

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FEDERAL TRADE COMMISSION, Plaintiff,

v.

MERCURY MARKETING OF DELAWARE, INC., a
corporation, and
NEAL D. SAFERSTEIN, individually and as an officer of the
corporation, Defendants.

Civ. Action No. 00-CV-3281

Hon. Clifford Scott Green

**STIPULATED JUDGMENT AND
ORDER FOR PERMANENT INJUNCTION**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), commenced this action by filing its Complaint for permanent injunction and other relief pursuant to Sections 5 and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45 and 53(b), charging that the Defendants engaged in unfair or deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, in connection with the sale of Internet-related services, including but not limited to design, hosting, and maintenance of web pages and web sites. The Commission and these Defendants, as hereinafter defined, hereby stipulate to the entry of this Stipulated Judgment and Order for Permanent Injunction ("Order") to resolve all matters of dispute between them in this action.

THEREFORE, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §§ 1331 and 1337(a), and 15 U.S.C. § 53(b).
2. Venue is proper as to all parties in the Eastern District of Pennsylvania.
3. The activities of the Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The Complaint states a claim upon which relief may be granted against the Defendants under Sections 5(a) and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a) and 53(b).
5. This Order is for settlement purposes only and does not constitute and shall not be interpreted to constitute an admission by Defendants that they have engaged in violations of any law or regulations, including but not limited to the Federal Trade Commission Act, or that the facts alleged in the Complaint, other than the jurisdictional facts, are true.
6. Plaintiff and Defendants, by and through their counsel, have agreed that the entry of this Order resolves all matters of dispute between them arising from the Complaint in this action, up to the date of entry of this Order.
7. Plaintiff and Defendants waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Defendants further waive and release any claim they may have against the Commission, its employees, representatives or agents.
8. Defendants have agreed that this Order does not entitle Defendants to seek or to obtain

attorneys' fees as a prevailing party 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 Defendants further waive any rights to attorneys' fees that may arise under said provision of law.

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

DEFINITIONS

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

1. "**Defendants**" means the Corporate Defendant and Individual Defendant. The "Corporate Defendant" is Mercury Marketing of Delaware, Inc. (Mercury), a Delaware corporation. The "Individual Defendant" is Neal D. Saferstein, individually and as an officer of the Corporate Defendant.
2. "**Document**" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.
3. "**Domain name**" is used in Universal Resource Locators ("URL") to identify a particular web page. The URL is the global address of documents or other resources on the World Wide Web. For example, in the URL "http://www.pcwebopedia.com/index.html," the domain name is "pcwebopedia.com."
4. "**Internet**" means a worldwide system of linked computer networks that use a common protocol (TCP/IP) to deliver and receive information. The "Internet" includes, but is not limited to, the following forms of electronic communication: file transfers, electronic mail, the World Wide Web, newsgroups, Internet Relay Chat, audio, and video.
5. "**Internet-related Service**" means any product or service that assists persons to access, use, browse, advertise on, communicate through, or do business on the Internet, including, but not limited to: design, hosting and maintenance of web pages and web sites, providing Internet access or e-mail accounts, and establishing domain names and virtual domain names.
6. "**Material**" means likely to affect a person's choice of, or conduct regarding, goods or services.
7. "**Person**" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.
8. "**Web page**" is a single electronic file or document displayed on the World Wide Web that includes at least the following elements: copy, graphics, layout, and internal technical design.
9. "**Web site**" means a set of electronic documents, usually a home page and subordinate pages, readily viewable on computer by anyone with access to the Internet, standard software, and knowledge of the web site's location or address.

I.

PROHIBITED BUSINESS ACTIVITIES PURSUANT TO THE FTC ACT

IT IS THEREFORE ORDERED that, in connection with the advertising, promotion, marketing, offering for sale, sale, or provision of any Internet-related good or service, Defendants, their successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from:

A. Making or assisting in the making of, expressly or by implication, directly or indirectly, orally or in writing, any false or misleading statements or misrepresentations of material fact, including but

not limited to misrepresentations that:

1. Consumers are legally obligated to pay for any Internet-related good or service that consumers or their agents did not authorize;
2. Defendants will not charge consumers before the end of a free trial period for web site or web page services;
3. Defendants will not charge consumers who cancel before the end of any free trial period for web site or web page services;
4. Defendants will not charge consumers for web page services if consumers cancel their web site or web page services within a specified period of time after receiving or accessing their web site or web page for review; and
5. Consumers' web sites or web pages have been registered or indexed by any Internet search engine, that submission of consumers' web sites or web pages to any Internet search engine for registration or indexing will result in the actual registration or indexing of the web sites or web pages, or that consumers' web sites or web pages have been submitted to any Internet search engine for registration or indexing.

B. Failing to clearly disclose, prior to charging consumers for any Internet-related goods or services, all material terms of the transactions, including but not limited to: (i) that Defendants intend to charge consumers or cause consumers to be charged for such services; (ii) the amount of the intended charges; (iii) the dates the intended charges will be assessed; (iv) the intended method of billing; and (v) Defendants' policies concerning cancellations or refunds; and

C. Sending a bill, or causing a bill to be sent, to consumers for any Internet-related good or service without first obtaining express, verifiable authorization that the persons being charged have agreed to be charged for the goods or services in the amount and in the manner disclosed pursuant to Paragraph I.B., above, and as set forth in the bills which Defendants are sending or causing to be sent to consumers.

II. AUDIO RECORDING OF CONSUMER CALLS

IT IS FURTHER ORDERED that in the event Defendants, their successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, audio record any conversation with a consumer to verify or confirm that a consumer is agreeing to purchase Defendants' goods or services, Defendants are permanently restrained and enjoined from accepting or processing such purchases unless the audio recording meets the following criteria:

A. The audio recording must clearly and accurately reflect the consumer's agreement to record the telephone call; and

B. The audio recording must include, in volume, tempo, and cadence sufficient for an ordinary consumer to hear and comprehend them, clear and conspicuous disclosures of all material terms of Defendants' offer and the consumer's express agreement to those terms. The material terms disclosed in the recorded conversation shall be consistent with any material terms previously disclosed to consumers. For purposes of this Paragraph, material terms include, but are not limited to:

1. The information contained in Paragraph I.B. of this Order;
2. Which, if any, of Defendants' products or services are free and, if applicable, the length of the free offer;
3. The amount of any set-up, monthly, or recurring fee;
4. The manner in which such fee will be billed; *i.e.*, by credit card, directly, on a consumer's

telephone bill, or otherwise;

5. The means by which a consumer may cancel Defendants' services without incurring any cost or obligation (if applicable, such as when a free-trial period is offered);

6. The date by which or time period within which a consumer must cancel Defendants' services to avoid being charged for the next month's service; and

7. Defendants' toll-free telephone number.

III.

BILLING AND REFUNDS

IT IS FURTHER ORDERED that, in connection with the advertising, promotion, marketing, offering for sale, sale, or provision of any Internet-related service, Defendants, their successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are permanently restrained and enjoined from:

A. Billing or causing any consumer to be billed prior to:

1. Three (3) days after the expiration of any free-trial period; and

2. Delivery of a sample web page and explanatory materials to the consumer, including written materials containing the disclosures required under Paragraph I.B. of this Order; and

B. Failing to credit a consumer's account, issue a refund check, or make a request for credit through the appropriate billing agency or local exchange carrier ("LEC"), as the case may be, within seven (7) business days from the receipt of any valid cancellation or refund request.

IV.

CONSUMER REDRESS

IT IS FURTHER ORDERED that Defendants shall engage one or more independent third-parties (collectively, "Administrator"), approved by the Commission's representatives, to administer a notification program as described below, at Defendants' expense:

A. Within thirty (30) days following entry of this Order, Defendants shall provide the Administrator and the undersigned counsel for the Commission with an affidavit or declaration that includes a list of the name and last known address and telephone number, including the Billing Telephone Number ("BTN"), of every consumer qualified to receive a notification, as described below. Consumers qualified to receive a notification include all consumers who were either (i) being billed for Mercury's services through a local exchange carrier ("LEC") as of June 28, 2000, or (ii) have been billed through a LEC between June 28, 2000, and the date the Defendants signed this Order, with the exception of any consumer:

1. for whom a full credit has been transmitted directly or through the LEC billing system for all charges for Mercury's Internet-related services; or

2. whom Mercury has fully reimbursed by check for all charges for Mercury's Internet-related services; or

3. who has, after the expiration of the fifteen-day free trial period, engaged their website administration feature or has requested that Mercury engage their website administration feature; or

4. who has, after the expiration of the fifteen-day free trial period, engaged their e-mail

address selection feature; or

5. who has, after the expiration of the fifteen-day free trial period, engaged their Internet connectivity service feature.

Defendants may generate the list of qualified consumers by using information in Mercury's customer database records, provided that the Individual Defendant provides an affidavit or declaration that truthfully states: (i) whether there is any reason to believe that the information or method used may not or did not generate an accurate list of consumers qualified to receive a notification; and (ii) if applicable, how and the extent to which the information or method used did not or may not generate an accurate list. If a means other than using information in Mercury's customer database records is used, the aforementioned affidavit or declaration shall state the method that was used to generate the list of qualified consumers.

B. Within sixty (60) days following entry of this Order, the Administrator shall mail a notification to every consumer identified on the list of consumers qualified to receive a notification. The notification, which shall have been approved in advance by the Commission's representatives, shall consist of a written notice and a self-addressed, postage paid reply form addressed to Corporate Defendant at an address maintained by the Administrator. The written notice shall clearly and conspicuously notify recipients that: (i) they have been billed, or are being billed, for Defendants' Internet-related services; (ii) they have a right to cancel Defendants' Internet-related services; and (iii) if they wish to cancel they should fill out the reply form and return it to Defendants. The Administrator shall retain a sample of the actual notification that is sent to consumers, to be provided to Commission counsel upon request, and records showing the date on which the notifications were mailed to eligible consumers.

C. The Administrator shall keep records showing the names of consumers whose notifications are returned by the post office as undeliverable and shall ask Defendants, through their counsel, to provide updated addresses for those consumers so that the notifications can be re-mailed. If Defendants, through their counsel, are unable to provide updated addresses, the Administrator shall make a reasonable effort to obtain valid addresses for such consumers, including placing a call to the BTN provided by the Defendants and asking for a current address, and using the National Change of Address registry.

D. The Administrator shall review and evaluate the eligibility for reimbursement of each consumer responding to the notification in accordance with the criteria set forth below. A consumer shall be determined eligible for reimbursement if the consumer:

1. Returns a signed reply form postmarked within thirty (30) days following the date on which the notification was mailed to the consumer; and
2. Indicates on the reply form that the consumer wants to cancel Mercury's service or halt all charges; and
3. Provides an explanation on the reply form as to the reason the consumer wants to cancel Mercury's service; and
4. Indicates on the reply form that:
 - a. the consumer did not authorize the charges for Mercury's services which appeared on the consumer's telephone bill; or
 - b. the consumer canceled within Mercury's free trial period but was nonetheless charged; or

c. the consumer was charged for Mercury's services even though the consumer was told they would not be charged unless they notified Mercury after the free trial period that they wanted to continue Mercury's services; or

d. the consumer was charged even though they never received any written materials or any notification that their Mercury website was available for review.

5. The Administrator shall have the authority to determine whether the explanation provided by the consumer on the reply form contains one or more of the indications enumerated in 4. a.-d., above.

E. Within one hundred forty (140) days following entry of this Order, the Administrator shall provide to Commission counsel and to Defendants (i) a list of consumers that the Administrator has determined to be eligible to receive reimbursement (the "preliminary eligibility list"), and (ii) copies of all reply forms and other written statements received from consumers.

F. Defendants may review the preliminary eligibility list and eliminate from the list the name of any consumer who has already been issued a full credit or refund, provided that the Defendants first provide Commission counsel an affidavit or declaration truthfully stating that, with respect to each consumer whose name the Defendants have removed from the preliminary eligibility list, Mercury has already (i) arranged for the appropriate billing agent or service to transmit a full credit to the consumer; (ii) provided a full credit or refund directly to the consumer; or (iii) received information, from either a LEC, indicating that a full credit has been provided to the consumer.

G. Defendants shall, within thirty (30) days following receipt of the preliminary eligibility list from the Administrator, take all steps necessary to (i) arrange for the appropriate LEC to transmit a full credit to each consumer whose name was included on the preliminary eligibility list and not eliminated pursuant to Paragraph IV.F., above, or (ii) provide full credits or refunds directly to such consumers. Defendants shall make and keep records reflecting the efforts taken to effectuate the credits or refunds, and shall, between thirty (30) and forty-five (45) days following receipt of that list of eligible consumers from the Administrator, prepare an affidavit or declaration stating the efforts taken to comply with this Paragraph IV.

H. The Administrator shall, between thirty (30) and sixty (60) days after providing the preliminary eligibility list to Defendants, review the efforts taken by Defendants to ensure that Defendants have taken the necessary steps to comply with Paragraph IV.G., above.

I. The Administrator shall, within twenty (20) business days of completing the review described in Paragraph IV.H., above, provide a report to the Commission and to Defendants describing the efforts taken by the Administrator and the results of its review of the Defendants' efforts to comply with Paragraph IV.G., above.

J. Defendants are responsible for ensuring that the Administrator performs all tasks as specified in this Paragraph IV. Should the Administrator be unable or fail to comply with any provision in this Paragraph, Defendants shall, within a reasonable time frame, make alternative arrangements, subject to the approval of the Commission or its representatives, for timely accomplishment of such tasks.

K. To secure Defendants' obligations under this Paragraph IV, Defendants shall place Five Hundred Thousand Dollars (\$500,000) into one or more escrow accounts, as follows:

1. Defendants shall place Two Hundred Fifty Thousand Dollars (\$250,000) into escrow within five (5) business days of entry of the Stipulated Judgment;

2. Defendants shall place an additional One Hundred Twenty-Five Thousand Dollars (\$125,000) in escrow within thirty-five (35) days of entry of the Stipulated Judgment; and

3. Defendants shall place an additional One Hundred Twenty-Five Thousand Dollars (\$125,000) in escrow within sixty-five (65) days of entry of the Stipulated Judgment.

L. The escrow accounts established pursuant to Paragraph IV.K., above, shall be maintained or terminated in accordance with the following conditions only:

1. Commission counsel shall, within fifteen (15) business days of receipt of the report of the Administrator required by Paragraph IV.I., above, notify Defendants and the escrow agent either that: (a) the escrow should be terminated and all funds in the escrow accounts should be returned to Defendants; or (b) the Commission is moving the court to require Defendants to show cause why they should not be held in contempt for their failure to comply with this Paragraph IV., in which case the escrow accounts must be maintained until such time as the Court rules otherwise; or

2. If Defendants have not complied fully with Paragraphs IV.A-J., above, within two hundred and fifty (250) days of entry of this Order, the Commission shall have the right to petition the court to order that funds necessary to provide consumer redress consistent with Paragraphs IV.A-J, above, shall be paid directly to the Commission from the escrow accounts, in addition to whatever other legal remedies are available to the Commission.

V.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, within five (5) business days of receipt of this Order as entered by the Court, Defendants shall submit to the Commission a truthful sworn statement, in the form shown on Appendix A, that shall acknowledge receipt of this Order.

VI.

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, Defendants shall, in connection with any business that any Defendant directly or indirectly manages, controls, or has a majority ownership interest in, that is engaged in the advertising, promotion, marketing, offering for sale, sale or provision of any Internet-related service, or assisting others engaged in these activities:

A. Provide:

1. a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, each officer and director, and each individual serving in a management capacity within ten (10) business days after receipt of this Order, and thereafter immediately upon employing any such person; and

2. an accurate summary of Paragraphs I and II of the Order that conforms to the model set forth in Appendix B to, and obtain a signed and dated acknowledgment of receipt of same from, all persons involved in responding to consumer complaints or inquiries, all persons involved in verifying sales or taping customers agreeing to purchase Defendants' services, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, within ten (10) business days after receipt of this Order, and thereafter immediately upon employing any such person;

Provided, however, that the Defendants shall, upon the request of any person who has received a summary pursuant to this Paragraph, promptly provide such person with a copy of the complete Order.

B. Maintain for a period of three (3) years after creation, and upon reasonable notice make available to representatives of the Commission, the original signed and dated acknowledgments of receipt of either a copy of this Order or a copy of the summary required by Paragraph VI.A.,

above.

VII.

COMPLIANCE REPORTING BY DEFENDANTS

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 after the date of entry of this Order, the Defendants shall notify the Commission in writing of the following:

1. Any changes in the residence, mailing addresses and telephone numbers of the Individual Defendant, within ten (10) days of the date of such change;
2. Any changes in the employment status (including self-employment) of the Individual Defendant, within ten (10) days of such change. Such notice shall include the name and address of each business that the Individual Defendant is affiliated with or employed by, a statement of the nature of the business, and a statement of the Individual Defendant's duties and responsibilities in connection with the business or employment;
3. Any proposed change in the structure of the Corporate Defendant, or any business entity that the Individual Defendant directly or indirectly manages, controls or has a majority ownership interest in, such as creation, incorporation, dissolution (including the dissolution of any subsidiaries), assignment, proposed filing of a bankruptcy petition, or sale or merger resulting in the emergence of a successor corporation, or any other change in that entity, including a change in the corporate name or address, that may affect any compliance obligation arising out of this Order, at least thirty (30) days prior to the effective date of any such change; *provided, however,* that with respect to any proposed change in the structure of the Corporate Defendant or any business entity that the Individual Defendant directly or indirectly manages, controls or has a majority ownership interest in, about which the Defendant learns less than thirty (30) days prior to the date such action is to take place, the Defendant shall notify the Commission as soon as is practicable after learning of such proposed change;

B. One hundred eighty (180) days after the date of entry of this Order, Defendants shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which Defendants have complied and are complying with this Order. This report shall include but not be limited to:

1. Individual Defendant's then current residence address, mailing addresses and telephone numbers;
2. Individual Defendant's then current employment and business addresses and telephone numbers, a description of the business activities of each such employer or business, and the Individual Defendant's title and responsibilities for each such employer or business;
3. A copy of each acknowledgment of receipt of this Order or Order summary obtained by the Corporate or Individual Defendant pursuant to Paragraph VI; and
4. A statement describing the manner in which the Corporate or Individual Defendant has complied and is complying with Paragraphs I-IV, VI and VIII this Order;

C. Upon written request by a representative of the Commission, Defendants shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) days' notice with respect to any conduct that is subject to this Order;

D. For the purposes of this Order, Defendants shall, unless otherwise directed by a representative of the Commission, identify all written notifications to the FTC as provided in reference to *Mercury Marketing of Delaware, Inc., U.S. District Court for the Eastern District of Pennsylvania, Civil*

Action No. 00-3281 and mail them to:

John M. Mendenhall, Esq. or Regional Director
Federal Trade Commission - East Central Region
1111 Superior Ave. East, Suite 200
Cleveland, Ohio 44114

E. For the purposes of this Paragraph, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom the Individual Defendant performs services as an employee, consultant, or independent contractor; and

F. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate with Craig A. Waldman, Esq., Clifford Chance Rogers & Wells LLP, New York, New York, or Arthur G. Jakoby, Esq., Herrick Feinstein LLP, New York, New York, or such other counsel as may be identified by Defendants.

VIII.

MONITORING COMPLIANCE OF SALES PERSONNEL

IT IS FURTHER ORDERED that, in connection with any business that any Defendant directly or indirectly manages, controls or has a majority ownership interest in that is engaged in the advertising, promotion, marketing, offering for sale, sale or provision of any Internet-related service, or assisting others engaged in these activities, Defendants and their successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from:

A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Paragraph I of this Order. Such steps shall include adequate monitoring of sales presentations or other calls with customers, and shall also include, at a minimum, the following:

1. Listening to the oral representations made by persons engaged in sales or other customer service functions;
2. Establishing a procedure for receiving and responding to consumer complaints;
3. Ascertaining the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved;
4. Failing promptly to investigate fully any consumer complaint received by any business to which this Paragraph applies; and
5. Failing to take corrective action with respect to any sales person whom any Defendant determines is not complying with this Order, which may include training, disciplining, and/or terminating such sales person;

Provided, however, that this Paragraph does not authorize or require a Defendant to take any action that violates any federal, state, or local law.

IX.

RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, in connection with any business that any Defendant directly or indirectly manages, controls or has a majority ownership interest in, that is engaged in the advertising, promotion, marketing, offering for sale, sale or provision of any Internet-related services, or assisting others engaged in these

activities, Defendants, their successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are hereby restrained and enjoined from failing to create and maintain for a period of three (3) years following the date of their creation, unless otherwise specified:

A. Books, records and accounts that, in reasonable detail, accurately and fairly reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Records containing the name, address, telephone number and social security number of each person employed by any Defendant in any capacity, 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; *provided, however*, that the businesses subject to this requirement shall retain such records during the employment of any person, and for a period of two (2) years after the date of their termination;

C. Records containing the name, address, telephone number, quantity of goods or services purchased, and a description of the goods or services purchased, for all consumers to whom the business has sold or invoiced web sites or Internet-related services;

D. Records that reflect, for every written or oral consumer complaint or refund request received by any of the Defendants, their successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether directly or indirectly or through any third party: (1) the customer's name, address, telephone number; (2) the dollar amount paid by the consumer; (3) the written complaint or refund request, if any; (4) the basis of the complaint or refund request, including the name of any salesperson complained about; (5) the nature and result of any investigation conducted concerning the complaint or refund request; (6) each response and the date of the response to the complaint or refund request; and (7) any final resolution of the complaint or refund request, and the date of the resolution; and (8) in the event of a denial of a refund request, the reason for the denial; and

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized, which shall be retained for three (3) years after the last date of their dissemination or use.

X.

ACCESS TO BUSINESS PREMISES

IT IS FURTHER ORDERED that for a period of five (5) years from the date of entry of this Order, for the purposes of determining or securing compliance with its provisions, the Defendants, their successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise shall grant to representatives of the Commission, within three (3) business days of receipt of written notice from the Commission:

A. Access during normal business hours to any office or facility storing documents of any business that any of the Defendants directly or indirectly manages, controls, or has a majority ownership interest in, that is engaged in the advertising, promotion, marketing, offering for sale, sale or provision of any Internet-related service, or assisting others engaged in such activities. In providing such access, Defendants shall permit representatives of the Commission, in the presence of counsel for Defendants, to inspect and copy all documents relevant to any matter contained in this Order; and shall permit representatives of the Commission to remove such documents for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and

B. The opportunity to interview, without restraint or interference, officers, directors, employees, contractors, and agents, including all personnel involved in responding to consumer complaints or inquiries and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which Paragraph X.A. applies, regarding compliance

with the provisions of this Order. Appropriate counsel may be present during such interviews.

Provided, however, that upon application of the Commission for good cause shown, the Court may enter an *ex parte* order granting immediate access to Defendants' business premises for the purposes of inspecting and copying all documents relevant to any matter contained in this Order.

XI.

AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that the Commission is authorized to monitor Defendants' compliance with this Order by all lawful means, including but not limited to the following:

A. The Commission is authorized, without further leave of Court, to obtain discovery from any person (including a Defendant) in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, subject to Rules 26(c), 45(c), and any other provision of the Rules providing the person the right to seek relief from the Court, for the purpose of monitoring and investigating Defendants' compliance with any provision of this Order.

B. The Commission is authorized to use representatives posing as consumers to Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice; and

C. 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 and 57b-1, to investigate whether Defendants have violated any provision herein or Section 5 of the FTC Act, 15 U.S.C. § 45.

XII.

CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendants are permanently restrained and enjoined from providing or disclosing, whether or not in exchange for payment or other consideration, to any party, the names, addresses, telephone numbers, credit card numbers, or bank account numbers of, or other information related to persons who at any time received a refund or credit from Defendants, including, but not limited to persons who received a refund or credit pursuant to Paragraph IV, above. *Provided, however,* that Defendants may provide such information to a law enforcement agency either voluntarily or as required by any law, regulation, or Court order.

XIII.

FEES AND COSTS

IT IS FURTHER ORDERED that each party to this Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

XIV.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the purpose of enabling the parties to apply to the Court at any time for such further orders and directives as may be necessary or appropriate for the interpretation or modification of this Order, for the enforcement of compliance therewith, or for the punishment of violations thereof.

XV.

COMPLETE SETTLEMENT

The parties hereby consent to entry of the foregoing Order which shall constitute a final judgment and order in this matter. The parties further stipulate and agree that the entry of the foregoing Order shall constitute a full, complete and final settlement of this action.

IT IS SO ORDERED this 1st day of March, 2001.

CLIFFORD SCOTT GREEN
United States District Judge

So stipulated and agreed:

FOR THE PLAINTIFF:

BRENDA W. DOUBRAVA
BRINLEY H. WILLIAMS
Federal Trade Commission
1111 Superior Avenue - Suite 200
Cleveland, OH 44114
(216) 263-3455
Attorneys for Plaintiff

FOR THE DEFENDANTS:

NEAL D. SAFERSTEIN, individually
and as an officer of Mercury Marketing
of Delaware, Inc.

MERCURY MARKETING OF
DELAWARE, INC.

By: Neal D. Saferstein, President

APPROVED AS TO FORM:

CRAIG A. WALDMAN
Clifford Chance Rogers & Wells
200 Park Avenue
New York, NY 10166-0153
(212) 878-8458
Attorney for Defendants