

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

OCT 21 1999 TC

MICHAEL N. MITOY, CLERK OF COURT

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

U.S. REPUBLIC COMMUNICATIONS, INC.,
a Texas Corporation,

and

T. GARY REMY,
individually and as an officer of U.S. Republic
Communications, Inc.

Defendants.

Civil Action No.

H - 9 9 - 3 6 5 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED

OCT 21 1999

Michael N. Mitoy, Clerk

**STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF**

Whereas: Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), commenced this action by filing a Complaint on 10/21/99; Defendants waived service of the Summons and Complaint; the parties are represented by the attorneys whose names appear hereafter; and the parties are in agreement to settle the Complaint by entering into this Stipulated Final Judgment and Order for Permanent Injunction and other Equitable Relief ("Order") upon the following terms and conditions, without adjudication of any issue of fact or law and without Defendants admitting liability for any of the matters alleged in the Complaint;

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THEREFORE, on the joint motion of Plaintiff and Defendants, it is hereby **ORDERED**, **ADJUDGED**, and **DECREED** as follows:

SECTION I.

FINDINGS

- A. This Court has jurisdiction over the subject matter and the parties.
- B. The Complaint states a claim upon which relief may be granted against Defendants under §§ 5(a)(1) and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a)(1) and 53(b).
- C. The activities of Defendants are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
- D. Entry of this Order is in the public interest.
- E. Defendants have waived any and all rights 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).
- F. Plaintiff and Defendants, by and through their counsel, have agreed that the entry of this Order resolves all matters of dispute between them arising from the Complaint in this action, up to the date of entry of this Order.
- G. Plaintiff and Defendants waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Defendants further waive and release any claim they may have against the Commission, its employees, agents, or representatives.

H. This Order is for settlement purposes only and does not constitute and shall not be interpreted to constitute an admission by Defendants that they have engaged in violations of any law or regulations including but not limited to the Federal Trade Commission Act, or that the facts alleged in the Complaint, other than the jurisdictional facts, are true.

DEFINITIONS

I. For the purposes of this Order, the following definitions shall apply:

1. "Defendant USRC" means defendant U.S. Republic Communications, Inc., its officers, agents, servants, attorneys, independent contractors and employees, and all other persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise.
2. "Defendant Remy" means defendant T. Gary Remy, his agents, servants, attorneys, independent contractors and employees, and all other persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise.

SECTION II.

IT IS FURTHER ORDERED that Defendants USRC and Remy are hereby permanently restrained and enjoined from participating or assisting, directly or through any corporation, subsidiary or other entity or intermediary, in the making of any false or misleading representation of material fact, or omitting material information, either expressly or by implication, orally or in writing, in connection with the promotion, marketing, offering for sale, or sale of services related to website design, webpage

design, or the posting or promulgation of webpages, websites, advertisements or other materials on the Internet, including but not limited to false or misleading representations that:

- A. Defendants will not charge consumers unless consumers take affirmative steps to authorize charges during any free-trial period;
- B. Defendants will not assess a recurring monthly charge for website services until thirty days after Defendants have provided consumers with information that will enable the consumers to access and review the website and to cancel the services; and
- C. Consumers are legally obligated to pay charges for website services that have not been authorized by the consumer that Defendants charge or cause to be charged.

SECTION III.

IT IS FURTHER ORDERED that:

- A. In the event Defendants USRC and Remy represent in the promotion, marketing or offering for sale of their services that they will submit websites to specific Internet search engines, they are hereby permanently restrained and enjoined, directly or through any corporation, subsidiary or other entity or intermediary, from failing to disclose that such submissions do not guarantee that the referenced search engines will index or list the websites; and
- B. In the event Defendants represent that they will submit websites to Internet search engines, without identifying specific search engines, Defendants are hereby permanently restrained and enjoined, directly or through any corporation, subsidiary or other entity

or intermediary, from failing to disclose that such submissions do not guarantee that all search engines will index or list the websites.

Provided, however, that Defendants are not required to make such disclosures if the submissions result in the websites being indexed or listed by all major search engines in all or nearly all instances ("major search engines" being defined as the eight most frequently used search engines). *Provided further* that in the event that the FTC issues a final rule in the future on this issue, Defendants' obligations shall be no greater than those imposed by such rule.

SECTION IV.

IT IS FURTHER ORDERED that Defendants USRC and Remy are hereby permanently enjoined, directly or through any corporation, subsidiary or other entity or intermediary, from sending a bill, or causing a bill to be sent, to any consumer for any product or service without first obtaining express, verifiable authorization that the person being charged has agreed to be charged for the good or service in the amount and in the manner set forth in the bill which Defendants have sent or caused to be sent to that consumer. *Provided, however,* that this section shall not be construed to prohibit Defendants USRC and Remy from billing charges to a credit card account number if: the credit card account number is disclosed by a consumer during the course of a call to purchase goods or services; the consumer gives express authorization to bill charges to that credit card account number; the credit card is subject to the dispute resolution requirements of the Fair Credit Billing Act and the Truth in Lending Act, as amended; and the credit card is the sole method used to pay for the charge.

SECTION V.

IT IS FURTHER ORDERED that Defendants are hereby permanently restrained and enjoined from providing to any person, except Defendants' agents, affiliates, subsidiaries, successors and assigns, agents of the Plaintiff or other law enforcement authorities, or as directed by Court Order, the name, address, telephone number, or credit card or bank account number of any consumer who, in response to Defendants' promotion of website services, provided such information to or did business with Defendants, except that Defendants are permitted to post the name, address and telephone numbers of consumers that authorize Defendants' website services on the Internet.

SECTION VI.

IT IS FURTHER ORDERED that:

- A. Defendants USRC and Remy shall, within forty-five (45) days of the entry of this Order, mail a written notice and a claims application, in a form approved by the Commission, including approval of the envelope, to all customers that:
1. were being billed through local exchange carriers ("LECs") as of May 20, 1999, and new customers signed up for LEC billing between that date and the date of entry of this Order;
 2. have not previously converted to credit card billing in a manner consistent with Section IV of the Order;
 3. have not previously converted to payment by electronic transfer of funds in a manner that complies fully with the provisions set forth at 16 C.F.R. § 310(a)(3); and

4. have not previously received a full credit from either the defendants or the consumers' LECs for all charges related to defendants website services.
- B. The notice described in paragraph A, above, shall clearly and conspicuously notify consumers that 1) they have been billed, and/or are being billed, for USRC's website services; 2) they have a right to cancel; 3) they have a right to request a full credit for all unauthorized charges, along with directions for doing so; and 4) they have the option to convert from LEC billing to direct invoice or credit card billing. Defendants USRC and Remy shall take the necessary steps to have the appropriate LECs provide full credits to all consumers who, in response to the notice, submit a signed claims application stating that the consumer did not authorize the charges. Consumers shall have thirty (30) days from the date of their receipt of Defendants' notice to mail back a completed claims application to Defendants or to Credit Managers Association of California ("CMA").
- C. Defendants USRC and Remy shall enter into a contract with CMA to provide the following auditing and reporting services related to Defendants' execution of the requirements contained in paragraph A of this Section:
1. Audit Defendants' mailing of notices, as required in paragraph A, through review of an affidavit or declaration to be submitted by Defendants to CMA within ten (10) business days of mailing all required notices. The affidavit or declaration shall, at a minimum, affirm the following:
 - a. the means used by Defendants to generate the list of consumers eligible to receive a notice;

- b. the means used by Defendants, including use of the National Change of Address registry, to assure that consumers' addresses are accurate;
 - c. the number of notices sent and the dates on which they were sent; and
 - d. a copy of the actual mailing sent;
2. Audit Defendants' mailing of notices, as required in paragraph A, through review of an affidavit or declaration to be submitted by Defendants to CMA within thirty (30) days of mailing all required notices. The affidavit or declaration shall, at a minimum, affirm the number of notices returned by the Post Office as undeliverable, and the reasonable efforts made by Defendants, such as calling the phone number that is billed and asking for a current address, to obtain valid addresses for those consumers and re-mail those notices;
3. Request and review such documents as needed from Defendants or consumers to verify that Defendants have sent redress notices in compliance with this Section;
4. Receive completed claims applications directly from consumers, and compile a list of those consumers that state on their signed claims applications form that they were billed through a LEC for USRC services, and that the charges were not authorized by the consumer, along with the name of the LEC and the telephone number that was billed. Within ten days of receipt of an incomplete or unsigned claims application, contact consumers as necessary to obtain missing information, with the cooperation of Defendants;
5. Provide the list of consumers eligible for a credit to the Defendants and to the

Commission, and then audit the Defendants to assure that Defendants have taken the necessary steps to assure that the appropriate LECs provide full credits to all consumers that are on the list of consumers eligible for a credit; and

6. Provide a report to the Federal Trade Commission and to Defendants describing the efforts taken by CMA, the results of all audits, and outlining Defendants' compliance with this Section.

D. Defendant USRC shall obtain and maintain an irrevocable letter of credit in the amount of One Million Eight Hundred Thousand Dollars (\$1,800,000) from an FDIC-insured bank, payable solely to the Federal Trade Commission, which shall be used as security for Defendants' obligations under this Section. Defendant USRC shall provide a certified copy of this letter of credit to the FTC within five (5) business days of entry of this Order. This letter of credit shall only be redeemed or released pursuant to the following conditions:

1. If Defendants have not either (1) complied fully with Paragraphs A, B and C of this Section, or (2) been granted an extension of time by the Court, within two-hundred and seventy (270) days of entry of this Order, plaintiff shall have the right to petition the Court to order that funds necessary to provide consumer redress consistent with Paragraphs A, B and C of this Section shall be paid directly to plaintiff through redemption of the letter of credit, in addition to whatever other legal remedies are available to plaintiff; or

2. Plaintiff shall, within fifteen (15) business days of receipt of the report described in paragraph (C)(4) above, notify Defendants and the Court that the Commission either: (1) releases Defendants from their obligation to maintain a Letter of Credit; or (2) is moving the Court to require the Defendants to show cause why they should not be held in contempt for their failure to comply with this Section, in which case the Defendants shall be required to maintain the Letter of Credit until such time as the Court rules otherwise.

SECTION VII.

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

SECTION VIII.

IT IS FURTHER ORDERED that Defendants USRC and Remy, their successors, subsidiaries, affiliates and assigns, shall within thirty (30) days of the entry of this Consent Decree, provide an accurate summary of this Consent Decree that clearly communicates the injunctive provisions contained herein to each of their directors, officers, agents, servants, independent contractors, employees, collection agencies to which they assign accounts, and attorneys that are involved, in any way, with the telemarketing of any Internet-related service, and secure from each such person a signed statement acknowledging receipt of a copy of this summary, and shall, within ten (10) business days of complying with this paragraph, provide

the FTC with an affidavit setting forth the fact and manner of their compliance, including the name and title of each person to whom a copy of the summary has been provided.

SECTION IX.

IT IS FURTHER ORDERED that:

- A. For a period of five (5) years from the date of entry of this Consent Decree, Defendants USRC and Remy shall notify the Commission of the following:
1. Any changes in their residence, mailing addresses, and telephone numbers, within ten (10) business days of the date of such change;
 2. Any changes in their employment status (including self-employment) within ten (10) business days of such change. Such notice shall include the name and address of each business with which such defendant is affiliated or employed, a statement of the nature of the business, and a statement of the defendant's duties and responsibilities in connection with the business or employment; and
 3. Any change in the structure of Defendant USRC, such as creation, incorporation, dissolution, assignment, sale, merger, creation or dissolution of subsidiaries or affiliates, filing of a bankruptcy petition, or change in the corporate name or address, or any other change that may affect compliance obligations arising out of this Consent Decree, within ten (10) business days of any such change.
- B. One hundred eighty (180) days after the date of entry of this Consent Decree, Defendant Remy shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in

detail the manner and form in which he has complied and is complying with this Consent Decree. This report shall include, but not be limited to:

1. The Defendant's then current residence address and telephone number;
 2. The Defendant's then current employment, business addresses and telephone numbers, a description of the business activities of such employer, and defendant's title and responsibilities for such employer;
 3. A statement describing the manner in which defendant has complied and is complying with the provisions of this Consent Decree.
- C. For a period of five (5) years from the date of entry of this Consent Decree, upon written request by a representative of the Commission, Defendants shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) business days' notice with respect to any conduct subject to this Consent Decree, subject to Defendants' right to seek relief from the court under Rule 26(c) of the Federal Rules of Civil Procedure or under any other appropriate provision of the rules.
- D. For a period of five (5) years from the date of entry of this Consent Decree, upon written request by a representative of the Commission, Defendants shall permit Commission staff to interview any employee of Defendants in the presence of counsel for Defendants, and subject to the same rights to counsel as set forth in 15 U.S.C. § 57b-1, and, should the interview not take place at Defendants' place of business or a similarly convenient location, the same rights to remuneration for travel expenses afforded to witnesses summoned before the Commission set forth in 15 U.S.C. § 49.

- E. For the purposes of this Consent Decree, Defendants 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
600 Pennsylvania Ave. NW
Washington, DC 20580

SECTION X.

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

1. The Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26 - 34, 36 and 37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating the Defendants' compliance with any provision of this Consent Decree, subject to Rules 26(c), 45(c) and any other provisions of the Rules providing the person with the right to seek relief from the court;
2. Nothing in this Consent Decree shall limit the Commission's lawful use of compulsory process, pursuant to §§ 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether Defendants have violated any provision of this Consent Decree, the Telemarketing Sales Rule, or Section 5 of the FTC Act, 15 U.S.C. § 45, subject to Defendants right to request relief from the courts.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the purposes of enabling any of the parties to this Consent Decree 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 Consent Decree, for the enforcement of compliance therewith, related to the monitoring provisions therein, or for the punishment of violations thereof.

JUDGMENT IS THEREFORE ENTERED in favor of plaintiff and against Defendants, pursuant to all the terms and conditions recited above.

Dated this th 25 day of October, 1999

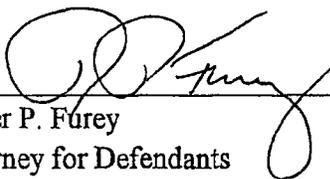
Melvin Harmon
UNITED STATES DISTRICT JUDGE

The parties, by their respective counsel, hereby consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof.

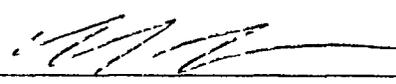
Dated: October 19 1999

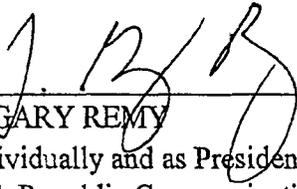
FOR THE DEFENDANTS:

U.S. REPUBLIC COMMUNICATIONS, INC.

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FOR THE FEDERAL TRADE
COMMISSION:


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T. GARY REMY
Individually and as President of
U.S. Republic Communications, Inc.

Honorable [*name of U.S. District Judge*] and entered by the Court on [*date of entry of Order*]. A true and correct copy of the Order I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on [*date*], at [*city and state*].

T. Gary Remy

State of _____, City of _____

Subscribed to and sworn to before me
this _____ day of _____, 199_.

Notary Public
My Commission Expires:
