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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Federal Trade Commission,

Plaintiff,

v.

Global Net Solutions, Inc., et al.,

Defendants.

Civil Action No.

CV-S-05-0002-PMP (LRL)

**ORDER FOR
PERMANENT INJUNCTION AND
MONETARY JUDGMENT**

Plaintiff, the Federal Trade Commission ("Commission" or "FTC") filed its Complaint for a permanent injunction and other relief in this matter pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) & 57b, and Section 7(a) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM" or the "CAN-SPAM Act"), 15 U.S.C. § 7706(a).

Plaintiff, having requested that the Clerk of the Court enter a default judgment against defendant Paul Rose for his failure to answer or otherwise defend this matter, pursuant to Fed. R. Civ. Pro. 55(b)(1) and LR77-1(b)(3), it is **THEREFORE ORDERED, ADJUDGED AND DECREED** as follows:

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FINDINGS

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2 1. This Court has jurisdiction over the subject matter of this case and the parties
3 pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, and 7706(a), and 28 U.S.C. §§ 1331, 1337(a), and
4 1345.

5 2. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b)
6 and (c).

7 3. The activities of Defendant is in or affecting "commerce," as that term is defined
8 in Section 4 of the FTC Act, 15 U.S.C. § 44.

9 4. The Complaint states a claim upon which relief may be granted against Defendant
10 under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57(b), Sections
11 5(a) and 7(d) of the CAN-SPAM Act, 15 U.S.C. §§ 7704(a) and 7706 (d).

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

14 6. Defendant has been duly served with the complaint and summons in this action
15 and has failed to answer or otherwise defend this matter, and is, therefore, in default, pursuant to
16 Fed. R. Civ. Pro. 55.

17 7. Entry of this Order is in the public interest.

ORDER
Definitions

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21 1. "**Affirmative consent**" to receipt of a commercial email message means that:

- 22 a. the recipient expressly consented to receive the message, either in response
23 to a clear and conspicuous request for such consent or at the recipient's
24 own initiative, and
25 b. if the message is from a party other than the party to which the recipient
26 communicated such consent, the recipient was given clear and
27 conspicuous notice at the time the consent was communicated that the
28 recipient's electronic mail address could be transferred to such other party

1 for the purpose of initiating commercial electronic mail messages.

2 15 U.S.C. § 7702(1).

3 2. **“Commercial electronic mail message”** (or **“commercial email”**) means any
4 electronic mail message the primary purpose of which is the commercial advertisement or
5 promotion of a commercial product or service (including the content on an Internet website
6 operated for commercial purposes) and that further satisfies the requirements of 16 C.F.R. 316.1
7 et seq.

8 3. **“Defendant”** means Paul Rose.

9 4. **“Document”** is synonymous in meaning and equal in scope to the usage of the term in
10 Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts,
11 photographs, audio and video recordings, computer records including email, ICQ, or other
12 electronic communications, and other data compilations from which information can be obtained
13 and translated, if necessary, through detection devices into reasonably usable form. A draft or
14 non-identical copy is a separate document within the meaning of the term. Any document
15 provided by one party to another pursuant to this Order shall be provided in a format that is
16 accessible to the receiving party.

17 5. **“Electronic mail address”** (or **“email address”**) means a destination, commonly
18 expressed as a string of characters, consisting of a unique user name or mailbox (commonly
19 referred to as the “local part”) and a reference to an Internet domain (commonly referred to as the
20 “domain part”), whether or not displayed, to which an electronic mail message can be sent or
21 delivered.

22 6. **“Electronic mail message”** (or **“email”**) means a message sent to a unique electronic
23 mail address.

24 7. **“Header information”** means the source, destination, and routing information
25 attached to an electronic mail message, including the originating domain name and originating
26 electronic mail address, and any other information that appears in the line identifying, or
27 purporting to identify, a person initiating the message.

28

1 8. "Initiate," when used with respect to a commercial email message, means to originate
2 or transmit such message or to procure the origination or transmission of such message.

3 9. "Procure," when used with respect to the initiation of a commercial email message,
4 means intentionally to pay or provide other consideration to, or induce, another person to initiate
5 such a message on one's behalf.

6 10. "Sender" means a person who initiates a commercial electronic mail message and
7 whose product, service, or Internet website is advertised or promoted by the message.

8 11. "Sexually oriented material" means any material that depicts sexually-explicit
9 conduct as that term is defined in 18 U.S.C. § 2256, unless the depiction constitutes a small and
10 insignificant part of the whole, the remainder of which is not primarily devoted to sexual matters.

11 12. "Valid physical postal address" means a sender's current street address, a Post
12 Office box a sender has registered with the United States Postal Service, or a private mailbox a
13 sender has registered with a commercial mail receiving agency that is established pursuant to
14 United States Postal Service regulations.

15
16 **Prohibition Against Violating the CAN-SPAM Act**

17 **I.**

18 **IT IS THEREFORE ORDERED** that Defendant and his officers, agents, servants,
19 employees, and attorneys, and those persons in active concert or participation with him who
20 receive actual notice of this Order by personal service or otherwise, are hereby permanently
21 restrained and enjoined from violating the CAN-SPAM Act, 15 U.S.C. §§ 7701 et seq., including
22 but not limited to initiating the transmission of a commercial email message:

- 23 A. That does not contain a functioning return email address or other Internet-based
24 mechanism, clearly and conspicuously displayed, that (i) a recipient may use to
25 submit, in a manner specified in the message, a reply email message or other form
26 of Internet-based communication requesting not to receive future commercial
27 email messages from that sender at the email address where the message was
28 received; and (ii) that remains capable of receiving such messages or

1 communications for no less than 30 days after the transmission of the original
2 message;

3 B. That does not provide clear and conspicuous identification that the message is an
4 advertisement or solicitation;

5 C. That does not contain a clear and conspicuous notice of a recipient's opportunity
6 to decline to receive further commercial email messages from Defendant; and

7 D. That does not contain a clear and conspicuous display of an accurate, valid,
8 physical postal address of the sender of the message.

9
10 **Prohibition Against Violating the Adult Labeling Rule**

11 **II.**

12 **IT IS FURTHER ORDERED** that Defendant and his officers, agents, servants,
13 employees, and attorneys, and those persons in active concert or participation with him who
14 receive actual notice of this Order by personal service or otherwise, are permanently restrained
15 and enjoined from violating the Adult Labeling Rule, 16 C.F.R. Part 316.4, including, but not
16 limited to, initiating the transmission of commercial email that includes sexually oriented
17 material:

18 A. That does not contain the phrase "SEXUALLY-EXPLICIT:" as the first nineteen
19 (19) characters at the beginning of the subject line of the message;

20 B. That includes sexually oriented materials within the subject line of the message;
21 or

22 C. That includes sexually oriented materials within the content of the message that is
23 initially viewable by the recipient, when the message is opened by the recipient
24 and absent any further action by the recipient.

25 **Provided, however,** that the requirements of this Part do not apply to commercial emails
26 transmitted only to persons who have given prior affirmative consent to receipt of such messages.

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

5 *Provided, however,* that nothing in this Order shall limit the Commission's lawful use of
6 compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and
7 57b-1, to obtain any documentary material, tangible things, testimony, or information
8 relevant to unfair or deceptive acts or practices in or affecting commerce (within the
9 meaning of 15 U.S.C. § 45(a)(1)).

10 **Compliance Reporting By Defendant**

11 **VI.**

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

- 14 A. Defendant shall notify the Commission in writing of any of the following:
- 15 1. any changes in residence, mailing addresses and telephone numbers of the
16 Defendant, within thirty (30) days of the date of such change;
 - 17 2. any change in employment status (including self-employment) of the
18 Defendant, and any change in the ownership interest of the Defendant in
19 any business entity engaged in commercial email, within thirty (30) days
20 of such change. Such notice shall include the name and address of each
21 business that the Defendant is affiliated with, employed by, or performs
22 services for, a statement of the nature of the business, and a statement of
23 the Defendant's duties and responsibilities in connection with the business
24 or employment; and
 - 25 3. any changes in the Defendant's name or use of any aliases or fictitious
26 names;
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1 B. One hundred and eighty (180) days after the date of entry of this Order, Defendant
2 shall provide a written report to the FTC, sworn to under penalty of perjury,
3 setting forth in detail the manner and form in which he has complied and is
4 complying with this Order. This report shall include, but not be limited to:

- 5 1. a copy of each acknowledgment of receipt of this Order, obtained
6 pursuant to Part VIII of this Order;
- 7 2. any changes required to be reported pursuant to Paragraph A of this Part;
- 8 3. a list of all names under which Defendant did or currently do business
9 since entry of this Order; and
- 10 4. a list of all domain names and web page addresses Defendant has
11 registered or used since entry of the Order;

12 C. For the purposes of this Order, Defendant shall, unless otherwise directed by a
13 representative of the Commission, identify all written notifications to the FTC as
14 being in reference to FTC v. Global Net Solutions, Inc., et. al, United States
15 District Court, District of Nevada, Case No. CV-S-05-0002-PMP (LRL), and mail
16 them to:

17 Associate Director
18 Division of Marketing Practices
19 Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. 238
Washington, DC 20580;

20 D. For purposes of the compliance reporting and monitoring required by this Order,
21 representatives of the Commission are authorized to communicate directly with
22 Defendant and his officers and managers.

23 Record Keeping Provisions

24 VII.

25 **IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry
26 of this Order, Defendant is hereby restrained and enjoined from failing to create and retain the
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1 following records in connection with the marketing, advertising, promotion, offering for sale, or
2 sale of goods or services via commercial email messages or other Internet-based mechanisms:

- 3 A. Accounting records that reflect the cost of goods or services sold, revenues
4 generated, and the disbursement of such revenues;
- 5 B. Records accurately reflecting: the name, physical address, and telephone number
6 of each person employed in any capacity by such business, including as an
7 independent contractor or affiliate; that person's job title or position; the date
8 upon which the person commenced work; and the date and reason for the person's
9 termination, if applicable;
- 10 C. Customer files containing the names, addresses, phone numbers, dollar amounts
11 paid, quantity of items or services purchased, and description of items or services
12 purchased, to the extent such information is obtained in the ordinary course of
13 business;
- 14 D. Records that reflect, for every written or oral consumer complaint received by
15 Defendant, whether directly or indirectly or through any third party, including
16 affiliates: (1) the consumer's name, address, and telephone number; (2) the
17 written complaint or request, if any; (3) the basis of the complaint or request;
18 (4) the nature and result of any investigation conducted concerning the complaint
19 or request; (5) each response and the date of such response to the complaint or
20 request; (6) any final resolution of the complaint or request, and the date of such
21 resolution; and (7) in the event of a denial of any resolution, the reason for the
22 denial; and
- 23 E. All other records and documents necessary to demonstrate full compliance with
24 each provision of this Order, including but not limited to, all documents obtained,
25 created, generated or which in any way relate to the requirements, provisions or
26 terms of this Order, copies of signed and dated acknowledgments of receipt of this
27 Order, required by Part VIII of this Order, and all reports submitted to the FTC
28 pursuant to this Order.

Distribution of Order by Defendant

VIII.

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

- A. Defendant must deliver a copy of this Order to all of his officers, directors, and managers. Defendant must also deliver copies of this Order to all of his employees, agents, independent contractors, and persons who engage in conduct related to the subject matter of this Order. For current personnel, delivery shall be within five (5) days of service of this Order. For new personnel, delivery shall occur prior to them assuming their responsibilities; and
- B. Defendant must secure a signed and dated written or electronic statement (which signature may be obtained electronically provided that the signature would comply with the signature requirements of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq.), acknowledging receipt of this Order, within thirty (30) days of delivery, from all persons receiving a copy of this Order pursuant to this Part.

Acknowledgment of Receipt of Order by Defendant

IX.

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

Severability

X.

IT IS FURTHER ORDERED that the provisions of this Order are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

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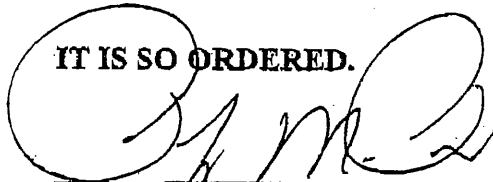
Retention of Jurisdiction

XI.

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

JUDGMENT IS THEREFORE ENTERED in favor of Plaintiff and against Defendant Paul Rose, pursuant to all the terms and conditions recited above.

IT IS SO ORDERED.



UNITED STATES DISTRICT JUDGE
DISTRICT OF NEVADA

DATED: Sept. 2, 2005