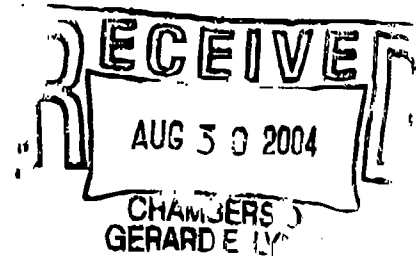


**WILLIAM E. KOVACIC**  
General Counsel

**BARBARA ANTHONY**  
Regional Director  
Northeast Region

**ANN F. WEINTRAUB (AW 3080)**  
**ROBIN E. EICHEN (RE 2964)**  
Federal Trade Commission  
One Bowling Green, Suite 318  
New York, NY 10004  
(212) 607-2829 (phone)

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF NEW YORK**



**FEDERAL TRADE COMMISSION,**

**Plaintiff,**

**v.**

**BRIAN E. SILVERMAN, d/b/a**  
**ELECTRO DEPOT,**  
**BES SYSTEMS,**  
**DALLAS TECH SURPLUS and**  
**NEW YORK TECH SURPLUS, and**

**JOHN ENGHOLM, a/k/a JOHN PATTERSON,**  
**d/b/a ELECTRO DEPOT,**  
**BES SYSTEMS,**  
**DALLAS TECH SURPLUS and**  
**NEW YORK TECH SURPLUS**

**Defendants.**

**Case No. 02-8920 (GEL)**

**STIPULATED**  
**PERMANENT**  
**INJUNCTION**  
**ORDER**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), commenced this action by filing its Complaint for a Permanent Injunction and Other Equitable Relief in this matter on November 8, 2002 pursuant to Sections 5(a), 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b), 45(a) and 57b, and by filing an Amended Complaint on October 14, 2003, and this Court entered a Stipulated Preliminary Injunction against Defendant Silverman on February 6, 2003, pursuant to Rule 65(a) of the Federal Rules of Civil Procedure (Fed. R. Civ. P. 65) and Local Civil Rule 6.1.

The Commission, by and through its counsel, Defendants, by and through their respective counsel, have agreed to the entry of this Stipulated Final Judgment and Order of Permanent Injunction ("Order") by this Court in order to resolve all matters of dispute between them in this action. The Commission and Defendants have consented to entry of this Order without trial or adjudication of any issue of fact or law, and without Defendants admitting liability or wrongdoing for the offenses alleged in the Complaint.

NOW, THEREFORE, the Commission and Defendants having requested this Court to enter this Order, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

1. This Court has jurisdiction over the subject matter of this case and of the parties consenting hereto. Venue is proper in the Southern District of New York.
2. This is an action instituted by Plaintiff under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Plaintiff has the authority to seek the relief it has requested.
3. The activities of the Defendants 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 Defendants under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b and the Mail or Telephone Order Merchandise Rule, 16 C.F.R. Part 435.
5. Defendants waive all claims 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. The Defendants have also waived all rights to seek appellate review or otherwise challenge or contest the validity of this Order, and have further waived and released any claim they may have against the Commission, its employees, and agents.
7. Entry of this Order is in the public interest.

### **DEFINITIONS**

For purposes of this Permanent Injunction:

1. "Defendants" mean Brian E. Silverman, individually and doing business as Electro Depot, Bes Systems, Dallas Tech Surplus and New York Tech Surplus, and John Engholm, a/k/a John Patterson, doing business as Electro Depot, Bes Systems, Dallas Tech Surplus and New York Tech Surplus.

### **ORDER**

#### **INJUNCTIVE RELIEF**

##### **I.**

**IT IS THEREFORE ORDERED** that, in connection with the sale or offering for sale of any goods or services via the Internet, Defendants and their successors, assigns, officers, agents, servants, employees, and those persons 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 corporation, subsidiary, division, or other device are hereby permanently restrained and enjoined from making, or assisting others in making, either expressly or by implication, orally or in writing, any false or misleading statement or representation of material fact, including but not limited to:

- A. Falsely representing that the consumers who offer the highest bids and send Defendants the agreed-on payment for auctioned goods, pursuant to those bids, will receive the promised goods;
- B. Falsely representing that Defendants have in their possession or under their control, goods or services available to be purchased;
- C. Falsely representing that Defendants will ship goods or provide services, within a reasonable time period, upon receipt of payment for those goods;
- D. Falsely representing that Defendants have shipped goods upon receipt of payment for those goods; or
- E. Falsely representing that Defendants have provided or will provide any consumer with a refund.

## II.

**IT IS FURTHER ORDERED**, in connection with any sale in which the buyer has ordered merchandise from the Defendants by mail or telephone, including by fax or over the Internet, that Defendants and their successors, assigns, officers, agents, servants, employees, and those persons 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 corporation, subsidiary, division, or other device are hereby permanently restrained and enjoined from:

- A. Violating or assisting others to violate any provision of the Telephone Order Rule, 16 C.F.R. Part 435, including but not limited to:
1. Section 435.1(a)(1) of the Rule, 16 C.F.R. § 435.1(a)(1), by soliciting orders for the sale of merchandise to be ordered by the buyer through the mail or by telephone without a reasonable basis for believing that he will be able to ship any ordered merchandise to the buyer within the time stated in the solicitation, or if no time has been clearly and conspicuously stated, within thirty days of receipt of a properly completed order;
  2. Section 435.1(c), 16 C.F.R. § 435.1(c) by failing to offer to the buyer, clearly and conspicuously and without prior demand, an option either to consent to a delay in shipping or to cancel the order and receive a prompt refund; or
  3. Failing to make a "prompt refund," as that term is defined in 16 C.F.R. § 435.2(f), to buyers when such refunds were required by 16 C.F.R. § 435.1(c) of the Rule.

### III.

#### MONETARY JUDGMENT

**IT IS FURTHER ORDERED** that:

- A. Judgment in the amount of \$35,000 is hereby entered against Defendants, jointly and severally, for equitable monetary relief, including, but not limited to, consumer restitution and/or disgorgement, and for paying any attendant expenses of administering any restitution fund;

- B. Within 90 days from the date the Judge signs this Order, Defendants will transfer \$35,000 into a fund administered by the Commission or its agent to be used for equitable relief, including consumer restitution and any attendant expenses for the administration of any such restitution.
- C. Of this \$35,000, \$23,000 shall be used for such restitution and expenses and any of this \$23,000 remaining one year from the entry of this Order shall be disgorged to the United States Treasury.
- D. Of this \$35,000, \$12,000 shall be used for such restitution and expenses and any of this \$12,000 remaining one year from the entry of this Order shall be returned to Defendants, proportionate to the amount paid by each of the Defendants under this provision.

#### IV.

#### ENFORCEMENT OF CONTRACTS

**IT IS FURTHER ORDERED** that Defendants are hereby permanently restrained and enjoined from demanding payment on or enforcing or threatening to enforce any contract or agreement, in conjunction with the sale of laptops via Internet auction, entered into by any Defendant with any customer prior to the effective date of this Order.

**Provided**, however, that Defendants may demand payment from customers who were refunded twice, or who received a laptop and a refund.

## V.

**TRANSFER OF CUSTOMER LISTS**

**IT IS FURTHER ORDERED** that Defendants, and any entity through which they do business, whether acting directly or through any corporation, limited liability company, subsidiary, division, or other device, and each of them and their officers, agents, servants, directors, employees, salespersons, independent contractors, subsidiaries, affiliates, divisions, sales entities, related entities, successors, assigns and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile or otherwise, are permanently enjoined and restrained from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any customer of Defendants who paid any money to any Defendant at any time prior to entry of this Order in connection with the purchase of laptops over the internet; *provided, however*, that Defendants may disclose such identifying information (i) to a law enforcement agency, or (ii) as required or authorized by any law, regulation, or court order.

## VI.

**RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of six (6) years from the date of entry of this Order, in connection with any business where Defendants, individually or together, are the majority owners of a business or otherwise control the business, Defendants 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 restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and 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 the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests; and
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials.

## VII.

### COMPLIANCE REPORTING BY DEFENDANTS

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Order may be monitored:



- A. For a period of three (3) years from the date of entry of this Order, Defendants shall each notify the Commission, in writing, of the following:
1. Any changes in such Defendant's residence, mailing addresses, and telephone numbers within ten (10) days of the date of such change;
  2. Any changes in such Defendant's 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 such Defendant is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of such Defendant's duties and responsibilities in connection with the business;
  3. Any changes in such Defendant's name or use of any aliases or fictitious names; and
- B. One hundred eighty (180) days after the date of entry of this Order, each Defendant shall provide a written report to the FTC, 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. Any changes required to be reported pursuant to subparagraph (A) above;
  2. A copy of each acknowledgment of receipt of this Order obtained by Defendant pursuant to Paragraph IX;

- C. For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:
- Barbara Anthony, Regional Director  
Federal Trade Commission  
One Bowling Green, Suite 318  
New York, NY 10004  
Re: FTC v. Brian E. Silverman, et al. Civil Action No. 02-8920
- D. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with Defendants Brian E. Silverman and John Engholm, a/k/a John Patterson, provided that Defendants are no longer represented with counsel.

#### VIII.

#### 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, Defendants shall submit additional written reports, sworn to 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 such Defendant'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 Defendants Brian E. Silverman, individually and doing business as Electro Depot, BES Systems, Dallas Tech Surplus and New York Tech Surplus, and John Engholm, a/k/a John Patterson, individually and doing business as Electro Depot, BES Systems, Dallas Tech Surplus and New York Tech Surplus employees, or any other entity managed or controlled in whole or in part Defendants Brian E. Silverman, individually and doing business as Electro Depot, BES Systems, Dallas Tech Surplus and New York Tech Surplus, and John Engholm, a/k/a John Patterson, d/b/a Electro Depot, BES Systems, Dallas Tech Surplus and New York Tech Surplus, without the necessity of identification or prior notice;

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

- C. Defendants 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.

**IX.****DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of this Order, Defendants shall deliver a copy of this Order to the principals, officers, directors, managers and employees under Defendants Brian E. Silverman or John Engholm, a/k/a John Patterson control for any business under either Defendant Brian E. Silverman or John Engholm's control that has responsibilities with respect to the subject matter of this Order. Defendants Brian E. Silverman and John Engholm, a/k/a John Patterson shall secure from each such person a signed and dated statement acknowledging receipt of the Order within thirty (30) days after the date of service of the Order or the commencement of the employment relationship.

**X.****ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that each Defendant, 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.

**XI.****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.

Defendants and the Commission, by its counsel, hereby consent to the terms and conditions of this Order as set forth above and consent to the entry of an Order with the same terms.

STIPULATED AND AGREED TO BY:

**PLAINTIFF:**

WILLIAM E. KOVACIC  
GENERAL COUNSEL

BARBARA ANTHONY  
REGIONAL DIRECTOR  
NORTHEAST REGION  
FEDERAL TRADE COMMISSION:

\_\_\_\_\_  
ANN F. WEINTRAUB (AW 3080)  
ROBIN E. EICHEN (RE 2964)

DATED: \_\_\_\_\_

**DEFENDANTS:**

\_\_\_\_\_  
BRIAN E. SILVERMAN d/b/a  
Electro Depot, Bes Systems, Dallas  
Tech Surplus and New York Tech Surplus

DATED: \_\_\_\_\_

\_\_\_\_\_  
DAVID BERENTHAL, ESQ. (DB 9568)  
Berenthal & Associates, P.C.  
Attorney for Defendant Brian E. Silverman

DATED: \_\_\_\_\_

\_\_\_\_\_  
JOHN ENGHOLM, a/k/a JOHN PATTERSON,  
d/b/a Electro Depot, Bes Systems, Dallas  
Tech Surplus and New York Tech Surplus

DATED: May 12, 2004

\_\_\_\_\_  
DAVID RICHMAN, ESQ. (DR 4960)  
Attorney for Defendant John Engholm

DATED: 5/12/04

SO ORDERED, this 31<sup>st</sup> day of August, 2004, at 2:45pm

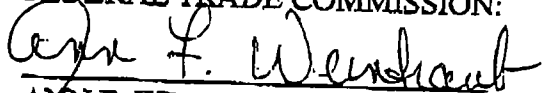
Gerard E. Lynch  
HON. GERARD E. LYNCH  
UNITED STATES DISTRICT JUDGE

STIPULATED AND AGREED TO BY:

PLAINTIFF:

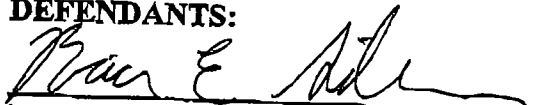
WILLIAM E. KOVACIC  
GENERAL COUNSEL

BARBARA ANTHONY  
REGIONAL DIRECTOR  
NORTHEAST REGION  
FEDERAL TRADE COMMISSION:


  
ANN F. WEINTRAUB (AW 3080)  
ROBIN E. EICHEN (RE 2964)

DATED: 8/30/04

DEFENDANTS:

  
BRIAN E. SILVERMAN d/b/a  
Electro Depot, Bes Systems, Dallas  
Tech Surplus and New York Tech Surplus

DATED: 4/30/04

  
DAVID BERENTHAL, ESQ. (DB 9568)  
Berenthal & Associates, P.C.  
Attorney for Defendant Brian E. Silverman

DATED: April 30, 2004

JOHN ENGHOLM, a/k/a JOHN PATTERSON,  
d/b/a Electro Depot, Bes Systems, Dallas  
Tech Surplus and New York Tech Surplus

DATED: \_\_\_\_\_

DAVID RICHMAN, ESQ. (DR 4960)  
Attorney for Defendant John Engholm

DATED: \_\_\_\_\_

SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2004, at \_\_\_\_\_.

HON. GERARD E. LYNCH  
UNITED STATES DISTRICT JUDGE