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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

**FEDERAL TRADE COMMISSION,**

**Plaintiff,**

**v.**

**DOMAIN REGISTRY OF AMERICA,  
INC.**

**Defendant.**

**03 CV 10075**

**Civil Action No.**

**STIPULATED FINAL  
JUDGMENT AND ORDER  
FOR PERMANENT  
INJUNCTION AND  
CONSUMER REDRESS**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), 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 Truth In Lending Act ("TILA"), 15 U.S.C. §§ 1601 *et seq.*, charging Defendant Domain Registry of America, Inc. ("DROA" or "Defendant") with violating Section 5 of the FTC Act, 15 U.S.C. § 45, and Section 166 of the TILA, 15 U.S.C. § 1666(e), and Section 226.12(e) of Regulation Z, 12 C.F.R. § 226.12(e).

The parties 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 them in this action.

**NOW, THEREFORE**, Plaintiff Federal Trade Commission and Defendant DROA 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 and the parties.
2. Venue is proper as to all parties in the Southern District of New York.
3. The activities of Defendant are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
4. The Complaint states a claim upon which relief may be granted against Defendant under §§ 5(a)(1) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a)(1) and 53(b), and the TILA, 15 U.S.C. §§ 1601 *et seq.*
5. Defendant has waived any and all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).
6. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.
7. Plaintiff and Defendant waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Defendant further waives and releases any claim it may have against the Commission, its employees, agents, and representatives.

8. The parties have agreed to settlement upon the following terms and conditions, without adjudication of any issue of law or fact, and without Defendant admitting liability or any wrongdoing for the allegations in the complaint. This settlement does not constitute discipline, a judicial determination, judgment, or a finding of any kind by the Commission or this Court.

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

## **ORDER**

### **Definitions**

1. “Domain name services” shall mean any service offered by Defendant for registering, hosting, parking, reserving, renewing, or transferring domain names, including any solicitation for any such services.

2. “Document” is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

## **PROHIBITED BUSINESS ACTIVITIES**

### **I.**

#### **INJUNCTION AGAINST MISREPRESENTATIONS**

**IT IS HEREBY ORDERED** that, in connection with the advertising, marketing, promotion, offering for sale, selling, distribution, or provision of any domain name services,

Defendant, its successors, assigns, officers, agents, servants, and employees, and those persons in active concert or participation with it who receive actual notice of this Order by personal service or otherwise are hereby permanently restrained and enjoined from making or from assisting in the making of, expressly or by implication, orally or in writing, any false or misleading statement or representation of material fact, including but not limited to any representation that the transfer of a domain name registration is a renewal.

## **II.**

**IT IS FURTHER ORDERED** that, in any written or oral communication where Defendant makes any representation that a domain name service is expiring or requires renewal, Defendant, its successors, assigns, officers, agents, servants, and employees, and those persons in active concert or participation with it who receive actual notice of this Order by personal service or otherwise are hereby permanently restrained and enjoined from failing to disclose, in a clear and conspicuous manner, in advance of receipt of any payment for services:

- A. Any cancellation or processing fees imposed prior to the effective date of any transfer or renewal; and
- B. Any limitations or restrictions on cancelling a request for domain name services.

## **III.**

### **COMPLIANCE WITH TILA**

**IT IS FURTHER ORDERED** that, in connection with the advertising, marketing, promotion, offering for sale, selling, distribution, or provision of any domain name services,

Defendant, its successors, assigns, officers, agents, servants, and employees, and those persons in active concert or participation with it who receive actual notice of this Order by personal service or otherwise are hereby permanently restrained and enjoined from failing to comply with § 166 of the TILA, or § 226.12(e) of Regulation Z, 12 C.F.R. § 226(e), or as those Sections of the TILA or Regulation Z may hereafter be amended.

## **CONSUMER REDRESS**

### **IV.**

**IT IS FURTHER ORDERED** that Defendant shall provide consumer redress as follows:

A. Within thirty (30) days of entry of this Order, Defendant shall provide to any consumer who cancelled a transfer request prior to the completion of the transfer a full refund of any monies paid, including any cancellation or administration fees. Defendant shall mail the refund in the form of a check drawn on U.S. funds to the consumer's last known address, along with a notice in the form that is attached to the Order as Attachment A;

B. Within thirty (30) days of entry of this Order, Defendant shall provide redress to any current customer who has not yet renewed a domain name registration with Defendant, or any former customer of Defendant who transferred a domain name to Defendant, who responded to a solicitation that is substantially similar in form or content to Attachment D ("eligible consumers") in accordance with the following terms and conditions:

1. Defendant shall send an email notice/claim form in the form attached to this Order as Attachment B to all eligible consumers;

2. The email notice/claim form shall be sent to eligible consumers at their last known email address(es);
3. The email notice/claim form shall offer eligible consumers an opportunity to transfer their domain name registrations to a different registrar and be reimbursed \$6.00 by Defendant for each completed transfer;
4. Defendant shall give recipients ninety (90) days to initiate the transfer or return the email notice/claim form to Defendant;
5. Defendant shall use all reasonable commercially available means to obtain updated email addresses for any returned emails with fifteen (15) days of receipt of such returned email and shall resend any such notices within ten (10) days of obtaining a new email address for the recipient. Defendant shall give eligible consumers who receive a resent email notice/claim form under this provision ninety (90) days to respond;
6. For ninety (90) days following the entry of this Order, Defendant shall maintain on its homepage, [www.droa.com](http://www.droa.com), a hyperlink to a notice/claim form in the form that is attached to this order as Attachment B;
7. Defendant shall mail to eligible consumers a check for \$6.00 within seven (7) days of Defendant's receiving notification from eNom that an eligible consumer successfully transferred the registration to another registrar. Defendant shall mail refunds in the form of a check drawn on U.S. funds to the eligible consumer's last known address, along with a notice in the form attached to this Order as Attachment C; and

C. No later than one hundred and eighty (180) days from the entry of this Order, Defendant shall provide the FTC with a report on the consumer redress program provided by this Part, including:

1. The name, address, and refund amount for each consumer;
2. The total number of consumers to whom email notices were sent; the number responding; the number responding who never completed a transfer; the number ineligible for redress and the reasons why; and
3. The number of consumers transferred to another registrar; and the number of transfers that were not completed and the reasons why.

## **GENERAL REQUIREMENTS**

### **V.**

#### **RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of four (4) years from the date of entry of this Order, in connection with any business engaged in advertising, marketing, promoting, offering for sale, selling, distributing, or providing any domain name services, or in assisting others engaged in such business, Defendant and its 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 retain the following records:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues, to the extent such records are used in the ordinary course of business or as required under applicable law;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, 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 items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

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

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials, to the extent such records are used in the ordinary course of business.

## **VI.**

### **COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, 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, Defendant shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; or appear for deposition;



B. In addition, the Commission 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 Defendant or to Defendant's employees, or any other entity managed or controlled in whole or in part by Defendant without the necessity of identification or prior notice;

*Provided* that nothing in this Order shall limit the Commission'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)); and

C. Defendant shall permit representatives of the Commission 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.

## **VII.**

### **COMPLIANCE REPORTING BY DEFENDANT**

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

A. For a period of four (4) years from the date of entry of this Order, Defendant shall notify the Commission of any proposed change 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 five (5) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant 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, 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 Defendant has complied and is complying with this Order.

This report shall include, but not be limited to:

1. Any changes required to be reported pursuant to Paragraph A above;
2. A copy of each acknowledgment of receipt of this Order obtained by Defendant pursuant to Part VIII;

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

Associate Director  
Division of Marketing Practices  
Federal Trade Commission, Room 238  
6th Street & Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

RE: FTC v. Domain Registry of America, Civil Action No. \_\_\_\_\_;

and

D. For purposes of the compliance reporting required by this Part, the Commission is authorized to communicate directly with Defendant's in-house counsel.

## **VIII.**

### **DISTRIBUTION OF ORDER**

**IT IS FURTHER ORDERED** that, for a period of four (4) years from the date of entry of this Order, Defendant shall deliver a copy of this Order to all principals, officers, directors, and employees serving in a management capacity, or having supervisory responsibility for responding to consumer complaints or inquiries or for sales or marketing of domain name services, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. Defendant shall deliver this Order to such current personnel within thirty (30) days after the date of service of this Order, and to new personnel within thirty (30) days after the person assumes such position or responsibilities.

## **IX.**

### **ACKNOWLEDGMENT OF RECEIPT OF ORDER**

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

**X.**

**RETENTION OF JURISDICTION**

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

The parties, and their respective counsel, hereby consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof.

**FOR DEFENDANT**

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Daniel Klemann  
President, Domain Registry of America, Inc.

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Charles L. Rosenzweig, Esq.  
Counsel for Domain Registry of America  
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**FOR THE FEDERAL TRADE COMMISSION**

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Ann Weintraub  
NY Bar # AW 3080  
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One Bowling Green, Suite 318  
New York, NY 10004  
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**SO ORDERED**, this \_\_\_\_ day of \_\_\_\_\_, 2003.

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United States District Judge  
Southern District of New York

ATTACHMENT A  
**REFUND NOTICE**

Date

Name  
Address

RE: [domain names and extensions]

Dear [Name]:

As part of a settlement between the Federal Trade Commission (FTC) and Domain Registry of America (DROA), we are pleased to provide you with the enclosed refund check.

In its complaint, the FTC alleged that DROA failed to clearly and conspicuously disclose its cancellation and administrative fees. DROA denies the allegation. You can read the complaint and final settlement at [www.ftc.gov](http://www.ftc.gov).

If you have any questions, please call DROA at [number] or the FTC at 1-877-FTC-HELP (382-4357).

Sincerely,

Enclosure

ATTACHMENT B

**EMAIL NOTICE/CLAIM FORM**

**SUBJECT LINE:** Important Notice Concerning Your Domain Registration

As part of a settlement between the [Federal Trade Commission](#)<sup>1</sup> and Domain Registry of America<sup>2</sup>, DROA has agreed to offer you the opportunity to switch your domain registration from DROA to a different registrar, and for you to receive \$6.00 for each registration you transfer.

In its complaint, the FTC alleged that DROA misled consumers into transferring their domain name registrations from their then-current registrars to DROA. DROA denies the allegation.

If you would like to switch your registration from DROA to another registrar, you must contact the new registrar to arrange for the transfer, and pay the new registrar its fee. DROA cannot arrange the transfer for you. For a list of ICANN-accredited registrars, visit [www.icann.org/registrars/accredited-list.html](http://www.icann.org/registrars/accredited-list.html). Once DROA confirms that you have successfully completed your transfer, we will send you a check for \$6.00 for each registration transferred.

If you would like to send us a copy of your transfer request, you may mail a copy of this form to [insert DROA's address] or by email to [insert email address as hyperlink for web version]. If you have any questions, please contact [insert contact] at DROA or the FTC at 1-877-FTC-HELP (382-4357).

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<sup>1</sup> Hyperlink to FTC press release announcing settlement for notice posted on Web site.

<sup>2</sup> Hyperlink to DROA's press release regarding settlement for notice posted on Web site.

ATTACHMENT C

**\$6.00 REFUND NOTICE**

Date

Name  
Address

RE: [domain names and extensions]

Dear [Name]:

The Federal Trade Commission (FTC) recently entered into an agreement with Domain Registry of America (DROA) to settle allegations that DROA transferred domain names without consumers' authorization. As part of the agreement, DROA has agreed to reimburse you for part of the cost of switching your domain registration to another registrar. Our records indicate that you have transferred the domain registration(s) referenced above. The enclosed check reimburses you \$6.00 for each registration you transferred.

If you have any questions, please contact DROA at [number] or the FTC at 1-877-FTC-HELP (382-4357).

Sincerely,

Enclosure



ATTACHMENT D  
**DROA SOLICITATION**