

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

FEDERAL TRADE COMMISSION,	:	
<i>et al.</i> ,	:	
	:	Civil Action No. 96-3228(AMW)
Plaintiffs,	:	
	:	
-against-	:	
	:	
SPARTA CHEM, INC., <i>et al.</i> ,	:	
	:	
Defendants.	:	

**SUPPLEMENTAL STIPULATED JUDGMENT
AND PERMANENT INJUNCTION**

Plaintiff Federal Trade Commission and Dennis J. Saccurato, Sparta Chem Inc., and Compu-Kleen, Inc. jointly stipulate to this Supplemental Stipulated Judgment and Permanent Injunction (“Supplemental Order”), which resolves the FTC’s Motion to Show Cause Why Dennis J. Saccurato, Sparta Chem Inc., and Compu-Kleen, Inc. Should Not Be Held in Contempt (“Show Cause Motion”) for violating the Stipulated Final Judgment for Permanent Injunction (“Final Order”) entered on November 5, 1996. The Court, being fully advised of the premises, hereby **Finds and Orders** as follows:

FINDINGS

1. This Court has jurisdiction over this matter for all purposes, as specifically reserved in Section XIII of the Final Order;
2. All provisions of the Final Order remain in full force and effect and nothing in this Supplemental Order shall be construed to limit the Final Order.
3. Dennis J. Saccurato, Sparta Chem Inc., and Compu-Kleen, Inc. are in contempt for violating Section I of the Final Order.

4. Contempt Defendants waive: (a) all rights to seek appellate review or otherwise challenge or contest the validity of this Supplemental Order; (b) any claim Contempt Defendants may have against the FTC, its employees, representatives, or agents that relate to the matter stated herein; (c) all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996); and (d) any rights to attorney's fees that may arise under said provision of law.
5. Entry of this Supplemental Order is in the public interest.

DEFINITIONS

For the purposes of this Supplemental Order, the following definitions apply:

1. "Contempt Defendants" means Dennis J. Saccurato, Sparta Chem Inc., and Compu-Kleen, Inc., and each of them, individually and jointly; and their successors and assigns; and
2. "Corporate Defendants" means Sparta Chem, Inc. and Compu-Kleen, Inc., and each of them individually and jointly; any affiliates or subsidiaries thereof that any Corporate Defendant controls; and their successors and assigns.
3. "Customer" means any person, group, unincorporated association, limited or general partnership, corporation, or other business entity to whom or which Contempt Defendants sell or attempt to sell any goods or services.

ORDER

I. REQUIRED RECORDINGS

IT IS ORDERED that Contempt Defendants, and each of them, and their officers, directors, agents, servants, employees, salespersons, corporations, or entities in active concert or participation with them who receive actual notice of this Supplemental Order by personal

service, facsimile, or otherwise, are required to:

- A. Digitally record all telephone calls to or from any and all customers in their entirety, from beginning to end, for a period of eight (8) years from date of entry of this Supplemental Order;
- B. Preserve and maintain such recordings;
- C. Transmit intelligible copies of all such recordings to the FTC upon request and no later than three days from the date of the FTC's request; and
- D. Transmit intelligible copies of any such recordings between Contempt Defendants and a particular customer to that customer no later than a week from the date of the customer's request.

II. REQUIRED ACTIVITIES PRIOR TO COLLECTIONS REFERRALS

IT IS FURTHER ORDERED that Contempt Defendants and each of them, and their officers, directors, agents, servants, employees, salespersons, corporations, or entities in active concert or participation with them who receive actual notice of this Supplemental Order by personal service, facsimile, or otherwise, are prohibited from threatening to refer or referring any charge to any collection agency unless, two weeks prior to threat of referral or referral, Contempt Defendants provide the customer with recordings of all calls that have taken place between Contempt Defendants and the customer regarding the charge.

III. REQUIRED ACCEPTANCE OF RETURNED MERCHANDISE

IT IS FURTHER ORDERED that Contempt Defendants and each of them, and their officers, directors, agents, servants, employees, salespersons, corporations, or entities in active concert or participation with them who receive actual notice of this Supplemental Order by personal service, facsimile, or otherwise, are required to accept the return of all unopened

merchandise that is returned within ninety (90) days of a customer's receipt of product or an invoice, whichever is later. Contempt Defendants are prohibited from imposing any costs or fees on customers for the return of such merchandise.

IV. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

- A. Judgment is hereby entered against Contempt Defendants, jointly and severally, in the amount of two million three hundred thousand dollars (\$2,300,000) in favor of the FTC. This monetary judgment is suspended. The suspended portion of the judgment shall be subject to the conditions set forth in Subparagraph B of this Section.
- B. The FTC's agreement to this Supplemental Order is expressly premised upon the truthfulness, accuracy and completeness of the sworn financial statements of Contempt Defendants dated March 10, 2008, provided to the FTC by the Contempt Defendants, and the truthfulness, accuracy, and correctness of which was attested to by the Contempt Defendants on those dates. These financial statements contain material information upon which the FTC has relied in negotiating and agreeing to this Supplemental Order. If, upon motion by the FTC, the Court finds that any such financial statement contains any material misrepresentation or omission, the suspended judgment entered in Subparagraph A of this Section shall become immediately due and payable, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance; provided, however, that in all other respects this Supplemental Order shall remain in full force and effect unless otherwise ordered by the Court.
- C. All funds paid pursuant to this Section shall be deposited into a fund administered by the

FTC 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 FTC may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Contempt Defendants' practices alleged in the Show Cause Motion. Any funds not used for such equitable relief shall be deposited to the United States Treasury as equitable disgorgement. Contempt Defendants shall have no right to challenge the FTC's choice of remedies or the manner of distribution.

- D. Contempt Defendants acknowledge and agree that all money paid pursuant to this Supplemental Order is irrevocably paid to the FTC for purposes of settlement between the parties, and Contempt Defendants relinquish all rights, title, and interest to such money. Contempt Defendants shall make no claim or demand for return of the funds, directly or indirectly, through counsel or otherwise, and in the event of bankruptcy of any Contempt Defendant, such Contempt Defendant acknowledges that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.
- E. Contempt Defendants are hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the FTC their respective taxpayer identifying numbers (social security numbers or employer identification numbers), which will be used for purposes of collecting and reporting on any delinquent amount arising out of such Contempt Defendant's relationship with the government.
- F. Contempt Defendants agree that the facts as alleged in the Show Cause Motion shall be taken as true without further proof in any bankruptcy case, including but not limited to a

nondischargeability complaint in any bankruptcy case. Contempt Defendants further stipulate and agree that the facts alleged in the Show Cause Motion establish all elements necessary to sustain an action pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S. C. § 523(a)(2)(A).

- G. The judgment entered pursuant to this Section is equitable monetary relief, solely remedial in nature, and not a fine, penalty, punitive assessment, or forfeiture.
- H. Any proceedings instituted under this Section shall be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including but not limited to contempt proceedings or any other proceedings that the FTC or the United States may initiate to enforce this Supplemental Order. For purposes of this Section, Contempt Defendants waive any right to contest any of the allegations in the Show Cause Motion.

V. COMPLIANCE MONITORING

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

- A. Within ten (10) days of receipt of written notice from a representative of the FTC, Contempt Defendants 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 Contempt Defendant's possession or direct or indirect control to inspect the business operation;
- B. In addition, the FTC is authorized to monitor compliance with the Final Order and this Supplemental 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 and suppliers to: Contempt Defendants, Contempt Defendants' employees, or any other entity managed or controlled in whole or in part by Contempt Defendants, without the necessity of identification or prior notice; and

C. Contempt Defendants shall permit representatives of the FTC 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 the Final Order or this Supplemental Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Supplemental Order shall limit the FTC'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)).

VI. COMPLIANCE REPORTING BY CONTEMPT DEFENDANTS

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

- A. For a period of five (5) years from the date of entry of this Supplemental Order,
- (1) Dennis J. Saccurato shall notify the FTC of the following:
 - (a) Any changes in residence, mailing addresses, and telephone numbers of Dennis J. Saccurato, within ten (10) days of the date of such change;
 - (b) Any changes in employment status (including self-employment) of Dennis J. Saccurato, and any change in the ownership of Dennis J. Saccurato in any business entity, within ten (10) days of the date of such change. Such

notice shall include the name and address of each business that Dennis J. Saccurato is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of Dennis J. Saccurato's duties and responsibilities in connection with the business or employment; and

- (c) Any changes in Dennis J. Saccurato's name or use of any aliases or fictitious names; and
- (2) Contempt Defendants shall notify the FTC of any changes in corporate structure of Corporate Defendants or any business entity that Dennis J. Saccurato directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under the Final Order or this Supplemental Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to the Final Order or this Supplemental 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 Contempt Defendants learn less than thirty (30) days prior to the date such action is to take place, Contempt Defendants shall notify the FTC as soon as is practicable after obtaining such knowledge.
- B. One hundred eighty (180) days after the date of entry of this Supplemental Order, and each year thereafter on the same date for a period of five (5) years from the date of entry of this Supplemental Order, Contempt Defendants each shall provide a written report to

the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with the Final Order and this Supplemental Order. This report shall include, but not be limited to:

- (1) For Dennis J. Saccurato:
 - a. The then-current residence address, mailing addresses, and telephone numbers of Dennis J. Saccurato;
 - b. The then-current employment and business addresses and telephone numbers of Dennis J. Saccurato, a description of the business activities of each such employer or business, and the title and responsibilities of Dennis J. Saccurato, for each such employer or business; and
 - c. Any other changes required to be reported under Subparagraph A of this Section.
- (2) For all Contempt Defendants:
 - a. A copy of each acknowledgment of receipt of this Supplemental Order, obtained pursuant to Section IX; and
 - b. Any other changes required to be reported under Subparagraph A of this Section.

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

Associate Director
Division of Enforcement
Federal Trade Commission
601 New Jersey Ave., N.W.
Suite NJ-2115

Washington, D.C. 20001

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- D. For purposes of the compliance reporting and monitoring required by this Supplemental Order, the FTC is authorized to communicate directly with Contempt Defendants.

VII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Supplemental Order, Contempt Defendants, in connection with the advertising, offering for sale, sale, or distribution of any goods, or where any Contempt Defendant is a majority owner of the business or directly or indirectly manages or controls such a business, and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of the Final Order or this Supplemental Order by personal service or otherwise, are hereby 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, phone 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 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 the Final Order and this Supplemental Order, including but not limited to, copies of acknowledgments of receipt of this Supplemental Order, required by Section IX, and all reports submitted to the FTC pursuant to Section VI.

**VIII. DISTRIBUTION OF FINAL ORDER AND SUPPLEMENTAL ORDER BY
CONTEMPT DEFENDANTS**

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

- A. **Corporate Defendants:** Corporate Defendants must deliver a copy of the Final Order and this Supplemental Order to all of their principals, officers, directors, and managers. Corporate Defendants also must deliver copies of the Final Order and this Supplemental Order to all of their employees, agents, and representatives who engage in conduct related to the subject matter of the Final Order or Supplemental Order. For current personnel, delivery shall be within (5) days of service of this Supplemental Order upon Contempt Defendants. For new personnel, delivery shall occur prior to them assuming their responsibilities.
- B. **Dennis J. Saccurato as Control Person:** For any business that Dennis J. Saccurato controls, directly or indirectly, or in which Dennis J. Saccurato has a majority ownership interest, Dennis J. Saccurato must deliver a copy of the Final Order and this

Supplemental Order to all principals, officers, directors, and managers of that business. Dennis J. Saccurato must also deliver copies of the Final Order and this Supplemental Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Final Order or Supplemental Order. For current personnel, delivery shall be within (5) days of service of this Supplemental Order upon Contempt Defendants. For new personnel, delivery shall occur prior to them assuming their responsibilities.

- C. **Dennis J. Saccurato as employee or non-control person:** For any business where Dennis J. Saccurato is not a controlling person of a business but otherwise engages in conduct related to the subject matter of the Final Order or this Supplemental Order, Dennis J. Saccurato must deliver a copy of the Final Order and this Supplemental Order to all principals and managers of such business before engaging in such conduct.
- D. Contempt Defendants must secure a signed and dated statement acknowledging receipt of the Final Order and Supplemental Order, within thirty days of delivery, from all persons receiving a copy of the Final Order and Supplemental Order pursuant to this Section.

IX. ACKNOWLEDGMENT OF RECEIPT OF SUPPLEMENTAL ORDER BY CONTEMPT DEFENDANTS

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

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X. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that the Court shall continue to retain jurisdiction of this matter for all purposes.

STIPULATED AND AGREED TO:

FOR THE PLAINTIFF FEDERAL TRADE COMMISSION:

Malini Mithal
MALINI MITHAL
JAMES A. PRUNTY
Federal Trade Commission

Dated: 5/13/08

FOR THE CONTEMPT DEFENDANTS:

Dennis J. Saccurato
Dennis J. Saccurato, individually and as
President of Sparta Chem, Inc. and Compu-Kleen,
Inc.

Dated: 3/28/08

Warren F. Clark
Warren F. Clark, Esq., attorney for
Contempt Defendants

Dated: 3/28/08

IT IS SO ORDERED, this 28th day of May, 2008, at 1:52 p.m.

Katharine S. Hayden
KATHARINE S. HAYDEN
United States District Judge
District of New Jersey