

Plaintiff, the Federal Trade Commission ("Commission"), has filed its Complaint pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging Defendants MyFreeMedicine, LLC., and Geoffrey J. Hasler ("Defendants") with violating Section 5 of the FTC Act. Defendants and the Commission have now agreed to entry of this Stipulated Permanent Injunction and Final Judgment ("Order") by this Court in order to resolve all matters in dispute between them in this action. Defendants have consented to the entry of this Order without trial or adjudication of any issue of law or fact herein, and this Order shall not constitute an admission of liability by Defendants nor constitute evidence that Defendants engaged in any conduct alleged in the Commission's Complaint or prohibited by the Order.

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NOW, THEREFORE, Defendants and the Commission having requested the Court to enter this Order, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and over all the parties.

2. Venue is proper in the Western District of Washington.

3. The activities of Defendants are in or affecting commerce, as defined in Section 4 of 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 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b).

5. Defendants have waived all rights to seek judicial review or otherwise challenge or contest the validity of this Order, and further waive and release any claim Defendants may have against the Commission, its employees, and agents, including any rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412.

6. The parties shall each bear their own costs and attorneys' fees incurred in this action.

7. Entry of this Order is in the public interest.

DEFINITIONS

1. "MyFreeMedicine.com, LLC ("MFM") program" shall mean a program or service marketed by Defendants as providing consumers with free or discounted prescription medications or to assist consumers in obtaining free or discounted prescription medications.

2. "Medical Services Program" shall mean any program or service that is represented to or does in fact assist consumers in obtaining access to or paying for any medical products or services, including prescription medicines.

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3. "Prescription Assistance Programs ("PAPs")" shall mean those programs offered by pharmaceutical companies to provide free prescription medications to certain eligible consumers.

4. For representations concerning the eligibility of a consumer to receive medications or the availability of medications through MFM or from a PAP, "reasonable basis" shall mean all of the information necessary to make a complete determination that the consumer is eligible, including all of the relevant financial and personal information from the consumer and the most current information for each PAP concerning all eligibility criteria and the availability of each drug and dosage offered by the PAP.

5. "Clearly and conspicuously" or "clear and conspicuous" means:

(1) In print communications, that the message shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears;

(2) In communications disseminated orally, that the message shall be delivered in a volume and cadence sufficient for an ordinary person to hear and comprehend it;

(3) In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), that the message shall be presented simultaneously in both the audio and visual portions of the communication;

(4) In any communication presented solely through visual or audio means, that the message shall be made through the same means in which the communication is presented:

(a) Any audio message shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it, and

(b) Any visual message shall be of a size and shade, with a degree of contrast to the background against which it appears, and shall appear on the screen for a duration and in a location, sufficiently noticeable for an ordinary consumer to read and comprehend it;

Regardless of the medium used to disseminate it, the message shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of, the message shall be used in any communication.

I.

PROHIBITED PRACTICES

IT IS THEREFORE ORDERED that Defendants and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other 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 trust, corporation, subsidiary, division, or other device, or any of them, in connection with the marketing, offering for sale, or sale of the MFM program or any other medical services program, are hereby permanently restrained and enjoined from:

A. Misrepresenting that consumers are eligible or pre-approved to receive prescription medications for free or at a discount;

B Misrepresenting that consumers' prescription medications are available for free or at a discount through the MFM program or any other medical services program;

C. Misrepresenting that Defendants deal directly with pharmaceutical companies or have arrangements with pharmaceutical companies or the government to provide free or discounted prescription medications, or that Defendants provide free or discounted medications directly to registered consumers or their doctors;

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2 D Misrepresenting that consumers who pay a fee for the MFM program or other
3 medical services program will receive their prescription medications or any other medical
4 products or services;

5 E. Misrepresenting their refund policy;

6 F. Making any other material misrepresentation;

7 G. Making any material representation to consumers without first having a
8 reasonable basis for the claim;

9 H. Accepting payment for the MFM program from a consumer without first
10 providing written materials to the consumer that clearly and conspicuously disclose the terms and
11 conditions of the MFM program and refund policy, including but not limited to, if applicable:

- 12 1. That consumers can access the PAP's directly and that the MFM program
13 only provides assistance in applying for PAP benefits;
- 14 2. That each PAP sets its own eligibility requirements and payment of the fee
15 to MFM does not ensure that a consumer will receive medications from a
16 PAP; and
- 17 3. All limitations and conditions of any MFM refund policy.

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19 **II.**

20 **MONEY JUDGMENT AND RIGHT TO REOPEN**

21 **IT IS FURTHER ORDERED** that:

22 A. Judgment is entered in the amount of \$500,000. Payment of this amount shall be
23 suspended subject to the conditions set forth in Paragraph B of this Section.

24 B. In the event that a monetary payment under this Order becomes due, all funds paid
25 pursuant to this Section shall be deposited into a fund administered by the Commission or its
26 designated agent to be used for equitable relief, including, but not limited to, consumer
27 restitution and any attendant expenses for the administration of such equitable relief. In the event
28 that direct restitution for consumers is wholly or partially impracticable or funds remain after

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restitution is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited into the U.S. Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Section.

C. Plaintiff's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of the Defendants' Financial Statements previously submitted by Defendants to the Commission, which include material information upon which the Plaintiff relied in negotiating and agreeing to this Order. If, upon motion by the Plaintiff, this Court finds that Defendants' Financial Statements failed to disclose any material asset or materially misstated the value of any asset in the Financial Statements described above, then this Order shall be reopened and suspension of the judgment shall be lifted for the purpose of requiring payment of the full amount of the judgment. *Provided, however*, that in all other respects this Order shall remain in full force and effect unless otherwise ordered by this Court; and *provided further*, that proceedings instituted under this Paragraph are in addition to, and not in lieu of, any other civil or criminal remedies available by law. Solely for the purposes of reopening or enforcing this Paragraph, Defendants waive any right to contest any of the allegations set forth in the Complaint filed in this matter.

D. The Commission and Defendants acknowledge and agree that no portion of this judgment for equitable monetary relief shall be deemed a fine, penalty, punitive assessment, or forfeiture; and

E. For the purposes of any subsequent proceedings to enforce payments required by this Section of the Order including, but not limited to, a non-dischargeability complaint filed in a bankruptcy proceeding, Defendants waive any right to contest any allegations in the Commission's Complaint.

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III.

PROHIBITED DISCLOSURE OF CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other 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 trust, corporation, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from selling, renting, leasing, transferring or otherwise disclosing the name, address, telephone number, credit card number, bank account number, email address or other identifying information of any person who paid any money for the MFM program to Defendants at any time prior to October 21, 2005. *Provided, however,* that Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation or court order.

IV.

TRAINING, MONITORING, AND VERIFICATION

IT IS FURTHER ORDERED that Defendants and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other 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 trust, corporation, subsidiary, division, or other device, or any of them, in connection with any business where: (1) any defendant is the majority owner of the business or directly or indirectly manages or controls the business; and (2) the business is engaged in the marketing of the MFM program or any other medical services program, are hereby permanently restrained and enjoined from:

- A. Failing to take reasonable steps sufficient to monitor and ensure that all employees or other agents engaged in sales or other customer service functions comply with

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Paragraph I of this Order. These steps shall include adequate monitoring of sales presentations or other calls with consumers, and shall also include, at a minimum, the following: (1) listening to a representative sample of the oral representations made by persons engaged in sales or other customer service functions; (2) establishing a procedure for receiving and responding to consumer complaints; and (3) ascertaining the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved;

B. Failing to investigate fully any consumer complaint received by any business to which this Section applies; and

C. Failing to take adequate corrective action with respect to any employee or other agent who defendant determines is not complying with this Order. This corrective action may include training, disciplining, and/or terminating such employee or other agent.

V.

RECORD KEEPING

IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of this Order, Defendants, in connection with any business where: (1) any defendant is the majority owner of the business or directly or indirectly controls the business; and (2) the business is engaged in the marketing of the MFM program or other medical services program, are hereby permanently restrained and enjoined from failing to create and retain the following records:

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

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

5 D. Complaints and refund requests, whether received directly, indirectly, or through a
6 third party, and any responses to those complaints or requests;

7 E. Copies of all sales scripts, training materials, advertisements, or other marketing
8 materials, including television advertisements; and

9 F. All records and documents necessary to demonstrate full compliance with each
10 provision of this Order including but not limited to, copies of acknowledgments of receipt of this
11 Order, required by Section IX, and all reports submitted to the Commission pursuant to Section
12 VIII.

13 VI.

14 COMPLIANCE REPORTING BY DEFENDANTS

15 IT IS FURTHER ORDERED that, in order that compliance with the provisions of this
16 Order may be monitored:

17 A. For a period of three (3) years from the date of entry of this Order,

18 1. Geoffrey J. Hasler shall notify the Commission of the following:

19 a. Any change in residence, mailing addresses, or telephone numbers,
20 within ten (10) days of the date of such change;

21 b. Any change in employment status (including self-employment),
22 and any change in his ownership in any business entity related to
23 the marketing, offering for sale, or sale of the MFM program or
24 other medical services program, within ten (10) days of the date of
25 such change. Such notice shall include the name and address of
26 each business that he is affiliated with, employed by, creates or
27 forms, or performs services for; a statement of the nature of the
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business; and a statement of his duties and responsibilities in connection with the business or employment; and

c. Any changes in Geoffrey J. Hasler's name or use of any aliases or fictitious names.

2. Defendant's shall notify the Commission of any changes in the corporate structure of MFM or any business entity that Geoffrey J. Hasler directly or indirectly controls, or has an ownership interest in, 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 entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in the marketing of any medical discount program or any other medical services program; 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* 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 Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order, Defendants shall provide a written report to the Commission, 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. For Geoffrey J. Hasler:

a. His then-current residence address, mailing addresses, and telephone numbers;

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- b. His then-current employment and business addresses and telephone numbers, a description of the business activities of each such employer or business, and his title and responsibilities for each such employer or business; and
- c. Any other changes required to be reported under Subparagraph A of this Section.

2. For all Defendants:

- a. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Paragraph IX; and
- b. Any other changes required to be reported under Subparagraph A of this Section.

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

Associate Director, Division of Enforcement
Federal Trade Commission, Room NJ-2122
Washington, D.C. 20580

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

VII.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for a period of three (3) years following entry of this Order, and for the purpose of monitoring and investigating compliance with any provision of this Order:

A. Within thirty (30) days of receipt of written notice from a representative of the Commission, each defendant shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide

