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U.S.D.C. - Atlanta

MAR 25 2002

LUTHER D. THOMAS, Clerk
By: *[Signature]*
Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FEDERAL TRADE COMMISSION,
Plaintiff,
v.
1268957 ONTARIO INC., et al.,
Defendants.

Civil Action No. 01-
CV-0423-JEC

STIPULATED FINAL
ORDER FOR
PERMANENT INJUNCTION
AND CONSUMER REDRESS

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), has filed its complaint for permanent injunction and other relief pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging Defendants 1268957 Ontario Inc., 1371772 Ontario Inc., and Darren J. Morgenstern, all doing business as National Domain Name Registry, Electronic Domain Name Monitoring, and Corporate Domain Name Monitoring ("Defendants"), with violating Section 5 of the FTC Act, 15 U.S.C. § 45.

The parties have agreed to the entry of this Stipulated Final Judgment and Order for Permanent Injunction and Consumer Redress ("Order") by this Court to resolve all matters of dispute between them in this action.

NOW, THEREFORE, Plaintiff Federal Trade Commission and Defendants having requested the Court to enter this Order,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter and the parties.

2. Venue is proper as to all parties in the Northern District of Georgia.

3. The activities of Defendants are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.

4. The Complaint states a claim upon which relief may be granted against Defendants under §§ 5(a)(1) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a)(1) and 53(b).

5. Defendants have waived any and all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).

6. The parties and their respective counsel have agreed that the entry of this Order resolves all matters of dispute between them arising from the Complaint in this action, up to the date of entry of this Order.

7. Plaintiff and Defendants waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Defendants further waive and release any claim they may have against the Commission, its employees, agents, and representatives.

8. This Order is for settlement purposes only and does not constitute and shall not be interpreted to constitute an admission by Defendants that they have engaged in violations of any law or regulation, including but not limited to the FTC Act, or that the facts alleged in the Complaint, other than the jurisdictional facts, are true.

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

ORDER

Definitions

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

B. "Defendants" means 1268957 Ontario Inc. and 1371772 Ontario Inc., both doing business as National Domain Name Registry ("NDNR"), as Electronic Domain Name Monitoring ("EDNM"), and as Corporate Domain Name Monitoring ("CDNM"), Darren J. Morgenstern ("Morgenstern"), or each of them.

C. "Material" means likely to affect a person's choice of, or conduct regarding, goods or services.

I.

**PROHIBITED BUSINESS ACTIVITIES
INJUNCTION AGAINST MISREPRESENTATIONS**

IT IS THEREFORE ORDERED that, in connection with the advertising, promotion, offering for sale, sale, or provision of any goods or services relating to domain names, web hosting, or email, Defendants, their successors, assigns, officers, agents, servants, and employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are hereby restrained and enjoined from making or from assisting in the making of, expressly or by implication, orally or in writing, any false or misleading statement or representation of material fact, including but not limited to any representation that:

A. Any person or entity has applied for a domain name that is identical to or similar to a domain name a consumer owns; and

B. Any Defendant is monitoring or has the ability to monitor applications for domain names by third parties.

II.

IT IS FURTHER ORDERED that, in connection with the advertising, promotion, offering for sale, sale or provision of any goods or services, including domain names, web hosting, or email, Defendants, their successors, assigns, officers, agents, servants, and employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are hereby restrained and enjoined from sending or causing to be sent any unsolicited advertisements to a telephone facsimile machine, in violation of 47 U.S.C. § 227 et seq.

III.

IT IS FURTHER ORDERED that, within forty-five (45) days of the entry of this Order, Defendants, their successors and assigns, shall, for any domain name purchased by a consumer for a period of time in excess of two (2) years, immediately purchase the remaining time originally contracted for by the consumer.

IV.

IT IS FURTHER ORDERED that Defendants, their successors, assigns, officers, agents, servants, and employees, and those persons in active concert or participation with them who receive

actual notice of this Order by personal service or otherwise are hereby restrained and enjoined from failing to comply with the Telemarketing Sales Rule, 16 CFR Part 310, or as it may be amended.

V.

TAPE RECORDING OF SALES CALLS

IT IS FURTHER ORDERED that, for a period of four (4) years from the entry of this Order, Defendants, their successors, assigns, officers, agents, servants, and employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are restrained and enjoined from offering to sell by telephone or from selling by telephone any goods or services relating to domain names, web hosting, or email to any consumer in the United States unless Defendants, or their agents, tape record the telephone sales solicitation, preserve the tape recording for one (1) year and provide such tapes as may be reasonably requested by staff of the FTC, and the tape recording meets the following criteria:

A. After introductions and a statement of the purpose of the call and after obtaining permission from the consumer to tape record the conversation, the tape recording shall reflect the entirety of the sales presentation;

B. The tape recording must clearly reflect the consumer's agreement to tape record the call. If the consumer does not agree to the tape recording of the call, the sales call shall be promptly terminated; and

C. The tape recording must include clear, complete, and understandable disclosures of all material terms of the purchase and the consumer's express agreement to such terms. Material terms include, but are not limited to:

1. A description of the service or product, including the reason(s) why a consumer may wish to purchase the product or service;
2. The cost of the service or product;
3. The amount of any recurring charges;
4. Limitations on any right to obtain a refund;
5. The business name, address, and telephone number to which the consumer may address any questions or complaints; and
6. The date of the tape recording;

Provided, however, (1) the date of the tape recording may be captured electronically if possible; and (2) this Paragraph shall not affect any Defendant's obligation to comply with any state law pertaining to the tape recording of telephone conversations.

VI.

CONSUMER REDRESS

IT IS FURTHER ORDERED that judgment is hereby entered against Defendants in the amount of three hundred and fifty thousand dollars, United States currency (\$350,000). The judgment is to be satisfied as follows:

A. Defendants, their successors and assigns, shall, within thirty (30) days of the entry of this Order, hire CMA Business Credit Services ("Claims Administrator"), an independent claims administrator. To fund the redress program and the administrative costs of the Claims Administrator, Defendants, their successors and assigns shall, within ten (10) days of contracting with the Claims Administrator:

1. Transfer to the Claims Administrator \$375,000 U.S. currency, representing the judgment amount of \$350,000 ("the redress fund") and \$25,000 to pay the costs of administering this redress program ("the administrative fund"); and
2. Provide the Claims Administrator with a database in electronic format that contains the name, address, email address where available, and domain names of each customer with whom Defendants have transacted business and who has not already received a full refund from Defendants;

B. Defendants shall expressly specify in their contract with the Claims Administrator that its duties shall include:

1. Sending, within sixty (60) days of the entry of this Order, each consumer in the United States and Canada who purchased a domain name from Defendants from March 1, 2000 to March 21, 2001, and who has not previously received a full refund from Defendants:

- a. a check representing the consumer's pro-rata share in the total redress proceeds, which shall be determined by dividing \$350,000 by the total number of domain names sold minus the number of domain names for which consumers received full refunds and then multiplying the result by the number of domain names purchased by such consumer; and
- b. a refund letter in the form of Attachment A to this Order, which may be made part of the refund check;

2. Sending an email message to each consumer, for whom Defendants have an email address on file and whose check is returned because the address is incorrect, within ten (10) days receipt of the

returned check. Such email message shall request a correct physical mailing address from the consumer and provide the consumer with ten (10) days to respond. Upon receipt of a response containing a corrected address, the Claims Administrator shall remail the check to the corrected address;

3. Ninety (90) days after sending the last check to consumers, remitting to the FTC any funds remaining from the redress fund; and
4. Providing Plaintiff and Defendants with a detailed written report that describes how the Claims Administrator has fulfilled the contract with Defendants that this Order mandates;

C. Defendants acknowledge and agree that payment of the judgment amount of \$350,000 is an irrevocable transfer for the purposes of settlement between Plaintiff and Defendants. Defendants forever disclaim all right, title, and interest in these funds. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Defendants' practices alleged in the complaint. Any funds not

used for such equitable relief shall be deposited to the Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Paragraph.

D. Upon receipt of the report referenced in Paragraph (B) (4) of this Part, the Commission shall have full and sole discretion to determine whether any money remaining in the redress fund shall be given to consumers or paid to the United States Treasury;

E. After payment in full to the Claims Administrator of its costs, any money remaining in the administrative fund ninety (90) days after disbursement of all checks shall be repaid to Defendants; and

F. Upon entry of this Order, any monies that are subject to the asset freeze of March 21, 2001, in excess of the amounts required by this Part shall be released to Defendants, and the asset freeze in all other respects shall be terminated.

VII.

RIGHT TO REOPEN

IT IS FURTHER ORDERED that the Commission's approval of this Order is expressly premised upon the truthfulness, accuracy, and completeness of the financial information provided to the FTC by Defendants on February 23, 2001 and July 2, 2001. If, at any time following entry of this Order, the Commission obtains

information indicating that the above-referenced financial information contains any material misrepresentation or omission concerning Defendants' assets, income, liabilities, or net worth, the Commission may, upon motion to the Court, request that the Order herein be reopened for the purpose of requiring additional consumer redress; provided, however, that in all other respects this Order shall remain in full force and effect unless otherwise ordered by this Court; and provided further, that proceedings instituted under this Part are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law.

GENERAL REQUIREMENTS

VIII.

RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, in connection with any business engaged in the advertising, promotion, offering for sale, sale or provision of any goods or services relating to domain names, web hosting, or email to any consumer in the United States, or in assisting others engaged in such business, Defendants, for a period of four (4) years from the date of entry of this Order, are hereby restrained and enjoined from failing to create, and from failing to retain, for a period of four (4) years following the date of such creation unless otherwise specified, the following:

A. Books, records and accounts that, in reasonable detail, accurately and fairly reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable. The businesses subject to this Paragraph shall retain such records for any terminated employee for a period of two (2) years following the date of termination;

C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

D. Records that contain or reflect, for every consumer complaint or refund request, whether received directly or indirectly or through any third party:

1. The consumer's name, address, telephone number and the dollar amount paid by the consumer;
2. The written complaint or refund request, if any, and the date of the complaint or refund request;

3. The basis of the complaint, including the name of any salesperson complained against, and the nature and result of any investigation conducted concerning any complaint;
4. Each response and the date of the response;
5. Any final resolution and the date of the resolution; and
6. In the event of a denial of a refund request, the reason for the denial; and

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized; provided that copies of all sales scripts, training materials, advertisements, or other marketing materials utilized shall be retained for three (3) years after the last date of dissemination of any such materials.

IX.

COMPLIANCE REPORTING BY DEFENDANTS

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

A. For a period of four (4) years from the date of entry of this Order, Defendants shall notify the Commission of the following:

1. Any changes in the individual Defendant's residence, mailing addresses, and telephone numbers, within thirty (30) days of the date of such change;
2. Any changes in the individual Defendant's employment status (including self-employment) within thirty (30) days of such change. Such notice shall include the name and address of each business with which the individual Defendant is affiliated, or by which the individual Defendant is employed, a statement of the nature of the business, and a statement of the individual Defendant's duties and responsibilities in connection with the business or employment; and
3. In connection with any business engaged in the advertising, promotion, offering for sale, sale or provision of any goods or services relating to domain names, web hosting, or email, or in assisting others engaged in such business, any proposed change in the corporate structure of any corporate Defendant, or any proposed change in the structure of any business entity owned or controlled by the individual Defendant, such as creation, incorporation, dissolution, assignment,

sale, merger, creation, dissolution of subsidiaries, proposed filing of a bankruptcy petition, or change in the corporate name or address, or any other change that may affect compliance obligations arising out of this Order, thirty (30) days prior to the effective date of any proposed change; *provided, however,* that, with respect to any proposed change in the corporation about which any Defendant learns less than thirty (30) days prior to the date such action is to take place, such Defendant shall notify the Commission as soon as is practicable after learning of such proposed change;

B. One hundred eighty (180) days after the date of entry of this Order, Defendants shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which Defendants have complied and are complying with this Order. This report shall include, but not be limited to:

1. The individual Defendant's then current residence address and telephone number;
2. The individual Defendant's then current employment, business addresses and telephone numbers, a description of the business activities

of each such employer, and the individual Defendant's title and responsibilities for each employer;

3. A copy of each acknowledgment of receipt of this Order obtained by Defendants pursuant to Part XII;
4. A statement describing the manner in which each such Defendant has complied and is complying with
 - (a) the injunctive provisions of this Order, and
 - (b) the consumer redress provisions of this Order;

C. Upon reasonable written request by a representative of the Commission, and for a period of four (4) years from the date of entry of this Order, each Defendant shall submit additional written reports (under oath, if requested) and produce documents on thirty (30) days' notice with respect to Parts I, III, IV, VIII, and XII of this Order.

D. For the purposes of this Order:

1. Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director
Division of Marketing Practices
Federal Trade Commission, Room 238
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Re: FTC v. 1268957 Ontario Inc.; and

2. Plaintiff shall, unless otherwise directed by the Defendants' authorized representatives, mail all written notifications to the Defendants to:

William B. Schultz, Esquire
Zuckerman Spaeder LLP
1201 Connecticut Avenue, N.W.
Washington, DC 20036
Re: FTC v. 1268957 Ontario Inc.

E. For the purposes of this Part, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" includes any individual or entity for whom any Defendant performs services as an employee, consultant, or independent contractor; and

F. For purposes of the compliance reporting required by this Part, the Commission is authorized to communicate directly with Defendants if it is unable to reach counsel for Defendants within a reasonable amount of time.

X.

COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that the Commission is authorized to monitor Defendants' compliance with this Order by all lawful means, including but not limited to the following means:

A. The Commission is authorized to use representatives posing as consumers or suppliers to Defendants, Defendants' employees, or any other entity managed or controlled in whole or

in part by any Defendant, without the necessity of identification or prior notice; and

B. Nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether Defendants have violated any provision of this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

XI.

ACCESS TO BUSINESS PREMISES

IT IS FURTHER ORDERED that, for a period of four (4) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, Defendants shall permit representatives of the Commission, within five (5) business days of receipt of written notice from the Commission:

A. Reasonable access during normal business hours to any office, or facility storing documents, of any business (1) where any Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and (2) where the business is engaged in the advertising, promotion, offering for sale, sale or provision of any goods or services relating to domain names, web hosting, or email, or in assisting others engaged in such business. In providing such access, Defendants shall permit representatives of the Commission to inspect and to

copy all documents relevant to any matter contained in this Order; and

B. To interview the officers, directors, and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which Paragraph (A) of this Part applies, concerning matters relating to compliance with the terms of this Order. The person interviewed may have counsel present.

XII.

DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, for a period of four (4) years from the date of entry of this Order, Defendants shall:

A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, each officer or director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such persons, for any business (1) where any defendant is the majority owner of the business or directly or indirectly manages or controls the business, and (2) where the business is engaged in the

advertising, promotion, offering for sale, sale, or provision of any goods or services relating to domain names, web hosting, or email, or in assisting others engaged in such business; and

B. Maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Order, as required in Paragraph (A) of this Part.

XIII.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that within five (5) business days after receipt by Defendants of this Order as entered by the Court, Defendants shall submit to the Commission a truthful sworn statement, in the form shown on Attachment B, that shall acknowledge receipt of this Order.

XIV.

IT IS FURTHER ORDERED that:

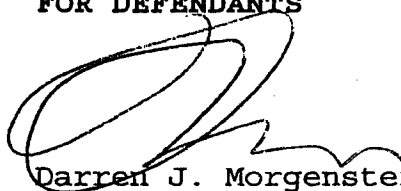
A. This Court will retain jurisdiction of this matter for the purpose of enabling any of the parties to this Order to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or

modification of this Order, for the enforcement of compliance therewith or for the punishment of violations thereof; and

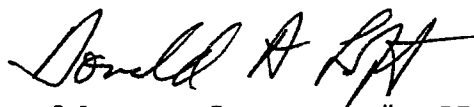
B. This Order supersedes and replaces in its entirety the Consent Order for Preliminary Injunction dated March 21, 2001.

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

FOR DEFENDANTS



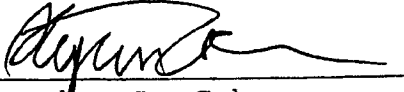
Darren J. Morgenstern,
Individually and as president of
1268957 Ontario Inc. and 1371772 Ontario Inc.



Donald A. Loft - Bar # 455706
Morris, Manning & Martin LLP
1600 Atlanta Financial Center
3343 Peachtree Rd., N.E.
Atlanta, GA 30326-1044
404-504-7755 (phone); 404-365-9522 (fax)

William B. Schultz
Mary I. Peters
Zuckerman Spaeder LLP
1201 Connecticut Ave., N.W.
Washington, D.C. 20036
202-778-1800 (phone); 202-822-8106 (fax)

FOR THE FEDERAL TRADE COMMISSION



Stephen L. Cohen
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
202-326-3222 (phone); 202-326-3295 (fax)

SO ORDERED, this 29 day of March, 2002, at ____ .m.



Julie E. Carnes
United States District Judge
Northern District of Georgia
Atlanta Division

3/29/02
K. S. [unclear]

ATTACHMENT A

REFUND NOTICE

Date

Name
Address

RE: [domain names and extensions]

Dear [Name]:

In February 2001, the Federal Trade Commission sued National Domain Name Registry, Electronic Domain Name Monitoring, and Corporate Domain Name Monitoring (collectively "NDNR"), alleging that they had misled consumers into believing that an undisclosed third party had applied for or was attempting to register a domain name similar to one already owned by the consumer. NDNR did not admit any wrongdoing but has agreed to settle this case with the FTC on terms that include partial restitution on a *pro rata* basis as reflected by the enclosed check to each consumer who purchased domain names from NDNR from March 1, 2000, to March 21, 2001.

The domain names you have registered with NDNR will remain in full force and effect. Cashing the enclosed check will not affect your domain registration. If you would like to make any changes to your registration, please contact NDNR at [address].

Should you have any questions concerning this refund program, please contact CMA Business Credit Services by email at [email address] or by telephone at [phone #]. If you would like more information about this matter, you may refer to [insert webpage for FTC press release on settlement].

THIS CHECK MUST BE CASHED WITHIN 90 DAYS OF RECEIPT.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

1268957 ONTARIO INC., et al.,

Defendants.

Civil Action No. 01-
CV-0423-JEC

AFFIDAVIT OF DARREN
J. MORGENSTERN

Darren J. Morgenstern, being duly sworn, hereby states and affirms as follows:

1. My name is Darren J. Morgenstern. My current residence address is

_____. I am a citizen of Canada and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am a defendant in Federal Trade Commission v. 1268957 Ontario Inc. et al. (United States District Court for the Northern District of Georgia).

3. On [date], I received a copy of the Consent Decree, which was signed by the Honorable Julie E. Carnes, and entered by the Court on [date of entry of Order]. A true and correct copy of the Order I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on [date]; at [city and province].

Darren J. Morgenstern

Province of _____, City of _____

Subscribed and sworn to before me
this _____ day of _____, 2002.

Notary Public
My Commission Expires:

CERTIFICATE OF SERVICE

I, Stephen L. Cohen, certify as follows: I am employed as an attorney by the Federal Trade Commission, Washington, D.C. I am not a party to this action. On March 22, 2002, I mailed a copy of the attached Stipulated Final Order For Permanent Injunction And Consumer Redress to counsel for defendants:

Donald A. Loft, Esq.
Morris, Manning & Martin LLP
1600 Atlanta Financial Center
3343 Peachtree Rd., N.E.
Atlanta, GA 30326-1044

William B. Schultz, Esq.
Mary I. Peters, Esq.
Zuckerman Spaeder LLP
1201 Connecticut Avenue, N.W.
Washington, D.C. 20036

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 22, 2002.



Stephen L. Cohen