

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

INTEGRITY FINANCIAL ENTERPRISES,
LLC, a limited liability company, also d/b/a
INFINITE FINANCIAL and
NATIONAL BENEFIT EXCHANGE,

NATIONAL BENEFIT EXCHANGE, INC.,
a corporation, and

ROBERT JAMES FISCHBACH, individually
and as an officer of INTEGRITY FINANCIAL
ENTERPRISES, LLC and NATIONAL BENEFIT
EXCHANGE, INC.,

Defendants.

Case No. 8:08-cv-914-T-27 MSS

**STIPULATED PRELIMINARY INJUNCTION AND
ORDER FOR OTHER EQUITABLE RELIEF**

In this action, the Federal Trade Commission ("FTC" or "Commission"), seeks permanent injunctive and other relief pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b). On May 14, 2008, this Court entered a Temporary Restraining Order pursuant to Rule 65. Pending a final resolution, the FTC and the Defendants have conferred and agreed to entry of this Stipulated Preliminary Injunction and Order for Other Equitable Relief ("Order") with the following findings of fact and order:

1. This Court has subject matter jurisdiction.

2. Defendants Integrity Financial Enterprises, LLC, doing business as Infinite Financial and as National Benefit Exchange, National Benefit Exchange, Inc., and Robert James Fischbach have engaged in and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Telemarketing Sales Rule. There is a substantial likelihood that the Commission will prevail on the merits.
3. Defendants have and in the absence of this Order will continue to cold-call consumers and offer them a guaranteed or pre-approved general-purpose credit card, such as a MasterCard or Visa, in exchange for an advance fee of \$200 to \$300. Instead of the promised general-purpose credit card, consumers receive a catalogue card that is good only for the purchase of merchandise from the Defendants' catalogues or websites. Defendants often tell consumers that they can cancel or change their order and avoid the debiting of their bank accounts, and imply that consumers' cancellation requests will be honored. Defendants, however, fail to honor such cancellation requests and often debit consumers' bank accounts nonetheless. This conduct violates Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and Sections 310.3(a)(2)(iii) and (iv), and 310(a)(4) of the Telemarketing Sales Rule, 16 C.F.R. §§ 310.3(a)(2)(iii) and (iv), 310.4(a)(4).
4. There is no legitimate aspect to Defendants' business. Consumers pay hundreds of dollars and receive nothing of value. Defendants have ignored

consumers' attempts to cancel and avoid debiting and/or receive refunds, and thus, consumers have been irreparably harmed for \$200 to \$300 each.

Consumers will continue to be harmed absent the issuance of this Order.

5. Immediate and irreparable damage to the FTC's ability to secure effective final relief for consumers in the form of monetary redress will occur, from the sale, transfer, or other disposition or concealment by the Defendants of assets or records, during the pendency of this action unless Defendants are restrained and enjoined by court order. Accordingly, there is good cause for an asset freeze to ensure the possibility of consumer redress and other effective relief.
6. Balancing the equities and considering the Plaintiff's likelihood of success on the merits, the entry of this Order as set forth below is in the public interest.
7. No security is required of any agency of the United States for issuance of a preliminary injunction. Fed. R. Civ. P. 65(c).
8. By this stipulation, Defendants waive their right to a preliminary injunction hearing before this Court.
9. For purposes of this preliminary injunction, "Defendants" shall include the named Defendants, their successors, assigns, officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, divisions, sales entities, related entities, 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, including, but not limited to, fictitious business names.

I. CONDUCT PROHIBITIONS

IT IS HEREBY ORDERED that in connection with the advertising, promotion, offering, or sale of any product, service, or program by telephone, on or through the Internet, the World Wide Web, any website, or otherwise in commerce, the Defendants are hereby restrained and enjoined from:

- A. Making, or assisting in the making of, expressly or by implication, orally or in writing, any statement or representation of material fact that is false or misleading, including but not limited to, any misrepresentation that:
 - 1. After paying a fee, consumers are likely or guaranteed to receive a general-purpose credit card, such as a MasterCard or Visa;
 - 2. Consumers may cancel or change their order and avoid the debiting of their bank accounts; or
 - 3. Consumers' cancellation requests will be honored;
- B. Misrepresenting, expressly or by implication, any fact material to a consumer's decision to purchase any product, program, or service;
- C. Violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, including but not limited to:



1. Misrepresenting that a card is a general-purpose credit card, such as a MasterCard or Visa, rather than a card that can only be used to purchase items from Defendants' catalogue or website;
 2. Misrepresenting that:
 - a. consumers may cancel or change their order and avoid the debiting of their bank accounts; or
 - b. that consumers' cancellation requests will be honored; and
 3. Requesting or receiving payment of any fee in advance of obtaining an extension of credit when Defendants have guaranteed or represented a high likelihood of success in obtaining such extension of credit; and
- D. Assisting others who violate any provision of Subparagraphs A through C of this Paragraph.

II. ASSET FREEZE

IT IS FURTHER ORDERED that the Defendants are hereby restrained and enjoined from:

- A. Transferring, liquidating, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, pledging, loaning, granting a lien or security interest or other interest in, or otherwise disposing of any funds, credit instruments, real or personal property, accounts, contracts, lists of consumer names, shares of stock, or other assets, wherever located, including outside the United States, that are:

1. Owned or controlled by any Defendant, in whole or in part, including but not limited to any assets held by, for, or in the name of the Defendants at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution, depository of any kind, or business entity, including but not limited to, Bank of America and Achieva Credit Union, Clearwater;
 2. In the actual or constructive possession of any Defendant; or
 3. Owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by or under common control with any Defendant.
- B. Opening or causing to be opened any safe deposit boxes, titled, singly or jointly, in the name of any Defendant, or subject to access by any Defendant;
- C. Cashing any checks or depositing any payments received from customers of Defendants;
- D. Incurring charges on any credit card issued in the name, singly or jointly of any Defendant;
- E. Obtaining a personal or secured loan; and



F. Incurring liens or other encumbrances on real property, personal property or other assets of any Defendant or in the name of any Defendant, singly or jointly.

The assets affected by this Paragraph shall include both (1) existing assets; and (2) assets acquired after the effective date of this Order only if such assets are derived from the activity prohibited by this Order or derived from any other violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) or the Telemarketing Sales Rule, 16 C.F.R. Part 310.

Notwithstanding the provisions of this Paragraph, Defendants may make transfers as ordered by this Court upon proper showing and after notice to counsel for the Commission.

Provided further, however, that nothing in this Paragraph shall restrict, curtail, or otherwise limit the ability of Defendant Fischbach to make charges on his personal credit or charge cards to the extent that any such charges do not relate to the advertising, promotion, offering for sale, or sale of credit cards for an advance fee.

III. CUSTOMER LISTS

IT IS FURTHER ORDERED that the Defendants are hereby restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, social security number, credit card number, debit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to any Defendant, at any time prior to entry of this Order, in connection with the telemarketing, advertising, promoting, offering for sale, and selling of any advance-fee credit card goods or services. *Provided*, however, that the Defendants may disclose such

identifying information to a law enforcement agency or as required by any law, regulation, or court order. The Defendants are also hereby restrained and enjoined from making any use of their own customer lists in any business, whether or not related to the present action.

IV. RETENTION OF ASSETS AND RECORDS HELD BY THIRD PARTIES

IT IS FURTHER ORDERED that any financial or brokerage institution, business entity, or person served with a copy of this Order, that holds, controls or maintains custody of any account or asset of any Defendant, or has held, controlled or maintained custody of any such account or asset at any time since January 1, 2005 shall:

- A. Prohibit the Defendants from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of any such account or asset except as directed by further order of the Court;
- B. Deny the Defendants access to any safety deposit box that is:
 - 1. Titled in the name of any of the Defendants, either individually or jointly; or
 - 2. Otherwise subject to access by any of the Defendants, either individually or jointly;
- C. Provide counsel for the FTC, if not already provided, within five (5) business days of receiving a copy of this Order, with a sworn statement setting forth:



1. The identification number and description of each such account or asset titled in the name, individually or jointly, of the Defendants, or held on behalf of, or for the benefit of, any Defendant;
2. The balance of each such account, or a description of the nature and value of such asset, as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted;
3. The identification of any safe deposit box that is either titled in the name, individually or jointly, of the Defendants, or otherwise subject to access by any Defendant; and

D. Upon the request of the counsel for the FTC, within forty-eight (48) hours, provide counsel for the FTC with copies of all records or other documentation pertaining to any account or asset of any Defendant, including, but not limited, to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.



**V. DUTIES OF THIRD PARTIES PROCESSING
PAYMENTS FOR DEFENDANTS**

IT IS FURTHER ORDERED that any automated clearing house, network transaction processor, business entity or person providing any services or assistance in processing Defendants' customer payments, including, but not limited to, payments made by bank account debits or checks, for any of the Defendants, that receives actual notice of this Order by personal service or otherwise, is hereby restrained and enjoined from providing any assistance in the processing of any payments made by consumers to any of the Defendants and from collecting any fees or charges in connection with providing such assistance.

**VI. REPATRIATION OF ASSETS AND DOCUMENTS LOCATED
IN FOREIGN COUNTRIES**

IT IS FURTHER ORDERED that the Defendants shall, if they have not already done so:

- A. Within three (3) days of receiving a copy of this Order, take such steps as are necessary to transfer to the territory of the United States of America all documents and assets that are located outside of such territory and are held by or for the benefit of the Defendants or are under their direct or indirect control, jointly, severally, or individually;
- B. Within three (3) days of receiving a copy of this Order, provide counsel for the Commission with a full accounting of all documents and assets that are located outside of such territory and are held by or for the benefit of the

Defendants or are under their direct or indirect control, whether jointly, severally, or individually;

- C. Hold and retain all documents and assets transferred pursuant to Subparagraph A above, and prevent any transfer, disposition, or dissipation whatsoever of any such assets or funds; and
- D. Provide counsel for the Commission with access to records and documents of the Defendants held by financial institutions outside the territorial United States of America, by signing and delivering to Plaintiff the Consent of Release of Financial Records provided by the Commission within three (3) days of receiving a copy of this Order.

VII. INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that the Defendants are hereby restrained and enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of Defendants' foreign assets or in the hindrance of the repatriation required by Paragraph VI of this Order, including but not limited to:

- A. Sending any statement, letter, facsimile, e-mail or wire transmission, telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a "duress" event has occurred under the terms of a foreign trust agreement until such time that all assets have been fully repatriated pursuant to Paragraph VI of this Order; and

- B. Notifying any trustee, protector or other agent of any foreign trust or other related entities of either the existence of this Order, or the fact that repatriation is required pursuant to a court order, until such time that all assets have been fully repatriated pursuant to Paragraph VI of this Order.

VIII. FINANCIAL REPORTS

IT IS FURTHER ORDERED that the Defendants shall, if they have not done so already, within three (3) business days of receiving a copy of this Order, produce and deliver to counsel for the Commission:

- A. All current accountants' reports; all federal tax returns filed since January 1, 2005; documents indicating title to real or personal property; and other indicia of ownership that are now in any of the Defendants' actual or constructive possession; and
- B. A listing of all computer passwords, entry codes and combinations to locks necessary to gain or to secure access to any assets or documents of the Defendants, including, but not limited to, their means of communication, accounts, computer systems, or other property, located at their business premises, 300 South Duncan Avenue, Clearwater, Florida.

IX. IDENTIFYING INFORMATION RELATING TO ACCOUNTANTS, FINANCIAL PLANNERS, INVESTMENT ADVISORS, STOCK BROKERS, AND OTHERS

IT IS FURTHER ORDERED that the Defendants shall, if they have not done so already, within three (3) business days of receiving a copy of this Order, provide counsel for

the Commission with: (1) the name, address and telephone number for each accountant, financial planner, investment advisor, stock broker or other individual, corporation or partnership whom they hire for personal advice or services, including but not limited to preparation of tax returns and investment advice, since January 1, 2005; and (2) the name, address and telephone number for each accountant, financial planner, investment advisor, stockbroker or other individual, corporation or partnership who was hired on behalf of the Defendants since January 1, 2005.

X. RECORD KEEPING/BUSINESS OPERATIONS

IT IS FURTHER ORDERED that the Defendants are hereby restrained and enjoined from directly or indirectly:

- A. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of money;
- B. Destroying, erasing, secreting, defacing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any contracts, accounting data, correspondence, advertisements, computer tapes, discs, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind

that relate to the business practices or business or personal finances of the Defendants;

- C. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, the Defendants; and
- D. Creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing counsel for the Commission with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers and employees; and (4) a detailed description of the business entity's intended activities.

XI. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that the Defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, agent, attorney, and representative of the Defendants and shall, within five (5) calendar days from the date of entry of this Order, provide counsel for the Commission with a sworn statement that each Defendant has

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complied with this provision of the Order, which statement shall include the names and addresses of each such person or entity who received a copy of the Order.

XII. CONSUMER CREDIT REPORTS

IT IS FURTHER ORDERED that the Commission may obtain credit reports concerning Defendant Robert James Fischbach pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), and that upon written request, any credit reporting agency from which such reports are requested shall provide them to the Commission. The Commission is prohibited from disseminating any such credit reports.

XIII. USE OF ALIASES

IT IS FURTHER ORDERED that the Defendants are hereby enjoined from using any fictitious, false, or assumed title or name, other than their own proper name, or otherwise misrepresenting their true identities in the course of business dealings or in publicly filed documents.

XIV. BANKRUPTCY PETITIONS

IT IS FURTHER ORDERED that Defendants are hereby prohibited from filing, or causing to be filed, a petition for relief under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., without five (5) days prior written notice to the Commission.

XV. SERVICE UPON PLAINTIFF

IT IS FURTHER ORDERED that, with regard to any correspondence, pleadings, or notifications related to this Order, service shall be performed by delivery to:

