

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

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

**STIPULATED FINAL JUDGMENT AND
ORDER FOR PERMANENT INJUNCTION AS TO
DEFENDANT GERARD ROBERT ENGLE**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed its Complaint for a permanent injunction and other relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, charging, *inter alia*, defendant Gerard Robert Engle (“Defendant”) with violating Section 5 of the FTC Act, 15 U.S.C. § 45. The FTC and Defendant, by and through counsel, have agreed to the entry of this Stipulated Final Judgment and

Order for Permanent Injunction (“Order”) by this Court to resolve all disputed matters between them in this action.

NOW, THEREFORE, the FTC and Defendant having asked the Court to enter this Order,
IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter of this case and of the parties consenting hereto.
2. Venue is proper as to all parties in the Northern District of Georgia.
3. The activities of Defendant are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
4. The Complaint states a claim upon which relief may be granted against Defendant under Section 5 of the FTC Act, 15 U.S.C. § 45(a).
5. Defendant has waived all rights to seek judicial review or otherwise challenge or contest the validity of this Order. He also waives any claim that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).
6. Issuance of this Order is in the public interest.
7. Nothing in this Order shall be construed as relieving Defendant of any obligations he may have under any other rule or law enforced by the FTC or Federal Communications Commission.
8. In accordance with Rule 65(d) of the Federal Rules of Civil Procedure, this Order shall be binding upon Defendant, his agents, servants, employees, and upon those persons in active

concert or participation with him who receive actual notice of this Order by personal service or otherwise.

DEFINITIONS

1. "Audiotext Service" means any information or entertainment service offered over the telephone through any dialing pattern or through return calls to a telephone.
2. "Defendant" means Gerard Robert Engle, individually and as an officer of International Telemedia Associates, Inc.
3. "LEC" or "local exchange carrier" means the local telephone company from which a line subscriber receives his or her telephone bill.
4. "Line subscriber" or "subscriber" means an individual or entity who has arranged with a LEC to obtain local telephone service provided through an assigned telephone number, and to be billed for such service on a monthly or other periodic basis.
5. "Telephone-billed transaction" means any purchase or purported purchase of a good or service that is charged to a line subscriber's telephone bill, but excluding purchases solely of common carrier transmission services. For purposes of this Order, any service in which the service provider advertises, promotes, directs, controls, or provides the content of communications provided or exchanged through the service is not a common carrier transmission service.

CONDUCT PROHIBITIONS

I.

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

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

II.

IT IS FURTHER ORDERED that Defendant is hereby restrained and enjoined from billing and collecting for charges, directly or through an intermediary, expressly or by implication, orally or in writing, incurred in violation of the 900-Number Rule, 16 C.F.R. Part 308, as currently promulgated or as it may hereafter be amended, including, but not limited to, 16 C.F.R. § 308.5(i)(4), which prohibits

use of an 800 number or other toll free number in a manner that results in a caller to such number being called back collect for the provision of audio information or entertainment services.

CONSUMER REDRESS

III.

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of **Ten Thousand Dollars (\$10,000)** is hereby entered in favor of the Commission against Defendant for equitable monetary relief, including but not limited to, consumer redress and/or disgorgement and for paying any attendant expenses of administering any redress fund. If the Commission, at its sole discretion, determines that redress is wholly or partially impracticable, any funds not so used shall be deposited in the United States Treasury.
- B. Defendant shall pay this judgment to the Commission by wire transfer, certified check, or cashier's check, within thirty (30) days after he executes this Order, or within five (5) business days after receiving notice of the entry of this Order, whichever is later. In the event of default, the Commission or its agents may without further notice immediately bring an action to collect any unpaid amount of the judgment.
- C. For purposes of this Paragraph and any subsequent proceedings to enforce payment, including but not limited to a nondischargeability complaint filed in bankruptcy proceedings, Defendant waives any right to contest any allegations of the Complaint.

IV.

MAINTENANCE OF BUSINESS RECORDS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, for each business that Defendant directly or indirectly, manages, controls, or has a majority ownership interest in, that is engaged in advertising, offering, promoting, providing, or billing for any audiotext service or other telephone-billed transaction, or assisting others engaged in those activities, Defendant is hereby restrained and enjoined from failing to create, and from failing to retain for a period of three (3) years following the date of such creation, unless otherwise specified:

A. Books, records, and accounts that, in reasonable detail, accurately and fairly reflect the price paid by consumers of goods or services sold, annual and quarterly gross revenues generated, and the disbursement of such revenues;

B. Records accurately reflecting: the name, address, and home telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and if applicable, the date and reason for the person's termination, at all times while any such person is employed, and for a period of at least three (3) years thereafter;

C. Records containing the names, addresses, telephone numbers, dollar amounts paid, quantity of all goods or services purchased or billed, and a description of all such goods or services, for all consumers billed or cause to be billed for any goods or services; and

D. Records of every consumer complaint or refund request, whether received directly or indirectly or through any third party, that are organized and maintained so that all records relating to a

consumer are retrievable by the consumer's name, address or telephone number, including, but not limited to:

1. The consumer's name, address, telephone number and the dollar amount paid or allegedly owed by the consumer;
2. A dated copy of the written complaint, inquiry or refund request, if any, and records reflecting the date and content of any oral complaint, inquiry or refund request;
3. The basis of the complaint, including the name of any salesperson complained against, and the nature and result of any investigation conducted concerning any complaint;
4. Each response and the date of the response;
5. Any final resolution and the date of the resolution; and
6. In the event of a denial of a refund request, the reason for the denial.

V.

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, Defendant shall notify the Commission of the following:

1. Any changes in his residence, mailing address and telephone number within ten (10) days of the date of such change;
2. Any change in his 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 he is affiliated with or employed by, a statement of the nature of the business, a statement of who owns and who manages the business, and a statement of his duties and responsibilities in connection with the business or employment; and

3. Any proposed change in the business structure of any business entity directly or indirectly owned, managed or controlled by Defendant, such as creation, incorporation, dissolution, assignment, sale, merger, dissolution of subsidiaries, filing of a bankruptcy petition, change in the corporate name or address, or any other change that may affect compliance obligations arising out of this Order, not less than thirty (30) days prior to the effective date of any proposed change; *Provided, however*, that, with respect to any proposed change in the business entity about which Defendant learns less than thirty (30) days prior to the date such action is to take place, he shall notify the Commission as soon as practicable after learning of such proposed change;

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

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

3. A copy of each acknowledgment of receipt of this Order obtained by Defendant pursuant to Paragraph IX;

4. A statement describing the manner in which Defendant has complied with and is complying with each of the injunctive provisions of this Order; and

C. Upon written request by a representative of the Commission, Defendant shall submit additional written reports (under oath, if requested) and produce documents on reasonable notice with respect to any conduct subject to this Order;

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

Associate Director
Division of Marketing Practices
Federal Trade Commission, Room 238
600 Pennsylvania Avenue, NW
Washington, D.C. 20580; and

E. For the purposes of this Paragraph, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom Defendant performs services as an employee, consultant, or independent contractor.

VI.

COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE

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

A. Without further leave of court, through discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26 - 37, including the

use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating Defendant's and his Representatives' compliance with any provision of this Order;

B. Through the use of representatives posing as consumers, potential clients and suppliers to Defendant or his employer, including holding incidental conversations with customer service and other representatives of Defendant or his employer, without the necessity of identification, prior notice, or the presence of counsel; and

C. Nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether Defendant has violated any provision of this Order, Section 5 of the FTC Act, 15 U.S.C. § 45, or any applicable rule or regulation promulgated and enforced by the Commission thereunder.

VII.

ACCESS TO BUSINESS PREMISES

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, Defendant shall permit representatives of the Commission, within three (3) business days of receipt of written notice from the Commission:

A. Access during normal business hours to any office or facility storing documents, of any business that Defendant directly or indirectly manages, controls, or has a majority ownership interest in, that is engaged in advertising, offering, promoting, providing, or billing for any audiotext service or other telephone-billed transaction, or assisting others engaged in those activities. In providing such access, Defendant shall permit Commission representatives to remove documents relevant to his compliance

with any provision of this Order for a period not to exceed five (5) business days so that the documents may be inspected, inventoried and copied; and

B. To interview the officers, directors, and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which this Paragraph applies, concerning matters relating to compliance with the terms of this Order. The person interviewed may have counsel present. *Provided*, however, that, upon application of the Commission and for good cause shown, the Court may enter an *ex parte* order granting immediate access to Defendant's business premises for the purposes of inspecting and copying all documents relevant to any provision of this Order.

VIII.

DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendant shall:

A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of the Order from, each officer, director, or partner, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such person, for each business that Defendant directly or indirectly manages, controls, or has a majority ownership interest in, that is engaged in advertising,

offering, promoting, providing, or billing for any audiotext service or other telephone-billed transaction, or assisting others engaged in those activities,; and

B. Maintain for a period of three (3) years after creation, and, upon reasonable notice, make available to representatives of the Commission, the original, signed and dated acknowledgments of receipt of copies of this Order required by the foregoing Paragraph VIII.A of this Order.

IX.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that within five (5) business days after Defendant receives this Order as entered by the Court, Defendant shall submit to the Commission a truthful sworn statement, in the form shown on Appendix A, acknowledging receipt of this Final Order.

X.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court will retain jurisdiction of this matter for the purpose of enabling any of the parties to this Order to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Order, for the enforcement or compliance therewith, or the punishment of violations thereof.

The parties, by their counsel and individually, hereby consent to the terms and conditions of the Stipulated Final Judgment and Order for Permanent Injunction set forth above, and consent to the entry hereof.

FOR DEFENDANT GERARD ROBERT ENGLE

Gerard Robert Engle, individually
and as officer of International Telemedia
Associates, Inc.

ATTORNEY FOR GERARD ROBERT ENGLE

FOR PLAINTIFF FEDERAL TRADE COMMISSION:

Michael P. Mora
Federal Trade Commission
Washington, DC 20580
(202) 326-2256
(202) 326-3395 (facsimile)
ATTORNEYS FOR THE FEDERAL TRADE COMMISSION

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

DATED

UNITED STATES DISTRICT JUDGE
Northern District of Georgia

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

FEDERAL TRADE COMMISSION,)	
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ONLINE CONSULTING GROUP, INC.; and))	
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DAVID PETERSON, JR., individually and))	
as an officer of Online Consulting Group, Inc.,))	
)	
Defendants.)	

AFFIDAVIT OF GERARD ROBERT ENGLE

I, Gerard Robert Engle, being duly sworn, hereby state and affirm as follows:

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

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

[AND/OR]

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

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

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

Executed on this ____ day of _____, 2001, at [city], [state].

GERARD ROBERT ENGLE

Subscribed and sworn to before me this ____ day of _____, 2001.

Notary Public

My Commission Expires: _____.