

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

<hr/>)	Civ. No. H 05-1905
FEDERAL TRADE COMMISSION,)	
)	FINAL
	Plaintiff,)	(PROPOSED)
vs.)	STIPULATED ORDER FOR
)	PERMANENT INJUNCTION AND
)	MONETARY JUDGMENT
TRUSTSOFT, INC. and,)	
DANILO LADENDORF,)	
)	
	Defendants.)	
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The Federal Trade Commission ("Commission" or "FTC") filed a Complaint in this matter against TrustSoft, Inc. ("TrustSoft") and Danilo Ladendorf alleging that they engaged in deceptive and unlawful acts or practices in violation of Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b) and 57b, and the Controlling the Assault of Non-Solicited Pornography and Marketing Act ("CAN-SPAM Act"), 15 U.S.C. §§ 7701 *et seq.* The Commission and the Defendants stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment ("Order") to resolve all matters of dispute between them in this action.

IT IS THEREFORE STIPULATED, AGREED, AND ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and the parties.
2. Venue in this District is proper pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).
3. The activities of Defendants are in or affecting "commerce," as that term is defined in Section 4 of 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 CAN-SPAM Act, 15 U.S.C. §§ 7701 *et seq.*

5. Defendants have entered into this Order freely and without coercion. Defendants further acknowledge that they have read the provisions of this Order and are prepared to abide by them.

6. The undersigned, individually and by and through their counsel, have agreed that the entry of this Order resolves all the matters alleged in the Complaint.

7. 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 or its employees, representatives or agents.

8. Defendants agree that this Order does not entitle them to seek or to obtain attorney or accountant fees except as expressly provided in Section IV.G. Defendants further agree that this Order does not entitle them to seek or to obtain attorney fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, and Defendants waive any right to attorney fees under that Act.

9. By entry of this Order, Defendants do not admit to, and deny, the allegations of the Complaint other than the jurisdictional facts.

10. This Order is remedial in nature and no portion of any payments hereunder shall be deemed or construed as payment of a fine, penalty, or punitive assessment. The monetary liability and judgment provided by this Order is the amount of money Defendants collected from consumers as a result of the conduct that the Complaint alleges was unlawful and, if the parties had not stipulated to this Order, the FTC would have sought this amount as restitution for consumers.

11. Entry of this Order is in the public interest, and there being no just reason for delay, the Clerk is directed to enter judgment immediately.

DEFINITIONS

For purposes of this order, the following definitions apply:

1. "Assets" means any legal or equitable interest in, right to, or claim to any real or personal property of any Defendant, or any property held for the benefit of any Defendant, wherever located, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes" (as these terms are defined in the Uniform Commercial Code), chattels, leaseholds, contracts, mails, other deliveries, shares of stock, lists of participants, intellectual property, accounts, credits, receivables, cash, and trusts, including, but not limited to, any other trust held for the benefit of any Defendant, any Defendant's minor children, or any Defendant's spouse.

2. "Commercial electronic mail message" (or "commercial email message") means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service and has the same meaning as defined in the CAN-SPAM Act, 15 U.S.C. § 7702(2)(A) and (C), and the Primary Purpose Rule promulgated by the FTC thereunder, 16 C.F.R. § 316.3.

3. "Defendants" means TrustSoft and Danilo Ladendorf and their successors and assigns.

4. "Document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, into reasonably usable form through detection devices. A draft or non-identical copy is a separate document within the meaning of the term.

5. "Plaintiff" means the Federal Trade Commission.

6. "Spyware," solely for the purposes of this order, has the meaning ascribed to it by Defendants in their marketing media, and includes computer programs, installed without a consumer's knowledge, that: obtain personal information; record or monitor keystrokes, conversations, or websites visited; cause a slowdown in computer performance; change a web browser's home page, default search engine, or other settings; effectuate pop-up, pop-under, or banner advertisements; allow others to remotely access or control a computer; or hijack search engine results. For the purposes of this order, it also includes, but is not limited to, "adware," "malwares," "web-browser hijackers," "ActiveX threats," "browser helper objects," "keyloggers," "remote administration trojans," "trojans," and "trojan tools." It also includes all items, definitions, signatures, traces, or other spyware elements that any "spyware removal product" purports to detect or remove.

7. "Spyware removal product" means any product marketed, sold, or distributed by Defendants, however denominated, including but not limited to SpyKiller, that does or purports to identify, monitor, remove, block, or otherwise prevent spyware from residing on a computer.

CONDUCT PROHIBITIONS

I.

IT IS THEREFORE ORDERED that in connection with the advertising, promotion, offering for sale, or sale of goods or services, Defendants, 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 making, directly or indirectly, expressly or by implication, any false or misleading material representation, including but not limited to:

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A. Misrepresenting, before a consumer has downloaded any of Defendants' computer software, that: (1) a computer has been scanned or otherwise examined for the presence of spyware; or (2) spyware has been detected on a computer;

B. Misrepresenting that processes on a computer that are not spyware are "Live Spyware Processes";

C. Misrepresenting any material feature of a spyware removal product including, but not limited to, the number or nature of the spyware definitions, signatures, items, traces, or other spyware elements that a spyware removal product detects or removes;

D. Misrepresenting the type of spyware detection mechanism used by a spyware removal product;

E. Misrepresenting that a file or application on a consumer's computer is spyware after receiving notice from a consumer, potential consumer, or other entity not affiliated with the spyware, file, or application at issue that the file or application is not spyware;

F. Misrepresenting that a spyware removal product detects, removes, blocks, or otherwise prevents all, or substantially all, spyware on a computer;

G. Misrepresenting the performance, benefits, or features of any computer software product that is marketed or sold by Defendants;

H. Misrepresenting the awards, endorsements, testimonials, ratings, or assessments related to any entity marketing a computer software product or to any computer software product that is marketed or sold by Defendants;

I. Misrepresenting those who contributed to, created, originated, supplied, or were sources of any computer software product that is marketed or sold by Defendants; or

J. Misrepresenting those who contributed to, created, originated, supplied, or were sources of any materials used to market a computer software product that is marketed or sold by Defendants.

II.

IT IS FURTHER ORDERED that Defendants, 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 marketing any product through use of any spyware that a spyware removal product purportedly detects or removes.

III.

IT IS FURTHER ORDERED that Defendants, 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 initiating commercial email messages that fail to comply with the CAN-SPAM Act, including, but not limited to, initiating commercial email messages that:

A. Contain, or are accompanied by, materially false or materially misleading header information;

B. Do not include a clear and conspicuous notice of the recipient's opportunity to decline to receive further commercial email messages from the sender at the recipient's electronic mail address;

C. Do not include a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that a recipient can use to submit a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial email messages from the sender at the electronic mail address where the message was received;

D. Do not include the sender's valid physical postal address; or

E. Do not provide clear and conspicuous identification that the message is an advertisement or solicitation.

MONETARY JUDGMENT

IV.

IT IS FURTHER ORDERED that:

- A. Judgment is entered in favor of the FTC against Defendants, jointly and severally, in the amount of \$13,500,000, which is the amount of consumer injury that the FTC alleges was caused by Defendants. This judgment shall be suspended except for: (1) \$638,135.82 to be paid to the FTC immediately from frozen funds as described in subsection B; (2) \$269,000 to be paid to the FTC as described in subsection C; (3) the property to be delivered to the FTC as described in subsection D; (4) tax credits or refunds to be paid to the FTC as described in subsection F; and (5) frozen funds placed in escrow in excess of Court-approved attorney fees and accountant fees, to be paid to the FTC as described in subsection G. The suspended portion of the judgment shall be subject to the conditions set forth in subsection I.
- B. Defendants shall pay \$638,135.82 to the FTC or its agent immediately from frozen funds by wire transfer in accordance with wiring instructions to be provided by the FTC.
- C. Defendants shall pay \$269,000 to the FTC or its agent as follows:
1. Danilo Ladendorf agrees to make all good faith efforts necessary to sell promptly the Ladendorf residence for fair market value.
 2. As security for Defendants' obligation to pay \$269,000, Danilo Ladendorf, individually and on behalf of his successors and assigns, hereby grants to the FTC

a lien on and security interest in the residence and property located at 206 Terrace Drive, Houston, Texas (the "Ladendorf residence"). Danilo Ladendorf represents that he is the sole owner in fee simple of the Ladendorf residence, and that his title to the Ladendorf residence is marketable. Danilo Ladendorf further represents that the only existing security interests in the Ladendorf residence are: a mortgage held by Encore Bank; property taxes owed to Harris County; property taxes owed to the Houston Independent School District; and a materialman's and mechanic's lien owed to MC² Architects.

3. Danilo Ladendorf shall cooperate fully with the FTC in promptly preparing, executing, and recording any documents necessary to perfect and evidence this lien and security interest. Upon entry of this Order, and as it relates to the FTC's lien and security interest in the amount of \$269,000, Defendant Ladendorf hereby releases, waives, and abandons any statutory, common law, or other homestead exemption that may apply to the Ladendorf Residence, and shall not declare or claim any homestead protection or make any other objection to the FTC taking any actions necessary to enforce its lien and security interest against the Ladendorf residence and to facilitate the prompt sale thereof in satisfaction of the judgment.
4. For a period of 180 days from the date of entry of this Order (the "allowable period"), the FTC shall refrain from executing on its lien on and security interest in the Ladendorf residence to allow Danilo Ladendorf to attempt in good faith to sell the Ladendorf residence.

5. If the Ladendorf residence is sold during the allowable period, upon closing, Defendant Ladendorf shall pay the FTC \$269,000 from the proceeds that remain from the sale after payment of the mortgage held by Encore Bank, the property taxes owed to Harris County and the Houston Independent School District, any materialman's and mechanic's lien held by MC² Architects, any repairs or other customary adjustments in favor of the buyer, and any customarily required brokers' commissions and closing costs (the "Net Proceeds"). No other payments from the Net Proceeds shall be made until the FTC is paid in full. Danilo Ladendorf shall instruct the closing agent to, at the time of closing, wire transfer Net Proceeds in the amount of \$269,000 directly to the FTC in accordance with wiring instructions to be provided by the FTC. If the Net Proceeds are less than \$269,000, Danilo Ladendorf shall instruct the closing agent to, at the time of closing, wire transfer the entire amount of the Net Proceeds to the FTC, and the difference between \$269,000 and the Net Proceeds (the "Deficiency Amount") shall be entered as a judgment against Defendants and shall be immediately due and payable. Interest on the Deficiency Amount shall be computed at the rate prescribed under 28 U.S.C. § 1961, as amended, and shall be due from the date of entry of this Order. The FTC shall be permitted to execute upon the judgment for the Deficiency Amount immediately and engage in discovery in aid of execution.
6. If the Ladendorf residence is not sold within the allowable period, the FTC shall be entitled to exercise immediately any and all rights and remedies against the Ladendorf residence, including but not limited to enforcing its \$269,000 lien and

security interest against the Ladendorf residence pursuant to applicable law.

Defendant Ladendorf shall cooperate fully with the FTC and take such other steps as the FTC may require to perfect and enforce its lien on and security interest in the Ladendorf residence, including executing any necessary documents. If the Net Proceeds from a sale pursuant to this subsection are less than \$269,000, the closing agent shall, at the time of closing, wire transfer the entire amount of the Net Proceeds to the FTC, and the difference between \$269,000 and the Net Proceeds (the "Deficiency Amount") shall be entered as a judgment against Defendants and shall be immediately due and payable. Interest on the Deficiency Amount shall be computed at the rate prescribed under 28 U.S.C. § 1961, as amended, and shall be due from the date of entry of this Order. The FTC shall be permitted to execute upon the judgment for the Deficiency Amount immediately and engage in discovery in aid of execution.

7. If the Ladendorf residence is sold with the approval of the Court prior to the date of entry of this Order and the Net Proceeds from the sale are placed in a frozen account, immediately upon entry of this Order, the FTC shall be paid \$269,000 by wire transfer from the frozen account in accordance with wiring instructions to be provided by the FTC. If the Net Proceeds from the sale are less than \$269,000, the FTC shall immediately be paid all Net Proceeds in the frozen account, and the difference between \$269,000 and the amount paid (the "Deficiency Amount") shall be entered as a judgment against the defendants and shall be immediately due and payable. Interest on the Deficiency Amount shall be computed at the rate

prescribed under 28 U.S.C. § 1961, as amended, and shall be due from the date of entry of this Order. The FTC shall be permitted to execute upon the judgment for the Deficiency Amount immediately and engage in discovery in aid of execution.

8. Notwithstanding subsections C.1 - C.7 above, the FTC will accept the payment of \$269,000 in cash from assets that are neither frozen nor in escrow pursuant to this Order. However, this subsection C.8 shall not be construed to lessen Danilo Ladendorf's obligation to promptly sell the Ladendorf residence as described in subsection C.1, unless and until the FTC actually receives the entire \$269,000 prior to such sale at which point Danilo Ladendorf shall have no obligation to sell the Ladendorf residence.

9. If Defendants pay the FTC \$269,000 within the allowable period from either the sale of the Ladendorf residence under subsections C.5 or C.7, or assets under subsection C.8 that are neither frozen nor in escrow, the FTC shall: terminate its lien on and security interest in the Ladendorf residence; fully cooperate with Danilo Ladendorf to remove the lien and make clear to any interested party that the FTC claims no encumbrance on the Ladendorf residence; and promptly issue a Release of Lien and any other documents reasonably necessary to evidence the release of lien.

D. Within ten (10) days of the entry of this Order, Danilo Ladendorf shall deliver to the FTC or its designated representative, at a location within Houston, Texas, possession of the following three vehicles listed in the sworn financial statements dated September 1, 2005: (1) the 2002 Ferrari 360 Modena Spider; (2) the 2004 Lamborghini Gallardo; and (3) the

2003 Infiniti FX45. Upon the FTC's request, Defendant Ladendorf shall promptly transfer title to each of the three vehicles to the FTC or its designated transferee. Any transfer fees, taxes, or other payments mandated from transferor under Texas law shall be paid from the proceeds of each sale at the time each vehicle is sold. The proceeds from each sale shall be paid to the FTC, and Danilo Ladendorf waives any interest therein.

- E. After all payments to the FTC pursuant to Paragraphs IV.B and IV.D and as soon as is practicable, Defendants shall deposit \$645,430 into an interest bearing escrow account with a mutually agreeable escrow agent for the sole purpose of paying income taxes due and owing as required by law for the tax year 2004. Payments to this account shall be made from frozen funds as soon as possible after the asset freeze is lifted. Any balance remaining to be paid to the account after frozen funds are exhausted shall be paid promptly. Defendants shall provide to the FTC proof of all payments from this account to the United States Treasury in satisfaction of Defendants' tax obligation pursuant to this subsection IV.E within 5 days of payment.
- F. If Defendants obtain a credit or a refund of any taxes paid for tax year 2004 in connection with any tax return filed for any tax year after 2004, Defendants shall promptly pay the FTC the amount of such credit or refund, together with the amount of any interest received by Defendants on account of such credit or refund.
- G. Defendants shall place \$40,000 from frozen funds immediately into an interest bearing escrow account with a mutually agreeable escrow agent until the Court determines if any accountant and attorney fees should be paid from those funds. Defendants have 30 days from the date of the entry of this Order to move the Court for the release of these monies

for accountant and attorney fees or the funds shall be paid to the FTC. The FTC will have 20 days thereafter to respond and object in whole or in part. Any sums in the escrow account not ordered paid for accountant or attorney fees by the Court shall immediately be paid to the FTC. The Court's decision on the release of such funds for attorney fees shall be final and the FTC, Defendants, and Defendants' attorneys agree to waive any right to appeal.

- H. The Commission's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of the sworn financial statements and information of Defendants dated September 1, 2005, including any subsequent addenda thereto, and Defendants' sworn deposition testimony in this case (together, the "financial disclosures"), all of which Defendants stipulate are truthful, accurate and complete. Defendants and the Commission stipulate that the Commission has relied upon the truthfulness, accuracy and completeness of the financial disclosures in agreeing to this Order and that the Commission would not have consented to the suspension of the monetary judgment, but for the truthfulness, accuracy, and completeness of the financial disclosures.
- I. If, upon motion by the Commission, the Court finds that Defendants failed to disclose any material asset, misrepresented the value of any material asset, or made any material misrepresentation or omission in the financial disclosures, then the Court shall lift the suspension and reinstate the suspended judgment against Defendants in the amount of \$13,500,000. *Provided, however,* that Defendants shall be entitled to offset the reinstated judgment amount by any sums derived or received by the Commission pursuant to this

Order. Upon such reinstatement of the monetary judgment, the Court shall make an express determination that the monetary judgment order shall be immediately due and payable. The Commission shall be entitled to interest on the judgment, computed from the date of entry of this Order at the rate prescribed under 28 U.S.C. § 1961, as amended. The Commission shall be permitted to execute upon the judgment immediately after the suspension is lifted and engage in discovery in aid of execution.

- J. This judgment shall not be abstracted or otherwise filed as a lien against Defendants' property unless and until this Court lifts the suspension of the monetary judgment pursuant to subsection IV.I; *provided, however*, that the FTC may immediately record its lien and security interest against the Ladendorf residence as provided in subsection IV.C.
- K. Lifting the suspension and reinstating the judgment pursuant to subsection IV.I shall not affect any other provisions of this Order, which shall remain in full force and effect unless otherwise ordered by the Court.
- L. Defendants agree that the allegations in the Complaint filed in this action shall be taken as true and deemed proven in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Order, including, but not limited to, a non-dischargeability complaint filed in any bankruptcy case.
- M. Defendants acknowledge and agree that: (1) this monetary judgment is equitable monetary relief, solely remedial in nature, and shall not be deemed or construed as a fine, penalty, or punitive assessment; and (2) any proceedings instituted under subsection IV.I are in addition to, and not in lieu of, any other civil or criminal remedies that may be

provided by law, including any other proceedings the Commission may initiate to enforce this Order.

COMMISSION'S USE OF FUNDS PAID BY DEFENDANTS

V.

IT IS FURTHER ORDERED that all funds paid to the Commission or its agent pursuant to this Order, may be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or that funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Paragraph.

ASSET FREEZE

VI.

IT IS FURTHER ORDERED that the asset freeze imposed in Section III of the Stipulated Preliminary Injunction entered in this case on June 14, 2005 shall remain in effect until Defendants: (1) make the \$638,135.82 monetary payment described in Paragraph IV.B; and (2) deliver to the FTC or its designated representative possession of the three vehicles described in Paragraph IV.D, at which time the freeze of Defendants' assets shall be lifted.

DISTRIBUTION OF ORDER BY DEFENDANTS

VII.

IT IS FURTHER ORDERED that, for a period of four (4) years from the date of entry of this Order, Defendants shall deliver copies of the Order as directed below:

- A. TrustSoft must deliver a copy of this Order to all of its principals, officers, directors, and managers. TrustSoft also must deliver copies of this Order to all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within (5) days of service of this Order upon Defendant TrustSoft. For new personnel, delivery shall occur prior to their first assuming their responsibilities.
- B. For any business that Danilo Ladendorf controls, directly or indirectly, or in which Danilo Ladendorf has a majority ownership interest, Danilo Ladendorf must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Danilo Ladendorf must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within (5) days of service of this Order upon Defendant Ladendorf. For new personnel, delivery shall occur prior to their first assuming their responsibilities.
- C. For any business in which Danilo Ladendorf is not a controlling person of a business but he otherwise engages in conduct related to the subject matter of this Order, Danilo Ladendorf must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

- D. TrustSoft and Danilo Ladendorf must secure a signed and dated statement acknowledging receipt of the Order, within thirty days of delivery, from all persons receiving a copy of the Order pursuant to this Part.

COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE

VIII.

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, each of the Defendants shall submit additional written reports sworn to under penalty of perjury, produce documents for inspection and copying, provide entry during normal business hours to any business location in Defendants' possession or direct or indirect control, and appear for deposition, *provided that* Defendants, after attempting to resolve a dispute without court action and for good cause shown, may file a motion with this Court seeking an order including one or more of the protections set forth in Fed. R. Civ. P. 26(c).
- 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; and
 2. Posing as consumers and suppliers to: Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part by Defendants, without the necessity of identification or prior notice; and

C. Defendants shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, officer, 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. Nothing in this subparagraph VIII.C shall be construed as a consent to waive the attorney-client privilege.

Provided, however, 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 and 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)).

COMPLIANCE REPORTING BY DEFENDANTS

IX.

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

- A. For a period of four (4) years from the date of entry of this Order:
1. Danilo Ladendorf shall notify the Commission of the following:
 - (a) Any changes in residence, mailing addresses, or telephone numbers of Danilo Ladendorf, within twenty (20) days of the date of such change;
 - (b) Any changes in employment status (including self-employment) of Danilo Ladendorf, and any change in Danilo Ladendorf's ownership of any business entity, within twenty (20) days of the date of such change. Such notice shall include the name and address of each business that Danilo

Ladendorf is affiliated with, is employed by, creates or forms, or performs services for; a statement of the nature of each business; and a statement of Danilo Ladendorf's duties and responsibilities in connection with each business or employment; and

(c) Any changes in Danilo Ladendorf's name or use of any aliases or fictitious names; and

2. Defendants Danilo Ladendorf and TrustSoft shall notify the Commission of any changes in corporate structure of TrustSoft or any business entity that Danilo Ladendorf directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address. Such notification must be given at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which Defendants learn less than thirty (30) days prior to the date such action is to take place, Defendants shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order, and each year thereafter on the same date, through and including January 1, 2009, Defendants TrustSoft and Danilo Ladendorf each shall provide a written report to the FTC, sworn to under

penalty of perjury, setting forth in detail the manner and form in which each has complied and is complying with this Order. This report shall include, but not be limited to:

1. For Danilo Ladendorf:

- (a) The then-current residence address, mailing addresses, and telephone numbers of Danilo Ladendorf;
- (b) The then-current employment and business addresses and telephone numbers of Danilo Ladendorf, a description of the business activities of each such employer or business, and the title and responsibilities of Danilo Ladendorf for each such employer or business;
- (c) A statement of Danilo Ladendorf's then-current business income and expenses, including a copy of his income tax returns, including returns for any corporations or businesses owned, controlled or operated by him or on his behalf; and
- (d) Any changes required to be reported under subparagraph A of this Section.

2. For all Defendants:

- (a) A copy of each acknowledgment of receipt of this Order obtained pursuant to Paragraph VII; and
- (b) Any changes required to be reported under subparagraph A of this Section.

C. For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, deliver all written notifications to the FTC clearly marked as in reference to FTC v. TrustSoft et al., United States District Court, Southern District of Texas, Case No. 05-1905 to:

Associate Director
Division of Enforcement
Federal Trade Commission
600 Pennsylvania Ave., NW
Mail Drop NJ-2122
Washington, DC 20580.

- D. 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 Danilo Ladendorf performs services as an employee, consultant, or independent contractor from whom he derives any financial recompense.
- E. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with Danilo Ladendorf, in writing, with a copy to counsel named below or other counsel of record:

Susan Okin Goldsmith, Esq.
240 Princeton Avenue, Suite 150
Hamilton, NJ 08619-2304
(U.S. Post: P.O. Box 5203, Princeton NJ 08543-5203)

RECORD-KEEPING PROVISIONS

X.

IT IS FURTHER ORDERED that, for a period of seven (7) years from the date of entry of this Order, in connection with any business that Danilo Ladendorf directly or indirectly manages, controls, or has a majority ownership interest in, 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, facsimile 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;
- E. Copies of all training materials, advertisements, or other marketing materials, including e-mail and Internet websites or web pages, regarding any good, service, company or web site disseminated by such businesses to any person; and
- F. All records and documents necessary to demonstrate full compliance with each provision of this Order.

FEES AND COSTS

XI.

IT IS FURTHER ORDERED that, except for the \$40,000 to be escrowed pursuant to paragraph IV.G, each party to this Order hereby agrees to bear its own costs and attorney fees incurred in connection with this action.

RETENTION OF JURISDICTION

XII.

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

ACKNOWLEDGMENT OF RECEIPT OF ORDER

XIII.

IT IS FURTHER ORDERED that each Defendant, within five (5) business days of receipt of this Order as entered by the Court, shall submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

SEVERABILITY

XIV.

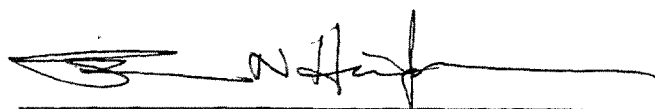
IT IS FURTHER ORDERED that the provisions of this Order are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.


COMPLETE SETTLEMENT

XV.

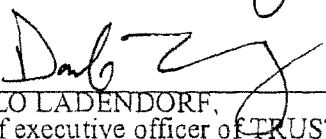
The parties hereby consent to entry of the foregoing Order which shall constitute a final judgment and order in this matter. The parties further stipulate and agree that the entry of the foregoing order shall constitute a full, complete, and final settlement of this action.

Signed Nov. 30, 2005, at Houston Texas.


LYNN N. HUGHES
UNITED STATES DISTRICT JUDGE


DANILO LADENDORF

Date: 9-9-05


DANILO LADENDORF,
as chief executive officer of TRUSTSOFT

Date: 9-9-05


ATTORNEYS FOR PLAINTIFF

Date: 11-28-05

Robert S. Kaye
Julie G. Bush
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
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APPROVED AS TO FORM:


ATTORNEY FOR DEFENDANTS

Date: 9-9-05

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