



American Association of Law Libraries

MAXIMIZING THE POWER OF THE LAW LIBRARY COMMUNITY SINCE 1906

Comments of the American Association of Law Libraries

To the Federal Trade Commission

Regarding the Prenotification Negative Option Rule Review
Matter No. P064202

October 8, 2009

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The American Association of Law Libraries (AALL) is a nonprofit educational organization with nearly 5,000 members nationwide who respond to the information needs of legislators, judges, and other public officials, corporations and small businesses, law professors and students, attorneys and members of the general public. AALL's mission is to promote and enhance the value of law libraries to the legal and public communities, to foster the profession of law librarianship, and to provide leadership in the field of legal information and information policy.

We submit the following comments regarding the Federal Trade Commission's Prenotification Negative Option Rule Review, Matter No. P064202, as announced in the Federal Register on May 14, 2009 (74 FR 22720). In addition, we would like to express our gratitude to the Commission for extending the deadline for comments to October 13, 2009, allowing us time to gather additional information from our membership.

Background

The Prenotification Negative Option Rule currently serves to protect consumers from unwanted merchandise when they join a subscription club, such as those for books or CDs. The Rule has successfully protected consumers from unfair publisher practices. However, the current Rule is written to protect the interests of the private consumer only. AALL believes that the Rule should be expanded to include institutional consumers, such as law libraries, and that it should be strengthened.

AALL members work in academic, firm, state, court and county law libraries throughout the United States. Law libraries serve legislators, judges, and other public officials, corporations and small businesses, law professors and students, attorneys and members of the general public. Our nation's law libraries are the largest consumers of print and electronic legal publications. Law libraries staffed with professional law librarians account for a significant percentage of the \$5 billion spent on legal materials annually.¹

Law libraries subscribe to materials that are shipped by agreement between the institution and a publisher. Law libraries are unique in that most of their collections are serial in nature, meaning that the titles they receive are regularly updated by replacement pages, supplements, pocket-parts, new editions and other means. This is necessary to ensure that customers of our libraries have access to the most current laws, regulations and analytical materials.

Generally, law libraries receive these materials through continuity plans, subscriptions, and standing orders placed with a publisher. Typically, incoming mail is received by the library, sorted, opened and date stamped. New loose-leaf updates, regardless of format, are checked-in, processed, cataloged and then filed in the existing title. This process is usually done by library staff that lack the expertise to distinguish between ordered and unordered, unwanted materials.

¹ Svengalis, Kendall F. Legal Information Buyer's Guide and Reference Manual, 2009, p.5

The serial nature of law library collections is such that libraries regularly receive from legal publishers unanticipated materials that have not explicitly been ordered, are unwanted, and result in significant costs to the library. Identifying and processing these unordered and unwanted materials consumes a great deal of staff time. If they are identified by library staff as unwanted, they are returned to the publisher. But if they are not identified as unwanted during processing, they are added to the collection and the library will likely continue to receive unordered, unwanted updates thereby incurring needless costs to the library and financial benefits to the publisher.

The current Prenotification Negative Option Rule has offered some protection to consumers from receiving unwanted materials when they participate in automatic shipment plans such as found for books and CDs. AALL believes strongly that the current Prenotification Negative Option Rule should be expanded to include protection for institutional consumers, such as law libraries, so that we may be better able to control the growth and cost of our library collections.

Response to Questions [74 FR 22720]

In response to the specific questions related to the notice and comment request regarding the Prenotification Negative Option Rule, AALL would like to respond to the following that are most relevant to the relationships between law libraries and legal publishers.

1) Is there continuing need for the Rule as currently promulgated? Why or why not?

There is a crucial need for the Rule to remain in place because it has successfully protected individual consumers from unfair publisher practices. The Prenotification Negative Option Rule protects consumers by requiring book, CD or video clubs to give the consumer information about their plans, clearly and conspicuously, in any promotional materials that consumers can use to enroll. Additionally, the company must tell the consumer the minimum purchase obligation; how and when the consumer may cancel a membership; how many announcements and rejection forms a consumer will receive each year; how to reject merchandise; the deadline for returning the rejection form; and whether billing charges include postage and handling.

3) What modifications, if any, should the Commission make to the Rule to increase its benefits to consumers?

First, AALL believes that the Rule should be expanded to include law libraries as institutional consumers needing the same protections afforded to individual consumers.

Serious publisher violations take place every day as a result of unfair publishing practices regarding the shipping of unordered, unwanted materials to law libraries. Recent settlements for unfair publishing practices by the Florida Attorney General with Thompson Publishing and LexisNexis/Matthew Bender demonstrate a continuing and compelling need for monitoring the legal publishing industry.

In 2008, the Attorney General of Florida worked with Thompson Publishing to stop the unfair practice of sending unordered and related books to law libraries throughout the United States. The Assurance of Voluntary Compliance (Attachment 1) found that law libraries of all types were shipped unordered and unwanted materials. As seen in Attachment 2, the HR Answer Book was sent as part of an automatic update program. The notice looks like an invoice and the order information is in small print in the lower right corner. This unfair practice created confusion and increased the workload in every library, regardless of type. In the Thompson Publishing settlement, Thompson Publishing agreed to change the way it ships, bills and markets merchandise to libraries when using a Negative Option Plan. AALL supports the specifics of the Florida Thompson settlement and we believe that the terms under the Agreement should apply to all legal publishers.

Specifically, as agreed to in the Florida Thompson settlement, we believe that legal publishers should not:

- send unordered book unless they are clearly marked as such;
- send invoices for unordered books, or dunning notices;
- send deceptive notices that resemble invoices;
- command payment or return of unordered books;
- take payment of an invoice as an enrollment in an automatic shipment plan;
- send renewal notices prior to 180 days of expiration of a subscription;
- continue telemarketing if the consumer has asked not to be called.

We also believe, as agreed to in the Florida Thompson settlement, that legal publishers should:

- disclose that acceptance of the product would enroll the library in a plan to receive related material;
- provide the right to cancel;
- mail an announcement prior to shipment;
- have a visible customer service number on all correspondence and on their Web site.

Law libraries have benefited from the specific Thompson Publishing practice changes listed above by having the opportunity, for example, to not receive orders disguised as invoices or receive unordered materials. These changes in the practices of Thompson Publishing have resulted in substantial cost savings to law libraries nationwide.

In 2009, the Attorney General of Florida also negotiated a settlement with LexisNexis/Matthew Bender stemming from their practice of shipping unordered books to members of the Florida Bar Association (Attachment 3). The settlement (Attachment 4) led to nationwide changes in the way Lexis/Nexis ships unordered merchandise.

Although the Rule as applied to the individual consumer was in effect at the time, two known publishers unfairly billed customers for books they did not anticipate, order or want. The Rule must remain in place and must be redefined to prevent unfair practices that publishers are known to employ with both individual and institutional consumers.

AALL believes that the Rule is essential. We strongly urge that the conditions stipulated in the Florida Attorney General's Settlements be incorporated into the Rule and that the unfair practice of sending unordered materials to libraries be defined as unlawful. Law libraries do not want materials they have not explicitly ordered.

Second, AALL believes that the current Rule should be expanded to also include online subscriptions and digital materials for individual and institutional consumers. We believe that it is crucial to have the Rule extended to electronic resources since more legal vendors employ the Negative Option approach to the sale of goods and services online, making the impact of these unfair practices even greater on law library consumers.

The exponential growth of online and digital resources is having a profound effect on law libraries in terms of costs and licensing agreements. It is not uncommon for a print subscription, freely routed to multiple individuals, to change to an online email with access limited to a single user. It is clear that e-books, podcasts and "apps" are in our immediate future. Therefore it is essential that these new formats be included in the Rule, and that the Rule allow for new formats as they evolve.

For example, consumers may be offered a trial subscription to an e-book service. After a specified period, the trial automatically converts to a monthly charge on their credit card. This could also happen with trial subscriptions to libraries, with the monthly charge appearing on the library's established account.

Third, AALL believes that print and online materials obtained through Negative Option Plans should have an *expiration date*, which should be a period of no more than five years.

Negative Option Plan material should have an expiration date, after which time the terms need to be clearly and conspicuously disclosed to the consumer *again* and affirmatively accepted by the consumer *again*. Otherwise, the agreement is lapsed. This protects the institutional consumer, where staff turnover occurs regularly and new staff may be unaware of existing negative option agreements.

Further, material received under initial negative option should come with terms that are clearly and conspicuously marked.

Fourth, AALL believes that an expanded Prenotification Negative Option Rule that includes institutional consumers should provide for a 90-day period for the return of goods when an unordered, unwanted item is shipped to a law library. That length of time is needed for the assessment and return of unsolicited merchandise by the library.

5) What significant costs has the Rule imposed on consumers? What evidence supports the asserted costs?

Here's a typical scenario in a law library when unordered material is received. Generally it takes a staff person about 30 minutes to determine why the item was received, if it was ordered, how it got there, how the package was addressed, and whether or not it was misdirected. If the staff person questions the receipt of the item, he/she makes notes and

takes the item to the supervising librarian. The average cost in non-professional staff time for 30 minutes is approximately \$10. The supervising librarian may spend another 30 minutes reviewing the item, making phone calls, disputing charges and dealing with a vendor. The average cost in professional staff time is approximately \$18.

If the item is determined to be unordered and unwanted, it is often returned to the vendor at additional cost to the library. A staff person must then locate a proper size box, photocopy the paperwork, prepare and affix a label, and deliver it to office services. Assuming this can all be done in 15 minutes, the combined cost in staff time and postage is approximately \$13 per item. Therefore, the total approximate cost to handle *one unordered item* is \$41 per library. If this same item were to be sent to half of the 1900 law libraries nationwide, the costs associated with this publishing practice *for just one unwanted item* is approximately \$32,800.

When an unwanted, unordered publication is added to the collection of a law library, it is inadvertently paid for. If the item is regularly updated, those costs will continue indefinitely. The impact on a library's budget is ongoing and far greater than the \$41 it would have cost to return the item. These costs greatly impact the budgets of law offices throughout the country that do not have professional librarians or staff to monitor the receipt of unauthorized shipments of legal materials and return them to the publisher.

The Thompson Publishing settlement referred to earlier is just one example of why this practice should be regulated by the Commission. The unordered title noted in the Florida settlement, *Human Resources Answer Book*, was shipped to libraries in 2006 at a cost of \$149 plus tax and shipping (Attachment 2). This initial cost would be followed by ongoing subscription charges in *all* subsequent years, making this a very lucrative practice for the publisher.

6) What modifications, if any, should be made to the Rule to reduce the costs imposed on consumers?

AALL proposes that the Rule be changed to include additions to existing sets, tangentially related items, continuity plans and trial conversions. These items should not be shipped by a legal publisher unless specifically requested by the law library. As noted above, the receipt of unordered, unwanted items imposes substantial costs to the law library in terms of staff time, resources, postage and the unwitting acceptance of unordered items that often results in ongoing costs for updates or replacements.

We believe that trial conversions should be included in the Prenotification Rule. A trial conversion is when a trial subscription to a serial publication automatically converts to a purchase after a specific period of time. After the free subscription period ends, the publisher sends an order for a 12-month subscription which looks exactly like an invoice. Payment of the invoice constitutes an order, making it an unexpected and unintended acquisition. If trial conversions were covered by the Prenotification Rule, clear and conspicuous language noting the subscription terms would be required before the order could be placed.

We also believe that continuity plans should be included in the Prenotification Rule. A continuity plan is when consumers receive regular shipments of merchandise until they cancel the agreement. However, in law libraries it is not uncommon for publishers to send a pamphlet with detailed explanations of a recent legislative act as part of an existing subscription (Attachment 5). These “special” issues are not included in the cost of the original subscription and may be priced as high as \$100 *per item*. Since the pamphlet is supposedly “part” of the subscription, the subscribing library will also get subsequent year pamphlets, making it an unexpected, unintended and expensive ongoing acquisition. Another continuity plan problem occurs when a law library subscribes to a multi-volume title on a specific topic. Additional volumes published in related areas are frequently sent to the library without notice. If these new additions are not caught by staff during the initial processing, they add to the size and cost of the set.

There is no such thing as a no cost return. However, these costs would be reduced if a notice were required on the *outside of the package* indicating that the item was not ordered. This would prevent an unknowing non-professional staff from opening and processing unordered items, thereby saving the time and costs needed to repackage and return the material. Libraries could then institute a policy for the processing of newly received materials that states:

If a package is received with the Notice “Unordered Merchandise” under the mailing label- do not open or process, and return to publisher.

14) Should the Rule define “clearly and conspicuously,” given that it requires marketers to make certain disclosures clearly and conspicuously? If so, why and how? If not, why not?

AALL believes that the Rule should define what constitutes "clearly and conspicuously" when disclosing the terms of the plan. The terms of any Prenotification Negative Option Plan must be clearly and conspicuously present in a format that is easy to read and in a prominent location on the invoice, purchase order or other documentation. It should be easy for the individual or institutional consumer to find and read the proposed terms of agreement before making a decision to purchase. For example, note the small print in the lower right corner of the Thompson invoice which ties the customer to an automatic update program, simply by purchasing the unordered title (Attachment 2).

We believe the Rule should also define what constitutes "acceptance" on the part of the consumer. Individual or institutional consumers are entitled to actively accept the proposed terms before they make a purchase. Acceptance should require an active step to indicate agreement with the terms and conditions of all Negative Option Plans. One should not be bound by terms just because an individual or law library purchased a related item or received an unsolicited subscription.

In asking the FTC to expand the Rule to include online goods and services because of the impact on costs and benefits for individual and law library consumers, we urge you to adopt the following principles. They are included among [“The 12 Principles for Fair Commerce in Software and Other Digital Products”](#) (Attachment 6) that were developed

and endorsed by members of Americans for Fair Electronic Transactions (AFFECT), of which AALL was a founding member. We believe that the following principles are relevant to requirements that should be covered by the Prenotification Rule for digital products:

“CUSTOMERS ARE ENTITLED TO READILY FIND, REVIEW AND UNDERSTAND PROPOSED TERMS WHEN THEY SHOP.

In a healthy digital marketplace, it should be easy for you to find and read a product’s proposed terms of agreement before making a decision to buy it. This is particularly important so that you can compare one product with another. You should be informed in plain and conspicuous language of all aspects of the proposed deal that might influence your purchase decision.”

“CUSTOMERS ARE ENTITLED TO ACTIVELY ACCEPT PROPOSED TERMS BEFORE THEY MAKE THE DEAL.

Real acceptance requires you to take an active step to indicate agreement to the terms that become part of the deal. You should not be bound by terms just because you visit a website, open a box containing a product or install a product that you already bought. Even if the terms are available somewhere on the website, inside the box, or on some file in the software, you should be bound by those terms only if you actively and unambiguously indicate your acceptance of them. ...”

20) Do current or impending changes in technology affect whether and how the Rule should be modified?

Absolutely. As we have already stated under Questions 3, section 2, there is much greater potential for deceptive practices for electronic products and services than for print. Because the growing trend in legal publishing is moving from print to electronic publications with online subscriptions, clear rules are needed to protect both individual and institutional consumers from unfair practices. Electronic subscriptions often have terms that differ substantively from print subscriptions.

Further, consumers have become immune to pop-ups and check boxes that require a click to proceed. When an individual consumer or law library is agreeing to be bound by terms that have a fiscal impact, the indication of agreement should at the very least be a multi-step process rather than a simple one-click type of transaction.

Because law libraries, like individual consumers and small businesses, increasingly are making purchases online, rather than by regular mail, over the phone, or in person, the Rule needs to address the impact of online ordering. AALL believes that law library consumers need to have a multi-step process that requires affirmative acceptance of the terms along with a time limit for the subscription when purchasing online, rather than a simple one-click type of transaction.

Conclusion

The American Association of Law Librarians, a non-profit, educational association, represents the interests of thousands of law libraries throughout the country. We urge the continued enforcement of the Prenotification Negative Option Rule and we ask that it be

extended to include institutional consumers. We also ask that it incorporate the important protections for law libraries, such as those found in the Florida Attorney General settlements with LexisNexis and Thompson Publishing.

AALL further believes that:

- the current Rule should be expanded to include online subscriptions and digital materials for individual and institutional consumers;
- print and online materials obtained through negative option plans should have an *expiration date*, which should be a period of no more than five years;
- an expanded Prenotification Negative Option Rule that includes institutional consumers should provide for a 90-day period for the return of goods when an unordered, unwanted item is shipped to a law library;
- the Rule should be changed to include additions to existing sets, tangentially related items, continuity plans and trial conversions; and,
- law library consumers need to have a multi-step process that requires affirmative acceptance of the terms along with a time limit for the subscription when purchasing online, rather than a simple one-click type of transaction.

We are grateful to the Commission for the opportunity to comment on the Prenotification Negative Option Rule and we welcome any questions you might have. We look forward to working with you to strengthen the Rule to protect the needs of our nation's law libraries.

Thank you very much.

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ATTACHMENTS

Attachment 1 : Thompson Publishing Group Assurance of Voluntary Compliance, L07-3-1159.

Attachment 2 : Thompson Invoice

Attachment 3 : LexisNexis Invoice

Attachment 4 : Matthew Bender and Company, and Reed Elsevier Inc d/b/a LexisNexis Assurance of Voluntary Compliance, L08-3-1128.

Attachment 5 : Thomson West Invoice

Attachment 6 : Americans for Fair Electronic Transactions (AFFECT), “The 12 Principles for Fair Commerce in Software and Other Digital Products.”

Attachment 1

Thompson Publishing Group Assurance of Voluntary
Compliance, L07-3-1159.

**STATE OF FLORIDA
OFFICE OF THE ATTORNEY GENERAL**

IN THE MATTER OF:

THOMPSON PUBLISHING GROUP, INC.,

Respondent

Case No. L07-3-1159

ASSURANCE OF VOLUNTARY COMPLIANCE

A. INTRODUCTION

PURSUANT to the provisions of Chapter 501, Part II, Florida Statutes, the DEPARTMENT OF LEGAL AFFAIRS, OFFICE OF THE ATTORNEY GENERAL, hereinafter referred to as the “OAG,” caused an inquiry to be made into the advertising and business practices of THOMPSON PUBLISHING GROUP, INC., hereinafter referred to as “Respondent.”

IT APPEARS that the Respondent is prepared to enter into this Assurance of Voluntary Compliance, without any admission that Respondent has violated the law and for the purpose of resolution of this matter only, and the Deputy Attorney General, by and through the undersigned Senior Assistant Attorney General, being in agreement, does in this matter accept this Assurance of Voluntary Compliance in termination of this investigation, pursuant to Section 501.207(6), Florida Statutes, and by virtue of the authority vested in the OAG by said statute. The OAG, and Respondent, hereby agree to the following:

B. STIPULATED FACTS

1. Respondent Thompson Publishing Group, Inc., “Thompson,” is a Delaware corporation with a principal place of business at 5201 West Kennedy Blvd., Suite 220, Tampa,

Florida 33609. Thompson also conducts business at 805 15th Street NW, Suite 300, Washington, D.C. 20005 and 4401 Freidrich Lane, Austin, Texas 78744.

2. Thompson markets and sells books, newsletters, forms, and other products, to libraries, government agencies, and businesses in Florida and nationwide.

3. Thompson advertises its products through direct mail solicitations, print advertising, telemarketing and the Internet.

4. Thompson represents that beginning on or about April 28, 2006 through on or about November 1, 2007, it shipped various publications to subscribers pursuant to a Negative Option Plan (the "Automatic Update Program"), as the term "Negative Option Plan" is defined herein. Thompson further represents that in November 2007 it temporarily suspended its Automatic Update Program on a voluntary basis to evaluate the plan and its operation.

5. The OAG conducted an investigation of Respondent in connection with Thompson's advertising, promoting, offering for sale, selling and/or providing of books and other products to consumers through the use of Negative Option Plans or through the mailing of unordered merchandise.

C. DEFINITIONS

6. "Advertising" (including "advertisement" and "advertise") means any message disseminated to the public or any segment thereof which promotes or is likely to promote directly or indirectly any good, merchandise, property, product, commodity, service, or any person. The term "advertising" includes messages conveyed by the name under which a person operates, and includes, but is not limited to, messages conveyed visually, orally, or in writing:

a. in a newspaper, magazine, periodical, leaflet, flyer, catalog, brochure, circular, on or in packaging; in telefacsimile material; in any direct mail literature, including but not limited to

notices, invoices and forms; in a telephone book or any other written, graphic, pictorial, illustrated or printed material;

b. on any recording, radio, television, video, computer, by a telephonic transmission, telex, facsimile or telecopier transmission, Internet or other electronic transmission or during any other transmission;

c. during any in-person appearance or otherwise during any personal contact, including telephone contact, with the public or any segment thereof.

7. “Clear and conspicuous” (including “clearly and conspicuously”) means that a statement, representation, claim or term being conveyed is readily noticeable and reasonably understandable by the persons to whom it is directed. The following, without limitation, shall be considered in determining whether a statement, claim, term, or representation is clear and conspicuous:

a. whether it is presented to the person(s) to whom it is directed in a coherent and meaningful sequence with respect to other terms, representations claims or statements being conveyed;

b. whether it is in close proximity to the statement, representation, claim, or term it clarifies, modifies, explains, or to which it otherwise relates;

c. whether it is contradictory to any representation, statement, claim or term it purports to clarify, modify or explain, or is otherwise contradictory or confusing in relation to any other term, statement, claim or representation being conveyed;

d. whether abbreviations are used and if so whether they are commonly understood by the public or approved by federal or state law;

e. whether it is legible;

f. whether it is of sufficient prominence in terms of print, size, placement, color, and contrast, as compared with accompanying statements, claims, terms, or representations so as to be readily noticeable and reasonably understandable by the person(s), to whom it is directed;

g. whether, if in association with a negative option offer, as defined herein, the terms and conditions of the negative option are segregated from other terms and conditions of the offer.

h. whether, if it is oral, it is at a decibel level equal to the highest decibel level used and is at a speed equal to or slower than any other statement, claim, representation or term conveyed so as to be readily noticeable and reasonably understandable by the person(s) to whom it is directed;

i. whether it appears for a duration sufficient to allow listeners or viewers to have a reasonable opportunity to notice, read, or otherwise understand;

j. whether the language and terms used are commonly understood by the consumer in the context in which they are used.

8. “Effective Date” as used herein shall mean the date of execution of this Assurance by the last signatory hereto.

9. “Merchandise” as used herein shall mean books, newsletters, updates, forms and other products.

10. A “Negative Option” as used herein is any type of sales term or condition that imposes on consumers the obligation of rejecting goods or services that sellers offer for sale in order to avoid further obligation.

11. A “Negative Option Plan” is a contractual plan or arrangement that includes a Negative Option and allows a seller to interpret the failure of a consumer to reject books or other

goods or services as the acceptance of an offer. Negative Option Plans as used herein include, but are not limited to, the following:

a. A “Prenotification Negative Option Plan” as used herein is as defined in the Federal Trade Commission Rule on the Use of Prenotification Negative Option Plans by Sellers in Commerce (referenced herein as the “Negative Option Rule”), 16 C.F.R. § 425.1, as a contractual plan or arrangement under which a seller periodically sends to subscribers an announcement which identifies merchandise (other than annual supplements to previously-acquired merchandise) it proposes to send to subscribers to such plan, and the subscribers thereafter receive and are billed for the merchandise identified in each such announcement, unless by a date or within a time specified by the seller with respect to each such announcement the subscribers, in conformity with the provision of such plan, instruct the seller not to send the identified merchandise.

b. A “Continuity Plan” as used herein means an arrangement, plan or system pursuant to which a consumer receives, or agrees to receive, periodic shipments of products without prior notification of each shipment, regardless of any trial or approval period allowing the consumer to return or be reimbursed for the product.

c. A “Trial Conversion Offer” as used herein shall mean an offer to provide a trial period of products to consumers where, as a result of accepting the trial period, consumers are enrolled in a Prenotification Negative Option or Continuity Plan, or are otherwise subsequently required to contact the sender or other person to avoid receiving additional products and incurring any financial obligation for the products.

12. “Form” as used herein shall mean any form that a consumer returns to the sender or its designee to instruct it not to send a selection.

13. "Mailing date" as used herein refers to the time specified by the sender as the time by or within which a form must be mailed by a consumer to prevent shipment of the selection.

14. "Promotional material," as used herein refers to advertising containing or accompanying any device or material which a consumer sends or returns to request acceptance or enrollment in a Negative Option Plan, or to accept a Trial Conversion Offer.

15. "Related Entities" as used herein shall refer to Thompson Publishing Holding Co., Inc., TPG AES Holding Co., Inc., Alex eSolutions, Inc. d/b/a Sheshunoff Information Services and A.S. Pratt & Sons and AHC Media LLC d/b/a American Health Consultants and BioWorld.

16. "Relevant Time Period" as used herein shall refer to the time period of January 1, 2006 to the date of execution of this Assurance of Voluntary Compliance.

17. "Representing" (including "represent") as used herein shall mean stating, orally or in writing, directly or by implication, by affirmative statements or material omissions.

18. "Return date" as used herein refers to a date specified by the sender when using a Prenotification Negative Option Plan as the date by which a form must be received by the sender or its designee to prevent shipment of the selection.

19. "Selection" as used herein shall mean the book or other product that is offered in a Negative Option Plan.

20. "Unordered merchandise" as used herein shall mean products sent to a consumer without the prior expressed request or consent of the consumer.

D. AGREEMENT OF COMPLIANCE

21. This Assurance of Voluntary Compliance applies to Respondent and its Related Entities as indicated, acting directly or through any entity they direct or control as well as their successors and assigns.

22. Respondent, in the course and conduct of the business of advertising, promoting, offering for sale, selling or providing of books or other products, shall comply with 39 U.S.C. §3009, relating to the sale of unordered merchandise. Specifically, Respondent shall not:

a. send merchandise to consumers without the prior expressed request or consent of the recipient, unless the merchandise is clearly and conspicuously marked as a free sample and has attached to it a clear and conspicuous statement that the recipient may treat the merchandise as a gift and may retain, use, discard or dispose of it in any manner without any obligation whatsoever;

b. send to any recipient of unordered merchandise a bill, invoice, or any writing that would reasonably be interpreted as a bill or invoice, or dunning communication that seeks to obtain payment for merchandise shipped without the prior expressed request or consent of the recipient.

23. Respondent, in the course and conduct of the business of advertising, promoting, offering for sale, selling or providing of books or other products, shall not represent that the recipient of a book or other product sent without the prior expressed request or consent of the recipient is required, or otherwise obligated, to pay for the books or to return them.

24. Respondent, in the course and conduct of the business of advertising, promoting, offering for sale, selling or providing of books or other products utilizing a Prenotification Negative Option Plan, shall comply with the Prenotification Negative Option Rule in all respects, and specifically as set forth herein below:

a. All promotional material shall clearly and conspicuously disclose the material terms of the plan, including:

(1) that by ordering or purchasing a book, or other products offered in the promotional material, the consumer will be enrolled in a plan in which books or other specified products will automatically be sent to the consumer;

(2) that the consumer will receive an announcement each time Thompson plans to send a selection under the plan;

(3) that the consumer must notify Thompson in the manner provided by Thompson if he does not wish to receive or be billed for the next selection; and if Thompson does not receive notification, Thompson will send the selection for review and a bill for the selection to the consumer;

(4) that the consumer will be provided with at least 10 days in which to mail or send a form, contained in or accompanying an announcement identifying the selection, to Thompson;

(5) the frequency with which the announcements and forms will be sent to the consumer and the maximum number of announcements and forms which will be sent to him during a 12-month period;

(6) whether billing charges will include an amount for postage or handling;

(7) the right of a contract-complete consumer to cancel his membership at anytime;

(8) a disclosure that Thompson will credit the return of any selections sent to a consumer, and guarantee to the Postal Service or the consumer postage to return such selections to Thompson when the announcement and form are not received by the consumer in time to afford the consumer at least ten (10) days in which to mail the form to Thompson.

b. Thompson shall obtain the consumer's affirmative agreement to the terms and conditions of the plan and to enroll in the plan.

c. Prior to the sending of a selection, Thompson shall mail to the consumer:

(1) either at least 20 days prior to the return date or
(2) at least 15 days prior to the mailing date, or
(3) in sufficient time to provide a mailing date at least ten days after receipt by the recipient; provided however that the recipient must have at least 10 days in which to mail the form to Thompson:

(a) an announcement identifying the selection Thompson intends to mail to the consumer.

(b) a form contained in or accompanying the announcement, clearly and conspicuously disclosing that the consumer will receive the selection identified in the announcement unless the consumer instructs Thompson that he or she does not want the selection, designating a procedure by which the form may be used for the purpose of enabling the consumer to so instruct Thompson, and specifying either the return date or the mailing date.

25. Respondent, in the course and conduct of the business of advertising, promoting, offering for sale, selling or providing of books or other products, under a Negative Option Plan other than a Prenotification Negative Option Plan, shall:

a. in promotional material and advertising by which a consumer sends an order form to Thompson or otherwise accepts or enrolls in a Negative Option Plan, clearly and conspicuously disclose all material terms and conditions of the plan, including:

(1) the fact that if the consumer accepts the offer and is enrolled in a plan, periodic shipments of products will occur without further action by consumers;

(2) the maximum number of books or products that will be shipped during any one-year period;

(3) any obligation assumed by the consumer to purchase a minimum number of books or other products;

(4) the billing procedure to be employed;

(5) a cost or range of costs for each shipment, including whether billing charges will include an amount for shipping and handling.

(6) whether the consumer has a right to return or reject books or other products provided under the plan, and if so, the procedure to be used by the consumer in order to do so.

b. Obtain the consumer's affirmative agreement to the terms and conditions of the plan and to enroll in the plan.

26. Respondent, in the course and conduct of the business of advertising, promoting, offering for sale, selling or providing of books or other products, shall not make any representation in connection with a Trial Conversion Offer unless, at the time of making the representation, all material terms and conditions of the Offer are clearly and conspicuously disclosed, including but not limited to:

a. if applicable, that consumers who accept the Offer are required to take some action to avoid receiving additional products or services, and the time period in which such action must be taken;

b. if true, that consumers who accept such Offer or make an initial purchase are automatically enrolled in a Prenotification Negative Option Plan or a Continuity Plan if they fail to cancel, and the terms and conditions of such Plan as set forth in paragraphs 24 or 25 herein, as applicable;

c. that consumers who accept the Trial Conversion Offer are responsible for returning the product offered at their own expense, or if true, that Thompson will pay for the return of such products;

d. that a consumer may cancel or take other affirmative action, including returning the book or other product, to avoid being charged for the book or other product.

e. an email or toll free telephone number and an address that consumers may use to notify Thompson that they do not want to receive additional products, or to incur financial obligations for additional products.

27. Respondent in the course and conduct of the business of advertising, promoting, offering for sale, selling or providing of books or other products on the Internet, if such products are offered in or through a Negative Option Plan, shall, in addition to the requirements set forth in paragraphs 24 through 26 herein, disclose the material terms and conditions of the plan on the same web page as the offer and position them so that a reader is likely to read the terms and conditions prior to making a purchase.

28. For a period of four years, which may be extended at the discretion of the OAG, in connection with the delivery of the first book or product delivered in a Negative Option Plan in which enrollment was made as a result of a telemarketing or Internet sale, Respondent shall provide the recipient with a written notice clearly and conspicuously disclosing:

a. that the consumer enrolled by Internet or telemarketing in a plan whereby the consumer will receive automatic shipments of books or other products;

b. all other applicable terms and conditions of the Negative Option Plan as set forth in paragraphs 24 through 26 herein.

29. Respondent, in the course and conduct of the business of advertising, promoting, offering for sale, selling or providing of books or other products under a Negative Option Plan, in promotional material or advertising by which a consumer sends an order form to Thompson or otherwise accepts or enrolls in a Negative Option Plan, shall clearly and conspicuously disclose:

a. that the book or other product offered is or may be one in a series; the maximum number of books or products that will be shipped during any one-year period; and a description of the books or other products included in the series sufficient to provide notice to consumers of the kind and subject matter of books or other products that will be offered through the plan;

b. the act on the part of the consumer which will trigger the consumer's enrollment in the plan;

c. a description of the terms and conditions under which, and the procedures by which, a consumer may cancel participation in the plan, including an e-mail address and toll-free telephone number that may be used by the consumer to cancel.

30. Respondent, in the course and conduct of the business of advertising, promoting, offering for sale, selling or providing of books or other products, shall not place a device or material which a consumer sends or returns to Thompson to enroll in a Negative Option Plan or accept a Trial Conversion Offer, in an invoice, bill, or other document that could reasonably be interpreted as a statement or invoice. "Device or material" shall include, but not be limited to, payment for the product listed on the invoice. This provision shall not prevent Thompson from using an invoice or bill to confirm a customer's previous enrollment in a Negative Option Plan or prior acceptance of a Trial Conversion Offer in accordance with the terms of this Assurance.

31. Respondent, in the course and conduct of the business of advertising, promoting, offering for sale, selling or providing of books or other products, shall not:

a. represent that a product has been ordered by the recipient when it has not been ordered by the recipient;

b. represent that a consumer has agreed to be enrolled in a Negative Option Plan or has accepted the terms and conditions of such a Plan, when the terms and conditions of the Plan have not been clearly and conspicuously disclosed to the consumer or the consumer has not expressly and affirmatively accepted enrollment in such Plan.

32. Respondent, its Related Entities, and their successors and assigns, in the course and conduct of the business of advertising, promoting, offering for sale, selling or providing of books or other products, shall not, in any bills, statements, invoices, notices, letters or dunning communications:

a. deceptively represent that a consumer ordered a book or other product, or that the consumer agreed to receipt or a trial offer of a book or other product.

b. deceptively represent that a consumer owes money.

c. deceptively represent that the consumer agreed to pay for a book or other product or service.

d. deceptively represent that the consumer has an obligation to pay for a book or other product or service.

e. deceptively represent that the consumer has not met an obligation to pay for books or other products or services.

33. Respondent, and its Related Entities, and their successors and assigns, shall not:

a. deceptively represent any material term or condition of a Negative Option Plan;

b. deceptively represent when payment for a book or other product is due or owing.

c. deceptively represent risks or obligation, or the absence of risk or obligation, attendant to the acceptance of an offer.

d. send, sell or distribute or cause to be sent, sold or distributed, books or other products included in a Negative Option Plan, without first clearly and conspicuously disclosing the material terms and conditions of the plan and obtaining the affirmative agreement of the recipient to participate in such plan.

34. Respondent, in the course and conduct of the business of advertising, promoting, offering for sale, selling or providing of books or other products, shall cancel the consumer's participation in a Negative Option Plan upon request of a consumer or the consumer's representative, within ten business days, or sooner if reasonably practicable, after Thompson's receipt of the request. It is acknowledged that it is not reasonably practicable for Respondent to retrieve materials that already have been mailed or delivered for mailing.

35. Respondent shall not solicit the payment of money by means of a statement or invoice, or any writing that would reasonably be interpreted as a statement or invoice, for goods or services not yet ordered, unless there appears on the face of the statement or invoice or writing in 30 point bold-faced type the following warning: "This is a solicitation for the order of goods or services, and you are under no obligation to make payment unless you accept the offer contained herein."

36. Respondent, in the course and conduct of the business of advertising, promoting, offering for sale, selling or providing of books or other products, shall not make a telephone call to any consumer for the purpose of selling or offering to sell books or other products, to offer trials of products, to renew subscriptions, or for the purpose of requesting payment for any book or product that was not expressly and affirmatively ordered, if the consumer, prior to such call,

requested that Thompson not make such calls to the consumer. Thompson also shall promptly inform any telemarketing service to whom it has given such consumer's contact information that it shall not contact the consumer by telephone for such purposes. Provided however, that this provision is not intended to prevent Thompson from calling consumers to request payment for books or products that were delivered in a Negative Option Plan offered in accordance with the terms of this Assurance.

37. Respondent, in the course and conduct of the business of advertising, promoting, offering for sale, selling or providing of books or other products, shall not send renewal notices, or telephone consumers for the purpose of seeking a renewal, for any subscription, publication or other products, prior to 180 days before the expiration of the subscription period. Such renewal notices or renewal solicitations shall clearly and conspicuously identify when expiration of the subscription will occur.

38. Respondent shall place a customer service telephone number for Thompson clearly and conspicuously on Thompson's proprietary web-sites, in all advertising and promotional material, and in all correspondence and electronic communications with consumers.

E. CONSUMER PRACTICES AND REFUNDS

39. IT IS AGREED that within 45 days of the Effective Date of this Assurance, Thompson shall mail the notice attached hereto as Exhibit A to each consumer who was sent a book or other product: 1) pursuant to a Negative Option Plan or Prenotification Negative Option Plan during the period from April 1, 2006 through November 1, 2007 and who paid Thompson for the book or other product, or 2) as unordered merchandise during the time period of April 1, 2006 to April 1, 2008 and who paid Thompson for the book or other product. The notice shall include an offer to refund all sums paid for each such book or other product sent to the recipient

and the original shipping charges if paid by the recipient. Thompson shall include a pre-addressed, postage paid envelope for consumers to return a signed refund request form.

40. The front of the envelope transmitting the Exhibit A shall be in the form of Exhibit B to this Assurance. The phrase “Attention: Notice of Refund Enclosed” shall be in red and in 14 point or larger typeface. All other print on the envelope shall be in black.

41. Thompson shall issue a refund of the amount paid plus the tax and shipping and handling charges associated with the original purchase of the book or other product to each consumer entitled to a refund offer under paragraph 39 of this Assurance who responds to the notices mailed pursuant to paragraph 39 herein within a period of 90 days from the mailing of such notices. Thompson also shall issue a refund of the amount paid plus the tax and shipping and handling charges associated with the original purchase of the book or other product to any person requesting such refund within one year of the Effective Date of this Assurance, who qualifies for a refund offer pursuant to paragraph 39 of this Assurance and does not receive and respond to a notice mailed pursuant to paragraph 39 herein. The refund checks shall be mailed in plain white envelopes that disclose only a return address containing Thompson’s name and address. The envelope shall contain only the refund check and a short statement identifying the check as the refund previously requested by the recipient.

42. Thompson shall issue and mail a refund required to be paid under the terms of the Assurance within 45 days of the receipt of a request for a refund.

43. Thompson shall cease all collection efforts seeking payments for books or other products that, prior to the Effective Date of this Assurance, were sent or distributed by Thompson pursuant to a Negative Option Plan or as unordered merchandise, unless the recipient placed an order for the specific product prior to the time it was sent or delivered.

44. Thompson shall terminate the enrollment in all Negative Option Plans of any consumer who notifies Thompson of the desire to terminate enrollment in a Negative Option Plan.

45. Thompson, within 30 days of the Effective Date of the Assurance, shall have, and thereafter maintain, sufficient telephone lines and electronic hardware and software, and sufficient personnel, to respond to consumers who call or write to Thompson with regard to this Assurance, requests for refunds, or to register a complaint. Respondent shall take appropriate steps to assure that telephone calls, e-mail and other electronic and written communications are answered in a reasonable and timely manner. Respondent shall monitor and keep reasonable records of the response times.

F. REPORTS AND RECORDS

46. Respondent, for a period of 12 months from the date notices required in paragraph 39 are mailed, shall make, and shall retain thereafter for a period of two years after the date the last such notices required in paragraph 39 are mailed, all data relating to each person who was mailed the notices described in paragraph 39 herein. Respondent shall create a spreadsheet from such data currently or reasonably available to Respondent listing in separate fields where available: the account number; first name; middle initial, if any; last name of contact person; name of business, agency or organization; street address; mailing address, if different from street address; city; state; zip code; telephone number, if available; each book or other product identified in the notice; the date such notice was mailed; the amount of any refund sought; the amount of any refund; the date the refund request was received; the date the refund was mailed; the book or product for which the refund was made; an explanation of any discrepancy between the amount sought and the amount refunded.

47. Respondent shall produce the data and spreadsheet maintained as described in paragraph 46 to the OAG within 10 days of the receipt of a request from the OAG. Respondent shall produce the spreadsheet required by paragraph 46 herein thirteen (13) months from the date the last notices are mailed in accordance with paragraph 39 herein.

48. Respondent, within 20 days of the Effective Date of this Assurance, shall write:

- a. policies and procedures regarding cancellation of Negative Option Plans upon request;
- b. the disclosures that are required to be made under the terms of this Assurance in telephone sales of Thompson's products, and if used, scripts to be used by telemarketing salespeople that are in compliance with the terms of this Assurance;
- c. other policies and procedures that are necessary to effectuate the terms and conditions of this Assurance.

49. Respondent shall immediately distribute such policies and procedures and scripts relating to the subject matter of this Assurance to all officers and to all managers, relevant supervisors and relevant employees. Third parties involved in any aspect of advertising, marketing, sales or customer service relevant to the subjects covered in this Assurance shall be provided with all such policies and procedures relating to the services that they provide. Respondent shall effectuate, maintain and monitor such policies and procedures.

50. Respondent shall make and retain for a period of four years after the Effective Date of this Assurance:

- a. All complaints received in writing or electronic form relating to Negative Option Plans, offers of free merchandise, renewals of subscriptions or collections;

b. A record of every complaint received over the telephone relating to Negative Option Plans, offers of free merchandise, renewals of subscriptions or collections, including, if available, the name and address of the business, the name and phone number of the person making the complaint; date of complaint; nature of complaint; the product complained of; nature of response and date of response; final resolution and date of resolution;

c. all original and non-identical copies of telemarketing sales scripts that relate to or include Negative Option Plans, renewal of subscriptions, offers of free merchandise, or collections;

d. all original and non-identical copies of training and marketing materials relating to any Negative Option Plan, unordered merchandise, complaints, renewal of subscriptions, offers of free merchandise, billing or collections;

e. order cards, recordings, or other devices evidencing informed affirmative consent to the terms and conditions of a Negative Option Plan and to enrollment in the Plan, for each consumer enrolled in a Negative Option Plan;

f. all advertising for books or other products or services offered by Thompson pursuant to a Negative Option Plan or delivered as unordered merchandise (online information may be archived quarterly, provided that such information can be retrieved upon request of the OAG);

g. all email and other electronic communications, memos, letters and other communications, reports and analyses relating to complaints regarding Negative Option Plans or unordered merchandise.

51. Respondent shall make and retain for a period of three years after the Effective Date of this Assurance:

a. The following data with regard to each publication sent or distributed by Respondent as part of a Negative Option Plan or as unordered merchandise to the extent that such information is captured in Respondent's ordinary course of business: parameters used for choosing recipients; approximate dates of distribution; number distributed; names and addresses of recipients; cost of product; name and address of recipients who paid, cancelled enrollment, or did not respond; approximate dates of billing;

b. Records of payment and account information for purchasers of all products and services pursuant to a Negative Option Plan or received as unordered merchandise.

52. The documents required to be written or maintained under paragraphs 48, 50 and 51 herein shall be produced at the request of the OAG within 20 days of such request. By entering into this Assurance and producing the documents referenced in this paragraph, Respondent does not waive any claim of confidentiality or trade secret regarding documents sought to be produced. Respondent may submit business sensitive and confidential documents pursuant to any applicable exemption from disclosure under the Florida public records law.

53. Upon request and reasonable notice by the OAG, Respondent shall provide additional information required to be kept under the terms of this Assurance and information related to consumers to whom Thompson sent books or other products during the Relevant Time Period. By entering into this Assurance and producing the documents referenced in this paragraph, Respondent does not waive any claim of confidentiality or trade secret regarding documents sought to be produced. Respondent may submit business sensitive and confidential documents pursuant to any applicable exemption from disclosure under the Florida public records law.

54. The records required to be made or retained in paragraphs 46-51 and 53 herein, shall be provided upon request in accordance with those paragraphs as they are maintained in the normal course of business. Documents maintained in electronic form must be produced in their native electronic form. For information contained in databases, the information shall be produced in Excel spreadsheet format (.xls), Microsoft Access (.mdb), or if not possible, comma-separated text files (.csv) or txt format.

To the extent that a document has been electronically scanned (for any purpose), the document must be produced in an Optical Character Recognition (OCR) format and an opportunity provided to review the original document. In addition, documents that have been electronically scanned must be in black and white and should be produced in a Group IV TIFF Format (TIF image format), with a Summation format load file (dii extension). DII Coded data should be received in a (Comma-Separated Values) CSV format with a caret (^) used for multi-value fields. Documents of more than one page should be multiple page TIFFs. If there is no text for a text file, the following should be inserted in that text file: "Page Intentionally Left Blank." All objective coding for the documents, to the extent it exists, shall be produced.

For electronic mail systems using Microsoft Outlook or LotusNotes, all emails and, if applicable, email attachments and any related documents shall be produced in their native file format (i.e., .pst for Outlook personal folder, .nsf for LotusNotes). For all other email systems, all responsive emails and, if applicable, email attachments and any related documents shall be produced in OCR and TIFF formats as outlined above.

55. For a period of 4 years from the date of this Assurance, the Respondent, its successors and assigns, shall notify the OAG of changes in the Respondent's ownership, business or mailing addresses, telephone numbers, officers and directors.

G. COMPLIANCE MONITORING

56. For the purpose of monitoring and investigating compliance with any provision of this Assurance, Respondent agrees that, for a period of four years from the date of this Assurance, upon the written request of the OAG, Respondent shall provide business records or documents and make any requested information available that is necessary to enable the OAG to monitor compliance with this Assurance, which documents and information are not specifically set forth in paragraph 46-51 herein, within thirty (30) days of the request, at its business office or at the OAG's office at election of the OAG.

57. Respondent shall reasonably monitor its telephone sales to ensure that its employees are providing the disclosures under the terms of this Assurance and obtaining express authorization from customers to enroll them in a Negative Option Plan. For a period of four years from the date of this Assurance, such monitoring shall include the following, at a minimum:

a. Periodically monitoring the oral representations made by persons engaged in sales or customer service by listening to a reasonable sample of calls not less frequently than once a week (and not fewer than 20 calls during any week in which calls are made);

b. Taking corrective action with respect to any sales person whom Respondent determines is not complying with this Assurance.

c. Require in writing that any third party telemarketers it uses comply with the terms of this Assurance and monitor the activities and representations made by such telemarketers, by, at a minimum:

(1) Drafting all scripts, or approving third party scripts, that are used by third parties to sell Thompson products.

(2) Listening to a reasonable sample of calls made by each such telemarketer not less frequently than once a week during each week calls are made (and not fewer than 20 calls during any week in which calls are made by a telemarketer) to assure sales are in compliance with the terms of this Assurance.

(3) taking corrective action with respect to any third-party telemarketer that Respondent determines is not complying with the requirements of this Assurance including warnings, conducting retraining for repeat non-compliance and requiring termination of individuals or organizations where appropriate for uncorrected non-compliance following warnings and retraining.

H. SETTLEMENT AND RELEASE

58. This Assurance constitutes a complete settlement and release by the State of Florida of all claims asserted or that could have been asserted by the OAG against the Releasees prior to the effective date of this Assurance and arising out of the matters investigated or the subject matter of this Assurance. The term "Releasees" shall include Respondent, its Related Entities, together with their affiliates and licensors, past and present, and their past and present representatives, successors, administrators, employees, shareholders, officers, directors, board of directors, attorneys, agents, servants and assignees.

59. The OAG shall not institute or proceed with any action against Releasees, including but not limited to, an action or proceeding seeking restitution, injunctive relief, fines, penalties, attorney's fees or costs arising out of any claims with respect to the matters investigated, or for any conduct or practice by Respondent prior to the effective date of this Assurance that were the subject of the matters investigated, except that the OAG may institute an action or proceeding to enforce the terms and provisions of this Assurance. To the extent that any changes in Respondent's business, advertisements and practices are made to achieve or facilitate

conformance to this Assurance, the fact that such changes were made shall not itself constitute any form of evidence, explicit or implicit, by Respondent of wrongdoing or failure to comply with any federal or state statute, regulation or the common law.

60. The parties acknowledge and agree that Respondent is entering into this Assurance solely for the purpose of settlement and that nothing contained herein may be taken as an admission or concession of any liability or violation of law, all of which Respondent expressly denies. No part of this Assurance constitutes or shall constitute evidence against Respondent in any action brought by any person(s) or entity or other party of any violation of any federal or state statute or regulation or the common law, except in an action brought by the OAG to enforce the terms of this Assurance.

I. ATTORNEY'S FEES AND COSTS

61. Upon execution of this Assurance by Respondent, Respondent shall pay to the State of Florida, Office of the Attorney General, attorney's fees and costs of investigation and the cost of future investigation and enforcement, in the sum of \$450,000, which sum shall be deposited in the Department of Legal Affairs' Revolving Trust Fund, in accordance with Section 501.2101(1), Florida Statutes. Payment to the Department of Legal Affairs shall be made by certified check payable to the Department of Legal Affairs' Revolving Trust Fund, and shall be delivered to Gerald Johnson, Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399-1050.

J. MISCELLANEOUS PROVISIONS

62. Respondent shall be responsible for making the substantive terms and conditions of this Assurance known to any officers, directors, successors, managers, employees, Related Entities, and others responsible for implementing the obligations set forth in this Assurance. Respondent shall further ensure that all individuals responsible for the direction and control of

Thompson's business understand any changes in practices and policies that are necessary to comply with the terms of this Assurance. Respondent shall record the name and title of each person provided with the terms and conditions of this Assurance, and the date such terms and conditions were made known to them; and shall provide such information to the OAG upon request.

63. Respondent shall not effect any change in its form of doing business or its organizational identity for the purpose of avoiding the terms and conditions set forth in this Assurance.

64. Future violations of this Assurance of Voluntary Compliance shall subject Respondent to any and all applicable civil penalties and sanctions provided by law, and payment of attorney's fees and costs.

65. If the OAG believes that a material breach of this Assurance has occurred, the OAG shall provide written notice to Thompson of and an opportunity promptly to cure such breach. The notice shall describe in detail the material breach that the OAG believes has occurred. Thompson shall have fourteen (14) days from the receipt of the notice within which to provide a good faith written response to the OAG's notice. The response shall include, at a minimum, either:

a. A statement explaining why Thompson believes it is in full compliance with the Assurance; or

b. An explanation of how the alleged material breach occurred; and

(1) A statement that the alleged breach has been cured, and explaining how; or

(2) A statement that the alleged breach cannot be reasonably cured within twenty (20) days from receipt of the notice, but (i) Thompson has begun to take corrective action to cure the

alleged breach; (ii) Thompson is pursuing such corrective action with reasonable due diligence; and (iii) Thompson has provided the OAG with a detailed and reasonable timetable for curing the alleged breach;

provided, however, that this provision shall not prevent the OAG from pursuing its statutory obligation to conduct investigations or bring enforcement actions necessary to protect the public interest.

66. This Assurance of Voluntary Compliance shall become effective upon its execution by the parties. The receipt or deposit by the OAG of any monies pursuant to the Assurance of Voluntary Compliance does not constitute acceptance by the Attorney General, and any monies received will be returned if this Assurance of Voluntary Compliance is not executed by the OAG.

67. Respondent may request modifications to this Assurance to the extent that Respondent believes that its provisions impose an unreasonable burden on Thompson or based on changes in applicable laws or regulations. The OAG may in its sole discretion accept, reject or propose alternatives to any proposed modifications. Determinations of the OAG pursuant to this paragraph shall be final and not subject to any administrative or judicial challenge.

IN WITNESS WHEREOF, the Respondent has caused this Assurance of Voluntary Compliance to be executed by Philip Gabel as President/CEO of Thompson Publishing Group, Inc., as a true act and deed, in Washington, D.C. County, Washington, D.C., this 5th day of May, 2008.

By my signature I hereby affirm that I am acting in my capacity and within my authority as President/CEO of Thompson Publishing Group, Inc., and that by my signature I am binding the corporation to this agreement.

Name: Philip Gabel
President & CEO

STATE OF Washington, D.C.
COUNTY OF Washington, D.C.

BEFORE ME, an officer duly authorized to take acknowledgments in the State of Washington, D.C., personally appeared Philip Gabel, as President/CEO of Thompson Publishing Group, Inc. and acknowledged before me that he/she executed the foregoing instrument for the purposes therein stated, on this 5th day of May, 2008.

Sworn to and subscribed before me
this 5th day of May, 2008.


Samantha Lyken (print name)
NOTARY PUBLIC

My Commission Expires 5/14/2012

(Print, type or stamp commissioned name of
Notary Public)

Personally known or Produced Identification
 (check one)

Type of Identification Produced:
Drivers License

Washington DC 

TINA FURLOW
Senior Assistant Attorney General

Dated this 7th day of May, 2008

DEPUTY ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
The Capitol, PL-01
Tallahassee, Florida 32399-1050
(850) 487-1963

[Thompson Publishing Group Letterhead]

(DATE)

(NAME)

(ADDRESS)

(ACCOUNT NUMBER)

Dear _____

Thompson Publishing sincerely appreciates your business over the years. As a result of an agreement with the Attorney General of the State of Florida, Thompson Publishing is offering to provide you with refunds for certain books or other publications which were shipped to you during the time period of January 1, 2006 to _____, but that you may not have ordered. According to our records, these are the books or other publications for which you may seek a refund:

[List items]

We hope you have been happy with all of these books or other publications. However, if you did not intend for us to send you these items, you can obtain a refund of the amount you paid plus any tax and shipping and handling charge you paid by filling out the form below and returning it to us by mail within 90 days of the date of this letter at the address below. If you ordered the items and are satisfied with them, no action is necessary.

Your continued satisfaction with our products is important to us and if there is ever anything we can do, please let us know.

Sincerely,

Name [print please] _____

Address: _____

Date: _____

Account #: _____ [listed above]

Please issue a refund for the following items: _____

[Thompson's name, address and telephone number]

EXHIBIT A

REIMBURSEMENT NOTICE ENVELOPE:

Thompson Publishing Group, Inc.
[address]

FORWARD AND ADDRESS CORRECTION REQUESTED

[address or address window]

ATTENTION: NOTICE OF REFUND ENCLOSED

EXHIBIT B (ENVELOPE)

Attachment 2

Thompson Invoice



Insight you trust.

Thompson Publishing Group, Inc
Subscription Service Center
PO Box 26185 • Tampa Florida 33623-6185

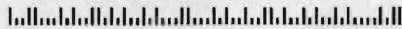
800 677-3789 • Fax 800 999-5661
thompson.com
Customer Service: service@thompson.com

Welcome to Thompson's HR QUESTION AND ANSWER BOOK, part of our automatic update program.

Account number	Reference number	Date	Your current subscription ends:	Your PO number	Our FEIN
[REDACTED]	I 6449419 1	09/04/07			54-2149013

Bill to: QUEST01N

Subscription/Attendee in the name of:



Copies	Description	Amount
1	HR Question and Answer Book	149.00

Thank you for reviewing Thompson's HR QUESTION AND ANSWER BOOK. Written by top employment attorneys and the respected editors of Thompson Publishing Group, this is the only book of its kind to use real questions asked by clients and subscribers and to provide complete answers intended to take you straight into action. Call 1-800-677-3789 with questions about this payment notice.

▼ Detach bottom portion and return with payment. ▼

Shipping & handling	14.95
Sales tax	.00
Total order price	163.95
Less payment	.00
Payment amount (USD)	163.95

Please include your account number on all correspondence. If tax exempt, please provide certificate.

Account number	Reference number	Date	Product reference	Your PO number	Amount due
[REDACTED]	I 6449419 1	09/04/07	ANO HCFW 25699 ASHP		163.95

Please indicate change of address / phone / email below

YES, I WISH TO SUBSCRIBE AND PAY BY:

Name / Title: [REDACTED] Credit Card: VISA MasterCard American Express

Organization: _____ Account Number: _____ Expiration Date: _____

Street: _____ City: _____ Card Holder's Signature: _____ *Thank You*

State: _____ Zip: _____ Phone: _____ Name, if different than above (please print): _____

Email: [REDACTED] Check: My payment is enclosed (payable to Thompson Publishing Group, Inc.)

QUEST01N



Automatic Update Program: Future updates and related publications will be sent automatically on a 30-day risk-free approval basis. You can keep what we send and pay for it, or return it and pay nothing. You may cancel your enrollment in this automatic update program at any time simply by notifying Thompson Publishing Group at 800-677-3789 or by emailing service@thompson.com.

Attachment 3

LexisNexis Invoice



LexisNexis™
Matthew Bender®

Return Products to:
LexisNexis Matthew Bender
136 Carlin Road
Conklin, NY 13748-1531
Payment Remittance
Address Below

BILL TO ACCOUNT: [REDACTED]
INVOICE # 68290012

SHIP TO ACCOUNT: [REDACTED]

This material was sent to keep your subscriptions current.
Should you require any assistance, please call Customer Services at 800-833-9844.
Outside US & Canada please call 1-518-487-3385. Thank you.

INVOICE

LexisNexis Matthew Bender

CUSTOMER COPY

Fed I.D. No. 14-0499170
GST No. R124610999

Invoice #	Date	PO #	Payment Terms	Ship Method	
68290012	05-07-08	BLN0215891	30	4th Class Mail	
# PKGS	# ITEMS	ISBN	UNIT PRICE	LAN VALUE	TOTAL
1	1	9781422451342	70.00		56.00
		TFB FL FAS PURCH/SALE RES 5E W/CD		S & H	5.74
				TAX	4.63
				TOTAL	66.37

BILL TO ACCOUNT: [REDACTED]

SHIP TO ACCOUNT: [REDACTED]

RETURN BOTTOM STUB

Please return this portion of the invoice with your payment. If payment does not equal Amount Due, please attach explanation to assure proper application.

Account #	Invoice #	Date	PO #	Payment Terms	Amount Due	Amount Enclosed
[REDACTED]	68290012	05-07-08	BLN0215891	30	66.37	
# PKGS	# ITEMS	ISBN	UNIT PRICE	LAN VALUE	TOTAL	
1	1	9781422451342	70.00		56.00	
		TFB FL FAS PURCH/SALE RES 5E W/CD		S & H	5.74	
				TAX	4.63	
				TOTAL	66.37	

MAKE CHECK PAYABLE TO:
Matthew Bender & Co., Inc.
P.O. Box 7247-0178
Philadelphia, PA 19170-0178

Bill to Account Name:
[REDACTED]

To change address or if paying by credit card, please note on reverse side.
INVOICE REMITTANCE COPY

00993291834 2 00006637 00006637 68290010

Attachment 4

Matthew Bender and Company, and Reed Elsevier Inc d/b/a
LexisNexis Assurance of Voluntary Compliance, L08-3-1128.

STATE OF FLORIDA
DEPARTMENT OF LEGAL AFFAIRS
OFFICE OF THE ATTORNEY GENERAL

IN THE MATTER OF:

**MATTHEW BENDER and COMPANY, INC.,
and REED ELSEVIER INC. d/b/a
LEXISNEXIS**

Case No. L08-3-1128

ASSURANCE OF VOLUNTARY COMPLIANCE

A. INTRODUCTION

PURSUANT to the provisions of Chapter 501, Part II, Florida Statutes, the STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS, OFFICE OF THE ATTORNEY GENERAL, hereinafter referred to as the "OAG," caused an inquiry to be made into the advertising and business practices of MATTHEW BENDER & COMPANY, INC., hereinafter "Matthew Bender" or "Respondent;" and REED ELSEVIER INC. d/b/a LEXISNEXIS, ("LexisNexis") only to the extent LexisNexis participates in Matthew Bender's activities in Florida, as more fully described herein. LexisNexis and Matthew Bender are hereinafter collectively referred to as "Respondents."

IT APPEARS that the Respondents are prepared to enter into this Assurance of Voluntary Compliance, without any admission that either has violated the law and for the purpose of resolution of this matter only, and the Deputy Attorney General, by and through the undersigned Senior Assistant Attorney General, being in agreement, does in

this matter accept this Assurance of Voluntary Compliance in termination of this investigation, pursuant to Section 501.207(6), Florida Statutes, and by virtue of the authority vested in the OAG by said statute. The OAG, and Respondents, hereby agree to the following:

B. STIPULATED FACTS

1. Respondent Matthew Bender is a New York Corporation, with a principal business address of 1275 Broadway, Albany, NY 12204.
2. Reed Elsevier Inc. is a Massachusetts corporation. LexisNexis is a division of Reed Elsevier Inc. Reed Elsevier Inc. and Matthew Bender and Company, Inc. are under common control and ownership of Reed Elsevier U.S. Holdings Inc.
3. Matthew Bender publishes, manufactures and distributes legal treatises, publications, books, newsletters, and other products in print and CD form ("Matthew Bender Publications.") It sells Matthew Bender Publications to lawyers, law firms, libraries, government agencies, and other businesses in Florida and nationwide.
4. Matthew Bender has had a contractual relationship with the Florida Bar since 2000. Under the terms of their agreements, Matthew Bender has manufactured the Florida Bar's publications, created marketing campaigns to market and distribute the Bar's publications, and has been solely responsible for fulfillment of the orders, as well as billing for the products.
5. The Florida Bar's publications are typically treatises which are updated and published on an infrequent publication schedule, there being up to 5 years between updated treatises.
6. Matthew Bender Publications also include publications which are typically published on a more regular basis.

7. All of the Matthew Bender Publications can typically be purchased as a one time purchase, or pursuant to a subscription. Matthew Bender utilizes two basic kinds of subscriptions, an "automatic renewal" of an annual subscription and an "automatic shipment" of updates, supplements and new editions, both of which are more fully described in paragraphs 11 and 12 below.
8. Respondents advertise the Matthew Bender Publications in Florida through direct mail solicitations, print advertising, by telephone, on the Internet, and in personal face to face meetings with customers.
9. Respondents do not arrange for automatic billing to retained credit card accounts, or automatic withdrawal for customers' accounts of any kind. Instead, all customers must take the affirmative step of paying for each purchase, update, supplement or subscription.

C. DEFINITIONS

10. "Advertising" (including "advertisement" and "advertise") means any message disseminated to the public or any segment thereof which promotes or is likely to promote directly or indirectly any good, merchandise, property, product, commodity, service, or any person. The term "advertising" includes messages conveyed by the name under which a person operates, and includes, but is not limited to, messages conveyed visually, orally, or in writing:
 - a. in a newspaper, magazine, periodical, leaflet, flyer, catalog, brochure, circular, on or in packaging; in telefacsimile material; in any direct mail literature, including but not limited to notices, invoices and forms; in any other written, graphic, pictorial, illustrated or printed material;

- b. on any recording, radio, television, video, computer, by a telephonic transmission, telex, facsimile or telecopier transmission, Internet or other electronic transmission or during any other transmission;
- c. during any in-person appearance or otherwise during any personal contact, including telephone contact, with the public or any segment thereof.

11. An "automatic renewal subscription" as used herein means a plan by which an annual subscription is renewed without further action on the part of the consumer and the consumer is sent a bill, with or without Matthew Bender Publications, for the renewal period, unless the consumer cancels within a certain prescribed period of time.

12. An "automatic shipment plan" as used herein is a means an arrangement, plan or system in which updates or supplements or new editions to previously purchased Matthew Bender Publications are automatically shipped without affirmative action on the part of the consumer and the consumer is sent a bill for the update, supplement or new edition.

13. "Clear and conspicuous" (including "clearly and conspicuously") means that a statement, representation, claim or term being conveyed is readily noticeable and reasonably understandable by the persons to whom it is directed. The following, without limitation, shall be considered in determining whether a statement, claim, term, or representation is clear and conspicuous:

- a. whether it is presented to the person(s) to whom it is directed in a coherent and meaningful sequence with respect to other terms, representations claims or statements being conveyed;
- b. whether it is in close proximity to the statement, representation, claim, or term it clarifies, modifies, explains, or to which it otherwise relates;

- c. whether it is contradictory to any representation, statement, claim or term it purports to clarify, modify or explain, or is otherwise contradictory or confusing in relation to any other term, statement, claim or representation being conveyed;
- d. whether abbreviations are used and if so whether they are commonly understood by the public or approved by federal or state law;
- e. whether it is legible;
- f. whether it is of sufficient prominence in terms of print, size, placement, color, and contrast, as compared with accompanying statements, claims, terms, or representations so as to be readily noticeable and reasonably understandable by the person(s), to whom it is directed;
- g. whether, if in association with a Negative Option Plan as defined herein, the terms and conditions of the Negative Option Plan are segregated from other terms and conditions of the offer.
- h. whether, if it is oral, it is at a decibel level equal to the highest decibel level used and is at a speed equal to or slower than any other statement, claim, representation or term conveyed so as to be readily noticeable and reasonably understandable by the person(s) to whom it is directed;
- i. whether it appears for a duration sufficient to allow listeners or viewers to have a reasonable opportunity to notice, read, or otherwise understand;
- j. whether the language and terms used are commonly understood by the consumer in the context in which they are used.

14. "Effective Date" as used herein shall mean the date of execution of this Assurance by the last signatory hereto.

15. As used herein, “Merchandise” when capitalized shall mean the Matthew Bender Publications marketed or distributed by Respondents in Florida.

16. A “Negative Option” as used herein is any type of sales term or condition that imposes on consumers the obligation of rejecting goods that sellers offer for sale in order to avoid further obligation.

17. A “Negative Option Plan” as used herein, is a contractual plan or arrangement that includes a Negative Option and allows a seller to interpret the failure of a consumer to reject books or other goods as the acceptance of an offer. Negative Option Plans as used herein include, but are not limited to, the following:

a. A “Prenotification Negative Option Plan” as defined in the Federal Trade Commission Rule on the Use of Prenotification Negative Option Plans by Sellers in Commerce (referenced herein as the “Negative Option Rule”), 16 C.F.R. § 425.1, as a contractual plan or arrangement under which a seller periodically sends to subscribers an announcement which identifies merchandise (other than annual supplements to previously-acquired merchandise) it proposes to send to subscribers to such plan, and the subscribers thereafter receive and are billed for the merchandise identified in each such announcement, unless by a date or within a time specified by the seller with respect to each such announcement the subscribers, in conformity with the provision of such plan, instruct the seller not to send the identified merchandise.

b. A “Continuity Plan” as used herein is a plan pursuant to which a customer receives or agrees to receive period shipments of updates, supplements or new editions of a product or publication either through an automatic renewal subscription or an automatic shipment plan.

18. A "Secondary Authority" is any Matthew Bender Publication that provides commentary or analysis on legal issues as distinguished from Primary Authorities that compile original materials such as statutes, codes, cases or case digests, or Sheppard's citations.
19. "Form" as used herein shall mean any form that a consumer returns to a sender or its designee to instruct it not to send a selection.
20. "Mailing date" as used herein refers to the time specified by a sender as the time by or within which a form must be mailed by a consumer to prevent shipment of the selection.
21. "Promotional material," as used herein refers to advertising containing or accompanying any order form which a consumer sends or returns to request acceptance or enrollment in a Negative Option Plan.
22. "Relating to" as used herein shall mean without limitation, the concepts: refer to, concerning, discuss, describe, reflect, deal with, pertain to, analyze, evaluate, estimate, constitute, study, survey, project, assess, record, summarize, criticize, report, comment, or otherwise involve in whole or in part.
23. "Relevant Time Period" as used herein shall refer to the time period of February 13, 2005, to the date of execution of this Assurance of Voluntary Compliance.
24. "Return date" as used herein refers to a date specified by a sender when using a Prenotification Negative Option Plan as the date by which a form must be received by a sender or its designee to prevent shipment of the selection.
25. "Representing" (including "represent") as used herein shall mean stating, orally or in writing, directly or by implication, by affirmative statements or material omissions.

26. "Selection" as used herein shall mean the book or other product that is offered in a Negative Option Plan.

27. "Unordered merchandise" as used herein shall mean products sent to a consumer without the prior expressed request or consent of the consumer.

28. "Matters Investigated" as used herein shall mean the OAG's investigation of Matthew Bender's use of Negative Options in the advertising, promoting, selling, distributing and billing of Matthew Bender Publications in Florida, and of LexisNexis, but only to the extent LexisNexis assists or contributes to the advertising, promoting, selling, distribution and billing of Matthew Bender Publications in Florida.

D. AGREEMENT OF COMPLIANCE

29. This Assurance of Voluntary Compliance applies only to Respondents' advertising, promoting, selling, distributing and billing of Merchandise, as defined herein, and covers such activities in Florida, whether Respondents are acting directly or through any entity they direct or control as well as to the same activities in Florida by Respondents' successors and assigns.

30. From the Effective Date of this Assurance, Respondents will assure that no new Negative Option Plans, including, without limitation, automatic renewal subscriptions or automatic shipment plans, for Matthew Bender Publications, are entered into anywhere in the United States, unless all appropriate disclosures described in paragraphs 33 – 36 below for Negative Option Plans are provided for Matthew Bender Publications and the customer provides affirmative consent.

31. Respondents, in the course and conduct of the business of advertising, promoting, sales, distributing and billing of Merchandise, shall comply with 39 U.S.C. §3009, relating to the sale of unordered merchandise. Specifically, 39 U.S.C. §3009 prohibits an entity from:

- a. sending merchandise to consumers without the prior expressed request or consent of the recipient, unless the merchandise is clearly and conspicuously marked as a free sample and has attached to it a clear and conspicuous statement that the recipient may treat the merchandise as a gift and may retain, use, discard or dispose of it in any manner without any obligation whatsoever;
- b. sending any recipient of unordered merchandise a bill or dunning communication.

32. Respondents, in the course and conduct of the business of advertising, promoting, selling, distributing or billing of Merchandise, shall not represent that the recipient of unordered merchandise is required, or otherwise obligated, to pay for the Merchandise or to return it.

33. In the event Respondents utilize a Prenotification Negative Option Plan (as distinguished from a Continuity Plan managed through an automatic renewal subscription of an automatic shipment plan) as defined in paragraph 17a, Respondents shall comply with the Prenotification Negative Option Rule in all respects, and specifically as set forth herein below:

- a. All promotional material shall clearly and conspicuously disclose the material terms of the plan, including:
 - i. that by ordering or purchasing a book or other product offered in the promotional material, the consumer will be enrolled in a plan in which

- books or other specified products will automatically be sent to the consumer;
- ii. that the consumer will receive an announcement prior to shipment of the product and the manner in which the announcement will be made;
 - iii. that the consumer must notify Respondents in the manner provided by Respondents if he does not wish to receive or be billed for the next selection; and that if the recipient does not so notify the Respondents, Respondents will send the selection and a bill for the selection to the consumer;
 - iv. that the consumer will be provided with at least 10 days in which to mail or send a form, contained in or accompanying an announcement identifying the selection, to Respondents;
 - v. the frequency with which the announcements and forms will be sent to the consumer and the maximum number of announcements and forms which will be sent to him during a 12-month period;
 - vi. whether billing charges will include an amount for postage or handling;
 - vii. the right of a contract-complete consumer to cancel his membership at anytime;
 - viii. a disclosure that Respondents will credit the return of any selections sent to a consumer, and guarantee to the Postal Service or the consumer postage to return such selections to Respondents when the announcement and form are not received by the consumer in time to afford the consumer at least ten (10) days in which to mail the form.

b. Respondents shall obtain the consumer's affirmative agreement to enrollment in the plan and the terms and conditions of the plan;

c. Prior to the sending of a selection, Respondents shall mail to the consumer:

- i. either at least 20 days prior to the return date or
- ii. at least 15 days prior to the mailing date, or
- iii. in sufficient time to provide a mailing date at least ten days after receipt by the recipient; provided however that the recipient must have at least 10 days in which to mail the form to Respondents:

1. an announcement identifying the selection Respondents intend to mail to the consumer.

2. a form contained in or accompanying the announcement, clearly and conspicuously disclosing that the consumer will receive the selection identified in the announcement unless the consumer instructs Respondents that he or she does not want the selection, designating a procedure by which the form may be used for the purpose of enabling the consumer to so instruct Respondents, and specifying either the return date or the mailing date.

34. Respondents, in the course and conduct of the business of advertising, promoting, selling, distributing and billing of Merchandise under a Negative Option Plan other than a Prenotification Negative Option Plan, shall:

- a. clearly and conspicuously disclose, in promotional materials and advertising by which a consumer sends or gives an order form to Respondents or otherwise accepts or enrolls in a Negative Option Plan, and in any order form or other document

evidencing an order that a consumer returns to Respondents that will result in enrollment in the Negative Option Plan:

- i. that if the consumer returns or transmits the order to Respondents, the consumer will receive automatic shipments of books or other products, or if applicable that that the agreement for the sale and shipment of books or other products will be automatically renewed each year, (or other specified period of time);
 - ii. periodic shipments of Merchandise will occur without further action on the part of the consumer;
 - iii. any obligation on the part of the consumer to take affirmative action to avoid future shipments or renewals.
- b. clearly and conspicuously disclose, in promotional materials and advertising by which a consumer sends an order form to Respondents or otherwise accepts or enrolls in a Negative Option Plan, all material terms and conditions of the Negative Option Plan, including:

- i. the maximum number of books or products that will be shipped during any one-year period for which the consumer will be billed; provided that when the shipment or distribution of the product or service may not occur within one year from the time of enrollment in the negative option, the time period within which the shipment or distribution will take place, e.g. “about every two years” or, if the time period is not known, a statement identifying the event that will trigger the next shipment or distribution, e.g., “when each next edition is published.”

- ii. Current and last year's cost for each shipment, or for each automatic renewal period, and whether each shipment in an automatic shipment or automatic renewal will include a charge for shipping and handling;
 - iii. a description of the books or other products included in the Negative Option Plan sufficient to provide notice to consumers of the kind of products that will be shipped in the Negative Option Plan;
 - iv. any obligation assumed by the consumer to purchase a minimum number of books or other products or services;
 - v. the billing procedure to be employed;
 - vi. whether the consumer has a right to return or reject books or other products provided under the Negative Option Plan, and if so, the procedure to be used by the consumer in order to do so.
 - vii. a description of the terms and conditions under which, and the procedures by which, a consumer may cancel participation in the Negative Option Plan, including an e-mail address and toll-free telephone number that may be used by the consumer to cancel.
- c. Obtain the consumer's affirmative agreement to enrollment in the Negative Option Plan and to the terms and conditions of the Negative Option Plan:
- i. in writing, or
 - ii. Electronically, if an order is placed via the Internet, or,
 - iii. By oral agreement, memorialized at the time of sale in the Respondents' record of the sale.

35. Respondents, in the course and conduct of the business of advertising, promoting, or selling of Merchandise over the Internet, if such publications are offered in or through a Negative Option Plan, in addition to the requirements set forth in paragraphs 33 and 34 herein shall:

- a. clearly and conspicuously disclose the terms and conditions of the Negative Option Plan on the same web page, prior to, and in close proximity to the mechanism used by the consumer to enroll in the Negative Option Plan.
- b. disclose the terms and conditions of the Negative Option Plan separately from the general terms and conditions of the offer.
- c. provide separate mechanisms for the consumer to enroll in a Negative Option Plan and the consumer's placement or submission of the order.
- d. treat an order as a one time order unless the consumer affirmatively enrolls in a Negative Option Plan.

36. Respondents in the course and conduct of the business of advertising, promoting, selling, distributing and billing of Merchandise that Respondents distribute through automatic renewals, in addition to the requirements for Negative Option Plans specified herein in paragraphs 33 through 35 shall:

- a. clearly and conspicuously disclose, in promotional materials and advertising by which a consumer sends an order form to Respondents or otherwise accepts or enrolls in a Negative Option Plan, that Respondents will send a notice at least 30 days prior to the each automatic renewal, reminding the consumer that the agreement will be renewed.

b. At least 30 days, but not longer than 90 days prior to the automatic renewal, send a notice, by first class mail, notifying the consumer that: (1) he will be charged for an automatic renewal, (2) the publication or product that will be renewed, (3) the cost of the renewal, (4) one or more means to cancel the renewal, and (5) the date the cancellation must be received in order to avoid receiving the product or service or being billed for the product or service.

37. Respondents, in the course and conduct of the business of advertising, promoting, selling, distributing and billing Merchandise, or in fulfillment of orders or billing, shall not:

a. represent that a product has been ordered by the recipient when it has not been ordered by the recipient; or,

b. represent that a consumer has agreed to be enrolled in a Negative Option Plan or has accepted the terms and conditions of such a plan, when the terms and conditions of the Negative Option Plan have not been clearly and conspicuously disclosed to the consumer or the consumer has not expressly and affirmatively accepted enrollment in such plan.

38. Respondents, in the course and conduct of the business of advertising, promoting, offering for sale, selling, or providing of Merchandise, or in fulfillment of orders or billing shall not, in any bills, statements, invoices, notices, letters or dunning communications:

a. deceptively represent that a consumer ordered a book or other product;

b. deceptively represent that a consumer owes money;

c. deceptively represent that the consumer agreed to pay for a book or other product;

d. deceptively represent that the consumer has an obligation to pay for a book or other product;

e. deceptively represent that the consumer has not met an obligation to pay for books or other products.

39. Respondents, in the course and conduct of the business of advertising, promoting, offering for sale, selling or providing of Merchandise, or in fulfillment of orders or billing shall not, in any bills, statements, invoices, notices, letters or dunning communications:

- a. deceptively represent any material term or condition of a Negative Option Plan;
- b. deceptively represent when payment for a book or other product is due or owing.
- c. deceptively represent risks or obligation, or the absence of risk or obligation, attendant to the acceptance of an offer.
- d. send, sell or distribute or cause to be sent, sold or distributed, Merchandise included in a Negative Option Plan, without first clearly and conspicuously disclosing the material terms and conditions of the Negative Option Plan.

40. For a period of four years, which may be extended in the discretion of the OAG, in connection with the delivery of the first book or other product mailed or distributed in a Negative Option Plan in which enrollment was made as a result of a telephone or Internet sale, Respondents shall provide the recipient with a written notice clearly and conspicuously disclosing:

- a. that the consumer enrolled by Internet or by telephone in a Negative Option Plan whereby the consumer will receive automatic shipments of books or other products;
- b. all other applicable terms and conditions of the Negative Option Plan as set forth in paragraphs 33 through 36 herein.

41. Respondents, in the course and conduct of the business of advertising, promoting, selling, distributing and billing of Merchandise, shall not:

a. represent that a product has been ordered by the recipient when it has not been ordered by the recipient; or,

b. represent that a consumer has agreed to be enrolled in a Negative Option Plan or has accepted the terms and conditions of such a plan, when the terms and conditions of the Negative Option Plan have not been clearly and conspicuously disclosed to the consumer or the consumer has not expressly and affirmatively accepted enrollment in such plan.

42. Respondents shall not solicit the payment of money by means of a statement or invoice, or any writing that would reasonably be interpreted as a statement or invoice, for goods not yet ordered, unless there appears on the face of the statement or invoice or writing in 30 point bold-faced type the following warning: "This is a solicitation for the order of goods, and you are under no obligation to make payment unless you accept the offer contained herein."

E. CONSUMER PRACTICES AND REFUNDS

43. It is agreed that within 45 days of the Effective Date of this Assurance, Respondents shall mail the notice attached hereto as Exhibit A to 1) each Florida consumer who during the Relevant Time Period was automatically shipped and paid for that consumer's first update, supplement or new edition to any Matthew Bender Publication representing Secondary Authorities as a result of having been treated by Respondents as having enrolled in Respondents' automatic shipment plan; or 2) who during the Relevant Time Period was automatically shipped and paid for any update, supplement or new edition to any Florida Bar publication. The notice shall list all Florida bar updates, supplements and new editions shipped to and paid for by the consumer during the Relevant Time Period, and all other updates, supplements or new editions to Secondary Authorities shipped to and paid by the

consumer within the Relevant Time Period where the first such update, supplement or new edition was shipped to that consumer within the Relevant Time Period. The notice shall include an offer to refund all sums paid for the automatic shipment(s) referenced in the notice and the original shipping charges if paid by the consumer. Respondents shall include a pre-addressed, postage paid label for consumers to return a signed refund request form along with the last update, supplement or new edition of the merchandise in question. All collection efforts related to merchandise subject to refund under this paragraph shall cease.

44. The front of the envelope transmitting the Exhibit A shall be in the form of Exhibit B to this Assurance. The phrase "Attention: Notice of Refund Enclosed" shall be in red and in 14 point or larger typeface. All other print on the envelope shall be in black.

45. Respondents shall issue a refund consisting of the amount paid for the automatic shipment referenced in the notice, including the tax and shipping and handling charges paid in connection with the purchase, to each consumer entitled to a refund offer under paragraph 43 of this Assurance who responds to the notices mailed pursuant to paragraph 43 herein within a period of 90 days from the mailing of such notices. The refund checks shall be mailed in plain white envelopes that disclose only a return address containing the name of Respondents and Respondents' address. The envelope shall contain only the refund check and a short statement identifying the check as the refund previously requested by the recipient.

46. Respondents shall issue and mail a refund required to be paid under the terms of the Assurance within 45 days of the receipt of a request for a refund.

47. Respondents shall mail the notice attached hereto as Exhibit C to all Florida Bar publication customers and to each Florida consumer who within ten years of the Effective

Date opened an account with Respondents and during the Relevant Time Period purchased any Secondary Authority and as a result of such purchase was treated by Respondents as having enrolled in Respondents' automatic shipment plan.

48. Respondents shall mail the notice attached hereto as Exhibit D to each Florida consumer who during the Relevant Time Period opened an account with Respondents to purchase any Secondary Authorities on an annual subscription basis and as a result of such purchase was treated by Respondents as having enrolled in Respondents' automatic renewal annual subscription program.

49. Respondents shall mail the notice attached hereto as Exhibit E to each Florida consumer who during the Relevant Time Period purchased any Primary Authorities on an automatic shipment or automatic renewal basis.

50. Respondent shall terminate a consumer's enrollment in the automatic shipment program or annual renewal subscription plan for any publication as to which the consumer fails to return the form enclosed with Exhibits C or D, affirmatively indicating that the consumer wishes to remain in the program or plan.

51. Respondents shall terminate the enrollment in any Negative Option Plan of any consumer who notifies Respondents of the desire to terminate enrollment in such Negative Option Plan.

52. Respondents shall reasonably respond to any customer inquiring about this Assurance within a year of its Effective Date. Upon review of the reports required under paragraph 61 below, the OAG shall have the discretion to determine the reasonableness of Respondents' response to such inquiries. Such discretion shall be reasonably exercised.

53. Respondents shall continue its practice of having, and thereafter maintaining, sufficient telephone lines and electronic hardware and software, and sufficient personnel, to respond to consumers who contact Respondents with regard to this Assurance, requests for refunds, or to register a complaint. Respondents shall continue its practice of assuring that telephone calls, e-mail and other electronic and written communications are answered in a reasonable and timely manner. Respondents shall monitor and keep reasonable records of the response times.

F. REPORTS AND RECORDS

54. Respondents, for a period of 12 months from the date notices required in paragraph 43 are mailed, shall make, and shall retain thereafter for a period of two years after the date the last such notices required in paragraph 43 are mailed, all data relating to each person who was mailed the notices described in paragraph 43 herein. Respondents shall create a spreadsheet from such data currently or reasonably available to Respondents listing in separate fields where available: the account number; first name; middle initial, if any; last name of contact person; name of business, agency or organization; street address; mailing address, if different from street address; city; state; zip code; telephone number, if available; each Matthew Bender Publication identified in the notice; the date such notice was mailed; the amount of any refund sought; the amount of any refund; the date the refund request was received; the date the refund was mailed; the book or product for which the refund was made; an explanation of any discrepancy between the amount sought and the amount refunded.

55. Respondents shall produce the data and spreadsheet maintained as described in paragraph 54 to the OAG within 10 days of the receipt of a request from the OAG. Respondents shall produce the spreadsheet required by paragraph 54 herein thirteen (13) months from the date the last notices are mailed in accordance with paragraph 43 herein. In

the event that Respondents claims that such information in whole or part is trade secret or confidential, Respondents shall produce, in addition to such information, a Summary Report that summarizes the data without disclosing the asserted trade secret or confidential information. The Respondents shall not claim that the Summary Report or its contents are trade secrets or confidential, and the Summary Report and its contents shall not be trade secret or confidential.

56. Respondents, within 30 days of the Effective Date of this Assurance, shall write:
- a. policies and procedures regarding cancellation of Negative Option Plans upon request;
 - b. the disclosures that are required to be made under the terms of this Assurance in telephone sales of Matthew Bender's Merchandise, and if used, telemarketing scripts, in compliance with the terms of this Assurance;
 - c. policies and procedures regarding calls and other contacts received from consumers regarding the Exhibits to this Assurance of Voluntary Compliance;
 - d. policies and procedures concerning calls and other contacts received from consumers regarding this Assurance of Voluntary Compliance, as described in paragraph 61 herein.
 - e. policies and procedures regarding the making and retention of documents and information required to be made and retained under the terms of this Assurance of Voluntary Compliance.
 - f. Policies and procedures regarding refunds offered under the terms of this Assurance of Voluntary Compliance.

57. Respondents shall immediately begin distribution of the policies and procedures and scripts described in paragraph 56 relating to the subject matter of this Assurance to all Respondents' officers and to all relevant managers, relevant supervisors and relevant employees and shall complete such distribution within 30 days thereafter. Third parties involved in any aspect of advertising, marketing, sales or customer service relevant to Matthew Bender Publications shall be provided with all such policies and procedures relating to the goods and merchandise that they provide. Respondents shall effectuate, maintain and monitor such policies and procedures.

58. Respondents shall make and retain for a period of four years after the date of receipt:

- a. All complaints received in writing or electronic form relating to Negative Option Plans, renewals of subscriptions, collections, the receipt of unordered merchandise, and all requests to cancel participation in a Negative Option Plan;
- b. A record of every complaint received over the telephone relating to Negative Option Plans, offers of free merchandise, the receipt of unordered merchandise, renewals of subscriptions, collections, and all requests to cancel participation in a Negative Option Plan, including, if available: the name and address of the business, the name and phone number of the person making the complaint or cancelling; date of complaint or cancellation; nature of complaint or reason for cancelling; the product complained of or cancelled; nature of response and date of response; final resolution and date of resolution;
- c. all original and non-identical copies of telemarketing sales scripts that relate to or include Negative Option Plans, renewal of subscriptions, or collections;

- d. all original and non-identical copies of training and marketing materials relating to any Negative Option Plan, unordered merchandise, complaints, renewal of subscriptions, billing or collections;
- e. order cards, recordings, or other devices evidencing informed affirmative consent to the terms and conditions of a Negative Option Plan and to enrollment in the Negative Option Plan, for each consumer enrolled in a Negative Option Plan;
- f. all advertising for books or other products offered by Matthew Bender pursuant to a Negative Option Plan (online information may be archived quarterly, provided that such information can be retrieved upon request of the OAG);
- g. all email and other electronic communications, memos, letters and other communications, reports and analyses relating to Negative Option Plans or complaints relating to Negative Option Plans or unordered merchandise.

59. Respondents shall make and retain for a period of three years after the Effective Date of this Assurance:

- a. The following data with regard to each publication sent or distributed by Respondent as part of a Negative Option Plan to the extent that such information is captured in Respondent's ordinary course of business: approximate dates of distribution; number distributed; names and addresses of recipients; cost of product; name and address of recipients who paid, cancelled enrollment, or did not respond; approximate dates of billing;
- b. Records of payment and account information for purchasers of all products pursuant to a Negative Option Plan;

60. The documents required to be written or maintained under paragraphs 56, 58 and 59 herein shall be produced at the request of the OAG within 20 days of such request. By entering into this Assurance and producing the documents referenced in this paragraph, Respondents do not waive any claim of confidentiality or trade secret regarding documents sought to be produced. Respondents may submit business sensitive and confidential documents pursuant to any applicable exemption from disclosure under the Florida public records law.

61. In addition to the record-keeping requirements set forth in paragraphs 54 through 56 and 58 through 59 herein, Respondents for a period of 12 months after the Effective Date, shall make, and shall retain thereafter for a period of one year: a record of every contact from consumers regarding this Assurance, to include: the name and phone number of the person making the contact; the name and address of the business; a summary of the communication; the publication or product that is the subject of the contact, the manner in which the contact was made; date of contact; any request made by the consumer; nature of response and date of response; final resolution and date of resolution.

62. Upon request and reasonable notice by the OAG, Respondents shall provide additional information required to be kept under the terms of this Assurance and information related to consumers to whom Respondents sent books or other Merchandise during the Relevant Time Period and information relating to nationwide implementation of the disclosure and consent procedures referenced in paragraph 30 herein. By entering into this Assurance and producing the documents referenced in this paragraph, Respondents do not waive any claim of confidentiality or trade secret regarding documents sought to be

produced. Respondents may submit business sensitive and confidential documents pursuant to any applicable exemption from disclosure under the Florida public records law.

63. The records required to be made or retained in paragraphs 54-56, 58, 59, 61 and 62 herein, shall be provided upon request in accordance with those paragraphs as they are maintained in the normal course of business. To the extent that a document has been electronically scanned (for any purpose), the document must be produced in black and white, and depending upon how such documents are kept in the normal course of business, in a TIFF or .pdf format. For information contained in databases, the information shall be produced in Excel spreadsheet format (.xls), Microsoft Access (.mdb), or if not possible, comma-separated text files (.csv) or txt format. For electronic mail systems using Microsoft Outlook or LotusNotes, all emails and, if applicable, email attachments and any related documents shall be produced in their native file format (e.g., .pst for Outlook).

64. For a period of 4 years from the Effective Date, the Respondents, their successors and assigns, shall notify the OAG in the event of a change in control of Respondents. "A change of control" means a change in the ownership interest of Respondents in that at least 50% of the shares of voting stock having the power to elect the board of directors of Respondents are held by an entity unrelated to the Respondents' parent company, Reed Elsevier U.S. Holdings Inc as of the Effective Date.

G. COMPLIANCE MONITORING

65. For the purpose of monitoring and investigating compliance with any provision of this Assurance, Respondents agree that, for a period of four years from the date of this Assurance, upon the written request of the OAG, Respondents shall provide business records or documents and make any requested information available that is reasonably necessary to enable the OAG to monitor compliance with this Assurance, which documents and

information are not specifically set forth in paragraphs 54-56, 58, 59, 61 or 62 herein, within thirty (30) days of the request, at its business office or at the OAG's office, at the election of the OAG.

66. Respondents shall reasonably monitor its telephone sales to Florida consumers to ensure that its employees are providing the disclosures under the terms of this Assurance and obtaining express authorization from customers to enroll them in a Negative Option Plan. For a period of four years from the date of this Assurance, such monitoring shall include the following, at a minimum:

- a. Periodically monitoring the oral representations made by persons engaged in sales or customer service by listening to a reasonable sample of calls not less frequently than once a week (and not fewer than 20 calls during any week in which calls are made;
- b. Establishing a system whereby trends or particular problems in customer complaints are timely disclosed to the appropriate managers;
- c. Taking corrective action with respect to any sales person whom Respondents determine is not complying with this Assurance.
- d. Requiring in writing that any third party telemarketers it uses comply with the terms of this Assurance and monitor the activities and representations made by such telemarketers, by, at a minimum:
 - i. Drafting all scripts, or approving third party scripts, that are used by third parties to sell Matthew Bender Merchandise.
 - ii. Listening to a reasonable sample of calls made by each such telemarketer not less frequently than once a week during each week calls are made (and

not fewer than 20 calls during any week in which calls are made by a telemarketer) to assure sales are in compliance with the terms of this Assurance.

- iii. taking corrective action with respect to any third-party telemarketer that Respondents determine is not complying with the requirements of this Assurance including warnings, conducting retraining for repeat non-compliance and requiring termination of individuals or organizations where appropriate for uncorrected non-compliance following warnings and retraining.

H. SETTLEMENT AND RELEASE

67. This Assurance constitutes a complete settlement and release by the State of Florida of all claims asserted or that could have been asserted by the OAG against Respondents prior to the Effective Date of this Assurance and arising out of the Matters Investigated.

68. The OAG shall not institute or proceed with any action against Respondents, including but not limited to, an action or proceeding seeking restitution, injunctive relief, fines, penalties, attorney's fees or costs arising out of any claims with respect to the Matters Investigated, or for any conduct or practice by Respondents prior to the Effective Date of this Assurance that were the subject of the Matters Investigated, except that the OAG may institute an action or proceeding to enforce the terms and provisions of this Assurance. To the extent that any changes in Respondents' business, advertisements and practices are made to achieve or facilitate conformance to this Assurance, the fact that such changes were made shall not itself constitute any form of evidence, explicit or implicit, by Respondents of wrongdoing or failure to comply with any federal or state statute, regulation or the common law.

69. The parties acknowledge and agree that Respondents are entering into this Assurance solely for the purpose of settlement and that nothing contained herein may be taken as an admission or concession of any liability or violation of law, all of which Respondents expressly deny. No part of this Assurance constitutes or shall constitute evidence against Respondents in any action brought by any person(s) or entity or other party of any violation of any federal or state statute or regulation or the common law, except in an action brought by the OAG to enforce the terms of this Assurance.

I. ATTORNEY'S FEES, COSTS AND CONTRIBUTIONS

70. Respondents shall pay to the State of Florida, Office of the Attorney General, attorney's fees and costs of investigation and the cost of future investigation and enforcement in the sum of two million dollars (\$2,000,000.00). This amount shall be paid in two installments with one million dollars (\$1,000,000.00) being paid within ten days of the Effective Date and one million dollars (\$1,000,000.00) being paid on July 1, 2009. These sums shall be deposited in the Department of Legal Affairs' Revolving Trust Fund, in accordance with Section 501.2101(1), Florida Statutes. Payment to the Department of Legal Affairs shall be made by certified check payable to the Department of Legal Affairs' Revolving Trust Fund, and shall be delivered to Gerald Johnson, Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399-1050 or by wire transfer. Respondents shall contribute two hundred and seventy five thousand dollars (\$275,000.00) to the Richard W. Ervin Eminent Scholar Chair Endowment at Florida State University School of Law within ten days of the Effective Date.

J. MISCELLANEOUS PROVISIONS

71. REED ELSEVIER INC. d/b/a LEXISNEXIS shall be responsible for making the substantive terms and conditions of this Assurance known to anyone responsible for

implementing the obligations set forth in this Assurance including Respondents' officers, directors, relevant managers and successors. Matthew Bender shall be responsible for making the substantive terms and conditions of the Assurance known to all of its officers, directors, managers and successors. Respondents shall further ensure that all individuals responsible for the direction and control of Respondents' business, which has been described in Section B above, understand any changes in practices and policies that are necessary to comply with the terms of this Assurance. Respondents shall record the name and title of each person provided with the terms and conditions of this Assurance, and the date such terms and conditions were made known to them; and shall provide such information to the OAG upon request.

72. Respondents shall not effect any change in its form of doing business or its organizational identity for the purpose of avoiding the terms and conditions set forth in this Assurance.

73. Future violations of this Assurance of Voluntary Compliance shall subject Respondents to any and all applicable civil penalties and sanctions provided by law, and payment of attorney's fees and costs.

74. If the OAG believes that a material breach of this Assurance has occurred, the OAG shall provide written notice to Respondents of the breach and an opportunity promptly to cure such breach. The notice shall describe in detail the material breach that the OAG believes has occurred. Respondents shall have fourteen (14) days from the receipt of the notice within which to provide a good faith written response to the OAG's notice. The response shall include, at a minimum, either:

- a. A statement explaining why Respondents believe they are in full compliance with the Assurance; or
 - b. An explanation of how the alleged material breach occurred; and
 - c. A statement that the alleged breach has been cured, and explaining how; or
 - d. A statement that the alleged breach cannot be reasonably cured within twenty (20) days from receipt of the notice, but (1) Respondents have begun to take corrective action to cure the alleged breach; (2) Respondents are pursuing such corrective action with reasonable due diligence; and (3) Respondents have provided the OAG with a detailed and reasonable timetable for curing the alleged breach;
- provided, however, that this provision shall not prevent the OAG from pursuing its statutory obligation to conduct investigations or bring enforcement actions necessary to protect the public interest.

75. This Assurance of Voluntary Compliance shall become effective upon its execution by the parties. The receipt or deposit by the OAG of any monies pursuant to the Assurance of Voluntary Compliance does not constitute acceptance by the Attorney General, and any monies received will be returned if this Assurance of Voluntary Compliance is not executed by the OAG.

76. Respondents may request modifications to this Assurance to the extent that Respondents believe that its provisions impose an unreasonable burden on Respondents or based on changes in applicable laws or regulations. The OAG may in its sole discretion accept, reject or propose alternatives to any proposed modifications. Determinations of the OAG pursuant to this paragraph shall be final and not subject to any administrative or judicial challenge.

77. **IN WITNESS WHEREOF**, the Respondent Matthew Bender and Company, Inc. has caused this Assurance of Voluntary Compliance to be executed by Michael F. Walsh as President of Matthew Bender and Company, Inc., as a true act and deed, in Monroe County, Florida, this 9th day of April, 2009. By my signature I hereby affirm that I am acting in my capacity and within my authority as President of Matthew Bender and Company, Inc. , and that by my signature I am binding the corporation to this agreement.

Name: Michael F. Walsh

Position: President, Matthew Bender and Company, Inc.

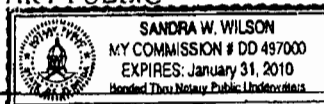
STATE OF FLORIDA
COUNTY OF Monroe

BEFORE ME, an officer duly authorized to take acknowledgments in the State of Florida, personally appeared Michael F. Walsh, as President of Matthew Bender and Company, Inc. and acknowledged before me that he executed the foregoing instrument for the purposes therein stated, on this 9th day of April, 2009.

Sworn to and subscribed before me this 9th day of April, 2009.



(print name)
NOTARY PUBLIC



(Print, type or stamp commissioned name of Notary Public)

Personally known _____ or Produced Identification
 (check one)

Type of Identification Produced:

NY Driver License [REDACTED]

78. IN WITNESS WHEREOF, the Respondent Reed Elsevier Inc. d/b/a LexisNexis, as more fully described herein, has caused this Assurance of Voluntary Compliance to be executed by Michael F. Walsh as Executive Vice President of Reed Elsevier Inc. d/b/a LexisNexis, as a true act and deed, in MONROE County, Florida, this 9th day of April, 2009. By my signature I hereby affirm that I am acting in my capacity and within my authority as Executive Vice President of Reed Elsevier Inc. d/b/a LexisNexis, and that by my signature I am binding the corporation to this agreement.

Name: Michael F. Walsh

Position: Executive Vice President of Reed Elsevier Inc. d/b/a LexisNexis

STATE OF FLORIDA
COUNTY OF Monroe

BEFORE ME, an officer duly authorized to take acknowledgments in the State of Florida, personally appeared Michael F. Walsh as Executive Vice President of Reed Elsevier Inc. d/b/a LexisNexis, and acknowledged before me that he executed the foregoing instrument for the purposes therein stated, on this 9th day of April, 2009.

Sworn to and subscribed before me
this 9th day of April, 2009.

(print name)
NOTARY PUBLIC



(Print, type or stamp commissioned name of
Notary Public)

Personally known ___ or Produced Identification
 (check one)

Type of Identification Produced:

NY License (Driver) [REDACTED]

TINA FURLOW
Senior Assistant Attorney General

Dated this 14th day of April, 2009.

DEPUTY ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
The Capitol, PL-01
Tallahassee, Florida 32399-1050
(850) 487-1963



[Matthew Bender LexisNexis Letterhead]

(DATE)
(NAME, AND NAME OF BUSINESS IF APPLICABLE)
(ADDRESS)
(ACCOUNT NUMBER)

Dear _____

Matthew Bender, a member of the LexisNexis Group, sincerely appreciates your business over the years. As a result of an agreement with the Attorney General of the State of Florida, Matthew Bender is offering to provide you with refunds for updates, supplements or new editions to certain books or other publications which were shipped to you during the time period of February 13, 2005 to _____, but that you may not have ordered. A list of the publications for which you may seek a refund is attached.

We hope you have been happy with all of these books or other publications. However, if you did not intend for us to send you these items, you can obtain a refund of the amount you paid plus any tax and shipping and handling charge you paid. If you would like a refund, fill out the form below and return it to us together with the last received update, supplement or edition by mail within 90 days of the date of this letter by using the enclosed pre-paid address label. If you ordered the items and are satisfied with them, no action is necessary.

Sincerely,

Name on account [print please] _____

Address: _____

Date: _____

Account #: _____ [listed above]

Please issue a refund for the following book or publication: _____

I have enclosed the last update, supplement, or new edition for each book or publication for which I am seeking a refund.

EXHIBIT A

REIMBURSEMENT NOTICE ENVELOPE:

Matthew Bender LexisNexis

[address]

FORWARD AND ADDRESS CORRECTION REQUESTED

[address or address window]

ATTENTION: NOTICE OF REFUND ENCLOSED

EXHIBIT B (ENVELOPE)

IMPORTANT NOTICE AFFECTING YOUR SUBSCRIPTIONS

The purpose of this letter is to advise you that Matthew Bender, a member of the LexisNexis Group, has been automatically shipping to you *all* updates, supplements or new editions ("Updates") for the publications listed on the next page.

In order to continue automatic shipments of Updates for these publications, you must complete the enclosed form and return to Matthew Bender in the enclosed postage-paid envelope or fax both sides to 1-800-643-1280. You may also return the enclosed form to tell us that you do not want to continue automatic shipments of some or all of the Updates. For assistance completing the enclosed form, you may contact Customer Support at 800-833-9844 Monday through Friday from 8 AM to 8 PM Eastern Time or via email at customer.support@lexisnexis.com.

If you **do not** return the enclosed form, Updates to your previously purchased publications will **not** be automatically shipped. If you wish to receive the Updates in the future, you may contact Customer Support at 800-833-9844 or via email at customer.support@lexisnexis.com.

EXHIBIT C (part 1)

IMPORTANT NOTICE AFFECTING YOUR SUBSCRIPTIONS

The purpose of this letter is to advise you that Matthew Bender, a member of the LexisNexis Group, has been automatically renewing annual subscription(s) for the publications listed on the next page.

In order to continue automatic renewals of your subscriptions for these publications, you must complete the enclosed form and return to Matthew Bender in the enclosed postage-paid envelope or fax both sides to 1-800-643-1280. You may also return the enclosed form to tell us that you do not want to continue automatic renewals of the subscriptions. For assistance completing the enclosed form, you may contact Customer Support at 800-833-9844 Monday through Friday from 8 AM to 8 PM Eastern Time or via email at customer.support@lexisnexis.com.

If you **do not** return the enclosed form, your subscriptions will **not** be automatically renewed. If you wish to receive the publications in the future, you may contact Customer Support at 800-833-9844 or via email at customer.support@lexisnexis.com.

EXHIBIT D (part 1)

Account #
 «AddressName1» «AddressName2»
 ATTN: Librarian
 «CustomerName»
 «StreetLine1»
 «City», «StateCode» «PostalCode»

Page 41 of 45

In order to continue automatic renewals of your subscriptions for these publications, you must complete this form and return to Matthew Bender in the enclosed postage-paid envelope or fax both sides to 1-800-643-1280. If you **do not** return this form, your subscriptions will **not** be automatically renewed. If you wish to receive the publications in the future, you may contact Customer Support at 800-833-9844 or via email at customer.support@lexisnexis.com.

Terms & Conditions for Automatic Renewal of Annual Subscriptions

- If you select this option, your subscription will continue to be automatically renewed in the future without any action on your part.
- Under the automatic renewal option, at least 60 days before each renewal date, you will receive a renewal notice, which will include the cost of the next annual subscription. The renewal price will likely include an increase over your prior year's subscription price.
- Under the automatic renewal option, if you take no action upon receiving the renewal notice, your subscription will be automatically renewed, and you will be invoiced on or about the renewal date.
- Thereafter, for each of the product(s) listed below you would receive any supplementation, releases, replacement volumes, new editions and revisions to a publication ("Updates") made available during the annual subscription period, included in a price to be disclosed on the renewal notice, which will likely include an increase over the prior year's subscription price. Shipping and handling fees are not included in the renewal price shown below, and would be added to the future renewal price.
- The number of Updates and the renewal price related to the Updates made to the publication(s) last year are shown below. The number of Updates and the renewal price may vary due to developments in the law and other publishing issues, but you may use the number of Updates and renewal price shown below as a rough estimate. You may call Customer Support at 800-833-9844 for additional information.
- You may cancel your subscription for the current or any future subscription year by: calling Customer Support at 800-833-9844; emailing customer.support@lexisnexis.com; or, for any automatic renewal period, returning the renewal notice marked "CANCEL". If you fail to cancel any automatic renewal within 60 days after the date of the renewal notice, then you will be invoiced for such annual subscription renewal year and will receive all Updates for such period.
- If the renewal subscription is cancelled within 30 days after the invoice date, then you will receive full credit of the price for the applicable subscription period. If you cancel between 31 and 60 days after the invoice date, then you will receive a 5/6th credit of the price for the applicable subscription period. No credit will be given for cancellations more than 60 days after the invoice date. To receive any credit, you must return all product(s) shipped during the applicable subscription period at your expense within the applicable cancellation period listed above.

INSTRUCTIONS

Place a check mark in the "Enroll Sub" column for each title you wish to subscribe to the Automatic Annual Renewal Subscription Program. Note that you currently own this title, and checking "Enroll Sub" ensures you will be automatically renewed at the end of your subscription period without any further action on your part.

Enroll Sub	ISBN	Pub #	Qty	Publication Title	# of Renewals	Current Renewal Price (not incl. S&H or applicable discounts)

IMPORTANT NOTICE ABOUT YOUR SUBSCRIPTIONS

The purpose of this letter is to advise you that as a customer of Matthew Bender, a member of the LexisNexis Group, you have been receiving publications that have been automatically shipped to you as a result of either an automatic renewal of annual subscriptions or automatic shipments of updates, supplements and/or new editions to an original purchase. Both of these subscriptions are described below. You may review the status of any existing subscription with Matthew Bender on line at: <http://www.lexisnexis.com/PrintCDSC> or by calling Customer Support at 800-833-9844. You may change or cancel any subscription by calling Customer Support at 800-833-9844, or emailing customer.support@lexisnexis.com.

Automatic Renewals of Annual Subscriptions work like this:

- Subscriptions are automatically renewed without any action on the subscriber's part.
- Subscribers receive the original product and any supplementation, releases, replacement volumes, new editions and revisions to a publication ("Updates") made available during the annual subscription period, included in the annual price. Shipping and handling fees are not included in the annual price.
- Under the automatic renewal option, at least 60 days before each renewal date, subscribers receive a renewal notice, which will include the cost of the next annual subscription. The renewal price will likely include an increase over the prior year's subscription rate.
- Subscribers are advised of the number of Updates that were made to the particular publication the prior year. The number of Updates may vary due to developments in the law and other publishing issues, but subscribers may use this as a rough estimate of future shipments. Subscribers may call Customer Support at 800-833-9844 for additional information.
- Subscribers may cancel their subscription(s) for the current or any future subscription year by: calling Customer Support at 800-833-9844; emailing customer.support@lexisnexis.com; or, for any automatic renewal period, returning the renewal notice marked "CANCEL". If subscribers fail to cancel any automatic renewal within 60 days after the date of the renewal notice, then subscribers are invoiced for such annual subscription renewal year and receive all Updates for such period.
- If the initial or any renewal subscription is cancelled within 30 days after the invoice date, then subscribers receive full credit of the price for the applicable subscription period. If subscribers cancel between 31 and 60 days after the invoice date, then subscribers receive a 5/6th credit of the price for the applicable subscription period. No credit will be given for cancellations more than 60 days after the invoice date. To receive any credit, subscribers must return all product(s) shipped during the applicable subscription period at their expense within the applicable cancellation period listed above.

Automatic Shipments work like this:

- Subscribers automatically receive and are billed for future updates (defined below) without any action on the Subscriber's part.

- The initial price includes the initial product and any supplementation, releases, replacement volumes, new editions and revisions to a publication (“Updates”) for only a limited period of time (minimum period of 30 days) after the order is placed (“Order Window”). Shipping and handling fees are not included in the initial price.
- After the Order Window, all Updates are automatically shipped to the Subscriber with an invoice at the then-current retail price on a semi annual or annual basis as the Updates become available. The Subscriber can expect a price increase over the current retail price. The retail price does not and will not include shipping and handling fees.
- The number of Updates and the costs may vary due to developments in the law and other publishing issues, but Subscribers may use as a rough estimate of future shipments the number of Updates and the costs related to the Updates made to the product last year. You may call Customer Support at 800-833-9844 for additional information on update frequency and price.
- All shipments may be returned, at Subscriber's expense, for full credit of the price within 30 days of receipt.
- Shipments may not be returned, and no credits will be issued, more than 30 days after receipt.
- Return of a shipment, other than the initial purchase, will not cancel an automatic shipment subscription.
- Enrollment in the Automatic Subscription Program may be cancelled anytime by: returning the invoice marked “CANCEL SUBSCRIPTION”; calling Customer Support at 800-833-9844; or emailing customer.support@lexisnexis.com.

If you do not want to continue receiving one or all of the publications on an Automatic Renewal or Automatic Shipment basis, call Customer Support at 800-833-9844, or email customer.support@lexisnexis.com and tell us that you wish to cancel the automatic renewal or automatic shipment for one or more of the publications you receive from Matthew Bender.

If we do **not** hear from you, we will continue to automatically renew your annual subscriptions and/or automatically ship the updates, supplements and/or new editions for the publications you receive from Matthew Bender.

EXHIBIT E

5830035_v21

Attachment 5

Thomson West Invoice



Returns-Bldg B
525 Wescott Rd.
Eagan, MN 55123

Subscription Notice

This Package Contains:
UNITED STATES CODE ANNOTATED RIA
COMPLETE ANALYSIS OF TAX BENEFITS
PROVISIONS AMERICAN RECOVERY, REINVEST

Date: 5/28/2009
Account # 1000609952
Delivery # 677335752
PO #

900
6/15/09

Qty: 1	Total: \$101.65
This is Box 1 of 1	

All pricing Resides on Box 1

Do Not Remit from this Document-----Invoiced Separately
Please contact West Group Customer Service at 1-800-328-4880 if you have questions about this subscription notice.

UNITED STATES CODE ANNOTATED RIA
Box 1 of 1

BOUND PRINTED MATTER
US POSTAGE PAID
WEST GROUP

List: 000100614389

LIBRARY

MP3
Z1

368



6773357520101001

Attachment 6

Americans for Fair Electronic Transactions (AFFECT), “The 12 Principles for Fair Commerce in Software and Other Digital Products.”



Stop Before You Click.

12 PRINCIPLES FOR FAIR COMMERCE IN SOFTWARE AND OTHER DIGITAL PRODUCTS

Americans for Fair Electronic Commerce Transactions (AFFECT) has long favored a competitive and fair marketplace. We are now undertaking an outreach campaign called **STOP BEFORE YOU CLICK** to help sellers, users of digital products and policymakers work together to develop better and more fair laws to govern purchases of off-the-shelf software and digital products. The cornerstone of AFFECT's efforts is the creation of *12 Principles for Fair Commerce in Software and Other Digital Products*.

STOP

before you click

Insist on fair  digital product terms

When you buy an off-the-shelf product for yourself or your business, you expect the law to provide you with some basic rights. For example, your car will work as advertised. Or you will be allowed to legally sell the television set when you upgrade to a new one and you wouldn't expect something as simple as lending a book to a friend to create any problems for you.

It might surprise you to learn, then, that the rights you are accustomed to when you buy traditional goods and services may not apply when you purchase digital products.

When you buy software or other digital information—and even when you buy another type of product that comes packaged with a CD-ROM or DVD, for example—the seller, including the creator, supplier and distributor, often presents terms that could deprive you of these rights. Frequently these terms of the deal are called a “license.”

The problem is it can be hard to find out what your rights are when buying digital products in the mass market. Often the seller will not make the terms of the “license” available until after you have opened the sealed package.

Then it's too late. At that point, you cannot negotiate more favorable terms. Nor do you have much, if any, recourse if you reject them. This anti-customer approach is used by many digital product sellers. What's worse, it could soon be used in transactions for “smart” goods that incorporate software into their design, such as for autos, fax machines and microwave ovens.

It's time to put a stop to unfair digital product terms.

And it's not just off-the-shelf products. When you purchase or “license” a digital product via the Internet, you are asked to click “I agree” to terms that, if enforced, may prohibit you from criticizing the product, giving it to someone else or using it to create new products. Some terms even claim to allow the seller to invade your privacy by collecting your personal data, monitoring your Internet activity and using the data in any way they wish. Even though courts might refuse to enforce such unfair digital product terms, people who read the license might avoid violating the terms for fear of being sued. Sellers might also build features into their software that prevent you from breaking a term of the agreement. Thus they give themselves protection even if a court might later rule their terms unfair.

The unfair digital product terms that many sellers embed in these agreements for off-the-shelf products, as well as the product features used to enforce them, often take away your basic rights as a customer. They could increase your computer security risks and jeopardize your privacy. They could also chill competition.

A competitive marketplace depends on a balance of power between sellers and customers. Rather than focusing on making secure, bug-free products, many sellers make the terms of agreement hard to locate and try to get you to sign away your rights after you purchase a product. At the same time, they deny all warranties. Consequently, consumers and businesses must continually struggle to maintain their computers' reliability and security and prevent invasion of their privacy.

It's time to put a stop to unfair digital product terms.

12 Principles for Fair Commerce in Software and Other Digital Products

1. CUSTOMERS ARE ENTITLED TO readily find, review and understand proposed terms when they shop.

In a healthy digital marketplace, it should be easy for you to find and read a product's proposed terms of agreement before making a decision to buy it. This is particularly important so that you can compare one product with another. You should be informed in plain and conspicuous language of all aspects of the proposed deal that might influence your purchase decision.

2. CUSTOMERS ARE ENTITLED TO actively accept proposed terms before they make the deal.

Real acceptance requires you to take an active step to indicate agreement to the terms that become part of the deal. You should not be bound by terms just because you visit a website, open a box containing a product or install a product that you already bought. Even if the terms are available somewhere on the website, inside the box, or on some file in the software, you should be bound by those terms only if you actively and unambiguously indicate your acceptance of them. Of course, any terms that are unfair, including but not limited to those discussed in Principles 5–12 below, should not become part of the deal.

3. CUSTOMERS ARE ENTITLED TO information about all known nontrivial defects in a product before committing to the deal.

You should have easy access to information in plain language about any known nontrivial defects in a digital product. An example of a nontrivial defect would be a flaw that prevents a spreadsheet from correctly calculating a certain type of formula or inclusion of spyware or security vulnerabilities. Improving your awareness of the quality differences between competing products will help you choose the best products for your particular needs.

4. CUSTOMERS ARE ENTITLED TO a refund when the product is not of reasonable quality.

You are entitled to assume a product will meet or surpass reasonable customer expectations and the seller's claims. If a product is not of reasonable quality or does not measure up to the product's stated purpose, you should be entitled to return the product for a refund. That refund should be easily available from the point of purchase or by a reasonably convenient refund procedure.

5. CUSTOMERS ARE ENTITLED TO have their disputes settled in a local, convenient venue.

If you have a dispute with the seller of a digital product, you should not be forced to go to an out-of-state court to resolve the dispute. Nor should you be forced to give up remedies and legal protections guaranteed by the laws of the state in which you live.

6. CUSTOMERS ARE ENTITLED TO control their own computer systems.

A seller or third-party should not be able to control or disable your system or a digital product installed on it. Terms permitting such acts are unfair unless a digital product is clearly labeled as a product that will only operate for a fixed period of time. Sellers who implement electronic “self-help” or “repossession” by remotely disabling a digital product threaten disproportionate damage. In addition, sellers must take reasonable steps to ensure that a product is free of viruses, spyware, and other malicious code or security problems that will compromise your computer systems.

7. CUSTOMERS ARE ENTITLED TO control their own data.

Since in the course of using a digital product you may enter personal or mission-critical business data, store private information or create documents for future use, you must be able to control the dissemination of that data. A seller should clearly inform you before payment or installation about a product’s principal and significant functions, including whether the seller will copy or distribute your data. In addition, you are entitled to be able to access data you have created even if you can no longer use the digital product used to create it, and you must be able to convert it to a format that other programs can read. Fair terms do not limit *your* rights to control *your* own data.

8. CUSTOMERS ARE ENTITLED TO fair use, including library or classroom use, of digital products to the extent permitted by federal copyright law.

Consumers, businesses, libraries and educational institutions rely on “off-the-shelf” digital products. For 200 years, federal copyright law has carefully developed balanced rules for the use of copyrighted information. Terms in agreements for mass-market digital products should not attempt to prohibit activities otherwise permitted under federal copyright law. For example, journalists and scholars should be able to quote language in mass-market digital content products, and libraries should be able to lend this type of material. To avoid inhibiting important fair uses, terms claiming to restrict them should not be used.

This set of principles was not formulated to apply to agreements for customized digital products, “Open Source” or “Free” software.

This project has been funded in part by the John D. and Catherine T. MacArthur Foundation.

9. CUSTOMERS ARE ENTITLED TO study how a product works.

Intellectual property law protects software vendors from theft of their work. We support the aggressive enforcement of those laws. However, it may be necessary for you to study a product so that you can adapt it to work with your own system or other systems, understand its security features, or repair it. This type of study is permitted under intellectual property law for traditional products available to the public and should be no different for digital products marketed to the general public.

10. CUSTOMERS ARE ENTITLED TO express opinions about products and report their experiences with them.

Healthy competition depends on information about competing products in the marketplace. You must be able to compare product terms and the products themselves, both qualitatively and quantitatively. You must also be able to recommend and criticize products, legally reprint images and quote text to explain product limitations and help other purchasers make informed decisions.

11. CUSTOMERS ARE ENTITLED TO the free use of public domain information.

Public domain information is free for anyone to use, either because the information inherently does not fall under copyright protection, because the copyright term has expired or because the copyright holder has allowed the information to fall into the public domain. Sellers, therefore, should not be able to take facts, ideas and other unprotected works from the public domain and claim property rights to them by limiting your use of these facts or ideas through an agreement. Such terms are unfair and should be unenforceable.

12. CUSTOMERS ARE ENTITLED TO transfer products as long as they do not retain access to them.

You should have the right to transfer a mass-market digital product in the same way that you might legally sell your old television or lend your favorite book to a friend as long as you do not retain access to it and the new recipient agrees to observe the fair terms of the deal. Any terms that claim to take away this right are unfair and should not be enforced.

A more detailed version of the *12 Principles*, designed for legislators, policymakers, and others interested in promoting a truly competitive digital marketplace, is available at www.fairterms.org.

“AFFECT has done a tremendous public service by developing a set of clear, accessible, balanced principles that reflects the best of modern contract law, as applied in this new area. Those who try to draft contract forms in this area to take advantage of others, or to get a better ‘bargain’ than the law (or sound policy) would permit, will be disappointed with these principles because they give to customers important rights that many vendors might believe they can take away.”

William J. Woodward, Jr.,
Temple University
Beasley School of Law



AMERICANS for FAIR ELECTRONIC
COMMERCE TRANSACTIONS

AFFECT is a national coalition of consumers, retail and manufacturing businesses, financial institutions, technology professionals and librarians committed to the growth of fair and competitive U.S. markets in software and other digital products.

Since 2000, AFFECT has successfully prevented the passage of UCITA (Uniform Computer Information Transactions Act), dangerous, anti-competitive, anti-business, anti-consumer legislation. UCITA would have a negative impact on the U.S. economy and the development of electronic commerce and new technologies. AFFECT continues to promote enactment of anti-UCITA “bomb-shelter” legislation in state legislatures to protect both individual consumers and businesses from the long-arm reach of UCITA.

www.ucita.com outlines AFFECT’s continuing legislative and policy efforts and links to www.fairterms.org, the new site for the **STOP BEFORE YOU CLICK** campaign based on AFFECT’s *12 Principles for Fair Commerce in Software and Other Digital Products*. **STOP BEFORE YOU CLICK** seeks to promote fair business practices and to guide sellers, users of digital products and policymakers in developing balanced law to govern purchases of off-the-shelf software and digital products.

Contact us to get involved or to learn more.

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STOP



Insist on fair  digital product terms