

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

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)
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)
)

Civil No. 06 C 2574

Chief Judge James F. Holderman

Injunction and Final Judgment Against Defendant Charles P. Farrugia (“Order”) without a trial or adjudication of any issue of law or fact herein.

NOW THEREFORE, the Plaintiff and Defendant Charles P. Farrugia, having requested that the Court enter this Order, and the Court having considered the Order reached between the parties, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. The Amended Complaint is an action by the Commission instituted under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). Pursuant to this section of the FTC Act, the Commission has the authority to seek the relief contained herein.

2. The Amended Complaint states a claim upon which relief may be granted against the Defendants under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b).

3. This Court has jurisdiction over the subject matter of this case and over the parties to this Order. Venue in the Northern District of Illinois is proper.

4. The alleged practices of the Defendants are in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

5. Defendant Charles P. Farrugia waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendant Charles P. Farrugia further waives and releases any claims that he may have against the Commission, its employees, representatives, or agents.

6. Defendant Charles P. Farrugia agrees that this Order does not entitle him to seek or 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 Defendant

Charles P. Farrugia further waives any right to attorneys' fees that may arise under said provision of law. The parties shall each bear their own costs and attorneys' fees incurred in this action.

7. Defendant Charles P. Farrugia denies liability for any of the actions alleged in the Amended Complaint, and this Order does not constitute, and shall not be interpreted to

security code, needed to charge or debit a consumer's account.

6. **“Asset”** or **“assets”** means any legal or equitable interest in, right to, or claim to, any real or personal property, including, but not limited to, goods, instruments, equipment, fixtures, general intangibles, effects, inventory, checks, notes, chattels, leaseholds, contracts, mails or other deliveries, shares of stock, lists of consumer names, accounts, credits, receivables, funds, monies, and all cash, wherever located, and shall include both existing assets and assets acquired after the date of entry of this Order.

7. **“Assisting others”** means providing any of the following goods or services to any person or entity engaged in telemarketing, including, but not limited to: (a) providing for or arranging for the provision of mail or telephone lists that contain, incorporate, or utilize consumers’ account numbers; (b) preparing or providing, or causing to be prepared or provided, telephone sales scripts or other materials for use in connection with the promotion of products or services to consumers; (c) providing or arranging for the provision of telemarketing services; (d) performing or providing marketing services of any kind; (e) developing, providing, or arranging for the provision of names of potential customers; and (f) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints, obtaining or receiving identifying and financial information from consumers, and communicating with consumers on behalf of the seller or telemarketer.

8. **“Consumer”** means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

9. **“Customer”** means any person who has paid, or may be required to pay, for goods or services offered for sale or sold by Defendants.

10. **“Document”** is synonymous in meaning and equal in scope to the usage of the

A. Misrepresenting, expressly or by implication:

1. That consumers have a preexisting business relationship with any Defendant or other person;

2. That consumers have agreed to purchase business directories or listings in business directories; or

3. That consumers owe money for business directories or listings in business directories;

B. Misrepresenting, expressly or by implication, or failing to disclose, any fact

of the payment obligations set forth in Sections II.B and II.C of this Order; and (2) as long as the Court makes no finding, as provided in Section III of this Order, that Defendant Farrugia materially misrepresented or omitted the nature, existence, or value of any asset;

B. Defendant Farrugia shall be liable for payment of equitable monetary relief, including, but not limited to, consumer redress and/or disgorgement, in the amount of two hundred seventy-five thousand U.S. Dollars (\$275,000 USD). Within ten (10) days of the signing of this Order by Defendant Farrugia, Defendant Farrugia shall cause that amount (\$275,000 USD) to be transferred to an interest bearing escrow account controlled by Defendant Farrugia's counsel of record in this action, who shall immediately provide the Commission with proof of said transfer. Defendant Farrugia's counsel shall hold the entire sum in the escrow account for no purpose other than payment to the Commission upon entry of this Order by the Court. Within ten (10) days of receipt of notice of entry of this Order by the Court, Defendant Farrugia's counsel shall transfer the entire sum plus any interest to the Commission in the form of a wire transfer or certified or cashier's check made payable to the Federal Trade Commission. The check or written confirmation of the wire transfer shall be delivered to: Associate Director for Enforcement, Federal Trade Commission, 601 New Jersey Avenue N.W., Washington, D.C. 20580, Re: *FTC v. Datacom Marketing Inc., et al.*, Civil Action No. 06 C 2574 (N.D. Ill. 2006). The cover letter accompanying the check shall include the title and case number of this case;

C. Time is of the essence for the payment specified above. In the event that Defendant Farrugia does not fulfill, or only partially fulfills, the payment obligations set forth in this Section, Defendant Farrugia shall be immediately liable for payment of seven million, six hundred three thousand, ninety-four U.S. Dollars (\$7,603,094 USD), which is the entire amount

of the judgment, plus interest computed pursuant to 28 U.S.C. § 1961, as amended, less any payments already made;

D. All funds paid pursuant to this Order shall be deposited into a fund administered

of collecting and reporting on any delinquent amount arising out of his relationship with the government. Defendant Farrugia is further required, unless he already has done so, to provide

the Commission with clear, legible and full-size photocopies of all valid driver's licenses that he possesses, which will be used for reporting and compliance purposes;

G. Defendant Farrugia agrees that the facts as alleged in the Amended Complaint filed in this action shall be taken as true, without further proof, in the event of any subsequent proceedings or litigation to enforce this Order or to collect amounts due pursuant to this Section, including, but not limited to, a non-dischargeability complaint in any bankruptcy case; and

H. Proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

III. RIGHT TO REOPEN

IT IS FURTHER ORDERED that:

A. Within ten (10) business days after the date of entry of this Order by the Court, Defendant Farrugia shall submit to the Commission a truthful sworn statement, in the form shown on **Attachment A** of this Order, that shall reaffirm and attest to the truthfulness, accuracy, and completeness of the financial statements and attachments submitted to the Commission, dated December 18, 2006, and January 15, 2008. Plaintiff's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of Defendant Farrugia's financial condition, as represented in the financial statements and attachments referenced above, which contain material information upon which Plaintiff relied in negotiating and agreeing to the terms of this Order;

B. If, upon motion of the FTC, the Court finds that Defendant Farrugia failed to disclose any material asset, materially misrepresented the value of any asset, or made any other

material misrepresentation in or omission from Defendant Farrugia's sworn financial statement or supporting documents, the Court shall enter judgment against Defendant Farrugia, in favor of the Commission, in the amount of seven million, six hundred three thousand, ninety-four U.S. Dollars (\$7,603,094 USD), and the entire amount of the judgment shall become immediately due and payable, less any amount already paid. *Provided, however,* that, in all other respects, this Order shall remain in full force and effect, unless otherwise ordered by the Court; and

C. Any proceedings instituted under this Section shall be in addition to, and not in

B. Benefiting from or using the name, address, telephone number, Social Security number, account number, email address, or other identifying information of any person about whom any Defendant obtained such information in connection with the activities alleged in the Amended Complaint.

Provided, however, that Defendant Farrugia may disclose identifying information to a law enforcement agency or as required by any law, regulation, or court order.

V. CEASE COLLECTION ON ACCOUNTS

IT IS FURTHER ORDERED that Defendant Farrugia, and his officers, directors, agents, servants, employees, salespersons, independent contractors, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or

instruments shall not be cashed, but shall be returned to their makers by the Commission or its agent; and the Commission or its agent is authorized for this purpose to open any mail addressed to any Defendant that is or has been forwarded to the Commission and to dispose of such mail as the Commission, in its sole discretion, determines to be appropriate. In the event that the makers of the uncashed checks or negotiable instruments cannot be located, or the Commission, in its sole discretion, determines that the return of checks or negotiable instruments is otherwise impracticable, the Commission or its agent shall destroy the checks or negotiable instruments.

VII. COOPERATION WITH FTC COUNSEL

IT IS FURTHER ORDERED that Defendant Farrugia shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the FTC's Amended Complaint, cooperate in good faith with the FTC and appear or cause his officers, employees, representatives, or agents to appear at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Defendant Farrugia shall appear or cause his officers, employees, representatives, or agents to appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Amended Complaint, without the service of a subpoena.

VIII. MONITORING COMPLIANCE OF SALES PERSONNEL

IT IS FURTHER ORDERED that, in connection with any business where (1) Defendant Farrugia is the majority owner of the business or directly or indirectly manages or

controls the business, and where (2) the business is engaged in, or is assisting others engaged in, telemarketing to U.S. consumers, Defendant Farrugia, and his agents, employees, officers, corporations, successors, and assigns, 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 Section I of this Order. These steps shall include adequate monitoring of sales presentations or other calls with consumers, 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; and (3) ascertaining the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved;

B. Failing promptly to investigate fully any consumer complaintiling prompTo3gnfg

and/or provide entry during normal business hours to any business location in Defendant Farrugia's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including, but not limited to, the following:

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;

2. posing as consumers and suppliers to: Defendant Farrugia; his employees, or any other entity managed or controlled in whole or in part by him, without the necessity of identification or prior notice;

C. Defendant Farrugia 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 Order. The person interviewed may have counsel present.

Provided, however, that 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 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)).

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 five (5) years from the date of entry of this Order,
 1. Defendant Farrugia shall notify the Commission of the following:
 - a. Any changes in residence, mailing addresses, and telephone numbers of Defendant Farrugia, within ten (10) days of the date of such change;
 - b. Any changes in employment status (including self-employment) of Defendant Farrugia, and any change in the ownership interest of Defendant Farrugia in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that Defendant Farrugia is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of Defendant Farrugia's duties and responsibilities in connection with the business or employment; and
 - c. Any changes in Defendant Farrugia's name or use of any aliases or fictitious names; and
 2. Defendant Farrugia shall notify the Commission of any changes in corporate structure of any business entity that Defendant Farrugia directly or indirectly control(s), or has an ownership interest in, that may affect compliance obligations arising under this Order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the

filing of a bankruptcy petition; or a change in the corporate or business entity's name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation or business entity about which Defendant Farrugia learns less than thirty (30) days prior to the date such action is to take place, Defendant Farrugia shall notify the Commission as soon as is practicable after obtaining such knowledge.

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

1. The then-current residence address, mailing addresses, and telephone numbers of Defendant Farrugia;
2. The then-current employment and business addresses and telephone numbers of Defendant Farrugia, a description of the business activities of each such employer or business, and the title and responsibilities of Defendant Farrugia for each such employer or business;
3. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Paragraph C of Section XII; and
4. Any other changes required to be reported under Paragraph A of this Section.

C. For the purposes of this Order, Defendant Farrugia shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Enforcement
Federal Trade Commission
601 New Jersey Avenue N.W.
Washington, D.C. 20580
Re: *FTC v. Datacom Marketing Inc., et al.*
Civil Action No. 06 C 2574 (N.D. Ill. 2006).

D. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Defendant Farrugia.

XI. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, for any business where (1) Defendant Farrugia is the majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business is engaged in, or is assisting others engaged in, telemarketing to U.S. consumers, Defendant Farrugia, and his agents, employees, officers, corporations, successors, and assigns, and those

C. Customer files containing the names, addresses, telephone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

D. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests;

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and

F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including, but not limited to, copies of acknowledgments of receipt of this Order, required by Paragraph C of Section XII, and all reports submitted to the FTC pursuant to Section X.

prior to them assuming their responsibilities.

B. **Defendant Farrugia as Employee or Non-Control Person:** For any business where Defendant Farrugia is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, Defendant Farrugia must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct; and

C. Defendant Farrugia must secure a signed and dated statement acknowledging receipt of this Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

XIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that Defendant Farrugia, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement, in the form shown on **Attachment B** to this Order, acknowledging receipt of this Order.

XIV. LIFTING OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze on the assets of Defendant Farrugia shall remain in effect until the Commission has received all payments required by Section II.B above, *provided, however,* that Defendant Farrugia may transfer funds to the extent necessary to make all payments required by Paragraph B of Section II.

XV. SEVERABILITY

IT IS FURTHER ORDERED that the provisions of this Order are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

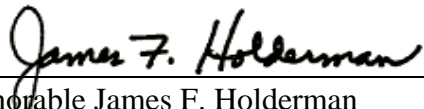
XVI. RETENTION OF JURISDICTION

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

JUDGMENT IS THEREFORE ENTERED in favor of the Plaintiff and against Defendant Farrugia pursuant to all the terms and conditions recited above.

IT IS SO ORDERED:

Dated: April 9, 2008



Honorable James F. Holderman
Chief Judge, United States District Court

SO STIPULATED:

William Blumenthal
General Counsel

John C. Hallerud
Federal Trade Commission
55 West Monroe Street, Suite 1825

Dated: _____

ATTACHMENT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

_____)	
FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Civil No. 06 C 2574
)	
v.)	Chief Judge James F. Holderman
)	
DATAKOM MARKETING INC., et al.,)	Magistrate Judge Maria Valdez
)	
Defendants.)	
_____)	

**AFFIDAVIT ATTESTING TO
TRUTHFULNESS OF FINANCIAL STATEMENT**

I, _____, hereby state that the information contained in the Financial Statement of Defendant _____, dated _____, and all supplemental disclosures made to the FTC on the same topic, were, to the best of my information, knowledge, and belief, true, accurate, and complete at such time.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on _____ [date], at _____ [city and state/province].

[Signature]

[Print Full Name]

State/Province of _____, City of _____

Subscribed and sworn to before me
this _____ day of _____, 2008.

Notary Public
My Commission Expires:

ATTACHMENT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

_____)	
FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Civil No. 06 C 2574
)	
v.)	Chief Judge James F. Holderman
)	
DATAKOM MARKETING INC., et al.,)	Magistrate Judge Maria Valdez
)	
Defendants.)	
_____)	

**AFFIDAVIT ATTESTING TO RECEIPT OF STIPULATED
ORDER FOR PERMANENT INJUNCTION AND FINAL JUDGMENT**

_____, being duly sworn, hereby states and affirms as follows:

1. My name is _____. My current residence address is _____ . I am a citizen of _____, and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am a Defendant in *FTC v. Datacom Marketing Inc., et al.*, (United States District Court for the Northern District of Illinois, Case Number 06 C 2574).

3. On _____, I received a copy of the Stipulated Order for Permanent Injunction and Final Judgment Against Defendant Charles P. Farrugia (“Order”), signed by the Honorable _____, and entered by the Court on _____. A true and correct copy of the Order I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on _____ [date], at _____ [city and state/province].

[Signature of Defendant]

[Print Full Name]

State/Province of _____, City of _____

Subscribed and sworn to before me

this _____ day of _____, 2008.

Notary Public
My Commission Expires:
