

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA

FEDERAL TRADE COMMISSION,	)	
	)	CIVIL NO. 1:98-CV-1935
Plaintiff,	)	
v.	)	
	)	
INTERNATIONAL TELEMEDIA ASSOCIATES, INC.,	)	
also doing business as ITA;	)	
	)	
ARJUNA DIAZ, a/k/a RONALD P. DIAZ, individually and )	)	
as an officer of International Telemedia Associates, Inc.;	)	
	)	
GERARD ROBERT ENGLE, individually and )	)	
as an officer of International Telemedia Associates, Inc.;	)	
	)	
ONLINE CONSULTING GROUP, INC.; and )	)	
	)	
DAVID PETERSON, JR., individually and )	)	
as an officer of Online Consulting Group, Inc., )	)	
	)	
Defendants.	)	
	)	

**STIPULATED FINAL JUDGMENT AND  
ORDER FOR PERMANENT INJUNCTION AS TO  
DEFENDANTS ONLINE CONSULTING GROUP, INC.  
AND DAVID PETERSON, JR.**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), has filed its complaint for a permanent injunction and other 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 Telephone Disclosure and Dispute Resolution Act of 1992 ("TDDRA"), 15 U.S.C. § 5701 *et seq.*, charging, *inter alia*, defendants Online Consulting Group,

Inc. and David Peterson, Jr. with violating Section 5 of the FTC Act, 15 U.S.C. § 45 and the FTC's 900-Number Rule, 16 C.F.R. Part 308.

Plaintiff Federal Trade Commission and defendants Online Consulting Group, Inc. and David Peterson, Jr., by and through counsel, have agreed to the entry of this Stipulated Final Judgment and Order for Permanent Injunction ("Order") by this Court to resolve all matters of dispute between them in this action.

**NOW, THEREFORE,** Plaintiff Federal Trade Commission and defendants Online Consulting Group, Inc. and David Peterson, Jr., having requested the Court to enter this Order,

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

#### **FINDINGS**

1. This Court has jurisdiction of the subject matter of this case and of the parties consenting hereto.
2. Venue is proper as to all parties in the Northern District of Georgia.
3. The activities of defendants Online Consulting Group, Inc. and David Peterson, Jr. are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
4. The Complaint states a claim upon which relief may be granted against defendants Online Consulting Group, Inc. and David Peterson, Jr. under Section 5 of the FTC Act, 15 U.S.C. § 45(a), and under the Telephone Disclosure and Dispute Resolution Act of 1992 ("TDDRA"), 15 U.S.C. § 5701 *et seq.*
5. Defendants Online Consulting Group, Inc. and David Peterson, Jr. have waived all rights to seek judicial review or otherwise challenge or contest the validity of this Order. They also waive any

claim that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).

6. Issuance of this Order is in the public interest.
7. Nothing in this Order shall be construed as relieving defendants Online Consulting Group, Inc. and David Peterson, Jr. of any obligations they may have under any other rule or law enforced by the FTC or Federal Communications Commission.
8. In accordance with Rule 65(d) of the Federal Rules of Civil Procedure, this Order shall be binding upon defendants Online Consulting Group, Inc. and David Peterson, Jr., their officers, agents, servants, employees, and upon those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.

#### **DEFINITIONS**

1. "Audiotext Service" means any information or entertainment service offered over the telephone through any dialing pattern or through return calls to a telephone.
2. "Assets" means all real and personal property of the Online Defendants, or held for the benefit of either of the Online Defendants, including but not limited to "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes," (as these terms are defined in the Uniform Commercial Code), and all cash, wherever located.
3. "LEC" or "local exchange carrier" means the local telephone company from which a line subscriber receives his or her telephone bill.

4. “Line subscriber” or “subscriber” means an individual or entity who has arranged with a LEC to obtain local telephone service provided through an assigned telephone number, and to be billed for such service on a monthly or other periodic basis.
5. “Online Defendants” means Online Consulting Group, Inc. and David Peterson, Jr., individually and as an officer of Online Consulting Group, Inc.
6. “Telephone-billed transaction” means any purchase or purported purchase of a good or service that is charged to a line subscriber’s telephone bill, but excluding purchases solely of common carrier transmission services. For purposes of this Order, any service in which the service provider advertises, promotes, directs, controls, or provides the content of communications provided or exchanged through the service is not a common carrier transmission service.

## **CONDUCT PROHIBITIONS**

### **I.**

IT IS THEREFORE ORDERED that the Online Defendants are hereby permanently restrained and enjoined from advertising, promoting, offering, providing or assisting others in advertising, promoting, offering, or providing any audiotext service or other service accessed by calling an 800 or other toll-free number unless:

- A. Before incurring any cost, the purchaser of such audiotext service or other service expressly agrees to purchase such audiotext service or other service, and to be billed charges for such service on a MasterCard, Visa, or similar bankcard account;
- B. The bankcard to which the purchaser agrees to have such charges billed is subject to the dispute resolution requirements of the Fair Credit Billing Act, 15 U.S.C. 1666-1666j, and the

Truth in Lending Act, 15 U.S.C. §§ 1601-1667f, as amended; and

- C. The audiotext service or other service is in fact billed to the bankcard account to which the purchaser agreed to have such charges billed.

## II.

**IT IS FURTHER ORDERED** that, in connection with advertising, promoting, offering or providing any audiotext service or other telephone-billed transaction, the Online Defendants are hereby permanently restrained and enjoined from making or assisting others in making, expressly or by implication, orally or in writing, any misrepresentation of material fact, including, but not limited to:

- A. Any misrepresentation about the price of such service or transaction, including but not limited to misrepresentations that any such service or transaction is free; or
- B. Any misrepresentation that a consumer can make contact with any individual in that consumer's local area through such service or transaction.

## III.

**IT IS FURTHER ORDERED** that, in connection with advertising, promoting, offering or providing any audiotext service or other telephone-billed transaction, the Online Defendants are hereby restrained and enjoined from failing to disclose, clearly and conspicuously, before any consumer incurs charges for any such service or transaction, the amount the consumer will be charged for receipt of the service or transaction.

#### IV.

**IT IS FURTHER ORDERED** that, in connection with billing and collecting charges for any audiotext service or other telephone-billed transaction, the Online Defendants are hereby restrained and enjoined from making, directly or through an intermediary, expressly or by implication, orally or in writing, any misrepresentation of material fact relating to any such service or transaction by the Online Defendants, including, but not limited to:

- A. Any misrepresentation that such audiotext service or other subject of a telephone-billed transaction has been provided to any telephone line or to any line subscriber;
- B. Any misrepresentation in the description of such service or other telephone-billed transaction for which a line subscriber is being billed, including, but not limited to, any description of such service or transaction as a “collect” or “long distance” call; and
- C. Any misrepresentation that a line subscriber is obligated to pay for any such service or other telephone-billed transaction that such line subscriber has not agreed to purchase or has not received.

#### V.

**IT IS FURTHER ORDERED** that the Online Defendants are hereby restrained and enjoined from violating the 900-Number Rule, 16 C.F.R. Part 308, as currently promulgated or as it may hereafter be amended, including, but not limited to, 16 C.F.R. § 308.5(i)(4), which prohibits use of an 800 number or other toll free number in a manner that results in a caller to such number being called

## RECEIVERSHIP PROVISIONS

### VI.

**IT IS FURTHER ORDERED** that Jane W. Moscovitz of Jane W. Moscovitz, P.A., is appointed as the permanent receiver (the "receiver") of defendant Online Consulting Group, Inc., and its affiliates and subsidiaries, including, but not limited to, Hold Time, Inc. (together "the receivership defendant"), and of all the funds, properties, premises, accounts and other assets directly or indirectly owned, beneficially or otherwise, by the receivership defendant, with directions and authority to accomplish the following:

- A. Maintain full control of the receivership defendant and collect, marshal, and take custody, control and possession of all the funds, property (real or personal), premises, accounts, mail and other assets of, or in the possession or under the control of, the receivership defendant, wherever situated. The receiver shall also assume control over the income and profits therefrom, and all sums of money now or hereafter due or owing to the receivership defendant, with full power to sue for, collect, receive and take possession of all goods, chattels, rights, credits, monies, effects, lands, leases, books and records, work papers, records of accounts, including computer-maintained information, and other papers and documents of the receivership defendant, wherever situated;
- B. Perform all acts that the receiver deems necessary to wind-up the business of the receivership;
- C. Disburse funds that the receiver deems necessary and advisable to carry out the receiver's mandate under this Order;
- D. Collect any monies owed the receivership defendant;

- E. Enter into such agreements in connection with administration of the receivership, including, but not limited to: (1) retaining investigators, attorneys or accountants of the receiver's choice, including, without limitation, members and employees of the receiver's firm, to assist, advise, and represent the receiver, and (2) moving and storing of equipment, furniture, records, files or other physical property of the receivership defendant;
- F. Institute, defend, prosecute, compromise, adjust, intervene in or become party to such actions or proceedings in state, federal or foreign courts that the receiver deems necessary and advisable to preserve the value of the properties of the receivership defendant or that the receiver deems necessary and advisable to carry out the receiver's mandate under this Order; and
- G. Prepare and submit a final report to this Court and to the parties, describing the wind-down of the business of the receivership defendant and the scope of the receiver's activities.

## **CONSUMER REDRESS**

### **VII.**

**IT IS FURTHER ORDERED** that:

- A. Judgment in the amount of **THREE MILLION AND FIVE HUNDRED THOUSAND DOLLARS (\$3,500,000.00)** is hereby entered in favor of the Commission against defendant Online Consulting Group, Inc., for equitable monetary relief, including but not limited to, consumer redress and/or disgorgement and for paying any attendant expenses of administering any redress fund. *Provided*, however, that if the Commission, at its sole discretion, determines that redress is wholly or partially impracticable, any funds not so used shall be deposited in the



United States Treasury. *Provided further*, however, that, in partial satisfaction of this judgment, at the final wind-up of the receivership defendant by the receiver, the receiver shall pay over to the Commission as partial satisfaction of this judgment all remaining assets of the receivership defendant, at which time, as to defendant Online Consulting, Inc., the remainder of the judgment shall be suspended and not be recorded;

- B. Judgment in the amount of TEN THOUSAND DOLLARS (\$10,000) is hereby entered in favor of the Commission against defendant David Peterson, Jr., for equitable monetary relief, including but not limited to, consumer redress and/or disgorgement and for paying any attendant expenses of administering any redress fund. *Provided*, however, that if the Commission, at its sole discretion, determines that redress is wholly or partially impracticable, any funds not so used shall be deposited in the United States Treasury. David Peterson, Jr. shall pay this judgment to the Commission by wire transfer or cashier's check within 30 days of the date of entry of this Order;
- C. Defendant David Peterson, Jr. waives any claim he has or may have to any assets of the receivership defendant; and
- D. The Online Defendants acknowledge and agree that this judgment for equitable monetary relief is solely remedial in nature and not a fine, penalty, punitive assessment or forfeiture.

Furthermore, the Online Defendants are hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Federal Trade Commission their respective taxpayer identifying numbers (social security number or employer identification number), which shall be used for purposes of

collecting and reporting on any delinquent amount arising out of such person's relationship with the government.

## RIGHT TO REOPEN

### VIII.

**IT IS FURTHER ORDERED** that the Commission's agreement to this Order is expressly premised upon the financial condition of defendant David Peterson, Jr. as represented in the sworn financial statement provided by defendant David Peterson, Jr. to the Commission on \_\_\_\_\_, 2001, which includes material information upon which the Commission relied in negotiating and consenting to this Order. If, upon motion by the Commission, this Court should find that defendant David Peterson Jr. made a material misrepresentation or omitted material information concerning his financial condition, then the Court shall enter a modified judgment holding that defendant David Peterson, Jr. is liable to the Commission in the amount of \$200,000. *Provided*, however, that in all other respects this judgment shall remain in full force and effect, unless otherwise ordered by the Court; and *provided further*, that proceedings instituted under this Paragraph are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that Plaintiff may initiate to enforce this Order. For purposes of this Paragraph, and any subsequent proceedings to enforce payment, defendant David Peterson, Jr. waives any right to contest any of the allegations of the Complaint.

### IX.

## MAINTENANCE OF BUSINESS RECORDS

**IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of this Order, for each business that defendant David Peterson, Jr. directly or indirectly, manages, controls, or has a majority ownership interest in, that is engaged in advertising, offering, promoting,



2. A dated copy of the written complaint, inquiry or refund request, if any, and records reflecting the date and content of any oral complaint, inquiry or refund request;
3. The basis of the complaint, including the name of any salesperson complained against, and the nature and result of any investigation conducted concerning any complaint;
4. Each response and the date of the response;
5. Any final resolution and the date of the resolution; and
6. In the event of a denial of a refund request, the reason for the denial.

**X.**

**COMPLIANCE REPORTING**

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

- A. For a period of three (3) years from the date of entry of this Order, defendant David Peterson, Jr. shall notify the Commission of the following:
  1. Any changes in his residence, mailing address and telephone number within thirty (30) days of the date of such change;
  2. Any change in his employment status (including self-employment) within thirty (30) days of the date of such change. Such notice shall include the name and address of each business that he is affiliated with or employed by, a statement of the nature of the business, a statement of who owns and who manages the business, and a statement of his duties and responsibilities in connection with the business or employment; and

3. Any proposed change in the business structure of any business entity directly or indirectly owned, managed or controlled by David Peterson, Jr., such as creation, incorporation, dissolution, assignment, sale, merger, dissolution of subsidiaries, filing of a bankruptcy petition, change in the corporate name or address, or any other change that may affect compliance obligations arising out of this Order, not less than thirty (30) days prior to the effective date of any proposed change; Provided, however, that, with respect to any proposed change in the business entity about which defendant David Peterson, Jr learns less than thirty (30) days prior to the date such action is to take place, he 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, defendant David Peterson, Jr. shall provide a written report to the FTC, sworn to under penalty of perjury, and setting forth in detail the manner and form in which he has complied and is complying with this Order.

The report shall include but not be limited to:

1. The then-current residence address and telephone number of David Peterson, Jr.;
2. The then-current business or employment address and telephone number of all then-current employer(s) of David Peterson, Jr.; a description of the business activities of each employer; and David Peterson, Jr.'s responsibilities for each employer;

3. A copy of each acknowledgment received by the defendant;

- C. Upon written request by a representative of the Commission, defendant David Peterson, Jr. shall submit additional written reports (under oath, if requested) and produce documents on reasonable notice with respect to any conduct subject to this Order;
- D. For the purposes of this Order, the Online Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director  
Division of Marketing Practices  
Federal Trade Commission, Room 238  
6<sup>th</sup> Street and Pennsylvania Avenue, NW  
Washington, D.C. 20580; and

- 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 defendant David Peterson, Jr. performs services as an employee, consultant, or independent contractor.

## **XI.**

### **COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

**IT IS FURTHER ORDERED** that the Commission is authorized to monitor defendant David Peterson, Jr.'s compliance with this Order by all lawful means, including, but not limited, to the following:

- A. Without further leave of court, through discovery from any person 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, for the purpose of monitoring and investigating David Peterson, Jr.'s compliance with any provision of this Order;

- B. Through the use of representatives posing as consumers, potential clients and suppliers to David Peterson, Jr., including holding incidental conversations with customer service and other representatives of David Peterson, Jr., without the necessity of identification, prior notice, or the presence of counsel; 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, 57b-1, to investigate whether defendant David Peterson, Jr., has violated any provision of this Order, Section 5 of the FTC Act, 15 U.S.C. § 45, or any applicable rule or regulation promulgated and enforced by the Commission thereunder.

## **XII.**

### **ACCESS TO BUSINESS PREMISES**

**IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, defendant David Peterson, Jr. shall permit 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 defendant David Peterson, Jr. directly or indirectly manages, controls, or has a majority ownership interest in, that is engaged in providing, marketing, or billing for any audiotext service or other telephone-billed transaction, or assisting others engaged in those activities. In providing such access, defendant David Peterson, Jr., shall permit Commission representatives



to obtain copies of documents relevant to his compliance with any provision of this Order within ten (10) days of requesting such documents; and

- B. To interview the officers, directors, and employees, 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 this Paragraph applies, concerning matters relating to compliance with the terms of this Order. The person interviewed may have counsel present; *Provided, however,* that, upon application of the Commission and for good cause shown, the Court may enter an *ex parte* order granting immediate access to defendant's business premises for the purposes of inspecting and copying all documents relevant to any provision of this Order.

### **XIII.**

#### **DISTRIBUTION OF ORDER**

**IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of this Order, defendant David Peterson, Jr. shall:

- A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of the Order from, each officer, director, or partner, and each individual serving in a management capacity, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such Person, for each business that David Peterson, Jr. directly or indirectly manages, controls, or has a majority ownership interest in, that is engaged in advertising, offering, promoting, providing, or billing for any audiotext service or other telephone-billed transaction, or assisting others engaged in those activities; and





The parties, having agreed to the entry of this Order enjoining the Online Defendants from violating Section 5 of the FTC Act, 15 U.S.C. § 45(a), this Stipulated Final Judgment and Order For Permanent Injunction is hereby approved and adopted by the Court.

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DATED

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UNITED STATES DISTRICT JUDGE  
Northern District of Georgia

**APPENDIX A**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA

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FEDERAL TRADE COMMISSION, )  
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 ) CIVIL NO. 1:98-CV-1935  
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 Plaintiff, )  
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 ONLINE CONSULTING GROUP, INC.; and )  
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 DAVID PETERSON, JR., individually and )  
 as an officer of Online Consulting Group, Inc., )  
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 Defendants. )  
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**AFFIDAVIT OF [NAME]**

I, [Name of defendant], being duly sworn, hereby state and affirm as follows:

1. My name is \_\_\_\_\_. My current address is \_\_\_\_\_  
\_\_\_\_\_. I am a citizen of the  
United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this  
Affidavit.

2. I am an individual defendant in FTC v. International Telemedia Associates, Inc., et al., Case No.1-98-CV-1935 in the United States District Court for the Northern District of Georgia.

[AND/OR]

3. I am the [Title] of [Name of Entity], a defendant in FTC v. International Telemedia Associates, Inc. et. al., Case No.:1-98-CV-1935, in the United States District Court for the Northern District of Georgia.

4. On [date], I received a copy of the Stipulated Final Judgment and Order for Permanent Injunction which was signed by the Honorable Judge Camp and entered by the Court on [date of entry of Order]. A true and correct copy of the Order I received is appended to this Affidavit.

I swear or affirm, under the penalty of perjury, with knowledge of the penalties for false statements provided by 18 United States Code Section 1001, and with the knowledge that this declaration is submitted by me to affect action by the Federal Trade Commission, that the foregoing is true and correct.

Executed on this \_\_\_\_ day of \_\_\_\_\_, 2001, at [city],