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CLERK US DISTRICT COURT  
DISTRICT OF NEVADA

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MAR - 4 2004	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: <u>MS</u>	DEPUTY

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23 UNITED STATES DISTRICT COURT  
24 DISTRICT OF NEVADA

25 FEDERAL TRADE COMMISSION,

26 Plaintiff,

27 v.

28 SEASILVER USA, INC.,  
AMERALOE, INC., BELA BERKES,  
JASON BERKES, BRETT  
RADEMACHER, individually, and d/b/a  
Netmark International and NetmarkPro,  
and DAVID R. FRIEDMAN, D.C.,

Defendants.

CV-S-03-0676-RLH-(LRL)

STIPULATED FINAL  
JUDGMENT AND ORDER  
FOR PERMANENT  
INJUNCTION AND OTHER  
EQUITABLE RELIEF RE  
BRETT RADEMACHER

29 Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), commenced  
30 this action on June 12, 2003, by filing its Complaint for Injunctive and Other Equitable  
31 Relief ("Complaint") pursuant to Section 13(b) of the Federal Trade Commission Act

1 (“FTC Act”), 15 U.S.C. § 53(b), charging Defendants Seasilver USA, Inc., Americaloe,  
2 Inc., Bela Berkes, Jason Berkes, Brett Rademacher also doing business as Netmark  
3 International and NetmarkPro, and David R. Friedman, D.C., with violating Sections 5  
4 and 12 of the FTC Act, 15 U.S.C. §§ 45 and 52.

5 The Commission, by and through its counsel, and Defendant Brett Rademacher,  
6 by and through his counsel, have agreed to the entry of this Stipulated Final Judgment  
7 and Order for Permanent Injunction and Other Equitable Relief (“Final Judgment”) by  
8 this Court in order to resolve all matters arising out of the facts alleged in the Complaint  
9 and in dispute in this action. The Commission and Defendant Brett Rademacher have  
10 consented to entry of this Final Judgment without trial or adjudication of any issue of law  
11 or fact herein, and without Defendant Brett Rademacher admitting liability or  
12 wrongdoing for the offenses alleged in the Complaint.

13 **NOW THEREFORE**, the Commission and Defendant Brett Rademacher having  
14 requested this Court to enter this Final Judgment, **IT IS HEREBY ORDERED,**  
15 **ADJUDGED, AND DECREED** as follows:

16 **FINDINGS**

17 1. This is an action instituted by the Commission under Sections 5 and 12 of  
18 the FTC Act, 15 U.S.C. §§ 45 and 52, and the Commission has the authority to seek the  
19 relief it requested.

20 2. This Court has jurisdiction over the subject matter of this case and  
21 jurisdiction over all parties, and venue in this district is proper.

22 3. The Commission’s Complaint states claims upon which relief may be  
23 granted against Defendant Brett Rademacher under Sections 5(a) and 12 of the FTC Act,  
24 15 U.S.C. §§ 45(a) and 52.

25 4. The activities of Defendant Brett Rademacher, as alleged in the Complaint,  
26 are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

27 5. Defendant Brett Rademacher waives all claims under the Equal Access to  
28 Justice Act, 28 U.S.C. § 2412, *amended by* Pub. L. 104-121, 110 Stat 847, 863-64

1 (1996).

2 6. Defendant Brett Rademacher also waives all rights to seek judicial review  
3 or otherwise challenge or contest the validity of this Final Judgment. Defendant Brett  
4 Rademacher further waives and releases any claim he may have against the Commission,  
5 its employees, agents, or representatives.

6 7. Entry of this Final Judgment is in the public interest.

7 8. Except as provided in Sections II. F. and III, the Final Judgment does not  
8 constitute and shall not be interpreted to constitute either an admission by Defendant  
9 Brett Rademacher or a finding by the Court that he has engaged in violations of the FTC  
10 Act or any other law.

11 9. This Final Judgment resolves claims only against Defendant Brett  
12 Rademacher and does not preclude the Commission from initiating further action or  
13 seeking any remedy against any other persons or entities, including without limitation  
14 persons or entities who may be subject to portions of this Final Judgment by virtue of  
15 actions taken in concert or participation with Defendants, and persons or entities in any  
16 type of indemnification or contractual relationship with Defendants.

### 17 DEFINITIONS

18 For the purposes of this Final Judgment, the following definitions shall apply:

19 1. "Advertising" means any written or verbal statement, illustration or  
20 depiction that is designed to effect a sale or create interest in the purchasing of goods or  
21 services, whether it appears in a brochure, newspaper, magazine, pamphlet, leaflet,  
22 circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart,  
23 billboard, public transit card, point of purchase display, packaging, package insert, label,  
24 film, slide, radio, television or cable television, audio program transmitted over a  
25 telephone system, program-length commercial ("infomercial"), Internet, or in any other  
26 medium.

27 2. "Covered product" means any food, drug, or device as defined in Section  
28 15 of the FTC Act, 45 U.S.C. § 55, or any dietary supplement, or any ingredient or aspect

1 of any such food, drug, device, or dietary supplement, including but not limited to  
2 Seasilver, however formulated, or any product containing aloe vera, phyto-silver, sea  
3 vegetables, or the herb Pau D'Arco.

4 3. "Distributor" shall mean any purchaser or other transferee of any covered  
5 product who acquires such product from any Defendant for resale, with or without  
6 valuable consideration, or any person or entity that offers or sells, or has offered or sold,  
7 such product to other sellers or to consumers, including but not limited to individuals,  
8 retail stores, or catalogs.

9 4. The terms "and" and "or" in this Final Judgment shall be construed  
10 conjunctively or disjunctively as necessary, to make the applicable sentence or phrase  
11 inclusive rather than exclusive.

12 **I. PROHIBITED BUSINESS ACTIVITIES**

13 **IT IS HEREBY ORDERED** that Defendant Brett Rademacher, and any entity  
14 through which he does business, including but not limited to Netmark International and  
15 NetmarkPro, and his officers, directors, agents, servants, employees, salespersons,  
16 distributors, corporations, subsidiaries, affiliates, successors, assigns, and those persons  
17 or entities in active concert or participation with him who receive actual notice of this  
18 Final Judgment by personal service, facsimile, or otherwise, are hereby enjoined from  
19 making, or assisting others in making, expressly or by implication, including through the  
20 use of endorsements, any false or misleading oral or written statement or representation  
21 in connection with the advertising, marketing, labeling, promotion, offer for sale,  
22 distribution, or sale of Seasilver or any covered product, including but not limited to:

23 A. Misrepresenting that any covered product cures or treats cancer, including  
24 but not limited to multiple myeloma, non-Hodgkin's lymphoma, lung, breast, and  
25 prostate cancer, and brain tumors;

26 B. Misrepresenting that any covered product treats or cures diabetes or  
27 enables diabetes patients to reduce or eliminate their insulin medication;

28 C. Misrepresenting that any covered product is clinically or scientifically

1 proven to be effective in treating or curing over 650 diseases, including cancer and  
2 AIDS;

3 D. Misrepresenting that any covered product is clinically or scientifically  
4 proven to be effective in treating or curing typhoid or anthrax;

5 E. Misrepresenting that any covered product is clinically or scientifically  
6 proven to be non-toxic;

7 F. Misrepresenting the ingredients of any covered product;

8 G. Misrepresenting the contents, validity, results, conclusions, or  
9 interpretations of any test or study;

10 H. Making any representation that any covered product causes rapid,  
11 substantial, or permanent weight loss without reducing caloric intake; and

12 I. Making any representation about the health benefits, efficacy, or safety of  
13 any covered product, or the performance of the product as it relates to health benefits,  
14 efficacy or safety, including but not limited to that such product:

- 15 1. Causes rapid, substantial, or permanent weight loss;
- 16 2. Enables users to lose weight, or any specific amount of weight, or  
17 assists in maintaining weight loss;
- 18 3. Is effective in the treatment or cure of any disease, including but not  
19 limited to cancer, AIDS, obstructive pulmonary disease, lyme  
20 disease, heart disease, and diabetes;
- 21 4. Reduces blood pressure; and
- 22 5. Is safe, has no side effects, or is non-toxic;

23 unless, at the time of making such representation, Defendant Brett Rademacher possesses  
24 and relies upon competent and reliable scientific evidence that substantiates the  
25 representation. For purposes of this provision, "Competent and reliable scientific  
26 evidence" shall mean tests, analyses, research, studies, or other evidence based on the  
27 expertise of professionals in the relevant area, that have been conducted and evaluated in  
28 an objective manner by persons qualified to do so, using procedures generally accepted in

1 the profession to yield accurate and reliable results.

2 For the purposes of this Section, the term "endorsement" shall mean as defined in  
3 16 C.F.R. § 255.0(b).

4 **Provided, however, that** nothing in this Final Judgment shall prohibit Defendant  
5 Brett Rademacher from making any representation for any drug that is permitted in  
6 labeling for any such drug under any tentative final or final standard promulgated by the  
7 Food and Drug Administration, or under any new drug application approved by the Food  
8 and Drug Administration. Nor shall it prohibit Defendant Brett Rademacher from  
9 making any representation that is specifically permitted in labeling for any product by  
10 regulations promulgated by the Food and Drug Administration pursuant to the Nutrition  
11 Labeling and Education Act of 1990.

12 **IT IS FURTHER ORDERED** that Defendant Brett Rademacher, and any entity  
13 through which he does business, including but not limited to Netmark International and  
14 NetmarkPro, and his officers, directors, agents, servants, employees, salespersons,  
15 distributors, corporations, subsidiaries, affiliates, successors, assigns, and those persons  
16 or entities in active concert or participation with him who receive actual notice of this  
17 Final Judgment by personal service, facsimile, or otherwise, are hereby enjoined from  
18 providing to any person or entity the means and instrumentalities that contain any claim  
19 prohibited under this Section. For purposes of this Section, "means and  
20 instrumentalities" shall mean any information, including but not necessarily limited to  
21 any advertising, labeling, or promotional materials, for use by distributors in their  
22 marketing or sale of any covered product.

23 **II. MONETARY JUDGMENT AND CONSUMER REDRESS**

24 **IT IS FURTHER ORDERED** that

25 A. Judgment is hereby entered against Defendant Brett Rademacher in the  
26 amount of One Million Five Hundred Thousand Dollars (\$1,500,000); **provided,**  
27 **however, that** all of this amount except for Five Hundred Thousand Dollars (\$500,000)  
28 shall be suspended.

1           B.     Defendant Brett Rademacher shall pay to the Commission the sum of Five  
2 Hundred Thousand Dollars (\$500,000) not later than five (5) days after the date of entry  
3 of this Final Judgment, such payment to be made in cash by electronic funds transfer to  
4 the Commission, or to such agent as the Commission may direct, pursuant to instructions  
5 provided by the Commission. Payments may be made from frozen accounts.

6           C.     All funds paid pursuant to this Final Judgment shall be deposited into a  
7 fund administered by the Commission or its agent to be used for equitable relief,  
8 including but not limited to consumer redress and any attendant expenses for the  
9 administration of any redress fund. In the event that direct redress to consumers is  
10 wholly or partially impracticable or funds remain after redress is completed, the  
11 Commission may apply any remaining funds for such other equitable relief (including  
12 consumer information remedies) as it determines to be reasonably related to the  
13 defendants' practices alleged in the Complaint. Any funds not used for such equitable  
14 relief shall be deposited in the United States Treasury as disgorgement. Defendant Brett  
15 Rademacher shall have no right to challenge the Commission's choice of remedies under  
16 this Section or the manner of distribution chosen by the Commission.

17           D.     All money paid pursuant to this Final Judgment is irrevocably paid to the  
18 Commission for purposes of settlement between the Commission and Defendant Brett  
19 Rademacher, and Defendant Brett Rademacher relinquishes all right, title, and interest to  
20 assets held by the Commission in connection with this case.

21           E.     No portion of the payment as herein provided shall be deemed payment of  
22 any fine, penalty, forfeiture, or punitive assessment.

23           F.     In the event of any default by Defendant Brett Rademacher of any  
24 obligation imposed on him under this Section, including but not limited to the failure to  
25 timely and completely fulfill the payment obligations set forth in Subsection II. B, the  
26 suspension of the judgment amount set forth in Subsection II. A shall be vacated as to  
27 Defendant Brett Rademacher, and the full amount of that judgment shall immediately  
28 become due, plus interest from the date of entry of this Final Judgment pursuant to 28

1 U.S.C. § 1961, less any payments already made.

2 G. Defendant Brett Rademacher agrees that, if he fails to timely and  
3 completely fulfill the payment and other obligations set forth in this Final Judgment, the  
4 facts as alleged in the Complaint filed in this matter shall be taken as true in any  
5 subsequent litigation filed by the Commission to enforce its rights pursuant to this Final  
6 Judgment, including but not limited to, a nondischargeability complaint in any  
7 bankruptcy case.

8 H. Defendant Brett Rademacher is hereby required, in accordance with 31  
9 U.S.C. § 7701, to furnish to the Commission his taxpayer identifying numbers (social  
10 security number or employer identification number), which shall be used for purposes of  
11 collecting and reporting on any delinquent amount arising out of this judgment.

12 **III. RIGHT TO REOPEN**

13 **IT IS FURTHER ORDERED** that, within five (5) business days after the date of  
14 entry of this Final Judgment, Defendant Brett Rademacher shall submit to the  
15 Commission a truthful sworn statement that shall reaffirm and attest to the truthfulness,  
16 accuracy and completeness of the financial statements submitted to the Commission by  
17 him dated July 15, 2003.

18 The Commission's agreement to this Final Judgment is expressly premised on the  
19 truthfulness, accuracy, and completeness of such financial statements. Such financial  
20 statements contain material information upon which the Commission relied in  
21 negotiating and agreeing to this Final Judgment. If, upon motion by the Commission, the  
22 Court finds that such financial statement contains any material misrepresentation or  
23 omission, the suspended judgment entered pursuant to Subsection A of Section II of this  
24 Final Judgment shall become immediately due and payable by Defendant Brett  
25 Rademacher, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as  
26 amended, shall immediately begin to accrue on the unpaid balance; **provided, however,**  
27 **that** in all other respects this Final Judgment shall remain in full force and effect unless  
28 otherwise ordered by the Court; and, **provided further, that** proceedings instituted under



1 this provision would be in addition to, and not in lieu of, any other civil or criminal  
2 remedies as may be provided by law, including but not limited to contempt proceedings,  
3 or any other proceedings that the Commission or the United States may initiate to enforce  
4 this Final Judgment. For purposes of this Section, and any subsequent proceedings to  
5 enforce payment, including, but not limited, to a non-dischargeability complaint filed in a  
6 bankruptcy proceeding, Defendant Brett Rademacher agrees not to contest any of the  
7 allegations in the Commission's Complaint.

8 **IV. LIFTING OF ASSET FREEZE**

9 **IT IS FURTHER ORDERED** that upon entry of this Final Judgment and  
10 completion of the payments required under Section II above, the freeze on Defendant  
11 Brett Rademacher's assets, as ordered in the Preliminary Injunction entered by this Court  
12 on July 15, 2003, shall be dissolved.

13 **V. MONITORING DISTRIBUTORS**

14 **IT IS FURTHER ORDERED** that

15 A. Defendant Brett Rademacher shall not disseminate to any distributor any  
16 advertisement containing any representations prohibited by this Final Judgment.

17 B. Defendant Brett Rademacher shall not, directly or indirectly, authorize or  
18 encourage any distributor to make any representations prohibited under this Final  
19 Judgment..

20 **VI. COMPLIANCE REPORTING BY DEFENDANT**

21 **IT IS FURTHER ORDERED** that, in order that compliance with the provisions  
22 of this Final Judgment may be monitored,

23 A. Within ten (10) business days after the date of entry of this Final Judgment,  
24 Defendant Brett Rademacher shall notify the Commission in writing of (1) his residence  
25 address and mailing address; (2) his home telephone number; (3) the name, address, and  
26 telephone number of each of his employers; (4) if applicable, the names of his  
27 employment supervisors; (5) a description of each employer's activities; and (6) a  
28 description of his duties and responsibilities in connection with such employment.

1 B. For a period of four (4) years from the date of entry of this Final Judgment,  
2 Defendant Brett Rademacher shall notify the Commission in writing of the following:

- 3 1. Any changes in his residence, mailing addresses, and telephone  
4 numbers, within ten (10) days of the date of such change;
- 5 2. Any changes in his employment status (including self-employment)  
6 within ten (10) days of the date of such change. Such notice shall  
7 include the name and address of each business that he is affiliated  
8 with, employed by, or performs services for; a statement of the  
9 nature of the business; and a statement of his responsibilities in  
10 connection with the business; and
- 11 3. Any changes in his name or use of any aliases or fictitious names  
12 within ten (10) days of the date of such change or use; and

13 C. Sixty (60) days after the date of entry of this Final Judgment, Defendant  
14 Brett Rademacher shall provide a written report to the FTC, sworn to under penalty of  
15 perjury, setting forth in detail the manner and form in which he has complied and is  
16 complying with this Final Judgment.

17 D. The report referred to in Subsection C above shall include, but not be  
18 limited to, any changes required to be reported pursuant to Subsection B above.

19 E. For the purposes of this Final Judgment, Defendant Brett Rademacher  
20 shall, unless otherwise directed by the Commission's authorized representatives, mail all  
21 written notifications to the Commission to:

22 Associate Director, Division of Advertising Practices  
23 Federal Trade Commission  
24 600 Pennsylvania Avenue, NW  
25 Washington, DC 20580  
26 Re: FTC v. Seasilver USA, Inc., et al., Civil Action No. CV-S-03-0676-  
27 RLH-(LRL).

28 F. For purposes of the compliance reporting required by this Section, the  
Commission is authorized to communicate directly with Defendant Brett Rademacher.

## 28 VII. COMPLIANCE MONITORING

1           **IT IS FURTHER ORDERED** that, for the purpose of monitoring and  
2 investigating compliance with any provision of this Final Judgment,

3           A.     Within ten (10) days of receipt of written notice from a representative of  
4 the Commission, Defendant Brett Rademacher shall submit additional written reports,  
5 sworn to under penalty of perjury; produce documents for inspection and copying; appear  
6 for deposition; or provide entry during normal business hours to any business location in  
7 his possession or direct or indirect control to inspect the business operation.

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

- 10           1.     Obtaining discovery from any person, without further leave of court,  
11                   using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34,  
12                   36, and 45; and  
13           2.     Posing as consumers and suppliers to Defendant Brett Rademacher  
14                   or any other entity managed or controlled in whole or in part by him  
15                   without the necessity of identification or prior notice.

16 **Provided that** nothing in this Final Judgment shall limit the Commission's lawful use of  
17 compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and  
18 57b-1, to obtain any documentary material, tangible things, testimony, or information  
19 relevant to unfair or deceptive acts or practices in or affecting commerce (within the  
20 meaning of 15 U.S.C. § 45(a)(1)).

21           C.     Defendant Brett Rademacher shall permit representatives of the  
22 Commission to interview any employer, consultant, independent contractor,  
23 representative, agent, or employee who has agreed to such an interview, relating in any  
24 way to any conduct subject to this Final Judgment. The person interviewed may have  
25 counsel present.

26 **VIII. RECORD KEEPING PROVISIONS**

27           **IT IS FURTHER ORDERED** that, for a period of seven (7) years from the date  
28 of entry of this Final Judgment, in connection with any business involved in the

1 advertising, marketing, promotion, offer for sale, distribution, or sale of any covered  
2 product, or any other health-related product, operated by Defendant Brett Rademacher, or  
3 where Defendant Brett Rademacher is a majority owner of the business or directly or  
4 indirectly manages or controls such a business, Defendant Rademacher and his agents,  
5 employees, officers, corporations, successors, and assigns, and those persons in active  
6 concert or participation with him who receive actual notice of this Final Judgment by  
7 personal service or otherwise, are hereby restrained and enjoined from failing to create  
8 and retain the following records:

9       A.     Accounting records that reflect the cost of goods or services sold, revenues  
10 generated, and the disbursement of such revenues;

11       B.     Personnel records accurately reflecting the name, address, and telephone  
12 number of each person employed in any capacity by such business, including as an  
13 independent contractor; such person's job title or position; the date upon which such  
14 person commenced work; and the date and reason for such person's termination, if  
15 applicable;

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

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

22       E.     Copies of all advertisements, promotional materials, sales scripts, training  
23 material, or other marketing material utilized in the advertising, marketing, promotion,  
24 offering for sale, distribution, or sale of any covered product; and

25       F.     All materials that were relied upon in making any representations contained  
26 in the materials identified in Subsection E, including all documents evidencing or  
27 referring to the accuracy of any claim therein or to the efficacy of any covered product,  
28 including but not limited to all tests, reports, studies, demonstrations, or other evidence

1 that confirm, contradict, qualify, or call into question the accuracy of any claim about a  
2 covered product or the efficacy of such covered product, including complaints and other  
3 communications with consumers or with governmental or consumer protection agencies.

4 **IX. DISTRIBUTION OF FINAL JUDGMENT BY DEFENDANT**

5 **IT IS FURTHER ORDERED** that, for a period of four (4) years from the date of  
6 entry of this Final Judgment, in the event that Defendant Brett Rademacher becomes  
7 employed by, enters into a contract for personal services with, or becomes a distributor  
8 for, any business involved in the advertising, marketing, promotion, offer for sale,  
9 distribution, or sale of any covered product, or any other health-related product, he shall,  
10 within thirty (30) days of entering into such relationship, deliver a copy of the Final  
11 Judgment to the principals, officers, directors, and managers of such business, and to any  
12 employees of such business who have responsibilities with respect to the subject matter  
13 of this Final Judgment and who are under the control of or supervised by Defendant Brett  
14 Rademacher, and shall secure from each such person a signed and dated statement  
15 acknowledging receipt of the Final Judgment.

16 **X. ACKNOWLEDGMENT OF RECEIPT OF FINAL JUDGMENT BY**  
17 **DEFENDANTS**

18 **IT IS FURTHER ORDERED** that Defendant Brett Rademacher, within five (5)  
19 business days of receipt of this Final Judgment as entered by the Court, shall submit to  
20 the Commission a truthful sworn statement acknowledging receipt of this Final  
21 Judgment.

22 //

23 //

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25 //

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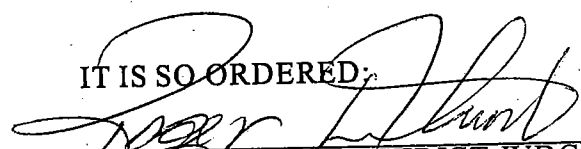
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1 **XI. RETENTION OF JURISDICTION**

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

5 IT IS SO ORDERED:

  
6 UNITED STATES DISTRICT JUDGE

7 DATED: 7 March 2004

10 So stipulated:

FOR THE FEDERAL TRADE COMMISSION

11  
12 Dated: March 2, 2004

13 By: David M Newman  
14 David M. Newman  
15 Janice L. Charter  
16 Christa Vecchi  
17 Matthew Daynard  
18 Karen Muoio  
19 Edward F. Glennon

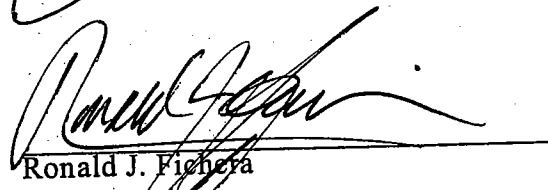
Attorneys, Federal Trade Commission

16 Dated: 2-10-04

  
BRETT RADEMACHER

19 APPROVED AS TO FORM AND  
20 CONTENT:

21 Dated: 2/12/04

  
Ronald J. Fichera

Attorney for Defendant Brett Rademacher