

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

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FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DATATECH COMMUNICATIONS, INC.,  
a corporation, *et al.*

Defendants.

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) Civil No. 03 C 6249  
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) Judge Joan H. Lefkow  
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) Magistrate Judge Nan R. Nolan  
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~~**[PROPOSED]**~~  
**FINAL JUDGMENT AND ORDER FOR PERMANENT  
INJUNCTION AGAINST DEFENDANT ROBERT BREWER**

Plaintiff Federal Trade Commission ("FTC" or "Commission"), pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), filed its Complaint for injunctive and other equitable relief, alleging that Datatech Communications, Inc., 9102-3127 Quebec Inc., d/b/a I-Point Media, Elias Bakomichalis, Gregory MacNeil, and Robert Brewer, engaged in deceptive acts and practices in connection with the offering for sale, sale, or distribution of business directories, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

Defendant Brewer was personally served with the Summons and Complaint in this matter on September 10, 2003. Defendant Brewer subsequently appeared before the Court through counsel. Although Defendant Brewer filed an Answer to the Commission's Complaint on October 24, 2003, since then he has failed to plead or otherwise defend this action. Defendant Brewer was personally served with the FTC's discovery requests. The FTC propounded

discovery to Defendant Brewer, including requests for production of documents, requests for admissions, and interrogatories, to which the Defendant did not respond. The Commission filed a Motion to Compel Answers to Discovery, which the Court granted on May 17, 2005, and gave Defendant Brewer fourteen days to respond to the outstanding discovery requests. Defendant Brewer was personally served with notice of the Court's order that he respond to the FTC's discovery requests. However, Defendant Brewer failed to comply with the Court's order. On June 30, 2005, the Court entered an Order of Default against Defendant Brewer as a discovery sanction under Fed. R. Civ. P. 37(d).

The Commission now seeks the entry of a default judgment against Defendant Brewer pursuant to Fed. R. Civ. P. 55(b)(2). Having considered the memorandum and exhibits filed in support of the Commission's motion and the entire record in this matter, and now being fully advised in the premises, the Court hereby grants the Commission's motion for a default judgment.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

**FINDINGS OF FACT**

1. This is an action by the Commission instituted under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. § § 45(a) and 53(b). The Complaint seeks permanent injunctive relief against Defendant Robert Brewer and others in connection with the advertising, promotion, offering for sale, sale, or distribution of business directories and listings, and seeks equitable monetary relief in the form of consumer restitution and/or disgorgement. Pursuant to these sections of the FTC Act, the Commission has the authority to seek the relief contained herein.

2. This Court has jurisdiction over the subject matter of this case and over all of the parties hereto. Venue in the Northern District of Illinois is proper.

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

4. The alleged practices of the Defendant Brewer are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

5. Defendant Brewer was personally served with process in this matter on September 10, 2003, and thereafter appeared before the Court through his counsel of record.

6. On June 30, 2005, the Court entered an Order of Default against Defendant Brewer as a discovery sanction under Fed. R. Civ. P. 37(d). The order of default was justified by Defendant Brewer's failure to make any response to the Commission's requests to admit, request for production of documents, and interrogatories, and his failure to otherwise plead or defend this action.

7. The Commission has made diligent attempts to serve Defendant Brewer with written notice of the FTC's application for the entry of a default judgment in accordance with Fed. R. Civ. P. 55(b)(2).

8. The factual allegations in the Commission's Complaint are taken as true against Defendant Brewer. Those allegations and the evidence supporting them establish that Defendant Brewer has violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

9. Defendant Brewer is likely to continue to engage in the acts and practices alleged in the Complaint unless he is permanently enjoined from such acts and practices.

10. The Commission is entitled to equitable monetary relief against Defendant Brewer in the amount of \$8,986,759 (USD), for which the Defendants are jointly and severally liable.

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

12. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of this Order are binding on Defendant Brewer, his officers, agents, servants, employees, corporations, successors and assigns, and upon those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise.

### **DEFINITIONS**

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

1. **“Plaintiff”** means the Federal Trade Commission.
2. **“Defendant”** means Robert Brewer, individually and as an officer and director of Datatech Communications, Inc., and 9102-3127 Quebec Inc., d/b/a I-Point Media.
3. **“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.
4. **“Material”** means likely to affect a person’s choice of, or conduct regarding, goods or services.
5. **“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.

6. **“Consumer”** includes any individual, group, unincorporated association, limited or general partnership, corporation or other business entity.

7. **“Customer”** means any person who has paid, or may be required to pay, for goods or services offered for sale or sold by the Defendant.

8. **“Assisting others”** means providing substantial assistance or support to any person. For purposes of this Order, providing substantial assistance or support includes, but is not limited to: (a) preparing, printing, or transmitting invoices; (b) recording or verifying sales solicitations; (c) performing customer service functions including, but not limited to, receiving or responding to consumer complaints, obtaining or receiving identifying and/or financial information from consumers, and communicating with consumers on behalf of a seller or telemarketer; (d) developing, providing, or arranging for the development or provision of sales scripts or any other marketing material; (e) verifying, processing, fulfilling, or arranging for the fulfillment of orders; (f) developing, providing, or arranging for the provision of names of potential customers; (g) collecting or arranging for the collection of accounts receivable or other amounts owed; (h) providing or arranging for the provision of post office boxes or commercial mail receiving agencies; or (i) performing or providing marketing services of any kind.

9. **“Telemarketing”** means any business activity (including, but not limited to, initiating or receiving telephone calls, managing others who initiate or receive telephone calls, operating an enterprise that initiates or receives telephone calls, owning an enterprise that initiates or receives telephone calls, or otherwise participating as an officer, director, employee, or independent contractor in an enterprise that initiates or receives telephone calls) that involves attempts to induce consumers to purchase any item, good, service, membership, partnership

interest, trust interest, or other beneficial interest, or to enter a contest for a prize, by means of telephone sales presentations, either exclusively or in conjunction with the use of other forms of telemarketing. *Provided, however,* that the term “telemarketing” shall not include transactions that are not completed until after a face-to-face contact between the seller or solicitor and the consumer solicited.

10. **“Document”** is synonymous in meaning and equal in scope to the term, as defined in Federal Rule of Civil Procedure 34(a), and includes any written, typed, printed, transcribed, taped, recorded, filmed punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including, but not limited to, any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, audio and video recordings, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book, electronic mail, copies of checks (front and back), complaints, airbills, and computer material (including print-outs, cards, magnetic or electronic tapes, discs and such codes or instructions as will transform such computer materials into easily understandable form). A draft or non-identical copy is a separate document within the meaning of this term.

11. **“Financial Institution”** means any bank, savings and loan institution, credit union, or any financial depository of any kind, including, but not limited to, any brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading company, or precious metal dealer.

## **ORDER**

### **I.**

#### **PERMANENT BAN**

**IT IS THEREFORE ORDERED** that Defendant Brewer, individually and as an officer and director of the corporate defendants, whether directly or indirectly, in concert with others, or through any corporation, intermediary, third party, business entity, device, or person under his control, is hereby permanently restrained and enjoined from engaging in, participating in, or assisting others who engage or participate in, the advertising, marketing, promoting, telemarketing, offering for sale, sale, or distribution of any type of business directory or directory listing, in any format, including, but not limited to, print media, CD-ROM, DVD, e-mail, or disseminated over the Internet.

### **II.**

#### **PROHIBITED BUSINESS ACTIVITIES**

**IT IS FURTHER ORDERED** that Defendant Brewer, and his 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 him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any person, trust, corporation, subsidiary, division, or other device, or any of them, in connection with the advertising, promoting, telemarketing, offering for sale, sale, or provision of any good or service, is hereby permanently restrained and enjoined from:

A. Making, or assisting others in making, any express or implied representation or omission of material fact that is false or misleading, in any manner, to any consumer or entity, including, but not limited to, any false or misleading statement:

1. That consumers have a preexisting or other type of relationship with any person or entity that offers a good or service;
2. That consumers are being called to renew a good or service, or any other false or misleading statement concerning the purpose of any communication with consumers;
3. That consumers have a right to cancel a good or service without financial obligation; and
4. That consumers purchased goods or services that were shipped and/or billed to them.

B. Failing to disclose in outbound telephone calls to consumers, promptly and in a clear and conspicuous manner: (1) the identity of the seller; (2) that the purpose of the call is to sell goods or services; and, (3) the nature of the goods or services.

### **III.**

#### **MONETARY JUDGMENT**

**IT IS FURTHER ORDERED** that:

A. Judgment is hereby entered against Defendant Brewer, jointly and severally, in the amount of eight million nine hundred eighty-six thousand seven hundred fifty-nine dollars (\$8,986,759) in United States currency. This amount shall become immediately due and payable by Defendant Brewer upon entry of this Order, and interest computed at the rate prescribed under



28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance.

Defendant Brewer shall pay the amount due to the Commission in United States funds by certified or cashier's check, made payable to the Federal Trade Commission, and delivered to the Regional Director, Federal Trade Commission, 55 East Monroe Street, Suite 1860, Chicago, Illinois 60603;

B. The funds paid by Defendant Brewer pursuant to 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 the Defendant's practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Department of Treasury as disgorgement. Defendant Brewer shall have no right to challenge the Commission's choice of remedies under this Section. The Commission, in its sole discretion, may use a designated agent to administer redress;

C. The judgment entered pursuant to Subsection A of this Section for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.

#### IV.

#### **DISCLOSURE OF CUSTOMER INFORMATION**

**IT IS FURTHER ORDERED** that Defendant Brewer, and his 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 him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any person, trust, corporation, subsidiary, division, or other device, or any of them, is permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, social security number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to or received any goods or services from the Defendant, or whose identifying information was obtained for the purpose of soliciting them to pay money to or receive goods or services from Defendant Brewer at any time prior to the date this Order is entered, in connection with the sale or rendition of the products, programs, or services referenced in the Complaint. *Provided, however,* that Defendant Brewer, his successors, assigns, officers, agents, servants, employees, and all other persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any person, trust, corporation, subsidiary, division, or other device, may provide such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

**V.**

**SUSPEND COLLECTION ON ACCOUNTS**

**IT IS FURTHER ORDERED** that Defendant Brewer is hereby permanently enjoined and restrained from collecting or attempting to collect payment for any business directory and/or listings in any business directory, directly or through any third party, on any account established prior to entry of this Order.

**VI.**

**ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**

**IT IS FURTHER ORDERED** that Defendant Brewer, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement, in the form shown on **Attachment A** to this Order, acknowledging receipt of this Order.

**VII.**

**COMPLIANCE MONITORING**

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

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendant Robert Brewer, shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such Defendant's possession or direct or indirect control to inspect the business operation.

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 prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;

2. Posing as consumers or suppliers to: Defendant Robert Brewer, said Defendant's employees, or any other entity managed or controlled in whole or in part by Defendant Robert Brewer, without the necessity of identification or prior notice;

C. Defendant Robert Brewer 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.

*Provided, however,* 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)).

## VIII.

### **COMPLIANCE REPORTING BY DEFENDANT**

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

A. For a period of five (5) years from the date of entry of this Order,

1. Defendant Robert Brewer, shall notify the Commission of the following:

- a. Any changes in residence, mailing addresses, and telephone numbers of Robert Brewer, within thirty (30) days of the date of such change;
- b. Any changes in employment status (including self-employment) of Robert Brewer, within thirty (30) days of the date of such change. Such notice shall include the name, address, and telephone number, of each business that Robert Brewer is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of Robert Brewer's duties and responsibilities in connection with the business;
- c. Any changes in Robert Brewer's name or use of any aliases or fictitious names; and
- d. Any businesses in which Robert Brewer possesses an ownership interest of more than five percent (5 %), or directly or indirectly manages or controls the business, including the name, address, telephone number, and all places where the business is incorporated and/or registered;

2. Defendant Robert Brewer shall notify the Commission of any changes in corporate structure of Datatech Communications, Inc., and 9102-3127 Quebec Inc., d/b/a I-Point Media, or any business entity that Robert Brewer directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including, but not limited to, a 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 the 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, Defendant Robert Brewer shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Order. This report shall include, but not be limited to:

1. The then current residence address, mailing address, and telephone numbers of Robert Brewer;
2. The then current employment and business addresses and telephone numbers of Robert Brewer, a description of the business activities of each such employer or business, and the title and responsibilities of Robert Brewer, for each such employer or business;
3. Any other changes required to be reported under subparagraph A of this Section; and
4. A copy of each acknowledgment of this Order, obtained pursuant to Section IX of this Order.

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

Director  
Federal Trade Commission, Midwest Region  
55 East Monroe Street, Suite 1860  
Chicago, Illinois 60603

D. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with the Defendant.

**IX.**

**DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Order, Defendant Brewer shall deliver copies of the Order as directed below:

A. Defendant Brewer must deliver a copy of this Order to all of his principals, officers, directors, managers, employees, agents, and representatives who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to the employees assuming their responsibilities.

B. For any business that Defendant Brewer controls, directly or indirectly, or in which Defendant Brewer has a majority ownership interest, said Defendant must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Defendant Brewer must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

C. For any business where Defendant Brewer is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, said

Defendant must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

D. Defendant Brewer must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

**X.**

**RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry of this Order, in connection with any business where Defendant Brewer possesses a majority ownership interest, or directly or indirectly control the business, Defendant and his agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, are hereby permanently 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. Personnel 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, account 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. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or refund requests;

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

F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including, but not limited to, copies of acknowledgments of receipt of this Order, required by Section IX, and all reports submitted to the FTC pursuant to Section VIII of this Order.

## **XI.**

### **RELEASE FROM DUTY TO WITHHOLD MAIL**

#### **IT IS FURTHER ORDERED that:**

A. All commercial mail receiving and/or forwarding agencies, commercial freight holding and/or forwarding agencies, customs brokers, or other parties holding or receiving mail and/or freight on behalf of the Defendant, including A.N. Deringer, Inc., #8 12<sup>th</sup> Street, Blaine, Washington 98230 and Touchpoint Logistics, 1925 Holmes Road, Suite 200, Elgin, Illinois 60123, are immediately released from their duty, pursuant to Section VII of the Stipulated Preliminary Injunction Order, to forward the Defendant's mail to the Commission.

B. The Commission is authorized to retain, open, or dispose of any such mail forwarded to it as the FTC deems appropriate. Defendant Brewer shall have no right to challenge the FTC's actions under this Section.

**XII.**

**DISSOLUTION OF ASSET FREEZE**

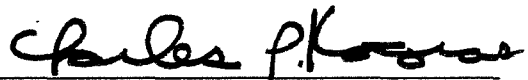
**IT IS FURTHER ORDERED** that upon payment to the Commission of the total amount required by Section III of this Order, the freeze against Defendant Brewer's assets pursuant to Section II of the Stipulated Preliminary Injunction entered by the Court on April 1, 2004, shall be lifted permanently.

**XIII.**

**RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

**IT IS SO ORDERED**, this 11th day of August, 2005.



United States District Judge

AUG 11 2005