

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

Federal Trade Commission,

Plaintiff,

v.

First Consumers, LLC, et al.,

Defendants.

Civ. Action No. 14-1608

**STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION AND
MONETARY JUDGMENT AS TO DEFENDANT MARC FERRY**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), filed a Complaint for Permanent Injunction and Other Equitable Relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101 *et seq.* The Commission and Defendant Marc Ferry ("Defendant") hereby stipulate to the entry of this Stipulated Final Order for Permanent Injunction and Monetary Judgment As to Defendant Marc Ferry ("Order") to resolve all matters of dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

- A. This Court has jurisdiction over this matter.
- B. The Complaint charges that Defendant violated Section 5 of the FTC Act, 15 U.S.C. § 45, and the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310, by participating in a fraudulent scheme to make unauthorized charges to consumers' bank accounts in connection with offerings for purported products such as fraud protection and prescription benefits.

C. Defendant Marc Ferry neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendant Marc Ferry admits the facts necessary to establish jurisdiction.

D. Defendant Marc Ferry waives any claim that he may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agrees to bear his own costs and attorney fees.

E. Defendant Marc Ferry waives all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

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

A. **“Charge”** (as a noun or verb) means any claimed obligation to pay against a Financial Account, any debit, or any other withdrawal from a Financial Account.

B. **“Corporate Defendants”** means First Consumers, LLC; Standard American Marketing Inc.; PowerPlay Industries, LLC; 1166519075 Québec Inc. d/b/a Landshark Holdings Inc.; and 1164047236 Québec Inc. d/b/a Madicom Inc., as well as any affiliates, subsidiaries, successors, or assigns, and any fictitious business entities or business names created or used by these entities, or any of them.

C. **“Defendant”** means Marc Ferry.

D. **“Defendants”** means the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

E. **“Financial Account”** means a credit card, debit card, pre-paid or stored value card, bank account, or any other account through which a consumer can be Charged.

F. **“Individual Defendants”** means Marc Ferry, Ari Tietolman, Charles W. Borie, and Robert Barczai.

G. **“Remotely Created Check”** means a check drawn on a payor’s account that is initiated or created by or on behalf of the payee, and which is deposited into or cleared through the check clearing system. For purposes of this definition, an account includes any Financial Account or credit or other arrangement that allows a person to draw checks that are payable by, through, or at a bank. For purposes of this definition, a Remotely Created Check originates as a paper-based transaction, but can be processed subsequently through electronic means (such as through check imaging or scanning) or through non-electronic means. A Remotely Created Check is often also referred to as an “RCC,” “demand draft,” “bank draft,” “bank check,” or “preauthorized draft.”

H. **“Remotely Created Payment Order”** (“RCPO”) means a payment instruction or order drawn on a payor’s account that is initiated or created by or on behalf of the payee, and which is deposited into or cleared through the check clearing system. For purposes of this definition, an account includes any Financial Account or credit or other arrangement that allows checks, payment instructions, or orders to be drawn against it that are payable by, through, or at a bank. For purposes of this definition, unlike a Remotely Created Check, a Remotely Created Payment Order does not originate as a paper-based transaction. A Remotely Created Payment Order is created when a seller, merchant, payment processor, or other entity directly or indirectly enters Financial Account and routing numbers into an electronic check template that is converted into an electronic file for deposit into the check clearing system.

ORDER

I. BAN ON REMOTELY CREATED CHECKS AND PAYMENT ORDERS

IT IS FURTHER ORDERED that Defendant is permanently restrained and enjoined from:

A. Creating or causing to be created, or assisting others in creating or causing to be created, directly or indirectly, Remotely Created Checks or Remotely Created Payment Orders drawn on any account not controlled by Defendant; and

B. Depositing or causing to be deposited, or assisting others in depositing or causing to be deposited, directly or indirectly, Remotely Created Checks or Remotely Created Payment Orders drawn on any account not controlled by Defendant.

II. REQUIRED CONDUCT REGARDING CONSUMER AUTHORIZATION FOR CHARGES

IT IS FURTHER ORDERED that, for any business in which Defendant is an actual or de facto officer, whole or partial owner, or which Defendant manages or controls, directly or indirectly, Defendant, his agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from, or assisting others engaged in, charging or attempting to charge any consumer's Financial Account, unless:

A. The payment method being used is otherwise permitted by this Order;

B. Before obtaining the consumer's Financial Account information, the Defendant or the entity charging the consumer's Financial Account clearly and conspicuously discloses to the consumer all material terms of the transaction, including but not limited to:

1. A description of the products or services being offered;

2. A telephone number for customer inquiry that is promptly answered during all normal business hours;
3. Whether any recurring Charges will be charged to the consumer, and if so, the amount and frequency of such Charges;
4. The manner in which the consumer may cancel the Charge or obtain a refund;
5. The total cost of such products or services, including the number or amount of any installments to be paid by the consumer; and
6. Any restriction, limitation, or condition to purchase, receive, or use the products or services; and

C. Before charging the consumer's account, Defendant obtains and retains, pursuant to Section X, below, competent and reliable evidence that proves the consumer's consent to the Charge.

III. PROHIBITIONS AGAINST MISREPRESENTATIONS OF GOODS AND SERVICES

IT IS FURTHER ORDERED that, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service or the Charging of any Financial Account, Defendant, his agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact, including but not limited to:

- A. Consumer authorization for a Charge;

B. The nature or terms of any refund or cancellation, including but not limited to entitlement to a refund or cancellation and the manner in which a refund or cancellation can be obtained or when it will be received;

C. Any recurring Charges, including but not limited to the amount and frequency of any such recurring Charges;

D. The total cost to purchase and the quantity of such products or services, including the number or amount of any installments to be paid;

E. Any restriction, limitation, or condition to purchase, receive, or use the products or services;

F. Any aspect of the performance, efficacy, nature, or characteristic of the product or service; and

G. That a person or entity is affiliated with, endorsed or approved by, or otherwise connected to any other person, business entity, charitable organization, or government entity.

IV. MONETARY JUDGMENT AND PARTIAL SUSPENSION

IT IS FURTHER ORDERED that:

A. Judgment in the amount of nine million, six hundred fifty-five thousand, six hundred thirty-eight dollars and eighty-one cents (\$9,655,638.81) is entered in favor of the Commission against Defendant Marc Ferry, as equitable monetary relief.

B. Defendant is ordered to pay to the Commission all funds held in the following frozen accounts to which Defendant is a signatory, which had an approximate cumulative value of \$21,367.51 as of October 17, 2014:

1. Accounts ending in [REDACTED] and [REDACTED] at Umpqua Bank;

2. Accounts ending in [REDACTED], and [REDACTED] at Citibank;
3. Accounts ending in [REDACTED] and [REDACTED] at Citadel Federal Credit Union; and
4. Account ending in [REDACTED] at Malvern Federal Savings Bank.

Such payment must be made within five days of entry of this Order by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission. Upon such payment, the remainder of the judgment is suspended, subject to the Subsections below.

C. The Commission's agreement to the suspension of part of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendant's sworn financial statements and related documents (collectively, "financial representations") submitted to the Commission, namely:

1. The Financial Statements of Defendant Marc Ferry signed on March 24, 2014, and 11. 14 14, including any attachments; and
2. The Financial Statements of Corporate Defendant First Consumers, LLC, signed by Defendant Marc Ferry on March 24, 2014, and 11. 13, 14, including any attachments.

D. The suspension of the judgment will be lifted as to Defendant Marc Ferry if, upon motion by the Commission, the Court finds that Defendant Marc Ferry failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.

E. If the suspension of the judgment is lifted, the judgment becomes immediately due as to Defendant Marc Ferry in the amount specified in Subsection A above (which the parties stipulate only for purposes of this Section represents the portion of consumer injury

alleged in the Complaint that is attributable to Defendant Marc Ferry), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

F. Defendant Marc Ferry relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

G. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

H. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

I. Defendant Marc Ferry acknowledges that his Taxpayer Identification Number (Social Security Number or Employer Identification Number), which Defendant Marc Ferry previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

J. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any

remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defendant Marc Ferry has no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

K. The Commission may request any tax-related information, including amended tax returns and any other filings, that Defendant has the authority to release. Within 14 days of receipt of a written request from a representative of the Commission, Defendant must take all necessary steps (such as filing a complete IRS form 4506 or 8821) to cause the Internal Revenue Service or other tax authority to provide the information directly to the Commission.

V. LIFTING OF THE ASSET FREEZE

IT IS FURTHER ORDERED that the freeze against the assets of Defendant pursuant to the Temporary Restraining Order entered by this Court on March 18, 2014 and by the Preliminary Injunction entered on March 26, 2014 shall be lifted for the sole purpose of transferring assets pursuant to this Order, and shall be dissolved upon the transfer of all such assets.

VI. CONSUMER INFORMATION

IT IS FURTHER ORDERED that Defendant, his agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from directly or indirectly:

A. Failing to provide sufficient consumer information to enable the Commission to efficiently administer consumer redress. If a representative of the Commission requests in writing any information related to redress, Defendant must provide it, in the form prescribed by the Commission, within 14 days;

B. Disclosing, using, or benefitting from consumer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a consumer's account (including a credit card, bank account, or other Financial Account) that any Individual or Corporate Defendant obtained prior to entry of this Order in connection with the telemarketing of goods or services and debiting of consumers' Financial Accounts; and

C. Failing to destroy such consumer information in all forms in their possession, custody, or control within 30 days after receipt of written direction to do so from a representative of the Commission.

D. Provided, however, that consumer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

VII. COOPERATION

IT IS FURTHER ORDERED that Defendant Marc Ferry must fully cooperate with representatives of the Commission: (1) in this case and (2) in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. Defendant Marc Ferry must provide truthful and complete information, evidence, and testimony, and must appear for interviews, discovery, hearings, trials, and any other proceedings that a

Commission representative may reasonably request upon 5 days written notice, or other reasonable notice, at such places and times as a Commission representative may reasonably designate, without the service of a subpoena.

VIII. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendant Marc Ferry obtain acknowledgments of receipt of this Order:

A. Defendant Marc Ferry, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 5 years after entry of this Order, Defendant Marc Ferry for any business that he, individually or collectively with any other Defendants, is the majority owner or controls directly or indirectly, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in the marketing of goods or services or the Charging of consumers' Financial Accounts; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which Defendant Marc Ferry delivered a copy of this Order, Defendant Marc Ferry must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

IX. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendant make timely submissions to the Commission:

A. One year after entry of this Order, Defendant must submit a compliance report, sworn under penalty of perjury, in which Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which Defendant performs services whether as an employee or otherwise and any entity in which Defendant has any ownership interest; (c) describe in detail Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership; (d) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant; (e) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (f) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant; (g) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (h) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

B. For 20 years after entry of this Order, Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following: (a) name, including aliases or fictitious name, or residence address; (b) title or role in any business activity, including any business for which Defendant performs services whether as an employee or otherwise and any entity in which Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity; (c) any designated point of contact; or (d) the structure of any entity in which Defendant has any ownership interest or which

Defendant controls directly or indirectly that may affect compliance obligations arising under this Order, including the creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

C. Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to: DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:

Associate Director for Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: FTC v. First Consumers, LLC, et al.
Matter No. X140021

X. RECORDKEEPING

IT IS FURTHER ORDERED that Defendant Marc Ferry must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, for any business that Defendant Marc Ferry, individually or collectively with any other Defendant, is a majority owner or controls directly or indirectly, Defendant Marc Ferry must create and retain the following records:

- A. Proof of consumers' consent to a Charge, which includes the consumer's name, phone number, and address; the manner, time, place, and method of the consent; proof that Defendant made all disclosures required by Section II.B, above; and sufficient data to readily show the complete consumer experience, including an audio recording of the entirety of any telemarketing transaction;
- B. Accounting records showing the revenues from all goods or services sold;
- C. Personnel records showing for each person providing services, whether as an employee or otherwise, that person's name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) reason for termination;
- D. Records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- E. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission;
- F. A copy of each unique advertisement or other marketing material, including affiliate network materials; and

G. Any documentation of commercial transactions or contracts with payment processors or list brokers.

XI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant Marc Ferry's compliance with this Order, including the financial representations upon which part of the judgment was suspended and any failure to transfer assets as required by this Order:

A. Within 14 days of receipt of a written request from a representative of the Commission, Defendant Marc Ferry must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with Defendant Marc Ferry. Defendant Marc Ferry must permit representatives of the Commission to interview any employee or other person affiliated with Defendant Marc Ferry who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendant Marc Ferry or any individual or entity affiliated with Defendant Marc Ferry, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. § 49, 57b-1.

D. Upon written request from a representative of the Commission, any credit reporting agency must furnish consumer reports concerning Defendant, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1).

XII. RETENTION OF JURISDICTION

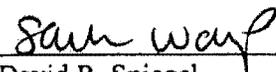
IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED:

DATED: 2/5/15, 2015


HON. GERALD AUSTIN McHUGH
UNITED STATES DISTRICT JUDGE

So stipulated and respectfully submitted,


David R. Spiegel
Sarah Waldrop
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
(202) 326-3281 [telephone]
(202) 326-3197 [facsimile]
dspiegel@ftc.gov
swaldrop@ftc.gov

Date: 1/6/15

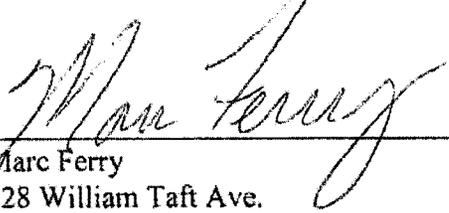
Attorneys for Plaintiff


Andrew Bellwoar
Siana, Bellwoar & McAndrew
941 Phoenixville Pike, Ste. 200
Chester Springs, PA 19425

Date: 11/20/14

610-221-5500

Attorney for Defendant Marc Ferry



Marc Ferry
328 William Taft Ave.
Downingtown, PA 19335

Date: 11.7.14

Defendant