

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-62186-CIV-ZLOCH

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

**FINAL JUDGMENT**

DOTAUTHORITY.COM, INC.,  
et al.,

Defendants.

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THIS MATTER is before the Court upon The Motion For Entry Of Stipulated Order For Permanent Injunction And Monetary Judgment As To All Defendants (DE 230). The Court has carefully reviewed said Motion, the entire court file and is otherwise fully advised in the premises.

The Court notes that all Defendants stipulate to the entry of the permanent injunction and monetary judgment against them sought herein. See DE 230-1.

Accordingly, after due consideration, it is

**ORDERED AND ADJUDGED** as follows:

1. The Court has jurisdiction over the Parties hereto and the subject matter herein;

2. The Motion For Entry Of Stipulated Order For Permanent Injunction And Monetary Judgment As To All Defendants (DE 230) be and the same is hereby **GRANTED**;

3. The Stipulated Order For Permanent Injunction And Monetary

Judgment (DE 230-1) be and the same is hereby approved, adopted, and ratified by the Court;

4. Pursuant to Federal Rule of Civil Procedure 58, Final Judgment be and the same is hereby **ENTERED** in favor of Plaintiff Federal Trade Commission and against Defendants DOTAUTHORITY.COM, Inc., JPL Enterprises, Inc., James P. Lamb, DOTFILINGS.COM, Inc., Excelsior Enterprises International, Inc., and Uliana Bogash;

5. The Court shall retain jurisdiction over the above-styled cause solely for the purposes of construction, modification, and enforcement of the Stipulated Order For Permanent Injunction And Monetary Judgment (DE 230-1); and

6. To the extent not otherwise disposed of herein, all pending motions in the above-styled cause are hereby **DENIED** as moot.

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida, this 13th day of April, 2018.



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WILLIAM J. ZLOCH  
Sr. United States District Judge

Copies furnished:

All Counsel of Record

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 0:16-cv-62186-WJZ

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DOTAUTHORITY.COM, INC., *et al.*,

Defendants.

**STIPULATED ORDER FOR  
PERMANENT INJUNCTION AND  
MONETARY JUDGMENT**

Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), filed its Complaint for Permanent Injunction and Other Equitable Relief ("Complaint") in this matter pursuant to Sections 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and Section 5 of the Restore Online Shoppers' Confidence Act ("ROSCA"), 15 U.S.C. § 8404. Through counsel, having filed a joint motion, the Commission and Defendants stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment ("Order") to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

**FINDINGS**

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants participated in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and Section 4 of ROSCA, 15 U.S.C. § 8403, in the marketing of state and federal motor carrier registration services to consumers throughout the United States.

3. Defendants neither admit nor deny any of the allegations in the Complaint. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction.

4. Defendants waive any claim that they 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 agree to bear their own costs and attorney fees.

5. Defendants waive and release any claims that they may have against the Commission and its agents that relate to this action.

6. Defendants and the Commission waive all rights to appeal or otherwise challenge or contest the validity of this Order.

#### DEFINITIONS

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

A. **“Clear(ly) and Conspicuous(ly)”** means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary Persons, including in all of the following ways:

1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.

2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
5. The disclosure must use diction and syntax understandable to ordinary Persons and must appear in each language in which the representation that requires the disclosure appears.
6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
8. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, "ordinary Persons" includes reasonable members of that group.

B. "Close Proximity" means immediately adjacent to the triggering representation. In the case of advertisements disseminated verbally or through audible means, the disclosure shall be made as soon as practicable after the triggering representation.



C. **"Defendants"** means all of the Corporate Defendants and the Individual Defendants, individually, collectively, or in any combination.

1. **"Corporate Defendants"** means DOTAuthority.com, Inc., also doing business as On-Line Registration; DOTFilings.com, Inc.; Excelsior Enterprises International, Inc., also doing business as DOTFilings.com, UCR Registration, UCR Filings, and James P. Lamb & Associates; JPL Enterprises International, Inc., also doing business as DOTAuthority.com, DOTFilings.com, On-Line Registration, Registration Services Online, and James P. Lamb & Associates; and their successors, assigns, affiliates, and subsidiaries, wherever located, individually, collectively, or in any combination.
2. **"Individual Defendants"** means James P. Lamb and Uliana Bogash, also known as Juliana Bogash, Yuliana Bogash, Yana Bogash, and Uliana Vogash, individually, collectively, and in any combination.

D. **"Negative Option Feature"** means, in an offer or agreement to sell or provide any goods or services, a provision under which the Person's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.

E. **"Person"** means a natural person, organization, or other legal entity, including a corporation, limited liability company, partnership, proprietorship, association, cooperative, government or governmental subdivision or agency, or any other group or combination acting as an entity.

**I.**

**ADVERTISING AND MARKETING**

**IT IS ORDERED** that Defendants, Defendants' officers, agents, employees, 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, in connection with the advertising, marketing, promotion, offering for sale, or sale of any goods or services, are hereby permanently restrained and enjoined from misrepresenting, expressly or by implication:

- A. That Defendants are representatives of, related to, associated with, vetted by, or in any way affiliated with a local, state, or federal government authority, such as the United States Department of Transportation, Indiana Department of Revenue, Motor Carrier Services Division, or Unified Carrier Registration system; and
- B. That Defendants' goods or services are being offered by or on behalf of a government authority, including through the use of business names and aliases, official government agency depictions or images, or URLs for public-facing websites.

**II.**

**REQUIRED DISCLOSURES**

**IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents, employees, 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, in connection with the advertising, marketing, promotion, offering for sale, or sale of any goods or services that are represented, expressly or by implication, to satisfy a Person's compliance or registration obligations, are

hereby permanently restrained and enjoined from failing to disclose in a Clear and Conspicuous manner:

A. That Defendants are private third-party service providers offering their goods or services in exchange for a fee;

B. In any solicitation or advertisement, the following statement: "This is a commercial solicitation and advertisement. [Insert name of Defendant] is NOT affiliated with any government authority"; and

C. Before a Person submits any payment or billing information, the amount of the total charge that is attributable to Defendants' service fees.

### III.

#### EXPRESS INFORMED CONSENT

**IT IS FURTHER ORDERED** that Defendants and their officers, agents, employees, 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, in connection with the advertising, marketing, promoting, or sale of any good or service with a Negative Option Feature, are permanently restrained and enjoined from engaging in, causing others to engage in, or attempting to engage in, using billing information to obtain payment from a Person, unless, prior to using such billing information to obtain payment, Defendants obtain the express informed consent of the Person. Express informed consent shall consist of:

A. For all written offers (including over the Internet or other web-based applications or services): a check box, signature space or line, or another substantially similar method by which a Person must affirmatively select to accept the Negative Option Feature. In Close



Proximity to an affirmative selection method, Defendants shall disclose the information identified in Section II entitled "Required Disclosures." This disclosure shall contain no additional information and shall be Clear and Conspicuous in relation to any other information provided on the page relating to costs, risks, or obligations associated with the Negative Option Feature.

B. For all oral offers: the Person's express, informed agreement to the Negative Option Feature, as evidenced by:

1. The Person's authorization of payment for the good or service described;
2. The Person's name and the date of the authorization;
3. The Person's understanding of what amount will be charged for Defendant's good or service; and
4. The Person's receipt of the disclosures required by the Order in Section II entitled "Required Disclosures."

Defendants shall maintain for each such transaction a voice recording of the entire transaction, including the sales representations. Each recording must be retrievable by the Person's name, telephone number, or billing information and must be provided upon request to the Person, the Person's bank, or any law enforcement entity.

#### IV.

#### NEGATIVE OPTION MARKETING PRACTICES

**IT IS FURTHER ORDERED** that Defendants and their officers, agents, employees, 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, in connection with the sale of any good

or service are permanently restrained and enjoined from engaging in, causing others to engage in, or attempting to engage in, any of the following practices:

A. Charging any Person in an Internet-based sale of a good or service sold through a Negative Option Feature without:

1. Providing text that Clearly and Conspicuously discloses all material terms of the transaction before obtaining the Person's billing information;
2. Obtaining a Person's express informed consent, as described in Section III (Express Informed Consent) before making any charge;
3. Providing a simple mechanism for a Person to stop recurring charges from being placed on the Person's credit card, debit card, bank account, or other financial account; and
4. Providing, at least 10 days *before* initiating the charge to a Person's account, a notification that Clearly and Conspicuously provides the following:
  - (a) notice that the Person is enrolled in SafeRenew or any other Negative Option Feature;
  - (b) the amount and date on which the Person's account will be charged;
  - (c) the service for which such Person is being charged; and
  - (d) a notice that any Person wishing to opt out of SafeRenew or any other Negative Option Feature must, on or before the date of the upcoming charge to a Person's account, notify Defendants by phone or email, or any other method by which Defendant can promptly receive such notice; and

B. Violating the Restore Online Shoppers Confidence Act, 15 U.S.C. §§ 8401-8405, a copy of which is attached as Attachment A.

V.

COMMUNICATIONS CONCERNING GOVERNMENT REGULATION

**IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents, employees, 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, in connection with the advertising, marketing, promotion, offering for sale, or sale of any goods or services, are hereby permanently restrained and enjoined from utilizing threats of government action, expressly or by implication, in communications with any Person, including threats that the failure of a Person to act will result in civil or criminal penalties; loss of mandatory government registration, such as with regard to US Department of Transportation (USDOT) numbers; or fines.

VI.

MONETARY JUDGMENT

**IT IS FURTHER ORDERED** that:

A. Judgment in the amount of **NINE HUNDRED THOUSAND DOLLARS (\$900,000)** is entered in favor of the Commission against the Defendants, jointly and severally, as equitable monetary relief, which Excelsior shall pay in full within one (1) business day of the entry of this order by electronic fund transfer pursuant to instructions previously provided by a representative of the Commission.

VII.

ADDITIONAL MONETARY PROVISIONS

**IT IS FURTHER ORDERED** that:

A. Defendants relinquish dominion and all legal and equitable right, title, and interest



in all funds transferred pursuant to this Order and may not seek the return of any funds.

B. 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.

C. 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.

D. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Defendants 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.

E. 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. Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.



**VIII.**

**CUSTOMER INFORMATION**

**IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents, employees, 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 failing to provide sufficient customer complaint information to enable the Commission to efficiently administer consumer redress. If a representative of the Commission requests in writing any customer complaint information related to redress, Defendants must provide it, in the form prescribed by the Commission, within 30 days.

**IX.**

**ORDER ACKNOWLEDGEMENTS**

**IT IS FURTHER ORDERED** that Defendants obtain acknowledgments of receipt of this Order:

A. Each Defendant, 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 3 years after entry of this Order, each Individual Defendant for any business that such Defendant, individually or collectively with any other Defendants, is the majority owner or controls directly or indirectly, and each Corporate Defendant, 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 conduct related to the subject matter of the Order; 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 a Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

**X.**

**COMPLIANCE REPORTING**

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

A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:

1. Each Defendant must: (a) 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; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) 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 (which Individual Defendants must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order

Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, each Individual 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 such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 5 years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: 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; and
2. Each Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which such Defendant



performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such 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. The subject line must begin: *FTC v. DOT Authority*.

XI.

RECORDKEEPING

**IT IS FURTHER ORDERED** that Defendants must create certain records for 5 years after entry of the Order, and retain each such record for 5 years. Specifically, Corporate Defendants and each Individual Defendant for any business that such Defendant, individually or



collectively with any other Defendants, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. Accounting records showing the revenues from all goods or services sold;
- B. 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) the reason for termination;
- C. Records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- E. A copy of each unique advertisement or other marketing material.

## XII.

### COMPLIANCE MONITORING

**IT IS FURTHER ORDERED** that, for the purpose of monitoring Defendants' compliance with this Order:

- A. Within 14 days of receipt of a written request from a representative of the Commission, each Defendant 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 each Defendant. Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant 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 Defendants or any individual or entity affiliated with Defendants, 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 consumer reporting agency must furnish consumer reports concerning Individual Defendants, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

### XIII

#### RETENTION OF JURIDICTION

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

**IT IS SO ORDERED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2018,

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**THE HONORABLE WILLIAM J. ZLOCH**  
**UNITED STATES DISTRICT JUDGE**


**SO STIPULATED AND AGREED:**

  
\_\_\_\_\_  
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**Defendants DOTFilings.com, Inc., Excelsior Enterprises International, Inc., and Uliana Bogash**



\_\_\_\_\_  
Uliana Bogash, Individually and as an  
officer or manager of DOTFilings.com,  
Inc. and Excelsior Enterprises  
International, Inc.

12 Jan 18  
Date

**Defendants DOTAuthority.com, Inc., JPL Enterprises International, Inc., and James P. Lamb**

  
\_\_\_\_\_  
James P. Lamb, Individually and as an  
officer or manager of  
DOTAuthority.com, Inc. and JPL  
Enterprises International, Inc.

12 Jan 18  
Date



**Attachment A**

**15 USC Ch. 110: ONLINE SHOPPER PROTECTION**  
**From Title 15—COMMERCE AND TRADE**

**CHAPTER 110—ONLINE SHOPPER PROTECTION**

- Sec.
- 8401.  
Findings; declaration of policy.
- 8402.  
Prohibitions against certain unfair and deceptive Internet sales practices.
- 8403.  
Negative option marketing on the Internet.
- 8404.  
Enforcement by Federal Trade Commission.
- 8405.  
Enforcement by State attorneys general.

**§8401. Findings; declaration of policy**

The Congress finds the following:

- (1) The Internet has become an important channel of commerce in the United States, accounting for billions of dollars in retail sales every year. Over half of all American adults have now either made an online purchase or an online travel reservation.
- (2) Consumer confidence is essential to the growth of online commerce. To continue its development as a marketplace, the Internet must provide consumers with clear, accurate information and give sellers an opportunity to fairly compete with one another for consumers' business.
- (3) An investigation by the Senate Committee on Commerce, Science, and Transportation found abundant evidence that the aggressive sales tactics many companies use against their online customers have undermined consumer confidence in the Internet and thereby harmed the American economy.
- (4) The Committee showed that, in exchange for "bounties" and other payments, hundreds of reputable online retailers and websites shared their customers' billing information, including credit card and debit card numbers, with third party sellers through a process known as "data pass". These third party sellers in turn used aggressive, misleading sales tactics to charge millions of American consumers for membership clubs the consumers did not want.
- (5) Third party sellers offered membership clubs to consumers as they were in the process of completing their initial transactions on hundreds of websites. These third party "post-transaction" offers were designed to make consumers think the offers were part of the initial purchase, rather than a new transaction with a new seller.
- (6) Third party sellers charged millions of consumers for membership clubs without ever obtaining consumers' billing information, including their credit or debit card information, directly from the consumers. Because third party sellers acquired consumers' billing information from the initial merchant through "data pass", millions of consumers were unaware they had been enrolled in membership clubs.
- (7) The use of a "data pass" process defied consumers' expectations that they could only be charged for a good or a service if they submitted their billing information, including their complete credit or debit card numbers.
- (8) Third party sellers used a free trial period to enroll members, after which they periodically charged consumers until consumers affirmatively canceled the memberships. This use of "free-to-pay conversion" and "negative option" sales took advantage of consumers' expectations that they would have an opportunity to accept or reject the membership club offer at the end of the trial period.

(Pub. L. 111-345, §2, Dec. 29, 2010, 124 Stat. 3618.)

**SHORT TITLE**

Pub. L. 111-345, §1, Dec. 29, 2010, 124 Stat. 3618, provided that: "This Act [enacting this chapter] may be cited as the 'Restore Online Shoppers' Confidence Act'."

## **§8402. Prohibitions against certain unfair and deceptive Internet sales practices**

### **(a) Requirements for certain Internet-based sales**

It shall be unlawful for any post-transaction third party seller to charge or attempt to charge any consumer's credit card, debit card, bank account, or other financial account for any good or service sold in a transaction effected on the Internet, unless—

(1) before obtaining the consumer's billing information, the post-transaction third party seller has clearly and conspicuously disclosed to the consumer all material terms of the transaction, including—

- (A) a description of the goods or services being offered;
- (B) the fact that the post-transaction third party seller is not affiliated with the initial merchant, which may include disclosure of the name of the post-transaction third party in a manner that clearly differentiates the post-transaction third party seller from the initial merchant; and
- (C) the cost of such goods or services; and

(2) the post-transaction third party seller has received the express informed consent for the charge from the consumer whose credit card, debit card, bank account, or other financial account will be charged by—

- (A) obtaining from the consumer—
  - (i) the full account number of the account to be charged; and
  - (ii) the consumer's name and address and a means to contact the consumer; and
- (B) requiring the consumer to perform an additional affirmative action, such as clicking on a confirmation button or checking a box that indicates the consumer's consent to be charged the amount disclosed.

### **(b) Prohibition on data-pass used to facilitate certain deceptive Internet sales transactions**

It shall be unlawful for an initial merchant to disclose a credit card, debit card, bank account, or other financial account number, or to disclose other billing information that is used to charge a customer of the initial merchant, to any post-transaction third party seller for use in an Internet-based sale of any goods or services from that post-transaction third party seller.

### **(c) Application with other law**

Nothing in this chapter shall be construed to supersede, modify, or otherwise affect the requirements of the Electronic Funds <sup>1</sup> Transfer Act (15 U.S.C. 1693 et seq.) or any regulation promulgated thereunder.

### **(d) Definitions**

In this section:

#### **(1) Initial merchant**

The term "initial merchant" means a person that has obtained a consumer's billing information directly from the consumer through an Internet transaction initiated by the consumer.

#### **(2) Post-transaction third party seller**

The term "post-transaction third party seller" means a person that—

- (A) sells, or offers for sale, any good or service on the Internet;
- (B) solicits the purchase of such goods or services on the Internet through an initial merchant after the consumer has initiated a transaction with the initial merchant; and
- (C) is not—
  - (i) the initial merchant;
  - (ii) a subsidiary or corporate affiliate of the initial merchant; or
  - (iii) a successor of an entity described in clause (i) or (ii).

(Pub. L. 111-345, §3, Dec. 29, 2010, 124 Stat. 3619.)

## **REFERENCES IN TEXT**

The Electronic Fund Transfer Act, referred to in subsec. (c), is title IX of Pub. L. 90-321, as added by Pub. L. 95-630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3728, which is classified generally to subchapter VI (§1693 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.



<sup>1</sup> So in original. Probably should be "Fund".

**§8403. Negative option marketing on the Internet**

It shall be unlawful for any person to charge or attempt to charge any consumer for any goods or services sold in a transaction effected on the Internet through a negative option feature (as defined in the Federal Trade Commission's Telemarketing Sales Rule in part 310 of title 16, Code of Federal Regulations), unless the person—

- (1) provides text that clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer's billing information;
- (2) obtains a consumer's express informed consent before charging the consumer's credit card, debit card, bank account, or other financial account for products or services through such transaction; and
- (3) provides simple mechanisms for a consumer to stop recurring charges from being placed on the consumer's credit card, debit card, bank account, or other financial account.

(Pub. L. 111-345, §4, Dec. 29, 2010, 124 Stat. 3620.)

**§8404. Enforcement by Federal Trade Commission**

**(a) In general**

Violation of this chapter or any regulation prescribed under this chapter shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices. The Federal Trade Commission shall enforce this chapter in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this chapter.

**(b) Penalties**

Any person who violates this chapter or any regulation prescribed under this chapter shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated in and made part of this chapter.

**(c) Authority preserved**

Nothing in this section shall be construed to limit the authority of the Commission under any other provision of law.

(Pub. L. 111-345, §5, Dec. 29, 2010, 124 Stat. 3620.)

**REFERENCES IN TEXT**

The Federal Trade Commission Act, referred to in subsecs. (a) and (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

**§8405. Enforcement by State attorneys general**

**(a) Right of action**

Except as provided in subsection (e), the attorney general of a State, or other authorized State officer, alleging a violation of this chapter or any regulation issued under this chapter that affects or may affect such State or its residents may bring an action on behalf of the residents of the State in any United States district court for the district in which the defendant is found, resides, or transacts business, or wherever venue is proper under section 1391 of title 28, to obtain appropriate injunctive relief.

**(b) Notice to Commission required**

A State shall provide prior written notice to the Federal Trade Commission of any civil action under subsection (a) together with a copy of its complaint, except that if it is not feasible for the State to provide



such prior notice, the State shall provide such notice immediately upon instituting such action.

**(c) Intervention by the Commission**

The Commission may intervene in such civil action and upon intervening—

- (1) be heard on all matters arising in such civil action; and
- (2) file petitions for appeal of a decision in such civil action.

**(d) Construction**

Nothing in this section shall be construed—

- (1) to prevent the attorney general of a State, or other authorized State officer, from exercising the powers conferred on the attorney general, or other authorized State officer, by the laws of such State; or
- (2) to prohibit the attorney general of a State, or other authorized State officer, from proceeding in State or Federal court on the basis of an alleged violation of any civil or criminal statute of that State.

**(e) Limitation**

No separate suit shall be brought under this section if, at the time the suit is brought, the same alleged violation is the subject of a pending action by the Federal Trade Commission or the United States under this chapter.

(Pub. L. 111–345, §6, Dec. 29, 2010, 124 Stat. 3621.)