

1 WILLIAM E. KOVACIC  
General Counsel

2 JEROME M. STEINER, JR.  
3 JANICE L. CHARTER  
4 DAVID M. NEWMAN  
Federal Trade Commission  
901 Market Street, Suite 570  
5 San Francisco, CA 94103  
Phone (415)848-5100/fax(415)848-5184

6 BLAINE T. WELSH  
7 Assistant United States Attorney  
Bar No. 4790  
8 333 Las Vegas Blvd, South, Suite 5000  
Las Vegas, NV 89101  
9 Phone (702)388-6336/fax(702)388-6787

10 Attorneys for Plaintiff  
Federal Trade Commission

11  
12 **UNITED STATES DISTRICT COURT**  
13 **DISTRICT OF NEVADA**

14 FEDERAL TRADE COMMISSION,

15 Plaintiff,

16 v.

17 ERIC STETZEL,

18 Defendant.

CV-S-03-0396-KJD (LRL)

[proposed]

**ORDER FOR JUDGMENT BY  
DEFAULT AND PERMANENT  
INJUNCTION AGAINST  
DEFENDANT ERIC STETZEL**

19  
20 On April 15, 2003, Plaintiff, the Federal Trade Commission (“Commission”),  
21 commenced this action by filing its complaint seeking an injunction and other relief  
22 against defendant Eric Stetzel (“defendant”) in connection with the operation of an  
23 allegedly fraudulent business that advertised and sold computers, computer-related  
24 equipment and other merchandise via Internet auction. The complaint alleged that the  
25 defendant engaged in unfair or deceptive acts or practices in violation of Section 5 of the  
26 Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45, and the FTC’s “Mail or  
27 Telephone Order Merchandise Rule” (“Mail Order Rule”), 16 C.F.R. Part 435, and sought  
28 a permanent injunction and monetary relief pursuant to Section 13(b) of the FTC Act, 15

1 U.S.C. § 53(b). Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, the Clerk  
2 of Court entered a default against defendant on May 14, 2003. The Commission now has  
3 moved this Court for entry of an Order for Judgment by Default and Permanent  
4 Injunction (“Order”) against defendant, pursuant to Rule 55(b)(2) of the Federal Rules of  
5 Civil Procedure. Having considered the memorandum and exhibits filed in support of this  
6 motion, and all other pleadings and files in this action, and now being fully advised in the  
7 premises, the Court finds:

8 1. This is an action by the Commission instituted under Sections 5 and 13(b)  
9 of the FTC Act, 15 U.S.C. §§ 45 and 53(b), and the Commission’s Mail or Telephone  
10 Order Trade Regulation Rule, 16 C.F.R., Part 435. The amended complaint seeks both  
11 permanent injunctive relief and consumer redress for alleged unfair or deceptive acts or  
12 practices by defendant in connection with the offering for sale and sale of computers,  
13 computer-related equipment and other merchandise via Internet auction.

14 2. The Commission has the authority under Section 13(b) of the FTC Act to  
15 seek the relief it has requested.

16 3. This Court has jurisdiction over the subject matter of this case and has  
17 jurisdiction over defendant. Venue in the District of Nevada is proper, and the complaint  
18 states a claim upon which relief may be granted against defendant under Sections 5 and  
19 13(b) of the FTC Act and under the Mail Order Rule.

20 4. The activities of defendant are in or affecting commerce, as defined in 15  
21 U.S.C. § 44.

22 5. The Complaint was filed on April 15, 2003. The summons and complaint  
23 were served by personal service on defendant on April 18, 2003. Defendant has failed to  
24 answer the complaint or otherwise defend himself in this action. Accordingly, defendant  
25 is in default.

26 6. To the best of this Court’s information and knowledge, defendant is not an  
27 infant, has not been declared incompetent, and is not currently in the military or otherwise  
28 exempted from default judgment under the Soldiers’ and Sailors’ Civil Relief Act of

1 1940.

2 7. It is proper in this case to issue a permanent injunction prohibiting  
3 defendant from making misrepresentations in connection with the sale of products or  
4 services by Internet auction or Internet sale, to comply with the Mail Order Rule, and to  
5 provide for monitoring by the Commission of defendant's compliance with such a  
6 permanent injunction.

7 8. It is proper in this case to enter a monetary judgment against defendant to  
8 redress consumer injury which resulted from violations of the FTC Act by defendant.  
9 The proper measure of consumer injury is the amount of money paid to defendant by  
10 consumers for goods which they did not receive. Redress to consumers is warranted  
11 because defendant's misrepresentations were of a type generally relied upon by  
12 consumers.

13 9. This action and the relief awarded herein are in addition to, and not in lieu  
14 of, other remedies as may be provided by law, including both civil and criminal remedies.

15 10. Entry of this Order is in the public interest.

16 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

17 **ORDER**

18 **DEFINITIONS**

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

20 1. "Plaintiff" means the Federal Trade Commission.

21 2. "Defendant" means defendant Eric Stetzel.

22 3. "Material" means likely to affect a person's choice of, or conduct regarding,  
23 goods or services.

24 4. "Asset" means any legal or equitable interest in, right to, or claim to, any  
25 real or personal property, including, without limitation, chattels, goods, instruments,  
26 equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory,  
27 checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash,  
28 wherever located.



1 including:

- 2 A. Violating or assisting others in violating Section 435.1(a)(1) of the Mail  
3 Order Rule by soliciting orders for the sale of merchandise to be ordered by  
4 the buyer through the mails or by telephone without a reasonable basis to  
5 expect that defendant will be able to ship any ordered merchandise to the  
6 buyer within the time stated in the solicitation, or, if no time has been  
7 clearly and conspicuously stated, within thirty days of receipt of a properly  
8 completed order;
- 9 B. Violating or assisting others in violating Section 435.1(b)(1) of the Mail  
10 Order Rule by failing to offer to the buyer, clearly and conspicuously and  
11 without prior demand, an option either to consent to a delay in shipping or  
12 to cancel the order and receive a prompt refund; and
- 13 C. Violating or assisting others in violating Section 435.1c) of the Mail Order  
14 Rule by failing to make a "prompt refund," as that term is defined in 16  
15 C.F.R. § 435.2(f), to buyers when such refunds are required by Section  
16 435.1c) of the Rule.

17 In the event that the Rule is amended by the Commission in a manner which would  
18 create a new or different standard applicable to defendant's obligations under this Order,  
19 compliance with the Rule as so amended shall not be deemed a violation of this Order.

20 **III.**

21 **MONETARY RELIEF**

22 **IT IS FURTHER ORDERED** that Judgment is hereby entered against defendant  
23 in the amount of nine thousand seven hundred twenty-three dollars and sixty-six cents  
24 (\$9,723.66);

- 25 A. Any and all funds paid pursuant to this Section III shall be deposited into a  
26 fund administered by the Commission or its agent to be used for equitable  
27 relief, including but not limited to consumer redress and any attendant  
28 expenses for the administration of any redress fund. In the event that direct

1 redress to consumers is wholly or partially impracticable or funds remain  
2 after redress is completed, the Commission may apply any remaining funds  
3 for such other equitable relief (including consumer information remedies) as  
4 it determines to be reasonably related to the defendant's practices alleged in  
5 the Complaint. Any funds not used for such equitable relief shall be  
6 deposited to the Treasury as disgorgement. Defendant shall have no right to  
7 challenge the Commission's choice of remedies under this Paragraph.

8 B. Defendant is hereby required, in accordance with 31 U.S.C. § 7701, to  
9 furnish to the Commission his Social Security numbers and/or taxpayer  
10 identification numbers, which shall be used for purposes of collecting and  
11 reporting on any delinquent amount arising out of this Order;

12 C. The facts as alleged in the Complaint shall be taken as true in the event of  
13 any subsequent litigation to enforce this Order or to collect amounts due  
14 pursuant to this Order, including but not limited to a nondischargeability  
15 complaint in any bankruptcy proceeding.

16 D. The judgment entered pursuant to this Section III is equitable monetary  
17 relief, solely remedial in nature, and not a fine, penalty, punitive assessment  
18 or forfeiture.

#### 19 IV.

#### 20 COMPLIANCE MONITORING

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

23 A. Within ten (10) days of receipt of written notice from a representative of the  
24 Commission, defendant shall submit written reports, sworn to under penalty  
25 of perjury; produce documents for inspection and copying; appear for  
26 deposition; and/or provide entry during normal business hours to any  
27 business location in his possession or direct or indirect control to inspect the  
28 business operation.

- 1 B. In addition, the Commission is authorized to monitor compliance with this  
2 Order by all other lawful means, including but not limited to the following:  
3 1. obtaining discovery from any person, without further leave of court,  
4 using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36,  
5 and 45; and  
6 2. posing as consumers and suppliers to defendant or any other entity  
7 managed or controlled in whole or in part by defendant, without the  
8 necessity of identification or prior notice.

9 *Provided* that nothing in this Order shall limit the Commission's lawful use  
10 of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15  
11 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things,  
12 testimony, or information relevant to unfair or deceptive acts or practices in  
13 or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

- 14 C. Defendant shall permit representatives of the Commission to interview any  
15 employer, consultant, independent contractor, representative, agent, or  
16 employee who has agreed to such an interview, relating in any way to any  
17 conduct subject to this Order. The person interviewed may have counsel  
18 present.

19 **V.**

20 **COMPLIANCE REPORTING BY DEFENDANT**

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

- 23 A. For a period of five (5) years from the date of entry of this Order Judgment,  
24 defendant shall notify the Commission of the following:

- 25 1. Any changes in defendant's residence, mailing addresses, and  
26 telephone numbers, within ten (10) days of the date of such change;  
27 2. Any changes in defendant's employment status (including self-  
28 employment) within ten (10) days of the date of such change. Such

1 notice shall include the name and address of each business that  
2 defendant is affiliated with, employed by, or performs services for; a  
3 statement of the nature of the business; and a statement of  
4 defendant's duties and responsibilities in connection with the  
5 business;

6 3. Any changes in defendant's name or use of any aliases or fictitious  
7 names.

8 B. One hundred eighty (180) days after the date of entry of this Order,  
9 defendant shall provide a written report to the FTC, sworn to under penalty  
10 of perjury, setting forth in detail the manner and form in which he has  
11 complied and is complying with this Order. This report shall include, but  
12 not be limited to:

13 1. Any changes required to be reported pursuant to subparagraph (A)  
14 above; and

15 2. A copy of each acknowledgment of receipt of this Order obtained by  
16 any defendant pursuant to Section VII.

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

20 Regional Director, Western Region  
21 Federal Trade Commission  
22 901 Market Street, Suite 570  
23 San Francisco, CA 94103-1768  
24 Re: FTC v. Eric Stetzel. CV-S-03-0396-KJD (LRL)

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

## 27 VI.

### 28 **RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of



1 entry of this Order, in connection with any business engaged in the sale of goods or  
2 services operated by defendant, or where defendant is a majority owner of the business or  
3 directly or indirectly manages or controls a business engaged in the sale of goods or  
4 services, defendant and his officers, agents, directors, employees, salespersons,  
5 independent contractors, subsidiaries, affiliates, successors, assigns, and all other persons  
6 or entities in active concert or participation with him who receive actual notice of this  
7 Order by personal service or otherwise, whether acting directly or through any person,  
8 corporation, affiliate, division, agent, employee, consultant, independent contractor, or  
9 other device, are hereby restrained and enjoined from failing to create and retain the  
10 following records:

- 11 A. Accounting records that reflect the cost of goods or services sold, revenues  
12 generated, and the disbursement of such revenues;
- 13 B. Personnel records accurately reflecting: the name, address, and telephone  
14 number of each person employed in any capacity by such business,  
15 including as an independent contractor; that person's job title or position;  
16 the date upon which the person commenced work; and the date and reason  
17 for the person's termination, if applicable;
- 18 C. Customer files containing the names, addresses, phone numbers, dollar  
19 amounts paid, quantity of items or services purchased, and description of  
20 items or services purchased, to the extent such information is obtained in  
21 the ordinary course of business;
- 22 D. Complaints and refund requests (whether received directly, indirectly or  
23 through any third party) and any responses to those complaints or requests;  
24 and
- 25 E. Copies of all sales scripts, training materials, advertisements, or other  
26 marketing materials.

1 **VII.**

2 **DISTRIBUTION OF ORDER BY DEFENDANT**

3 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of  
4 entry of this Order,

5 A. Defendant shall deliver a copy of this Order to all principals, officers,  
6 directors, managers, and current employees, agents, and representatives  
7 having responsibilities with respect to the subject matter of this Order, and  
8 shall secure from each such person a signed and dated statement  
9 acknowledging receipt of the Order. Defendant shall deliver this Order to  
10 current personnel within thirty (30) days after the date of service of this  
11 Order, and to new personnel within thirty (30) days after the person  
12 assumes such position or responsibilities; and

13 B. Defendant shall deliver a copy of this Order to the principals, officers,  
14 directors, managers and employees under his control for any business that  
15 has responsibilities with respect to the subject matter of this Order.  
16 Defendant shall secure from each such person a signed and dated statement  
17 acknowledging receipt of the Order within thirty (30) days after the date of  
18 service of the Order or the commencement of the employment relationship.  
19

20 **VIII.**

21 **ACKNOWLEDGMENT OF RECEIPT OF**  
22 **ORDER BY DEFENDANT**

23 **IT IS FURTHER ORDERED** that defendant, within five (5) business days of  
24 receipt of this Order as entered by the Court, must submit to the Commission a truthful  
25 sworn statement acknowledging receipt of this Order.

26 **IX.**

27 **RETENTION OF JURISDICTION**

28 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this

1 matter for purposes of construction, modification and enforcement of this Order.

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3 **IT IS SO ORDERED.**

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\_\_\_\_\_  
The Honorable Kent J. Dawson  
United States District Judge

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Dated: \_\_\_\_\_, 2003

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