

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

_____)
FEDERAL TRADE COMMISSION,)

Plaintiff,)

v.)

BRIAN D. WESTBY, MARTIJN P.)
BEVELANDER, and MAPS HOLDING B.V.)

Defendants.)
_____)

Case No. 03 C 2540

Judge James B. Zagel

Magistrate Judge Arlander Key

**STIPULATED FINAL JUDGMENT AND
ORDER FOR PERMANENT INJUNCTION**

Plaintiff Federal Trade Commission (“Commission” or “FTC”) filed its complaint in this action pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b). The Commission and Defendants, as hereinafter defined, hereby stipulate to the entry of and request the Court to enter this Stipulated Final Judgment and Order for Permanent Injunction (“Order”) to resolve all matters of dispute between them in this action.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and over the parties consenting hereto.
2. Venue is proper as to all parties in the Northern District of Illinois under 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. § 53(b).
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 Section 5 of the Federal Trade Commission Act (the “FTC Act”), 15 U.S.C. § 45(a).

5. Defendants have entered into this Order freely and without coercion. Defendants further acknowledge that they have read the provisions of the Order and are prepared to abide by them.

6. The Plaintiff and Defendants, by and through 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. Defendants waive all rights to seek judicial 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, representatives or agents.

8. Defendants agree that this Order does not entitle Defendants to seek or to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, and Defendants further waive any rights to attorneys' fees that may arise under said provision of law.

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

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

11. This Order does not constitute, and shall not be interpreted to constitute, an admission by Defendants or a finding by the Court that Defendants have engaged in any violations of law.

DEFINITIONS

1. **"Defendants"** means Brian D. Westby, Martijn P. Bevelander and Maps Holding B.V., individually, and/or as officers of Maps Holding B.V.

2. **"Plaintiff"** means the Federal Trade Commission ("Commission").

3. **"Document"** is synonymous in meaning and equal in scope to the term, as defined 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 this term.

4. **“Asset” or “Assets”** means any legal or equitable interest in, right to, or claim to, any real and/or personal property, including without limitation, chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash, wherever located.

5. **“Material”** means likely to affect a person’s choice of, or conduct regarding, goods or services.

6. **“Person”** means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

7. **“Spoofing”** means the practice of disguising a commercial e-mail to make the e-mail appear to come from an address from which it actually did not originate. Spoofing involves placing in the “From” or “Reply-to” lines, or in other portions of e-mail messages, an e-mail address other than the actual sender’s address, without the consent or authorization of the user of the e-mail address whose address is spoofed.

8. **“Unsolicited commercial e-mail”** means an electronic mail message that consists of or contains a communication advertising, promoting, soliciting, offering, or offering to sell any product or service, and that is not requested by the addressee or recipient or sent pursuant to a pre-existing business or personal relationship between the sender and the addressee or recipient of the e-mail.

9. **“Assisting and facilitating”** means providing substantial assistance or support to any third party, where the party knows or has reason to believe, that the third party is engaged in any practice that violates the FTC Act.

I. INJUNCTION AGAINST MISPRESENTATIONS

IT IS THEREFORE ORDERED that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, in connection with the marketing, advertising, promotion, offering for sale, sale, or provision of any good or service, are hereby permanently restrained and enjoined from:

- A. Misrepresenting, either orally or in writing, directly or by implication:
 - 1. that the subject line of an unsolicited commercial e-mail relates to the contents of the underlying e-mail message;
 - 2. that the e-mail address of a recipient of an unsolicited commercial e-mail will, upon request, be removed from any lists of addresses to which future e-mail solicitations will be sent;
 - 3. the nature, subject or source of an unsolicited commercial e-mail; or
 - 4. the nature of any product or service offered or sold.
- B. Assisting and facilitating others who violate any provision of Paragraph A of this Section.

II. INJUNCTION AGAINST SPOOFING

IT IS FURTHER ORDERED that in connection with the advertising, promotion, offering or sale of goods or services in commerce, Defendants are hereby restrained and enjoined from the practice of “spoofing” or assisting and facilitating the practice of spoofing.

III. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment in the amount of \$87,500 is hereby entered against Defendant Brian D. Westby and satisfied by payment to be made in accordance with Paragraphs C and D of this Section.

B. Judgment in the amount of \$25,000 is hereby entered against Defendants Martijn P. Bevelander and Maps Holding B.V., jointly and severally. This judgment is satisfied by payment to be made in accordance with Paragraphs C and D of this Section.

C. The payments required in this Section shall be made as follows:

1. Within ten (10) business days of executing this Order, Defendant Brian D. Westby shall wire transfer to the law firm of Klein, Zelman, Rothermel & Dichter LLP \$87,500 to be deposited into a non-interest bearing escrow account established by the law firm of Klein, Zelman, Rothermel & Dichter LLP for the purpose of receiving payments due under the provisions of this Order;

2. Within ten (10) business days of executing this Order, Defendants Martijn P. Bevelander and Maps Holding shall wire transfer to the Commission a total of \$25,000 to be deposited into a non-interest bearing escrow account established by the Commission for the purpose of receiving payments due under the provisions of this Order. Wire transfers made pursuant to this paragraph shall be made in accordance with instructions provided by the Commission.

3. Interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on any unpaid balance.

D. By signing this Order, Defendants relinquish all dominion, control and title to the monies transferred to the FTC pursuant to this Section, and agree that all legal and equitable title to those monies is vested in the Commission, for use according to the terms of this Order, *provided that*, in the event this Order is not approved by the Commission or the Court, all monies shall be returned to Defendants;

E. Nothing herein should be deemed or construed to prevent the Commission from initiating any appropriate proceeding or proceedings to enforce the provisions of this Order.

IV. COMMISSION'S USE OF MONETARY JUDGMENT

IT IS FURTHER ORDERED that all funds paid pursuant to Section III of this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. 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 Defendants' practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Section.

V. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order,

A. Within fifteen (15) days of receipt of written notice from a representative of the Commission, Defendants each shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; and/or appear for deposition;

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

1. obtaining discovery from any person, without further leave of court, using the procedures proscribed by Fed. R. Civ. P. 30, 31, 33, 34, 36 and 45;
2. posing as consumers and suppliers to Defendants and Defendants' employees, or any other entity managed or controlled in whole or in part by Defendants, without the necessity of identification or prior notice;

Provided that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

C. Defendants shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

VI. 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 three (3) years from the date of entry of this Order, Defendants shall notify the Commission of the following:

1. Any changes in any Defendant's residence, mailing address, or telephone numbers, within ten (10) days of the date of such change;
2. Any changes in any Defendant's employment status (including self-employment) within ten (10) days of such change. Such notice shall include the name and address of each business that such Defendant is affiliated with or employed by, or performs services for; a statement of the nature of the business, and a statement of the Defendant's duties and responsibilities in connection with the business or employment;
3. Any changes in any Defendant's name or use of any aliases or fictitious names;
4. With respect to Maps Holding B.V., any changes in corporate structure that may affect compliance obligations arising under this Order, including but not limited to dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor

corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* 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, Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge;

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

1. Any changes required to be reported pursuant to subsection A above; and
2. A copy of each acknowledgment of receipt of this Order obtained by Defendants pursuant to Section VIII; and

C. For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Federal Trade Commission
Director, Midwest Region
55 East Monroe Street, Suite 1860
Chicago, Illinois 60603
Re: FTC v. Westby, et al.;

D. For purposes of the compliance reporting required by this Section, the Commission is authorized to communicate directly with Defendants, unless represented by counsel.

VII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of this Order, in connection with any business where Brian D. Westby or Martijn P. Bevelander is the majority owner of the business or directly or indirectly manages or controls the business, Defendants and their agents, officers, corporations, successors, and assigns, 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 create and retain the following records:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

C. Customer files containing the names, addresses, telephone 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. Complaint and refund requests (whether received directly, indirectly or through any third party), and any responses to those complaints or refund requests; and

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials.

VIII. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order,

A. Defendant Maps Holding B.V. shall deliver a copy of this Order to all principals, officers, directors, managers, agents, and representatives having responsibilities with respect to the subject matter of this Order, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. Defendant Maps Holding B.V. shall deliver the copy of the Order to current personnel within thirty (30) days after the date of service of this Order, and to new personnel within thirty (30) days after the person assumes such position or responsibilities.

B. Defendants Brian D. Westby and Martijn P. Bevelander shall deliver a copy of this Order to the principals, officers, directors, and managers for any business that (a) employs or

contracts for personal services from Defendants Brian D. Westby or Martijn P. Bevelander and (b) has responsibilities with respect to the subject matter of this Order. Defendants Brian D. Westby and Martijn P. Bevelander shall secure from each such person a signed and dated statement acknowledging receipt of this Order within thirty (30) days after the date of service of the Order or the commencement of the employment relationship.

IX. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that each Defendant, within five (5) business days after receipt by this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

X. MONITORING COMPLIANCE OF SALES PERSONNEL

IT IS FURTHER ORDERED that Defendants, in connection with any business where Brian D. Westby or Martijn P. Bevelander is the majority owner of the business or directly or indirectly manages or controls the business, is hereby permanently restrained and enjoined from:

A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Sections I and II of this Order;

B. Failing to investigate promptly and fully any consumer complaint received by any business to which this Section applies; and

C. Failing to take corrective action with respect to any sales person whom Defendant Brian D. Westby or Martijn P. Bevelander determines is not complying with this Order, which may include training, disciplining, and/or terminating such sales person.

XI. PROHIBITIONS INVOLVING CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendants are hereby restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any

person who submitted such information to Defendants as a result of, derived from, or otherwise related to the activities alleged to be in violation of the FTC Act in Counts I and II of the Commission's complaint, *provided, however*, that Defendants may disclose such information to a law enforcement agency, to Plaintiff, or as required by any law, regulation, or court order.

XII. FEES AND COSTS

IT IS FURTHER ORDERED that each party to this Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

XIII. ENTRY OF THIS JUDGMENT

IT IS FURTHER ORDERED that, as there is no just reason for delay of entry of this judgment, pursuant to Fed. R. Civ. P. 54(b), the Clerk shall enter this Order immediately.

XIV. RETENTION OF JURISDICTION

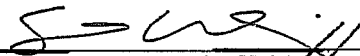
IT IS FURTHER ORDERED that this Court shall retain jurisdiction over this matter for all purposes.

The parties hereby consent to entry of the foregoing Order which shall constitute a final judgment in this action. The parties further stipulate and agree that the entry of the foregoing order shall constitute a full, complete and final settlement of this action

STIPULATED AND AGREED AS FOLLOWS:

FOR THE PLAINTIFF:

DATED: MARCH 3, 2004

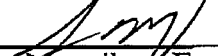


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Federal Trade Commission
55 E. Monroe St., #1860
Chicago, IL 60603
(312) 960-5630
(312) 960-5600 *facsimile*

Attorney for Plaintiff

FOR DEFENDANTS:

DATED: _____

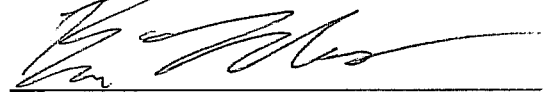


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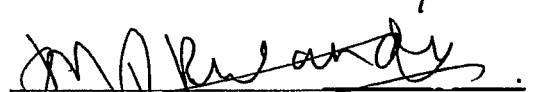
Attorneys for Defendant Brian D. Westby

DATED: NOVEMBER 4 2003



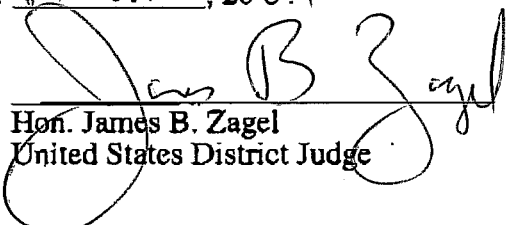
Brian D. Westby

DATED: NOVEMBER 4 2003



Martijn P. Bevelander, individually and on behalf of Maps Holding B.V.

IT IS SO ORDERED, this 4 day of March, 2004


Hon. James B. Zagel
United States District Judge