

CU

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FEDERAL TRADE COMMISSION,	)
	)
Plaintiff,	)
	)
v.	)
	)
LANCE THOMAS ATKINSON,	)
	)
INET VENTURES PTY LTD, an Australian	)
proprietary company,	)
	)
JODY MICHAEL SMITH,	)
	)
TANGO PAY INC., a Delaware corporation,	)
	)
CLICK FUSION INC., a Delaware corporation,	)
	)
TWOBUCKS TRADING LIMITED, a Cyprus	)
limited liability company,	)
	)
Defendants.	)

Case No. 08CV5666  
Judge Virginia M. Kendall  
Magistrate Judge Maria Valdez

**STIPULATED ORDER FOR PERMANENT INJUNCTION  
AND FINAL JUDGMENT AS TO DEFENDANT JODY MICHAEL SMITH**

Plaintiff Federal Trade Commission ("Commission" or "FTC") filed a Complaint For Injunctive And Other Equitable Relief against Lance Thomas Atkinson, Inet Ventures Pty Ltd., Jody Michael Smith, Tango Pay Inc., Click Fusion Inc. and TwoBucks Trading Limited, on October 6, 2008, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM"), 15 U.S.C. § 7701 *et seq.* The FTC and Jody Michael Smith ("Defendant"), having been represented by counsel and acting by and through such counsel, have consented to the entry

of this Stipulated Order for Permanent Injunction and Final Judgment (the "Order") without a trial or adjudication of any issue of law or fact herein.

**NOW, THEREFORE**, the Commission and Jody Michael Smith, having requested the Court to enter this Order, and the Court having considered the Order reached among the parties and for other cause appearing, it is **ORDERED, ADJUDGED, AND DECREED** as follows:

#### FINDINGS

1. This Court has jurisdiction over the subject matter pursuant to 28 U.S.C. §§ 1331 and 1337(a), and 15 U.S.C. §§ 53(b) and 57b.
2. This Court has jurisdiction over Jody Michael Smith.
3. Venue in the United States District Court for the Northern District of Illinois is proper.
4. The activities of Jody Michael Smith are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
5. The Commission's Complaint states a claim upon which relief may be granted against Jody Michael Smith under Section 5 of the FTC Act, 15 U.S.C. § 45, and CAN-SPAM, 15 U.S.C. § 7701 *et seq.*
6. Jody Michael Smith has entered into this Order freely and without coercion. Jody Michael Smith further acknowledges that he has read the provisions of this Order and is able to abide by them.
7. Jody Michael Smith does not admit any of the allegations set forth in the Complaint, other than jurisdictional facts, and denies liability for any of the violations alleged in the Complaint.
8. Jody Michael Smith waives: (a) all rights to seek judicial review or otherwise challenge or contest the validity of this Order; (b) any claim he may have against the Commission, its employees,

representatives or agents; (c) all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996); and (d) any rights to attorney's fees that may arise under said provision of law. The Commission and Jody Michael Smith shall each bear their own costs and attorney's fees.

9. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

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

#### DEFINITIONS

1. "Advertising" or "Advertisement" means any written or verbal statement, illustration, or depiction that is designed to effect a sale or create interest in the purchasing of goods or services, whether it appears in a brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, packaging insert, label, film, slide, radio, television or cable television, audio program transmitted over a telephone system, program-length commercial ("infomercial"), Internet website (including metatags), or in any other medium.

2. "Asset" or "Assets" mean any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, contracts, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.

3. "Assisting others" means providing services to any person or entity, including but not limited to: (1) performing customer service functions including, but not limited to, receiving or responding to

consumer complaints; (2) providing, or arranging for the provision of, names of potential customers; (3) performing marketing services of any kind; (4) acting as an officer or director of a business entity; or (5) providing credit or debit card account processing.

4. "Clear(ly) and Prominent(ly)" means as follows:

- A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services and software), the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement. *Provided, however,* that in any advertisement presented solely through visual or audio means, the disclosure may be made through the same means in which the ad is presented. *Provided, further,* that in any advertisement communicated through interactive media which is presented predominantly through visual or audio means, the disclosure may be made through the same means in which the ad is predominantly presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual disclosure 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. *Provided, however,* in the case of advertisements disseminated by means of an interactive electronic medium, such as software, the Internet, online service page, or other electronic page, "clear and prominent" disclosures do not include disclosures accessed or displayed through hyperlinks, pop-ups, or interstitials.
- B. In a print advertisement, promotional material, or instructional manual, the disclosure 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.

C. The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

5. **“Commercial electronic mail message”** (or **“commercial email”**) **“means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose).”** 15 U.S.C. § 7702(2) (A) (2004).

6. **“Competent and reliable scientific evidence”** means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

7. **“Covered product or service”** means any dietary supplement, food or drug, or any service purporting to provide health-related benefits.

8. **“Defendant”** means Jody Michael Smith.

9. **“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 writing, drawings, graphs, charts, Internet sites, Web pages, Web sites, electronic correspondence, 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.

10. "Electronic mail address" means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the "local part") and a reference to an Internet domain (commonly referred to as the "domain part"), whether or not displayed, to which an electronic mail message can be sent or delivered." 15 U.S.C. § 7702(5).

11. "Header information" means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person initiating the message." 15 U.S.C. § 7702(8).

12. "Product label" means any label or other written, printed or graphic matter upon any product or accompanying any product, including package labels, bottle labels, and package inserts.

13. "Sender" means a person who initiates a commercial electronic mail message and whose product, service, or Internet website is advertised or promoted by the message. 15 U.S.C. § 7702(16).

## ORDER

### I. PROHIBITED PHARMACY CLAIMS AND PRACTICES

**IT IS THEREFORE ORDERED** that Jody Michael Smith, his officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of 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 advertisement, promotion, offering for sale or sale of prescription drugs or pharmacy services over the Internet are hereby permanently restrained and enjoined from:

A. misrepresenting, or assisting others in misrepresenting, either orally or in writing, expressly or by implication, any material fact, including, but not limited to:

1. that they are a bona fide U.S. licensed pharmacy that employs board certified urologists and endocrinologists; or
2. that they dispense U.S. FDA approved drugs.

B. failing to disclose clearly and prominently on each Web page or commercial electronic mail message where prescription drugs or pharmacy services are advertised, promoted, offered for sale or sold:

1. the name, business address, and phone number of the pharmacy that will dispense the prescription drug, and the state or states where such pharmacy is licensed or registered to do business;
2. the name, address, and phone number of the physician who will review the information provided by the consumer for the purpose of determining whether to issue or authorize the prescription, if such service is offered, and the state or states where the physician is licensed or authorized to practice medicine;
3. the name, business address, phone number and a contact person for the entity offering the prescription drugs;
4. the state or states from which the entity will accept orders for prescription drugs; and
5. that "Dispensing a prescription drug without a valid prescription is a violation of Federal law. More information about purchasing prescription drugs online is available at [www.fda.gov](http://www.fda.gov)."

**II. OTHER PROHIBITED PRODUCT CLAIMS**

**IT IS FURTHER ORDERED** that Jody Michael Smith, his officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of 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 manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, in or affecting commerce, are hereby permanently restrained and enjoined from making, or assisting others in making, any representation, in any manner, expressly or by implication, including through the use of endorsements, about the health benefits, absolute or comparative benefits, performance, safety, or efficacy of such product or service unless, at the time the representation is made, Defendant possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

**III. PROHIBITED SECURITY CLAIMS**

**IT IS FURTHER ORDERED** that Jody Michael Smith, his officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of 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 advertisement, promotion, offering for sale or sale of any product or service over the Internet, are hereby permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly or by implication, any material fact relating to the security measures employed on any Web site, including, but not limited to that:

- A. the information customers provide to Defendant's Web sites is encrypted; or

B. Defendant uses an SSL secure connection when transmitting this information over the Internet.

#### **IV. PROHIBITED CAN-SPAM PRACTICES**

**IT IS FURTHER ORDERED** that Jody Michael Smith, his officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of 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 violating, or assisting others in violating, the provisions contained in the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM Act"), 15 U.S.C. §§ 7704 and 7705, as currently promulgated or as it may hereafter be amended, or any rule, regulation, or requirement adopted pursuant thereto, including, but not limited to, initiating the transmission of a commercial electronic mail message that:

- A. Contains, or is accompanied by, false or misleading header information;
- B. Fails to include a clear and conspicuous notice of the opportunity to decline to receive further electronic mail messages from the sender, or
- C. Fails to include a valid physical postal address of the sender.

#### **V. EQUITABLE MONETARY RELIEF**

**IT IS FURTHER ORDERED** that:

- A. Judgment in the amount of One Million One Hundred Twenty One Thousand Three Hundred and Ninety Eight Dollars (\$1,121,398) is hereby entered in favor of the FTC and against Jody Michael Smith.

B. The judgment identified in Paragraph A shall be suspended upon the assignment, transfer, and payment of the assets (approximately \$870,000) identified in sub-Paragraphs B.1 and B.2 below.

1. Upon entry of this Order, Jody Michael Smith shall be deemed to have assigned and transferred to the Commission any and all legal or equitable rights, title and interest to the assets listed in Attachment A. Within fifteen (15) days after the date of entry of this Order, the funds shall be transferred by Jody Michael Smith, with the cooperation of third parties as set forth in Section VI of this Order, to the Commission by wire transfer or certified check in accordance with instructions to be provided by counsel for the FTC; and
2. Within fifteen (15) days after the date of entry of this Order, Jody Michael Smith also shall pay \$20,000, which constitute the proceeds from the sale of Defendant's residence in McKinney, Texas, to the FTC by wire transfer or certified check in accordance with instructions to be provided by counsel for the FTC.

C. Time is of the essence for the payments specified in Paragraph B above. In the event of the failure to timely and completely fulfill the payment obligation:

1. The judgment imposed herein will not be suspended, and the full amount of that Judgment (\$1,121,398) shall immediately become due and payable, plus interest from the date of entry of this Order pursuant to 28 U.S.C. § 1961, as amended, less any amounts already paid; and
2. the Commission shall be entitled to immediately exercise any and all rights and remedies against Jody Michael Smith and his assets to collect

the full amount of the judgment and interest thereon, less any amounts already paid.

- D. All funds paid to the FTC pursuant to the Order shall be deposited into an account administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress, and any attendant expenses for the administration of such equitable relief. Jody Michael Smith shall cooperate fully to assist the Commission in identifying consumers who may be entitled to redress pursuant to this Order. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress 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 practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Jody Michael Smith shall have no right to challenge the Commission's choice of remedies under this Paragraph. Jody Michael Smith shall have no right to contest the manner of distribution chosen by the Commission.
- E. Jody Michael Smith relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Jody Michael Smith shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.
- F. The Commission's agreement to this Order is expressly premised upon the truthfulness, accuracy and completeness of the sworn financial statement submitted to the Commission in a letter dated June 22, 2009, which Jody Michael Smith stipulates is truthful, accurate and complete. Jody Michael Smith and the Commission stipulate that this financial disclosure provides the basis for the assets listed in Attachment A to this

Order and include material information upon which the Commission relied in negotiating and agreeing to this Order. Jody Michael Smith and the Commission stipulate that the Commission has relied on the truthfulness, accuracy, and completeness of these financial disclosures in agreeing to the terms of this Order and that the Commission would not have entered into this Order but for the truthfulness, accuracy, and completeness of these financial disclosures.

- G. IF, upon motion by the Commission, this Court finds that Jody Michael Smith has failed to disclose any material asset or materially misstated the value of any asset in the financial statement or related documents described above, or has made any other material misstatement or omission in the financial statement described above, then this Order shall be reopened and suspension of the judgment shall be lifted for the purpose of requiring payment of monetary relief in the amount of the judgment set forth in Paragraph A of this Section, less the sum of any amounts paid to the Commission pursuant to Paragraph B of this Section. *Provided, however,* that in all other respects this Order shall remain in full force and effect, unless otherwise ordered by the Court.
- H. Upon such reinstatement of the monetary judgment, the Court shall make an express determination that the monetary judgment shall be immediately due and payable. The Commission shall be entitled to interest on the judgment, computed from the day of entry of this Order, at the rate prescribed by 18 U.S.C. § 1961, as amended. The Commission shall be permitted to execute on the judgment immediately after the suspension is lifted and engage in discovery in aid of execution.
- I. Jody Michael Smith agrees that the facts as alleged in the Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil

litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy case. Jody Michael Smith further stipulates and agrees that the facts alleged in the Complaint establish all elements necessary to sustain an action pursuant to, and that this Order shall have collateral estoppel effect for purposes of, Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A).

- J. Proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

**VI. TRANSFER OF ASSETS HELD BY THIRD PARTIES AND LIFTING OF ASSET FREEZE**

**IT IS FURTHER ORDERED** that:

- A. In order to partially satisfy the monetary judgment set forth in Section V above, any financial or brokerage institution, escrow agent, title company, commodity trading company, automated clearing house, network transaction processor, business entity, or person that holds, controls, or maintains custody of any account or asset of, on behalf of, or for the benefit of, Jody Michael Smith, including, but not limited to, assets held by Deutsche Bank AG, ePassporte, Wachovia, and Wells Fargo as listed in Attachment A, shall turn over such assets to the Commission within ten (10) business days of receiving notice of this Order by any means, including, but not limited to via facsimile or electronic mail message.
- B. The freeze on Jody Michael Smith's assets pursuant to the Stipulated Preliminary Injunction Order entered by this Court on January 13, 2009 shall be lifted for the sole

purpose of transferring funds pursuant to Sections V.B and VI.A of this Order, and shall be dissolved upon transfer of all such funds.

#### **VII. COOPERATION WITH COMMISSION COUNSEL**

**IT IS FURTHER ORDERED** that Jody Michael Smith shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the FTC's Complaint, cooperate in good faith with the FTC and appear at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Jody Michael Smith shall appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena.

#### **VIII. COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of (i) monitoring and investigating compliance with any provision of this Order, and (ii) investigating the accuracy of Jody Michael Smith's financial statement upon which the Commission's agreement to this Order is expressly premised:

- A. Within ten (10) days of receipt of written notice from a representative of the Commission, Jody Michael Smith shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in his possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to use all other lawful means, including but not limited to:

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, 45 and 69;
2. having its representatives pose as consumers and suppliers to Defendant, his employees, or any other entity managed or controlled in whole or in part by Defendant, without the necessity of identification or prior notice; 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.

*Provided, however,* 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)).

#### **IX. COMPLIANCE REPORTING**

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

- A. For a period of three (3) years from the date of entry of this Order,
  1. Jody Michael Smith shall notify the Commission 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), and any change in his ownership in any business entity 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, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of his duties and responsibilities in connection with the business or employment; and

(c) Any changes in his name or use of any aliases or fictitious names within ten (10) days of the date of such change; and

2. Jody Michael Smith shall notify the Commission of any changes in structure of any business entity that he directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or a change in the business name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any such change in the business entity about which he learns less than thirty (30) days prior to the date such action is to take place, he 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 and annually thereafter for a period of three (3) years, Jody Michael Smith shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury,

setting forth in detail the manner and form in which he has complied and is complying with this Order. This report shall include, but not be limited to:

1. His then-current residence address, mailing address, and telephone numbers;
  2. His then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that he is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of his duties and responsibilities in connection with the business or employment;
  3. Any other changes required to be reported under subparagraph A of this Section; and
  4. A copy of each acknowledgment of receipt of this Order obtained pursuant to the Section titled "Distribution of Order;"
- C. Jody Michael Smith shall notify the Commission of the filing of a bankruptcy petition within fifteen (15) days of filing.
- D. For purposes of this Order, Jody Michael Smith shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier all reports and notifications required by this Order to the Commission, to the following address:

Associate Director for Enforcement  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W., Room NJ-2122  
Washington, DC 20580  
Re: *FTC v. Atkinson, et al.*  
Civ. No. 08C 5666 (N.D. Ill)

*Provided* that, in lieu of overnight courier, Defendant may send such reports or notifications by first-class mail, but only if he contemporaneously sends an electronic version of such report or notification to the Commission at: DEBrick@ftc.gov.

- E. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Jody Michael Smith.

**X. RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of six (6) years from the date of entry of this Order, Jody Michael Smith, in connection with any business involving the marketing, advertising, promotion, offering for sale, or sale of food, drugs, devices or dietary supplements, or the marketing of goods or services via commercial email messages, and his agents, employees, officers, corporations, and those persons in active concert or participation with any of 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 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 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 or indirectly, such as through a third party) and any responses to those complaints or requests;
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and
- F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order required by the Sections titled "Distribution of Order" and "Acknowledgment of Receipt of Order" and all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting."

**XI. DISTRIBUTION OF ORDER**

**IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of this Order, Jody Michael Smith shall deliver copies of the Order as directed below:

- A. **Jody Michael Smith as Control Person:** For any business that Jody Michael Smith controls, directly or indirectly, or in which he has a majority ownership interest, he must deliver a copy of this Order to (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any

change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

**B. Jody Michael Smith as employee or non-control person:** For any business where Jody Michael Smith is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, he must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

**C** Jody Michael Smith must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

#### **XII. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

**IT IS FURTHER ORDERED** that Jody Michael Smith, 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.

#### **XIII. ORDER PROVISION REGARDING CUSTOMER INFORMATION**

**IT IS FURTHER ORDERED** that Jody Michael Smith, and his officers, agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, are permanently restrained and enjoined from:

**A.** disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), of any person which any Defendant

obtained prior to entry of this Order in connection with the sale of pharmaceuticals or herbal products through commercial email messages; and

- B. failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.

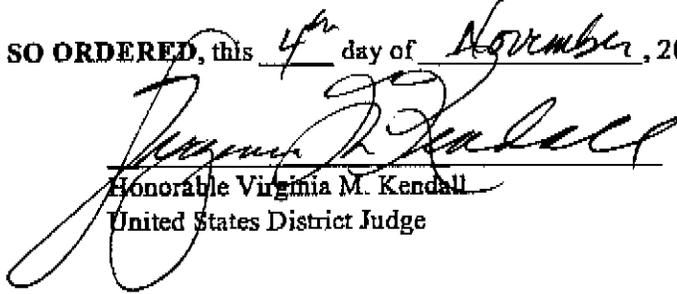
Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

#### XIV. 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.

JUDGMENT IS THEREFORE ENTERED, pursuant to all the terms and conditions recited above.

IT IS SO ORDERED, this 4<sup>th</sup> day of November, 2009

  
Honorable Virginia M. Kendall  
United States District Judge

**STIPULATED AND AGREED TO BY:**

**FOR THE PLAINTIFF:**

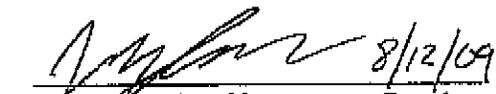
  
\_\_\_\_\_ 10/27/09

Steven M. Wernikoff Dated

Federal Trade Commission  
55 West Monroe Street, Suite 1825  
Chicago, Illinois 60603  
(312) 960-5634 [Telephone]  
(312) 960-5600 [Facsimile]

Attorney for Federal Trade Commission

**FOR THE DEFENDANT:**

  
\_\_\_\_\_ 8/12/09

Jody Michael Smith Dated

  
\_\_\_\_\_

Michael J. Petro, Esq. Dated  
53 W. Jackson Blvd., Suite 324  
Chicago, IL 60604  
(312) 913-1111 [Telephone]  
(312) 873-3758 [Facsimile]

Attorney for Jody Michael Smith

## ATTACHMENT A

Name on Account	Last Four Digits of Account	Type of Account	Party Holding Funds	Approximate Amount of Funds
Jody Michael Smith		Cash	ePassporte	\$5,000
Jody Michael Smith	x1932	IRA	Wachovia	\$10,480
Jody Michael Smith	x8535	MMA	Wachovia	\$6,624
Jody Michael Smith	x4877	Checking	Wells Fargo	\$111
Click Fusion Inc.		Cash	ePassporte	\$26,000
Click Fusion Inc.	x8202		Wachovia	\$40,644
Click Fusion Inc.	x5783	Checking	Wells Fargo	\$1,173
Darkcave Investments		Merchant	Israel Bank Cards	\$470,000
Darkcave Investments			Marfin Laiki Bank	
Monster Clicks Inc.	x1196	Checking	Wells Fargo	\$5,084
On and On Investments		Merchant	Israel Bank Cards	
On and On Investments			Marfin Laiki Bank	
SaltWater Holdings		Merchant	Israel Bank Cards	\$77,000
SaltWater Holdings			Marfin Laiki Bank	
Tango Pay Inc.		Cash	ePassporte	\$3
Tango Pay Inc.	x5480	Checking	Wells Fargo	\$1,176
TwoBucks Trading Limited		Correspondent	Deutsche Bank	\$90,532
TwoBucks Trading Limited		Cash	ePassporte	\$412
TwoBucks Trading Limited			Marfin Laiki Bank	
TwoBucks Trading Limited		Merchant	Israel Bank Cards	
Xablo Media Inc.	x2010	Checking	Wells Fargo	\$116,227
WhiteDesert Holdings			Marfin Laiki Bank	
WhiteDesert Holdings			Israel Bank Cards	