

Court having considered the submissions of the parties, and having granted the FTC's motion, **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.
4. Venue in the United States District Court for the Northern District of Illinois is proper pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b), (c), and (d).
5. The practices of Defendants are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
6. Defaulting Defendant Bernard Fromstein was properly served with the Original

Civ. P. 12(a), or thereafter, or within ten days of service of the Amended Complaint, as required by Fed. R. Civ. P. 15(a), or thereafter.

10. Defaulting Defendants Bernard Fromstein and Judy Provencher have not appeared in this action.

11. Defaulting Defendants Bernard Fromstein and Judy Provencher have failed to plead or otherwise defend.

12. On June 20, 2006, the Court entered findings of default against Defaulting Defendants Bernard Fromstein and Judy Provencher for failing to plead or otherwise defend.

13. The Court extended the time for Defaulting Defendants to plead or otherwise defend until April 15, 2008. Docket Entry 130 (April 8, 2008). The FTC served that order on Defaulting Defendants. Defaulting Defendants failed to plead or defend despite the order.

14. The FTC served Defaulting Defendants Bernard Fromstein and Judy Provencher with notice of the FTC's Application for Order for Permanent Injunction and Final Default Judgment despite being served with notice. Notice was not required because Defaulting Defendants Bernard Fromstein and Judy Provencher have not appeared in this action. Fed. R. Civ. P. 55(b)(2).

15. Plaintiff is entitled to judgment against Defaulting Defendants Bernard Fromstein and Judy Provencher pursuant to Fed. R. Civ. P. 55(b)(2).

16. Defendants' total net sales amounted to \$50,015,402 USD from the conduct alleged in the FTC's Amended Complaint during the period from July 31, 2000, until May 9, 2006.

17. Defendants who settled with the FTC (Datacom Marketing Inc., Datacom Direct Inc., Judy Neinstein, Stanley Fromstein, Paul Barnard, and Charles P. Farrugia) have collectively paid \$780,000 in settlement of the Amended Complaint.

18. Plaintiff is therefore entitled to equitable monetary relief against Defaulting Defendants Bernard Fromstein and Judy Provencher in the amount of \$49,235,402 USD, which is the amount of consumer injury from July 31, 2000, until May 9, 2006, minus the payments made in settlement by the other Defendants.

19. Defaulting Defendants Bernard Fromstein and Judy Provencher are jointly and severally liable for the payment of \$49,235,402 USD in equitable monetary relief for consumer redress.

20. Defaulting Defendants Bernard Fromstein and Judy Provencher are likely to continue to engage in the activities alleged in the Amended Complaint unless they are permanently enjoined from such acts and practices.

21. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

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

DEFINITIONS

1. **“Plaintiff,” “Commission,” or “FTC”** means the Federal Trade Commission.

2. **“Defendants”** means Datacom Marketing Inc., Ontario Corporation

No. 1431798; Datacom Direct Inc., Ontario Corporation No. 1417524; Bernard Fromstein; Judy

3. **“Defaulting Defendants”** means Bernard Fromstein and Judy Provencher, by whatever names each might be known.

4. **“Original Complaint”** means the Complaint filed May 9, 2006, Document No. 1.

5. **“Amended Complaint”** means the Amended Complaint dated November 14, 2006, filed instanter November 21, 2006, Document No. 94.

6. **“Account number”**

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.

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

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

11. **“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, but is not limited to, 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.

12. **“Material”** means likely to affect a person’s choice of, or conduct regarding, goods or services.

13. **“Person”** or **“persons”** means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

14. **“Telemarketing”** means a plan, program, or campaign (whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310) which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones.

ORDER

I. PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that Defaulting Defendants Bernard Fromstein and Judy Provencher, and their officers, directors, agents, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, in connection with the advertising, promotion, offering for sale, sale, or provision of any good or service, are hereby permanently restrained and enjoined from:

A.I.

D. Violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, as currently promulgated or as hereafter it may be amended; and

E. Assisting others who violate any provision of Section I of this Order.

II. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment is hereby entered in favor of Plaintiff, and against Defaulting Defendants Bernard Fromstein and Judy Provencher, jointly and severally, in the amount of forty-nine million, two hundred thirty-five thousand, four hundred two United States dollars (\$49,235,402 USD), as equitable monetary relief for consumer injury;

B. Upon entry of this Order, this monetary judgment shall become immediately due and payable by Defaulting Defendants Bernard Fromstein and Judy Provencher, and interest, computed pursuant to 28 U.S.C. § 1961(a), as amended, immediately shall begin to accrue upon the unpaid balance;

C. All payments under this Section shall be made by certified check or other guaranteed funds payable to and delivered to the Commission, or by wire transfer in accord with directions provided by the Commission;

D. All funds paid pursuant to this Section shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to,

as it determines to be reasonably related to Defendants' practices alleged in the Amended Complaint. Defendants shall have no right to challenge the Commission's choice of remedies under this Section. This judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture; and

E. 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. DISCLOSURE OF CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defaulting Defendants Bernard Fromstein and Judy Provencher, and their officers, directors, agents, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any person, trust, corporation, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from:

A. Selling, renting, leasing, transferring, or otherwise disclosing 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; and

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 Defaulting Defendants Bernard Fromstein and Judy Provencher may disclose identifying information to a law enforcement agency or as required by any law, regulation, or court order.

IV. CEASE COLLECTION ON ACCOUNTS

IT IS FURTHER ORDERED that Defaulting Defendants Bernard Fromstein and Judy Provencher, and their officers, directors, agents, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any person, trust, corporation, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from collecting or attempting to collect, or assigning any right to collect payment for any business directory and/or listing in any business directory, directly or through any third party, on any United States consumer account established prior to entry of this Order.

V. RETURN OF UNCASHED CHECKS

IT IS FURTHER ORDERED that Defaulting Defendants Bernard Fromstein and Judy Provencher waive and release all rights, claims, and interests in all uncashed checks and other negotiable instruments, totaling approximately four hundred seventy thousand United States dollars (\$470,000 USD), sent by United States consumers in response to Defendants' telemarketing, invoices and/or collection activities related to business directories or listings in business directories. Said uncashed checks and negotiable 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.

VI. MONITORING COMPLIANCE OF SALES PERSONNEL

IT IS FURTHER ORDERED that, in connection with any business where Defaulting Defendants Bernard Fromstein and Judy Provencher are the majority owners of the business or otherwise control the business, Defaulting Defendants Bernard Fromstein and Judy Provencher, and their 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 notice of the terms of this Order to all employees and independent contractors engaged in sales or other customer service functions.

C. Failing to take adequate corrective action with respect to any employee or independent contractor whom Defaulting Defendants Bernard Fromstein and Judy Provencher determine is not complying with this Order. This corrective action may include training, disciplining, and/or terminating such employee or independent contractor.

VII. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defaulting Defendants Bernard Fromstein and Judy Provencher shall submit additional written reports, sworn to or affirmed 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 Defaulting Defendants Bernard Fromstein and Judy Provencher'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: Defaulting Defendants Bernard Fromstein and Judy Provencher; their employees, or any other entity managed or controlled in whole or in part by them, without the necessity of identification or prior notice; and

C. Defaulting Defendants Bernard Fromstein and Judy Provencher 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

employment; and

c. Any changes in Defaulting Defendants Bernard Fromstein and Judy Provencher's name or use of any aliases or fictitious names; and

2. Defaulting Defendants Bernard Fromstein and Judy Provencher shall notify the Commission of any changes in corporate structure or any business entity that Defaulting Defendants Bernard Fromstein and Judy Provencher 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 Defaulting Defendants Bernard Fromstein and Judy Provencher learns less than thirty (30) days prior to the date such action is to take place, Defaulting Defendants Bernard Fromstein and Judy Provencher 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, Defaulting Defendants Bernard Fromstein and Judy Provencher shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are 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 Defaulting Defendants Bernard Fromstein and Judy Provencher;

2. The then-current employment and business addresses and telephone numbers of Defaulting Defendants Bernard Fromstein and Judy Provencher, a description of the business activities of each such employer or business, and the title and responsibilities of Defaulting Defendants Bernard Fromstein and Judy Provencher for each such employer or business;

3. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Paragraph C of Section X; and

4. Any other changes required to be reported under Paragraph A of this Section.

C. For the purposes of this Order, Defaulting Defendants Bernard Fromstein and Judy Provencher 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 Defaulting Defendants Bernard Fromstein and Judy Provencher.

IX. 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 Defaulting Defendants Bernard Fromstein and Judy Provencher are the majority owners of the business or otherwise control the business, Defaulting

Defendants Bernard Fromstein and Judy Provencher, and their agents, employees, officers,

X. DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defaulting Defendants Bernard Fromstein and Judy Provencher shall deliver copies of the Order as directed below:

A. Defaulting Defendants Bernard Fromstein and Judy Provencher as Control

Persons: For any business that Defaulting Defendants Bernard Fromstein and Judy Provencher control, directly or indirectly, or in which such Defendant has a majority ownership interest, Defaulting Defendants Bernard Fromstein and Judy Provencher must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Defaulting Defendants Bernard Fromstein and Judy Provencher must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon Defaulting Defendants Bernard Fromstein and Judy Provencher. For new personnel, delivery shall occur prior to them assuming their responsibilities.

B. Defaulting Defendants Bernard Fromstein and Judy Provencher as

Employee or Non-Control Person: For any business where Defaulting Defendants Bernard Fromstein and Judy Provencher are not controlling persons of a business but otherwise engage in conduct related to the subject matter of this Order, Defaulting Defendants Bernard Fromstein and Judy Provencher must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct; and

C. Defaulting Defendants Bernard Fromstein and Judy Provencher 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.

XI. ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that Defaulting Defendants Bernard Fromstein and Judy Provencher, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

XII. LIFTING OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze on the assets of Defaulting Defendants Bernard Fromstein and Judy Provencher shall remain in effect until the Commission has received all payments required by Section II above, *provided, however*, that Defaulting Defendants Bernard Fromstein and Judy Provencher may transfer funds to the extent necessary to make all payments required by Section II.

XIII. 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.

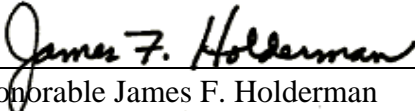
XIV. RETENTION OF JURISDICTION

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 Defaulting Defendants Bernard Fromstein and Judy Provencher pursuant to all the terms and conditions recited above.

IT IS SO ORDERED:

Dated: May 6, 2008



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