

May 19, 2008

STEVEN M. LARIMGHE  
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S.D. OF FLA. - MIAMI

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

Case No. **08-21433-CIV-JORDAN/MCALILEY**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ALTERNATEL, INC.; G.F.G. ENTERPRISES  
LLC, also d/b/a MYSTIC PREPAID; VOICE  
PREPAID, INC.; TELECOM EXPRESS, INC.;  
VOICE DISTRIBUTORS, INC.; LUCAS  
FRIEDLANDER; MOSES GREENFIELD;  
NICKOLAS GULAKOS; and FRANK  
WENDORFF,

Defendants.

**COMPLAINT FOR PERMANENT INJUNCTION  
AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC”), for its complaint against defendants Alternatel, Inc., G.F.G. Enterprises LLC, also d/b/a Mystic Prepaid, Voice Prepaid, Inc., Telecom Express, Inc., Voice Distributors, Inc., Lucas Friedlander, Moses Greenfield, Nickolas Gulakos, and Frank Wendorff (collectively “Defendants”) alleges:

**INTRODUCTION**

1. This case concerns Defendants’ deceptive marketing of prepaid telephone calling cards in violation of the Federal Trade Commission Act, 15 U.S.C. § 41, *et seq.* (“FTC Act”). As explained below, Defendants have deceived and continue to deceive consumers, many of whom are recent immigrants, by: (1) misrepresenting the number of calling minutes consumers

can obtain using Defendants' prepaid calling cards, and (2) failing to disclose or disclose adequately fees that have the effect of reducing the number of calling minutes available to consumers using Defendants' prepaid calling cards.

2. The FTC brings this action under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), to obtain temporary, preliminary, and permanent injunctive relief against Defendants to prevent them from engaging in unfair and deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and to obtain other equitable relief, including rescission, restitution, and disgorgement, as is necessary to redress injury to consumers and the public interest resulting from Defendants' violations of the FTC Act.

#### **JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a) and 53(b), and 28 U.S.C. §§ 1331, 1337(a) and 1345.

4. Venue in the United States District Court for the Southern District of Florida is proper pursuant to 15 U.S.C. § 53(b), and 28 U.S.C. §§ 1391(b) and (c).

#### **PLAINTIFF**

5. Plaintiff, the FTC, is an independent agency of the United States Government created by the FTC Act, 15 U.S.C. § 41, *et seq.* The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such other equitable relief as may be appropriate in each case, including redress and disgorgement. 15 U.S.C. § 53(b).

## DEFENDANTS

6. Defendant Alternatel, Inc. (“Alternatel”) is a Florida corporation located at 8200 Pines Boulevard, Pembroke Pines, Florida 33024. Alternatel creates, promotes, and sells prepaid calling cards. Alternatel transacts or has transacted business in this District.

7. Defendant G.F.G. Enterprises LLC, also d/b/a Mystic Prepaid (“Mystic Prepaid”), is a New Jersey limited liability company located at 720 Monroe Street, Unit C-508, Hoboken, New Jersey 07030. Mystic Prepaid creates, promotes, and sells prepaid calling cards. Mystic Prepaid transacts or has transacted business in this District.

8. Defendants Voice Prepaid, Inc., Telecom Express, Inc. and Voice Distributors, Inc. (collectively “Voice Prepaid”) are Massachusetts corporations located at 151 Mystic Avenue, Medford, Massachusetts 02155. Voice Prepaid creates, promotes, and sells prepaid calling cards. Voice Prepaid transacts or has transacted business in this District.

9. Defendant Lucas Friedlander (“Friedlander”) is an owner, a Member/Manager, and the Chief Operating Officer of Mystic Prepaid. He serves as Controller of Voice Prepaid. Individually or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Alternatel, Mystic Prepaid, and Voice Prepaid, including the acts and practices alleged in this complaint. Friedlander transacts or has transacted business in this District.

10. Defendant Moses Greenfield (“Greenfield”) is a fifty-percent owner of Alternatel, serves as an officer and director of Alternatel, and is an owner and a Member/Manager of Mystic Prepaid. Individually or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Alternatel, Mystic Prepaid, and Voice Prepaid, including the acts and practices alleged in this complaint. Greenfield transacts or has transacted business in this District.

11. Defendant Nickolas Gulakos (“Gulakos”) is the founder, sole owner, and President of Voice Prepaid. Gulakos is also a fifty-percent owner of Alternatel, serves as an officer and a director of Alternatel, and is an owner and a Member/Manager of Mystic Prepaid. Individually or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Alternatel, Mystic Prepaid, and Voice Prepaid, including the acts and practices alleged in this complaint. Gulakos transacts or has transacted business in this District.

12. Defendant Frank Wendorff (“Wendorff”) is the President and Chief Operating Officer of Alternatel. Individually or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Alternatel, Mystic Prepaid, and Voice Prepaid, including the acts and practices alleged in this complaint. Wendorff transacts or has transacted business in this District.

### **COMMON ENTERPRISE**

13. Corporate defendants Alternatel, Mystic Prepaid, and Voice Prepaid (collectively “Corporate Defendants”) have operated as a common business enterprise while engaging in the deceptive acts and practices alleged in this complaint. Because these Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the deceptive acts and practices alleged below.

### **COMMERCE**

14. At all times relevant to this complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

### **DEFENDANTS’ BUSINESS PRACTICES**

15. Defendants create and promote prepaid calling cards, which they distribute to sub-distributors and retailers in Florida, New England, New Jersey, and Pennsylvania, and to Internet retailers.

16. A prepaid calling card is a retail product for which the purchaser prepays a specified dollar amount and which enables the purchaser to make domestic or international telephone calls.

17. A wide variety of consumers purchase prepaid calling cards. They are especially popular with members of immigrant communities, many of whom depend on prepaid calling cards to stay in touch with family and friends outside the United States.

18. Defendants' prepaid calling cards are typically sold in denominations of between \$2 and \$10. They are often sold in newsstands, grocery and convenience stores, kiosks, and over the Internet.

19. Since at least 1995, Defendants have distributed millions of dollars worth of prepaid calling cards.

20. Defendants do not provide the telecommunications service for their prepaid calling cards. Instead, Defendants purchase the telecommunications service for their prepaid calling cards from telecommunications service providers, including, but not limited to, Dollar Phone, IDT Telecom, Inc., CVT Prepaid Solutions, Inc., STi Phonecard, Inc., Telecom Colombia, Orbitel, and RNK.

### **Defendants' Marketing**

21. Defendants market their calling cards under a variety of brand names, including, but not limited to: "Aló Mamá," "Bean Town," "Brasil Alto Astral," "Coffee Time, Call Me Time," "Dangerous Minutes!," "Mama Africa," "Martini," "Mass. Connection," "Nigeria Connect," "Oi Brasil," "Rey de Florida," "Taco Libre," "Tree Monkey," "Voice Africa," "Voice Card," and "Voz Do Brasil."

22. In many cases, Defendants Alternatel, Mystic Prepaid, and Voice Prepaid sell cards under the same brand names. Such cards, whether sold by Alternatel, Mystic Prepaid, or Voice Prepaid, are nearly indistinguishable in appearance. For example, a photocopy of the front of three "Tree Monkey" cards sold by each of the Corporate Defendants is shown below as **Graphic A**.



Graphic A

23. Defendants frequently market prepaid calling cards for use in making calls to destinations across the globe, including Argentina, Brazil, Colombia, Cuba, Dominican Republic, El Salvador, Guatemala, Haiti, Mexico, Pakistan, Poland, Vietnam, Ghana, Nigeria, and many other foreign countries.

24. In many cases, Defendants use mass-media advertising, in the form of radio, television, or newspaper advertisements, to market their cards. For example, in a radio spot that aired in the Boston market more than 450 times from February 22, 2007 to September 9, 2007, Defendants advertised the Voice Prepaid “Dangerous Minutes!” card (“Dangerous Minutes! Radio Ad”). During the Dangerous Minutes! Radio Ad, Latin music plays in the background while a male voice says in Spanish:

*¡Latinos del mundo! ¡Latinos del mundo! ¡Nueva Inglaterra!  
¿Quieres vivir peligrosamente? Voice Prepaid, la compañía  
que te trae las mejores tarjetas como: Mass Connection, Bean  
Town, Coffee Time y Voz du Brazil. ¡Ahora te trae la tarjeta  
de llamada con Dangerous Minutes! Con una cantidad de  
minutos peligrosos. ¡Dangerous Minutes! ¡Dangerous  
Minutes! La tarjeta de llamada con la motocicleta. Con  
Dangerous Minutes! usted recibirá: 270 minutos para la  
Republica Dominicana, 405 Medellín, 650 para Bogota,  
Colombia, 120 para El Salvador y 100 para Guatemala.  
¡Corra! ¡No camine a tu tienda local y dile a ellos que tu  
necesitas tus Dangerous Minutes! ¡De la tarjeta Dangerous  
Minutes! ¡La tarjeta de llamada con la motocicleta y sin  
cargo de conexión! Con Dangerous Minutes! usted recibirá:  
270 minutos para la Republica Dominicana, 405 Medellín, 650  
para Bogota, Colombia, 120 para El Salvador y 100 para  
Guatemala. ¡De Voice Prepaid! ¡La compañía que siempre  
tiene las mejores tarjetas!*

25. Translated into English, the Dangerous Minutes! Radio Ad states:

Latinos of the world! Latinos of the world! New England!  
Want to live dangerously! Voice Prepaid, the company that  
brings you the best cards like: Mass Connection, Bean Town,  
Coffee Time and Voz du Brazil. Now brings you the  
Dangerous Minutes! calling card! With a dangerous number of  
minutes. Dangerous Minutes! Dangerous Minutes! The card  
with the motorcycle. With Dangerous Minutes! you will  
receive: 270 minutes to the Dominican Republic, 405  
Medellin, 650 for Bogota, Colombia, 120 for El Salvador and  
100 for Guatemala. Run! Don't walk to your local store and  
tell them that you need your Dangerous Minutes! From the  
Dangerous Minutes! card! The calling card with the  
motorcycle and no connection fees! With Dangerous Minutes!  
you will receive: 270 minutes to the Dominican Republic, 405



Medellin, 650 for Bogota, Colombia, 120 for El Salvador and 100 for Guatemala. From Voice Prepaid! The company that always has the best cards!

26. Defendants' mass-media advertising typically offers no, or only vague, disclosures about the fees and charges associated with their cards that have the effect of reducing the value of the prepaid calling cards and the number of calling minutes a consumer is likely to receive. For example, the Dangerous Minutes! Radio Ad described in paragraphs 24 and 25 represents that there are "no connection fees," but fails to disclose other surcharges and fees, including weekly maintenance fees, hang-up fees, and destination surcharges, that will have the effect of reducing the number of minutes provided by Dangerous Minutes! cards.

27. In addition to mass-media advertising, Defendants market their cards through point-of-sale posters they distribute to sub-distributors and to retail stores.

28. As a general matter, Defendants are responsible for designing and printing the posters they use to market their cards.

29. In numerous instances, Defendants' posters state that the advertised calling cards offer the best rates, provide the most calling minutes, and do not have connection fees.

30. A typical poster for one of Defendants' calling cards includes the name of the prepaid calling card (e.g., "Tree Monkey"), one of the Defendants' corporate names and logos (e.g., "Alternatel"), and the Defendant's relevant website address (e.g., "www.alternatel.net"). A photograph of an 11 x 17 inch poster for the Alternatel "Tree Monkey" card is attached hereto as **Attachment A**.

31. In many instances, Defendants' posters prominently display the phrase "No Connection Fee" in both Spanish and English.

32. Defendants' posters typically tout the number of calling minutes the advertised prepaid calling cards offer to specified destinations through the display of large and colorful text

“bubbles” each of which contains the name of a particular calling destination (e.g., “El Salvador”) and a representation as to the number of calling minutes a consumer will receive to that destination using the advertised prepaid calling card of a specified dollar value (e.g., “per \$5”).

33. In many instances, in addition to such text bubbles, Defendants’ posters contain a table listing numerous calling destinations along with representations as to the number of calling minutes a consumer will receive to that destination using the advertised calling card of a specified dollar value.

34. In numerous instances, the text bubbles touting the calling minutes to particular destinations are in relatively large font size and are emphasized through the use of color and placement on the posters. At the same time, in numerous instances, such posters contain vague disclosures about fees in tiny font on the bottom of the poster, stating in relevant part:

By using this card you agree to the following: Prompted minutes are before applicable charges and fees, application of surcharges and fees have an effect of reducing total minutes on cards. One or all of the following may apply: 1) A weekly maintenance fee ranging between .49 and .79. 2) A hang-up fee between .05 and \$1 depending upon length and destination of the call. 3) A destination surcharge of between 0% and 100%. – minutes and/or seconds are rounded to multiple minute increments. – International calls made to cellular phones are billed at higher rates. – Toll free access numbers are subject to an additional fee of up to 4 cents per minute. – Prices are subject to change without notice. – This card has no cash value. – Card expires 3 months after first use or 12 months after activation.

35. In some instances, but not all, the Defendants’ posters contain additional disclaimers in even smaller print, stating in relevant part:

Voice Prepaid (VP) is the Distributor of this card and it markets, advertises and sells this product based upon limited information provided to it by the Network Service Provider (NSP). Applications of NSP surcharges and fees have the effect of reducing total minutes on the card. Please read the NSP

Disclaimer carefully. Minutes indicated are set and given by NSP and may change at their discretion and without notice. VP is not liable for any services provided by NSP including but not limited to: rate changes, minutes determination, service fees of any kind, destination charges, call completion or other items that are within the control of the NSP. All customer service related issues should be directed to the NSP Customer Service Phone number available on each card. The card has no cash value and is non-refundable, not returnable. VP is not responsible for lost, stolen or unauthorized use of this card. This card may be deactivated without advance notice if fraud or theft is suspected.

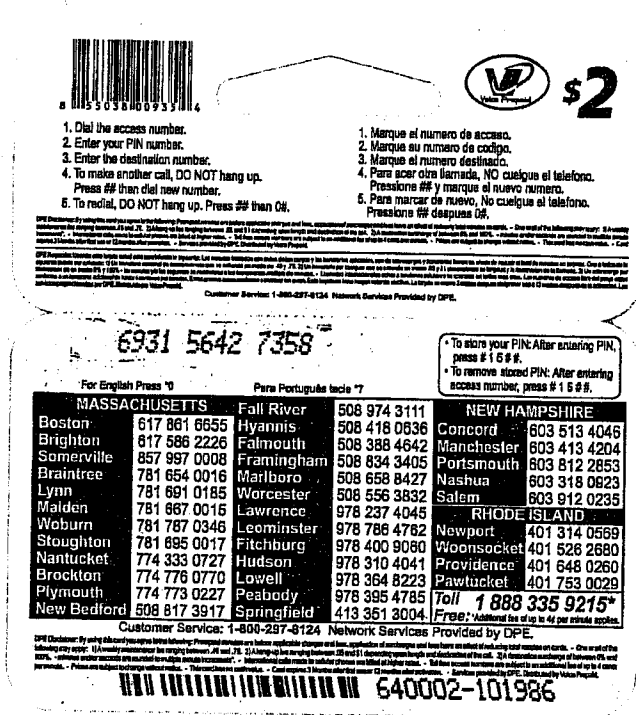
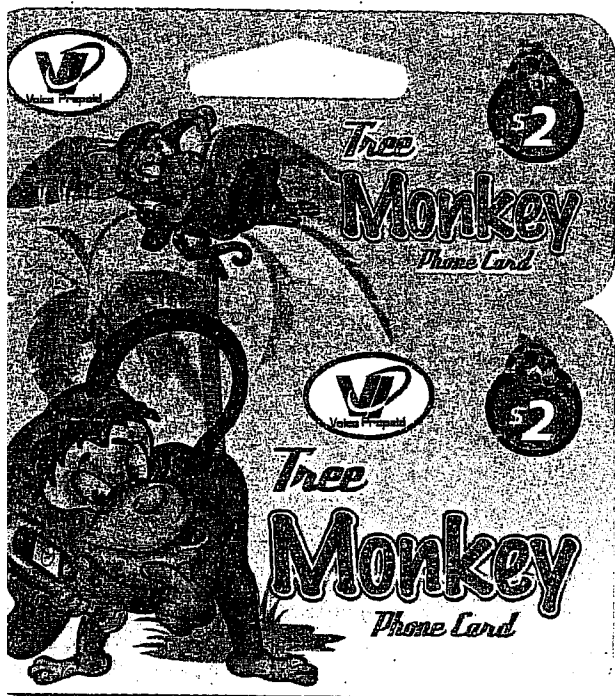
**Defendants' Calling Cards**

36. Defendants' calling cards are printed on laminated paper and generally come in two parts: a top portion and bottom portion.

37. A photocopy of a Voice Prepaid \$2 "Tree Monkey" card is shown as **Graphic B**.

**Front (Actual Size)**

**Back (Actual Size)**



**Graphic B**

38. The back of the hang tag of the Defendants' calling cards contains disclosures in both English and Spanish regarding fees and charges. These disclosures are nearly illegible

because they are written in such tiny font sizes. In numerous instances, such disclosures state in relevant part:

DPE Disclaimer: By using this card you agree to the following: Prompted minutes are before applicable charges and fees, application of surcharges and fees have an effect of reducing total minutes on cards. – One or all of the following may apply: 1) A weekly maintenance fee ranging between .49 and .79. 2) A hang-up fee ranging between .05 and \$1 depending upon length and destination of the call. 3) A destination surcharge of between 0% and 100%. – minutes and/or seconds are rounded to multiple minute increments. – International calls made to cellular phones are billed at higher rates. – Toll free access numbers are subject to an additional fee of up to 4 cents per minute. – Prices subject to change without notice. – This card has no cash value. – Card expires 3 Months after first use or 12 months after activation. Services provided by DPE. Distributed by Voice Prepaid.

39. The bottom portion of Defendants' calling cards often is the size of a credit card and it separates from the top portion by a perforation.

40. The back of the Defendants' calling cards typically includes a scratch off area which hides a personal identification number ("PIN"), local access numbers, a toll-free access number, a customer service number, the telecommunications provider's name, and disclosures written in fonts so miniscule they are nearly illegible. Except for the fact that such disclosures are typically written only in English, and not translated into Spanish, they are identical to the disclosures set forth in paragraph 38.

### **Using the Defendants' Cards**

41. To make a phone call using one of Defendants' prepaid calling cards, a consumer first dials one of the access phone numbers printed on the card, enters a PIN unique to each card, and when prompted, the phone number of the party the consumer is trying to reach. After the consumer enters the PIN and destination phone number, an automated voice (known in the industry as a "voice prompt") typically announces how much calling time is left on the card.

42. In numerous instances, the calling minutes actually delivered to consumers by Defendants' prepaid calling cards are substantially fewer than what is promised by Defendants in marketing, advertising, and promoting their cards.

43. For example, a poster advertising Defendants' \$2 "Dangerous Minutes!" card promises that consumers will obtain 56 calling minutes to Ghana. By contrast, once the consumer enters the PIN and the destination phone number, a voice prompt says, "you have 50 minutes." In testing Defendants' \$2 "Dangerous Minutes!" calling card, the FTC found that a single call to Ghana cut off after 15 minutes.

44. As another example, Defendants' poster advertising the \$2 "Tree Monkey" card promises 52 calling minutes to Guatemala. By contrast, once the consumer enters the PIN and destination number, the voice prompt says, "you have 24 minutes." In testing Defendants' \$2 "Tree Monkey" card, the FTC found that a single call to Guatemala cut off after 24 minutes.

45. When consumers attempt to use Defendants' cards to make multiple calls, they typically get even fewer of the promised minutes. For example, Defendants' poster advertising the \$2 "Coffee Time, Call Me Time" card promises 320 minutes to Brazil. Once the consumer enters the PIN and destination number, the voice prompt says, "you have 320 minutes." In testing Defendants' \$2 "Coffee Time, Call Me Time" card, the FTC found that a consumer would only receive 70 minutes in seven calls to Brazil instead of the advertised 320 minutes.

#### **VIOLATIONS OF THE FTC ACT**

46. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices affecting commerce. Misrepresentations or omissions of material fact constitute deceptive acts or practices pursuant to Section 5(a) of the FTC Act. As set forth below,

Defendants, individually or in concert with others, have violated Section 5 of the FTC Act in connection with the advertising, offering for sale, or selling of goods or services.

**COUNT I**  
**(Deception—Misrepresentations Regarding Number of Calling Minutes)**

47. In numerous instances, in the course of offering for sale and selling prepaid calling cards, Defendants represent, expressly or by implication, that consumers who purchase Defendants' prepaid calling cards will receive a specified number of calling minutes to specific countries.

48. In truth and in fact, in numerous instances, consumers who purchase Defendants' prepaid calling cards do not receive the specified number of calling minutes to specific countries.

49. Therefore, Defendants' representation set forth in paragraph 47 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**COUNT II**  
**(Deception—Failure to Disclose Fees)**

50. In numerous instances, in the course of offering for sale and selling prepaid calling cards, Defendants have represented, expressly or by implication, that consumers who purchase Defendants' prepaid calling cards will receive a specified number of calling minutes to specific countries.

51. In numerous instances, Defendants have failed to disclose or disclose adequately that fees will reduce the value of the prepaid calling cards, which in turn will reduce the number of calling minutes to specific countries provided to consumers.

52. This additional information, described in paragraph 51, would be material to consumers in deciding to purchase Defendants' prepaid calling cards.

53. The Defendants' failure to disclose or disclose adequately the material information described in paragraph 51, above, in light of the representations described in paragraph 50, above, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

### **CONSUMER INJURY**

54. Defendants' violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), as set forth above, have injured and will continue to injure numerous consumers in the United States. As a result of Defendants' deceptive acts or practices, consumers have suffered substantial monetary loss. In addition, Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

### **THIS COURT'S POWER TO GRANT RELIEF**

55. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other equitable relief to prevent and remedy Defendants' violations of the FTC Act, and in the exercise of its equitable jurisdiction, to award redress to remedy the injury to consumers, to order disgorgement of monies resulting from Defendants' unlawful acts or practices, and to order other ancillary equitable relief.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, the FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

1. Award the FTC such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to

preserve the possibility of effective final relief, including, but not limited to, temporary and preliminary injunctions and appointment of a monitor;

2. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants;

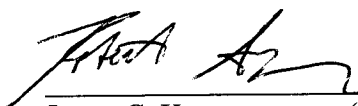
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from the Defendants' violations of the FTC Act, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

4. Award the FTC the costs of bringing this action, as well as any other equitable relief that the Court may determine to be just and proper.

Dated: May 19, 2008

Respectfully submitted,

WILLIAM BLUMENTHAL  
GENERAL COUNSEL



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