

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

BRENT CHIVERS,

doing business as Credit Card Services
and Destyni Enterprises,

Defendant.

Commission and the defendant have consented to entry of this Final Judgment and Order without trial or adjudication of any issue of law or fact herein and without the defendant

admitting liability for any of the violations alleged in the complaint or for any wrongdoing whatsoever.

Being fully advised in the premises and acting upon the joint motion of the parties, the Commission and Brent Chivers, to enter this Final Judgment and Order,

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

FINDINGS

1. This Court has jurisdiction over the subject matter of this case, and all parties thereto;
2. The complaint states a claim upon which relief may be granted against the defendant under Sections 5, 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45, 53(b), and 57b, and the Telemarketing Sales Rule;
3. Venue in this district is proper under 28 U.S.C. § 1391(b), 15 U.S.C. §§ 53 (b) and 57b, and the Telemarketing Sales Rule;
4. The activities of the defendant are in or affecting commerce as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;
5. Entry of this Final Judgment and Order is in the public interest; and
6. Defendant has waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, and all rights to seek judicial review or otherwise challenge the validity of this Final Judgment and Order.

DEFINITIONS

For the purpose of this Stipulated Final Judgment and Order, the following definitions shall apply:

1. ***“Plaintiff,” “Commission,”*** or ***“FTC”*** means the Federal Trade Commission.
2. ***“Defendant”*** means Brent Chivers and each of his successors, assigns, agents, servants or employees, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, unless specified otherwise.
3. ***“Assets”*** means any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to, “goods,” “instruments,” “equipment,” “fixtures,” “general intangibles,” “inventory,” “checks,” “notes” (as these terms are defined in the Uniform Commercial Code), and all chattel, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer

5. ***“Telemarketing”*** means any business activity (which includes, but is not limited to, initiating or receiving telephone calls, managing others who initiate or receive telephone calls, operating an enterprise that initiates or receives telephone calls, owning an enterprise that initiates or receives telephone calls, or otherwise participating as an officer, director, employee or independent contractor in an enterprise that initiates or receives telephone calls) that involves attempts to induce consumers to

ORDER

I. INJUNCTION AGAINST MISREPRESENTATIONS

A. **IT IS THEREFORE ORDERED** that, in connection with the advertising, promotion, offering for sale, or sale of services relating to loans, credit cards or other extensions of credit, defendant Brent Chivers and each of his successors, assigns, agents, servants or employees, and those persons in active concert or participation with him who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby permanently restrained and enjoined from:

1. Misrepresenting, expressly or by implication, that consumers who pay a required fee can reasonably expect to receive a loan, credit card or other extension of credit;
2. Misrepresenting, expressly or by implication, that defendant has connections with sources that are likely to result in the provision of credit cards, loans, or other extensions of credit.

Chivers, and each of his successors, assigns, agents or employees, and all other persons or entities in active concert or participation with him who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, are hereby permanently restrained and enjoined from misrepresenting, expressly or by implication, any fact material to a consumer's decision to purchase defendant's products or services; and

- C. IT IS FURTHER ORDERED** that defendant Brent Chivers and each of his successors, assigns, agents, servants or employees, and those persons in active concert or participation with him who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby permanently restrained from violating or assisting others in violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, including, but not limited to: (1) stating that consumers have a high likelihood of obtaining a loan or credit card in return for the payment of a fee; and (2) requesting or receiving payment of any fee or consideration in advance of obtaining or arranging an extension of credit when they have guaranteed or represented a high likelihood of success in obtaining or arranging an extension of credit.

II. INJUNCTION AGAINST PROVIDING CUSTOMER LISTS

IT IS FURTHER ORDERED that defendant Brent Chivers is hereby permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, social security number, or other identifying information of any person who purchased services from defendant at any time prior to the date this Final Judgment and Order is entered. Provided, however, that defendant may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

III. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

- A.** Judgment in the amount of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) is entered against defendant Brent Chivers; provided, however, that upon the fulfillment of the payment obligations of Section III(B) and Section III(C) of this Final Judgment and Order by defendant, this judgment shall be suspended until further order of the Court, and provided further that this judgment shall be subject to the conditions set forth in Section IV of this Final Judgment and Order.
- B.** Defendant Brent Chivers shall be liable for payment of equitable monetary relief, including, but not limited to, consumer redress and/or disgorgement, and for paying any attendant expenses of administration of any redress fund, in the amount of EIGHTY FIVE THOUSAND DOLLARS (\$85,000.00).

C. Within ten (10) days of the execution of this Final Judgment and Order, defendant Brent Chivers shall turn over the entire payment of EIGHTY FIVE THOUSAND DOLLARS (\$85,000.00) required pursuant to Paragraph III(B) to his attorney who shall hold it in an escrow account until the entry of this Final Judgment and Order.

Within ten (10) days of the date of entry of this Final Judgment and Order, defendant

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 Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the defendant's practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. Defendant Brent Chivers shall have no right to challenge the Commission's choice of remedies under this Section.

- F.** Defendant Brent Chivers shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payments under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.

IV. FINANCIAL STATEMENTS

- A. IT IS FURTHER ORDERED** that the Commission's agreement to and the Court's approval of this Final Judgment and Order are expressly premised upon the truthfulness, accuracy, and completeness of the financial statements and information provided to the Commission by defendant Brent Chivers on or about August 20, 2002, which contain material information relied upon by the Commission in negotiating and agreeing to the terms of this Final Judgment and Order.
- B. IT IS FURTHER ORDERED** that if the Commission should have evidence that the above-referenced financial statements and information failed to disclose any material

- A. Within ten (10) days of receipt of written notice from a representative of the Commission, defendant Brent Chivers 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 defendant's possession or direct or indirect control to inspect the business operation;
- B. In addition, the Commission is authorized to monitor compliance with this Final Judgment and 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 proscribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
 2. Posing as consumers and suppliers to: defendant's employees, or any other entity managed or controlled in whole or in part by defendant, without the necessity of identification or prior notice;

Provided that nothing in this Final Judgment and 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 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)).

- C. Defendant shall permit representatives of the Commission 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 this Final Judgment and Order. The person interviewed may have counsel present.

VI. COMPLIANCE REPORTING BY DEFENDANT

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

- A. For a period of five (5) years from the date of entry of this Final Judgment and Order:
 - 1. Defendant Brent Chivers shall notify the Commission of the following:
 - a. Any changes in defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
 - b. Any changes in defendant's employment status (including self-employment) within ten (10) days of the date of such change. Such notice shall include the name and address of each business that defendant is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of

1. Any changes required to be reported pursuant to Subsection A above; and
 2. A copy of each acknowledgment of receipt of this Final Judgment and Order obtained by defendant pursuant to Section VIII.
- C. For the purposes of this Final Judgment and Order, defendant shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:
- Regional Director
Southwest Region
Federal Trade Commission
Suite 2150, 1999 Bryan Street
Dallas, Texas 75201
Re: FTC v. Defendant, Civil Action No. 3-02CV1727-G.
- D. For purposes of the compliance reporting required by this Section, the Commission is authorized to communicate directly with defendant Brent Chivers.

VII.

(a) employs or contracts for personal services from defendant and (b) has responsibilities with respect to the subject matter of this Final Judgment and Order. Defendant shall secure from each such person a signed and dated statement acknowledging receipt of the Final Judgment and Order within thirty (30) days after the date of service of the Final Judgment and Order or the commencement of the employment relationship.

IX. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that defendant, within five (5) business days of receipt of this Final Judgment and Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Final Judgment and Order.

X. ATTORNEYS' FEES

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

XI. LIFT OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze of defendant's assets, imposed in the Preliminary Injunction entered in this proceeding, shall be lifted upon the entry of this Final Judgment and Order.

XII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Final Judgment and Order.

IT IS SO ORDERED.

Dated this _____ day of _____, 200__.

A. JOE FISH
UNITED STATES DISTRICT JUDGE

SO STIPULATED:

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