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10 UNITED STATES DISTRICT COURT  
 11 CENTRAL DISTRICT OF CALIFORNIA

12  
 13 FEDERAL TRADE COMMISSION,  
 14 Plaintiff,  
 15 v.  
 16 MDK MEDIA INC., et al.,  
 17 Defendants.

Case No. 2:14-cv-05099-JFW (MRWx)

FINAL ORDER FOR  
 PERMANENT INJUNCTION  
 AND MONETARY JUDGMENT  
 AGAINST DEFENDANTS  
 MAKONNEN KEBEDE AND  
 MDK MEDIA INC.

18  
 19 Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its  
 20 First Amended Complaint for Permanent Injunction and Other Equitable Relief for  
 21 a permanent injunction, and other equitable relief in this matter, pursuant to  
 22 Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C.  
 23 § 53(b). In order to resolve all matters in dispute in this action between them, the  
 24 Commission and Defendants Makonnen Kebede and MDK Media Inc. have  
 25 stipulated to resolve the pending litigation by entry of the attached Final Order for  
 26 Permanent Injunction and Monetary Judgment Against Defendants Makonnen  
 27 Kebede and MDK Media Inc. (“Order”) with the terms set forth below.  
 28

1 **FINDINGS**

2 1. This Court has jurisdiction over the subject matter of this case and over all  
3 parties hereto.

4 2. The First Amended Complaint charges that Defendants participated in  
5 deceptive and unfair acts or practices in violation of Section 5 of the FTC Act, 15  
6 U.S.C. § 45, in a scheme to place unauthorized charges on consumers’ mobile  
7 telephone bills, a practice known as “cramming.”

8 3. Settling Defendants Makonnen Kebede and MDK Media Inc. neither admit  
9 nor deny any of the allegations in the First Amended Complaint, except as  
10 specifically stated in this Order. Only for purposes of this action, Settling  
11 Defendants admit the facts necessary to establish jurisdiction.

12 4. Settling Defendants waive and release any claims that they may have against  
13 Plaintiff, the Commission, the Receiver, and their agents that relate to this action.  
14 Settling Defendants waive any claim that they may have under the Equal Access to  
15 Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through  
16 the date of this Order, and agree to bear their own costs and attorney fees.

17 5. Settling Defendants and the Commission waive all rights to appeal or  
18 otherwise challenge or contest the validity of this Order.

19 **DEFINITIONS**

20 For the purpose of this Order, the following definitions apply:

21 A. **“Settling Defendants”** means the Individual Settling Defendant and the  
22 Corporate Settling Defendant, individually, collectively, or in any combination.

23 B. **“Corporate Settling Defendant”** means MDK Media Inc. and its dba’s,  
24 successors, and assigns.

25 C. **“Individual Settling Defendant”** means Makonnen Kebede.

26 D. **“Person”** means any individual, group, unincorporated association, limited  
27 general partnership, corporation, or other business entity.  
28

**ORDER**

**I. BAN ON PLACING CHARGES ON TELEPHONE BILLS**

IT IS HEREBY ORDERED that Settling Defendants are permanently restrained and enjoined from billing, submitting for billing, or assisting or facilitating the billing or submitting for billing, charges to any telephone bill, including but not limited to a bill for any voice, text, or data service.

**II. INJUNCTION AGAINST MISREPRESENTATIONS**

IT IS FURTHER ORDERED that, in connection with the advertising, marketing, promotion, offering for sale, sale, or distribution of any product or service, Settling Defendants, Settling Defendants’ officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from making, or assisting others in making, expressly or by implication, any false or misleading representation, including representations concerning the cost, performance, efficacy, nature, characteristics, benefits, or safety of any product or service, or concerning any consumer’s obligation to pay for charges for any product or service.

**III. INJUNCTION AGAINST UNFAIR BILLING PRACTICES**

IT IS FURTHER ORDERED that, in connection with the advertising, marketing, promotion, offering for sale, sale, or distribution of any product or service, Settling Defendants, Settling Defendants’ officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from causing any consumer to be billed for any product or service without having previously obtained the consumer’s express informed consent, and having created and maintained a record of such consent.

1 **IV. MONETARY JUDGMENT AND PARTIAL SUSPENSION**

2 IT IS FURTHER ORDERED that:

3 A. Judgment in the amount of Three Hundred Eighty-Three Thousand Dollars  
4 (\$383,000) is entered in favor of the Commission against Settling Defendants  
5 Makonnen Kebede and MDK Media Inc., jointly and severally, as equitable  
6 monetary relief.

7 B. Settling Defendants are ordered to pay to the Commission Fifty-Five  
8 Thousand Dollars (\$55,000), which, as Settling Defendants stipulate, their  
9 undersigned counsel holds in escrow for no purpose other than payment to the  
10 Commission. Such payment must be made within 7 days of entry of this Order by  
11 electronic fund transfer in accordance with instructions previously provided by a  
12 representative of the Commission. Upon such payment, the remainder of the  
13 judgment is suspended, subject to the Subsections below.

14 C. The Commission's agreement to the suspension of part of the judgment is  
15 expressly premised upon the truthfulness, accuracy, and completeness of Settling  
16 Defendants' sworn financial statements and related documents (collectively,  
17 "financial representations") submitted to the Commission, namely:

- 18 1. the Financial Statements of Individual Settling Defendant Makonnen  
19 Kebede dated on July 17, 2014, and January 27, 2015, including the attachments;
- 20 2. the Financial Statement of Corporate Settling Defendant MDK Media Inc.  
21 signed by Makonnen Kebede, President on July 13, 2014, including the  
22 attachments;
- 23 3. the additional documentation submitted by Settling Defendants' counsel to  
24 Commission counsel on July 16, 2014, July 20, 2014, and February 6, 2015,  
25 including invoices, bank statements, and other representations.

26 D. The suspension of the judgment will be lifted as to any Settling Defendant if,  
27 upon motion by the Commission, the Court finds that Settling Defendant failed to  
28 disclose any material asset, materially misstated the value of any asset, or made

1 any other material misstatement or omission in the financial representations  
2 identified above.

3 E. If the suspension of the judgment is lifted, the judgment becomes  
4 immediately due as to that Settling Defendant in the amount specified in  
5 Subsection A above (which the parties stipulate only for purposes of this Section  
6 represents the consumer injury alleged in the First Amended Complaint), less any  
7 payment previously made pursuant to this Section and any other payment received  
8 by the FTC relating to that Settling Defendant's practices alleged in the First  
9 Amended Complaint, plus interest computed from the date of entry of this Order.

10 **V. ADDITIONAL MONETARY PROVISIONS**

11 IT IS FURTHER ORDERED that:

12 A. Settling Defendants relinquish dominion and all legal and equitable right,  
13 title, and interest in all assets transferred pursuant to this Order and may not seek  
14 the return of any assets.

15 B. The facts alleged in the First Amended Complaint will be taken as true,  
16 without further proof, in any subsequent civil litigation by or on behalf of the  
17 Commission in a proceeding to enforce its rights to any payment or monetary  
18 judgment pursuant to this Order, such as a nondischargeability complaint in any  
19 bankruptcy case.

20 C. The facts alleged in the First Amended Complaint establish all elements  
21 necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A)  
22 of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have  
23 collateral estoppel effect for such purposes.

24 D. Settling Defendants acknowledge that their Taxpayer Identification Numbers  
25 (Social Security Numbers or Employer Identification Numbers), which Settling  
26 Defendants previously submitted to the Commission, may be used for collecting  
27 and reporting on any delinquent amount arising out of this Order, in accordance  
28 with 31 U.S.C. §7701.

1 E. All money paid to the Commission pursuant to this Order may be deposited  
2 into a fund administered by the Commission or its designee to be used for  
3 equitable relief, including consumer redress and any attendant expenses for the  
4 administration of any redress fund. If a representative of the Commission decides  
5 that direct redress to consumers is wholly or partially impracticable or money  
6 remains after redress is completed, the Commission may apply any remaining  
7 money for such other equitable relief (including consumer information remedies)  
8 as it determines to be reasonably related to Settling Defendants' practices alleged  
9 in the First Amended Complaint. In addition, all money paid to the Commission  
10 pursuant to this Order may be used to pay the fees associated with the receivership  
11 in this matter, as approved in the Court's September 11, 2014 order. Any money  
12 not used for such equitable relief or receivership fees is to be deposited to the U.S.  
13 Treasury as disgorgement. Settling Defendants have no right to challenge any  
14 actions the Commission or its representatives may take pursuant to this Subsection.

15 F. If a Settling Defendant is in default on any obligations under this Section,  
16 then the judgment amount, minus any payments previously made pursuant to this  
17 Section and any other payments received by the FTC relating to Settling  
18 Defendants' conduct, becomes immediately due.

19 G. If any Settling Defendant fails to pay fully the amount due at the time  
20 specified, Settling Defendants must cooperate fully with the Commission and their  
21 representatives in all attempts to collect the judgment. In such an event, Settling  
22 Defendants agree to provide federal and state tax returns for the preceding 2 years,  
23 and to complete new financial disclosure forms fully and accurately within 10  
24 business days of receiving a request from the Commission. Settling Defendants  
25 further authorize the Commission to verify all information provided on their  
26 financial disclosure forms with all appropriate third parties, including financial  
27 institutions.  
28

1 **VI. CUSTOMER INFORMATION**

2 IT IS FURTHER ORDERED that Settling Defendants, Settling Defendants'  
3 officers, agents, employees, and attorneys, and all other persons in active concert  
4 or participation with any of them, who receive actual notice of this Order, whether  
5 acting directly or indirectly, are permanently restrained and enjoined from directly  
6 or indirectly:

7 A. failing to provide sufficient customer information in the Settling Defendants'  
8 possession or control to enable the Commission to efficiently administer consumer  
9 redress. If a representative of the Commission requests in writing any information  
10 related to redress, Settling Defendants must provide it, in the form prescribed by  
11 the Commission, within 14 days.

12 B. disclosing, using, or benefitting from customer information, including the  
13 name, address, telephone number, email address, social security number, other  
14 identifying information, or any data that enables access to a customer's account  
15 (including a credit card, bank account, telephone billing account, or other financial  
16 account), that any Settling Defendant obtained prior to entry of this Order in  
17 connection with the placement of charges on consumers' mobile telephone bills;  
18 and

19 C. failing to destroy such customer information in all forms in their possession,  
20 custody, or control within 30 days after receipt of written direction to do so from a  
21 representative of the Commission.

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

25 **VII. COOPERATION**

26 IT IS FURTHER ORDERED that Settling Defendants must fully cooperate  
27 with representatives of the Commission in this case and in any investigation or  
28 litigation related to or associated with the transactions or the occurrences that are



1 the subject of the First Amended Complaint. Such Settling Defendants must  
2 provide truthful and complete information, evidence, and testimony. Such  
3 Individual Settling Defendant must appear and such Corporate Settling Defendant  
4 must cause Corporate Settling Defendant's officers, employees, representatives, or  
5 agents to appear for (1) interviews and/or discovery at a location within that  
6 Settling Defendants' county of residence, or at (2) hearings, trials, and any other  
7 proceedings that a Commission representative may reasonably request upon 10  
8 days written notice, or other reasonable notice, at such places and times as a  
9 Commission representative may designate, without the service of a subpoena.

10 **VIII. ORDER ACKNOWLEDGMENTS**

11 IT IS FURTHER ORDERED that Settling Defendants obtain  
12 acknowledgments of receipt of this Order:

13 A. Each Settling Defendant, within 7 days of entry of this Order, must submit to  
14 the Commission an acknowledgment of receipt of this Order sworn under penalty  
15 of perjury.

16 B. For 3 years after entry of this Order, each Individual Settling Defendant for  
17 any business involved with placing charges on phone bills that such Defendant,  
18 individually or collectively with any other Defendants, is the majority owner or  
19 controls directly or indirectly, and each Corporate Settling Defendant, must deliver  
20 a copy of this Order to: (1) all principals, officers, directors, and LLC managers  
21 and members; (2) all employees, agents, and representatives who participate in the  
22 placement of charges on phone bills; and (3) any business entity resulting from any  
23 change in structure as set forth in the Section titled Compliance Reporting.

24 Delivery must occur within 7 days of entry of this Order for current personnel. For  
25 all others, delivery must occur before they assume their responsibilities.

26 C. From each individual or entity to which a Settling Defendant delivered a  
27 copy of this Order, that Settling Defendant must obtain, within 30 days, a signed  
28 and dated acknowledgment of receipt of this Order.



1 **IX. COMPLIANCE REPORTING**

2 IT IS FURTHER ORDERED that Settling Defendants make timely  
3 submissions to the Commission:

4 A. One year after entry of this Order, each Settling Defendant must submit a  
5 compliance report, sworn under penalty of perjury:

6 1. Each Settling Defendant must: (a) identify the primary physical, postal, and  
7 email address and telephone number, as designated points of contact, which  
8 representatives of the Commission may use to communicate with that Defendant;  
9 (b) identify all of that Defendant's businesses by all of their names, telephone  
10 numbers, and physical, postal, email, and Internet addresses; (c) describe the  
11 activities of each business, including the goods and services offered, the means of  
12 advertising, marketing, and sales, and the involvement of any other Defendant  
13 (which Individual Settling Defendant must describe if they know or should know  
14 due to their own involvement); (d) describe in detail whether and how that  
15 Defendant is in compliance with each Section of this Order; and (e) provide a copy  
16 of each Order Acknowledgment obtained pursuant to this Order, unless previously  
17 submitted to the Commission.

18 2. Additionally, Individual Settling Defendant must: (a) identify all telephone  
19 numbers and all physical, postal, email and Internet addresses, including all  
20 residences; (b) identify all business activities, including any business for which  
21 such Defendant performs services whether as an employee or otherwise and any  
22 entity in which such Defendant has any ownership interest; and (c) describe in  
23 detail such Defendant's involvement in each such business, including title, role,  
24 responsibilities, participation, authority, control, and any ownership.

25 B. For 3 years after entry of this Order, each Settling Defendant must submit a  
26 compliance notice, sworn under penalty of perjury, within 14 days of any change  
27 in the following:  
28

1 1. Each Settling Defendant must report any change in: (a) any designated point  
2 of contact; or (b) the structure of any Corporate Settling Defendant or any entity  
3 that any Settling Defendant has any ownership interest in or controls directly or  
4 indirectly that may affect compliance obligations arising under this Order,  
5 including: creation, merger, sale, or dissolution of the entity or any subsidiary,  
6 parent, or affiliate that engages in any acts or practices subject to this Order.

7 2. Additionally, Individual Settling Defendant must report any change in: (a)  
8 name, including aliases or fictitious name, or residence address; or (b) title or role  
9 in any business activity, including any business for which such Defendant  
10 performs services whether as an employee or otherwise and any entity in which  
11 such Defendant has any ownership interest, and identify the name, physical  
12 address, and any Internet address of the business or entity.

13 C. For 3 years after entry of this Order, each Settling Defendant must submit to  
14 the Commission notice of the filing of any bankruptcy petition, insolvency  
15 proceeding, or similar proceeding by or against such Defendant within 14 days of  
16 its filing.

17 D. Any submission to the Commission required by this Order to be sworn under  
18 penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746,  
19 such as by concluding: “I declare under penalty of perjury under the laws of the  
20 United States of America that the foregoing is true and correct. Executed on:  
21 \_\_\_\_\_” and supplying the date, signatory’s full name, title (if applicable), and  
22 signature.

23  
24 E. Unless otherwise directed by a Commission representative in writing, all  
25 submissions to the Commission pursuant to this Order must be emailed to  
26 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:  
27 Associate Director for Enforcement, Bureau of Consumer Protection, Federal  
28 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The

1 subject line must begin: FTC v. Makonnen Kebede and MDK Media Inc.,  
2 X140034.

3 **X. RECORDKEEPING**

4 IT IS FURTHER ORDERED that Settling Defendants must create certain  
5 records for 3 years after entry of the Order, and retain each such record for 2 years.  
6 Specifically, Settling Corporate Defendant and Individual Settling Defendant for  
7 any business that such Defendant, individually or collectively with any other  
8 Defendants, is a majority owner or controls directly or indirectly, must create and  
9 retain the following records:

- 10 A. accounting records showing the revenues from all goods or services sold;  
11 B. personnel records showing, for each person providing services, whether as  
12 an employee or otherwise, that person's: name; addresses; telephone numbers; job  
13 title or position; dates of service; and (if applicable) the reason for termination;  
14 C. records of all consumer complaints and refund requests, whether received  
15 directly or indirectly, such as through a third party, and any response;  
16 D. all records necessary to demonstrate full compliance with each provision of  
17 this Order, including all submissions to the Commission; and  
18 E. a copy of each unique advertisement or other marketing material.

19 **XI. COMPLIANCE MONITORING**

20 IT IS FURTHER ORDERED that, for the purpose of monitoring Settling  
21 Defendants' compliance with this Order, including the financial representations  
22 upon which part of the judgment was suspended and any failure to transfer any  
23 assets as required by this Order:

- 24 A. Within 14 days of receipt of a written request from a representative of the  
25 Commission, each Settling Defendant must: submit additional compliance reports  
26 or other requested information, which must be sworn under penalty of perjury;  
27 appear for depositions; and produce documents for inspection and copying. The  
28

1 Commission is also authorized to obtain discovery, without further leave of court,  
2 using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30  
3 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

4 B. For matters concerning this Order, the Commission is authorized to  
5 communicate directly with each Settling Defendant. Settling Defendant must  
6 permit representatives of the Commission to interview any employee or other  
7 person affiliated with any Settling Defendant who has agreed to such an interview.  
8 The person interviewed may have counsel present.

9 C. The Commission may use all other lawful means, including posing, through  
10 its representatives as consumers, suppliers, or other individuals or entities, to  
11 Settling Defendants or any individual or entity affiliated with Settling Defendants,  
12 without the necessity of identification or prior notice. Nothing in this Order limits  
13 the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20  
14 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

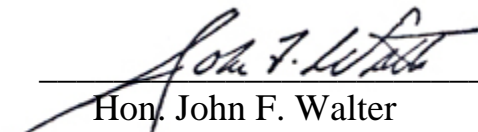
15 D. Upon written request from a representative of the Commission, any  
16 consumer reporting agency must furnish consumer reports concerning Individual  
17 Settling Defendant, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15  
18 U.S.C. §1681b(a)(1).

19 **XII. RETENTION OF JURISDICTION**

20 IT IS FURTHER ORDERED that this Court retains jurisdiction of this  
21 matter for purposes of construction, modification, and enforcement of this Order.

22  
23 IT IS SO ORDERED.

24 Dated: May 6, 2015

25   
26 \_\_\_\_\_  
27 Hon. John F. Walter  
28 UNITED STATES DISTRICT JUDGE