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COUNSEL/PARTIES OF RECORD	
JUL 19 2005	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY:	(gw) DEPUTY

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FEDERAL TRADE COMMISSION,
Plaintiff,
v.
3RD UNION CARD SERVICES INC., doing business as PHARMACYCARDS.COM, a Delaware Corporation, DAVID GRAHAM TURNER, individually and doing business as HELMCREST, LTD., and PHARMACYCARDS.COM, and as an officer or director of 3RD UNION CARD SERVICES and STEVE PEARSON, individually and doing business as HELMCREST, LTD., and PHARMACYCARDS.COM, and as an officer or director of 3RD UNION CARD SERVICES,
Defendants.

CV-S-04-0712-RCJ-RJJ
**(PROPOSED) DEFAULT
JUDGMENT AND ORDER
FOR PERMANENT
INJUNCTION AND FOR
MONETARY RELIEF**

26 Plaintiff, the Federal Trade Commission ("Commission"), having filed a complaint
27 under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C.

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1 § 53(b), to obtain permanent injunctive relief, rescission of contracts, restitution,
2 disgorgement, and other equitable relief for defendants' unfair acts or practices in
3 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Clerk of the Court
4 having entered defaults, and this Court having considered the pleadings, declarations,
5 exhibits, and memoranda filed by plaintiff, and now being advised in the premises,
6 pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure, makes the following
7 findings and enters the following Permanent Injunction:

8
9 **FINDINGS**

- 10 A. This Court has jurisdiction of the subject matter of this action and of the
11 parties hereto.
- 12 B. The Commission is charged, *inter alia*, with responsibility for administering
13 and enforcing Section 5 of the FTC Act, 15 U.S.C. § 45, which prohibits
14 unfair or deceptive acts or practices in or affecting commerce.
- 15 C. The activities of the defendants are in or affecting commerce, as
16 "commerce" is defined in 15 U.S.C. § 44.
- 17 D. This action was instituted by the Commission under Sections 5 and 13(b) of
18 the FTC Act, 15 U.S.C. §§ 45 and 53(b). The Commission seeks permanent
19 injunctive relief and monetary and other redress for alleged unfair acts or
20 practices by the defendants in connection with the unauthorized debiting of
21 consumers' bank accounts and credit card accounts. Pursuant to Section
22 13(b) of the FTC Act, the Commission has the authority to seek the relief it
23 has requested.
- 24 E. The complaint states a claim upon which relief may be granted against the
25 defendants under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and
26 53(b).

- 1 F. Defendant 3rd Union Card Services, Inc., was served with the complaint
2 and summons, and defendants David Graham Turner and Steve Pearson,
3 individually and doing business as HelmCrest Ltd., and
4 Pharmacards.com, and as officers or directors of 3rd Union Card
5 Services, Inc., were served with the amended complaint and summons, as
6 required by Rule 4 of the Federal Rules of Civil Procedure.
- 7 G. Defendants each failed to file an answer with the Clerk of Court within the
8 time set forth by Rule 12(a) of the Federal Rules of Civil Procedure or
9 otherwise defend this action.
- 10 H. The Clerk of this Court, pursuant to Rule 55(a) of the Federal Rules of Civil
11 Procedure, entered default against defendant 3rd Union Card Services, Inc.,
12 on October 27, 2004, and against defendants David Graham Turner and
13 Steve Pearson, individually and doing business as HelmCrest, Ltd., and
14 Pharmacards.com, and as officers or directors of 3rd Union Card
15 Services, on February 2, 2005.
- 16 I. The FTC has provided evidence, in the form of a sworn affidavit, detailing
17 the consumer injury attributable to the defendants' violations of Section
18 5(a) of the FTC Act.
- 19 J. The FTC is therefore entitled to a default judgment pursuant to Rule 55(b)
20 of the Federal Rules of Civil Procedure.
- 21 K. The Court now finds that, in connection with the unauthorized debiting of
22 consumers' bank accounts and the unauthorized charging of consumers'
23 credit card accounts, defendants have violated Section 5(a) of the FTC Act,
24 15 U.S.C. § 45(a).
- 25 L. The defendants have caused consumer injury in the amount of \$5,315,824.
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- 1 M. The defendants are likely to continue to engage in the activities alleged in
2 the Complaint unless they are prohibited from debiting consumers' bank
3 accounts or charging consumers' credit card accounts without authorization.
4 N. Plaintiff is entitled to permanent injunctive relief, consumer redress, and
5 disgorgement from the defendants in the form and amount set forth below.
6 O. Entry of this Order is in the public interest.
7

8 ORDER

9 I.

10 PROHIBITED PRACTICES

11 **IT IS THEREFORE ORDERED** that the defendants, and each of them, their
12 successors and assigns, directors, officers, agents, servants, employees, salespersons,
13 independent contractors, corporations, subsidiaries, affiliates, and other persons directly
14 or indirectly under their control or in active concert or participation with them who
15 receive actual notice of this Order by personal service, facsimile or otherwise, whether
16 acting directly or through any corporation, subsidiary, division, or other device, are
17 hereby permanently restrained and enjoined from:

- 18 A. Accessing or attempting to access any consumer's account at any financial
19 institution;
- 20 B. Debiting or attempting to debit, or charging or attempting to charge, any
21 consumer's bank or credit card account maintained by any financial
22 institution; and
- 23 C. Making any false representation to any payment processor regarding any
24 consumer's authorization to process a charge or debit against his or her
25 credit card or bank account, expressly or by implication, orally or in writing.
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1 **II.**

2 **DISCLOSURE OF CONSUMER LISTS**

3 **IT IS FURTHER ORDERED** that the defendants, and each of them, their
4 successors and assigns, directors, officers, agents, servants, employees, salespersons,
5 independent contractors, corporations, subsidiaries, affiliates and other persons directly or
6 indirectly under their control or in active concert or participation with them who receive
7 actual notice of this Order by personal service, facsimile or otherwise, whether acting
8 directly or through any corporation, subsidiary, division, or other device, are hereby
9 permanently restrained and enjoined from selling, renting, leasing, transferring, or
10 otherwise disclosing the name, address, telephone number, credit card number, bank
11 account number, e-mail address, or other identifying information of any U.S. consumer,
12 except that defendants may disclose such identifying information to a law enforcement
13 agency or as required by any law, regulation, or court order.

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15 **III.**

16 **CONSUMER REDRESS**

17 **IT IS FURTHER ORDERED** that:

- 18 A. Judgment is entered in favor of the FTC and against the defendants in the
19 amount of \$5,315,824; and
- 20 B. Assets received by the FTC pursuant to Section III.A and B shall be used to
21 provide redress to consumers who were injured by defendants' practices as
22 described above and to pay any attendant expenses of administration. If the
23 Commission determines, in its sole discretion, that redress to consumers is
24 wholly or partially impracticable, any funds not so used shall be deposited
25 into the United States Treasury.

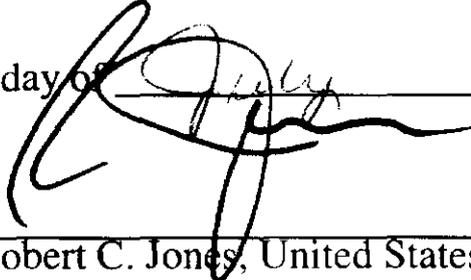
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IV.

JURISDICTION

IT IS FURTHER ORDERED that this Court shall 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 the punishment of violations thereof.

SO ORDERED, this 15 day of July, 2005.



Robert C. Jones, United States District Judge

Presented by:



Tracy S. Thorleifson
Mary T. Benfield
Attorneys For Plaintiff
Federal Trade Commission

Date: July 8, 2005

1 **CERTIFICATE OF SERVICE**

2 I, Gerald Fondow, am a citizen of the United States, over the age of eighteen years.
3 I am an employee of the Federal Trade Commission. My business address is 915 Second
4 Avenue, Suite 2896, Seattle, WA 98174. On October 27, 2004 and February 2, 2005, the
5 clerk entered default against the named defendants, so I did not attempt service on them.

6 On 8 July, 2005, I served copies of the foregoing document by
7 sending it, by facsimile and first class mail, to:

- 8 1. Susan E. Flint, Managing Counsel, Wells Fargo Bank, Law Department,
9 MAC: N9305-176, 1700 Wells Fargo Center, 6th and Marquette Avenue,
10 Minneapolis, MN 55479, (612) 667-5098 (facsimile);
11 2. Local Counsel for Wells Fargo, Kent F. Larsen, Smith Larsen & Wixom,
12 Hills Center Business Park, 1935 Village Center Circle, Las Vegas, NV
13 89134, (702) 252-5002, (702) 252-5006 (facsimile);
14 3. Counsel for InterBill, Ltd., and Thomas Wells: Lawrence Semenza,
15 Semenza Law Firm, 3027 East Sunset Road, # 106, Las Vegas, NV
16 89120-2758, (702) 263-3539 (facsimile);
17 4. John F. Haussner, C.F.O, Electronic Funds Transfer Corporation, 245 Saw
18 Mill River Road, Suite 105, Hawthorne, NY (914) 747-3222 (facsimile);
19 5. Paul G. Hook, Alliance Payment Technologies, Inc., 302 S. Milliken
20 Avenue, Suite G-1, Ontario, CA 91761, (909) 974-0110 (facsimile); and
21 6. Counsel for Matt Jackson: Paul N. Jacobs, Jacobs & Dodds, 881 Dover
22 Drive, Suite 285, Newport Beach, CA 92663-5962, (949) 645-7305
23 (facsimile).

24 I declare under penalty of perjury that the foregoing is true and correct.

25 Executed this 8th day of July 2005.

26
27 
28 Gerald Fondow