

may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.
6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.
7. Proposed respondent has read the draft complaint and consent order. It understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

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

1. "Personally identifiable information" or "personal information" shall mean individually identifiable information from or about an individual including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name that reveals an individual's email address; (d) a telephone number; (e) a Social Security number; (f) a persistent identifier, such as a customer number held in a "cookie" or processor serial number, that is combined with other available data that identifies an individual; or (g) any information that is combined with any of (a) through (f) above.

2. Unless otherwise specified, “Respondent” shall mean Vision One and its successors and assigns and its officers, and its agents, representatives, and employees.
3. “Merchant customer” shall mean a person or entity that uses Respondent’s shopping cart software and related services in connection with the sale of products and services on a Web site.
4. “Clearly and conspicuously” shall mean as follows:
 - A. In print communications, 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.
 - B. In communications disseminated orally, the message shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.
 - C. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services and software), the message shall be presented simultaneously in both the audio and visual portions of the communication. In any communication presented solely through visual or audio means, the message may be made through the same means in which the communication is presented. Any audio message shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. 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.

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.

5. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that Respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the collection of personally identifiable information from or about consumers, shall not make, expressly or by implication, any false or misleading representation regarding the collection, use, or disclosure of personally identifiable information.

II.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, subsidiary, division, or other device, shall not sell, rent, or disclose to any third party for marketing purposes any personally identifiable information that was collected from consumers through shopping cart software used at a merchant customer's Web site prior to the date of service of this order.

III.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, subsidiary, division, or other device, shall not sell, rent, or disclose to any third party for marketing purposes any personally identifiable information collected from consumers through shopping cart or other software used at a merchant customer's Web site after the date of service of this order unless, prior to the date such information was collected, Respondent took one of the following two actions:

- A. Provided to the merchant customer a clear and conspicuous written notice of its information practices and obtained from the merchant customer a written certification stating:

(1) that the merchant customer received such notice; and

(2) either (a) that its posted privacy policy states that consumers' information may be sold, rented, or disclosed to third parties, or (b) that it provides a clear and conspicuous disclosure, before any personally identifiable information is collected from consumers through Respondent's shopping cart or other software, stating that the consumer is leaving the merchant customer's Web site and entering Respondent's Web site, and that Respondent's site is governed by Respondent's own privacy policy.

The written notice to merchants required by this Paragraph shall be labeled "**Important Notice to Merchants from CartManager**" and must: (1) state that Respondent intends to sell, rent, or disclose such information; (2) identify the types or categories of any entities to which such information will be disclosed; (3) advise the merchant customer that it may be liable for any misrepresentations it makes about the use or disclosure of information collected from consumers at its Web site, including through software used at the site; and (4) contain no other information;

OR

- B. Provided a clear and conspicuous disclosure on the page(s) through which it collected such information stating: (1) that the consumer is on Respondent's Web

site, and (2) that information provided by the consumer to Respondent will be used, sold, rented, or disclosed to third parties for marketing purposes.

IV.

IT IS FURTHER ORDERED that within five (5) days of the date of service of this order, Respondent shall pay \$9,101.63 to the United States Treasury as disgorgement. Such payment shall be by cashier's check or certified check made payable to the Treasurer of the United States. In the event of any default in payment, which default continues for more than ten (10) days beyond the due date of payment, Respondent shall also pay interest as computed under 28 U.S.C. § 1961, which shall accrue on the unpaid balance from the date of default until the date the balance is fully paid.

V.

IT IS FURTHER ORDERED that Respondent Vision One and its successors and assigns shall, for a period of five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying a print or electronic copy of all documents demonstrating their compliance with the terms and provisions of this order, including, but not limited to:

- A. A sample copy of each different privacy statement or communication relating to the collection of personally identifiable information containing representations about how personally identifiable information will be used and/or disclosed. Each Web page copy shall be dated and contain the full 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 the information on the Web; provided, however, that after creation of any Web page or screen in compliance with this order, Respondent shall not be required to retain a print or electronic copy of any amended Web page or screen to the extent that the amendment does not affect Respondent's compliance obligations under this order;
- B. A sample copy of each different document containing the disclosures required by Part III.A. of this order; a list of all merchant customers who received each different document containing such disclosures; all communications by merchant customers in response to such disclosures, including all written certifications received pursuant to Part III.A. and any complaints received from merchant customers; and a sample copy of each different document containing the disclosures required by Part III.B.; and

- C. All invoices, communications, and records relating to the disclosure to third parties of personally identifiable information collected through merchant customer Web sites.

VI.

IT IS FURTHER ORDERED that Respondent Vision One and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to such current personnel within thirty (30) days after the date of service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

VII.

IT IS FURTHER ORDERED that Respondent Vision One and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) 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 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 corporation about which Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VIII.

IT IS FURTHER ORDERED that Respondent Vision One and its successors and assigns shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IX.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this _____ day of _____, 2004.

VISION I PROPERTIES, LLC, d/b/a
CARTMANAGER INTERNATIONAL

By: _____
JEFFREY MARCOUS
President

JOSEPH B. EMIG
Counsel for Vision I Properties LLC, d/b/a/
CartManager International

FEDERAL TRADE COMMISSION

LORETTA H. GARRISON
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APPROVED:

JOEL WINSTON
Associate Director
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LYDIA B. PARNES
Acting Director
Bureau of Consumer Protection