

FEB 25 2010

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JAMES N. HATTEN, Clerk  
By: *[Handwritten signature]* Deputy Clerk

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

FILED IN CHAMBERS  
U.S.D.C. Atlanta

MAR 08 2010

JAMES N. HATTEN, Clerk  
By: *[Handwritten signature]* Deputy Clerk  
*[Handwritten initials]*

\_\_\_\_\_)  
FEDERAL TRADE COMMISSION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CONTROLSCAN, INC., )  
a corporation, )  
 )  
Defendant. )  
\_\_\_\_\_)

**1 10-CV-0532**  
Civil No. \_\_\_\_\_

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

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), has contemporaneously filed a Complaint for Injunctive and Other Equitable Relief ("Complaint") against Defendant ControlScan, Inc. ("ControlScan") pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 53(b). The parties have agreed to the entry of this Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief ("Order") to resolve all matters in dispute in this action without trial or adjudication of any issue of law or fact herein and without Defendant admitting the truth of, or liability for, any of the matters alleged in the Complaint. Defendant has

waived service of the Summons and Complaint.

**THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND  
DECREED** as follows:

**FINDINGS**

1. This Court has jurisdiction over the subject matter of this case and over Defendant ControlScan.
2. Venue in this district is proper under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).
3. The acts and practices of Defendant are in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. ControlScan is a Delaware corporation with its principal office or place of business at 340 Interstate North, Suite 347, Atlanta, Georgia 30339.
5. The Complaint states a claim upon which relief may be granted against Defendant under Sections 5(a)(1) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a)(1), 53(b).
6. Defendant does not admit to the allegations in the Complaint, other than the jurisdictional facts.
7. Defendant waives (a) all rights to seek appellate review or otherwise

challenge or contest the validity of this Order; (b) any claim Defendant may have against the Commission, its employees, representatives, or agents that relates to the matter stated herein; (c) all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996); and (d) any rights to attorneys' fees that may arise under said provision of law.

8. Entry of this Order is in the public interest.

### **DEFINITIONS**

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

1. "Seal" means any trustmark, logo, seal of approval, emblem, shield, or other insignia offered for placement on a company's website.
2. "Defendant" means ControlScan and its successors and assigns.
3. "Commerce" means as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

### **ORDER**

#### **I. PROHIBITED BUSINESS ACTIVITIES**

**IT IS ORDERED** that Defendant and its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with any one or more of them, whether acting directly or through any sole proprietorship,

partnership, limited liability company, corporation, subsidiary, branch, division, or other entity, who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, in or affecting commerce, materially misrepresenting, in any manner, expressly or by implication:

- A. the verification that is conducted by any party concerning the protection that a company provides for the privacy and/or security of consumer information or the steps a company has taken to provide such protection; or
- B. the frequency of such verification.

## II. NOTICE

**IT IS FURTHER ORDERED** that, within thirty (30) days after the date of entry of this Order, Defendant shall provide notice, in the form provided in Attachment A, to each company that purchased or received, since January 1, 2007, ControlScan's Business Background Reviewed, Verified Secure, Registered Member, Privacy Protected, or Privacy Reviewed seal, pursuant to the following:

- A. The notice shall be delivered by first-class mail to the company's last known mailing address and by electronic mail to its last known electronic mail

address. Each such notice, whether sent by U.S. mail or electronic mail, shall be sent to the attention of an individual at the company with whom ControlScan has or had a business relationship.

B. Other than as described in this Section and provided by Attachment A, the notice shall not include any other document, material, or statement. The notice shall be prepared on ControlScan's official corporate letterhead and also shall include prominently ControlScan's official logos for the Business Background Reviewed, Verified Secure, Registered Member, Privacy Protected, and Privacy Reviewed seals.

C. Each envelope in which such notice is mailed shall include ControlScan's name and return address. In addition, the words "ATTENTION: Important Notice Concerning ControlScan's Seals" shall appear below the recipient's address on any such notice that is mailed and in the subject line of any notice that is sent by electronic mail.

D. Defendant shall take reasonable steps to obtain a signature or electronic receipt acknowledging receipt of the notice by an authorized representative of the recipient. If Defendant elects to obtain this acknowledgment by U.S. mail, it shall provide a self-addressed, postage pre-paid envelope with the

notice to enable return of the acknowledgment or send the notice via certified mail, return receipt requested.

### III. MONETARY JUDGMENT

**IT IS FURTHER ORDERED** that:

A. Judgment is hereby entered in favor of the Commission and against Defendant, as equitable monetary relief, in the amount of \$750,000, less any amounts paid by Richard Stanton pursuant to the Decision and Order arising from *In the Matter of Richard Stanton*, FTC File No. 072-3165. Payment of this amount shall be suspended subject to the conditions set forth in Paragraphs C and D.

B. In the event a monetary payment under this Stipulated Judgment becomes due, all funds paid to or received by the Commission shall be deposited into a fund administered by the Commission or its agent. In the event that direct restitution to consumers is wholly or partially impracticable or funds remain after restitution 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 Defendant's practices as alleged in the Complaint. Any funds not used for such equitable relief will be deposited with the United States Treasury as disgorgement. Defendant shall have no right to challenge the

Commission's choice of remedies under this Section. Defendant shall have no right to contest the manner of distribution chosen by the Commission. This judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.

C. The Commission's agreement to, and the Court's entry of, this Order is expressly premised upon the truthfulness, accuracy, and completeness of (1) the sworn financial statement of Defendant dated August 6, 2009, including any attachments and subsequent addenda thereto, and (2) all statements and representations made by Defendant in correspondence with the FTC related to its revenues and current financial condition (together, the "financial disclosures"), all of which Defendant stipulates are truthful, accurate and complete. Defendant 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.

D. If, upon motion by the Commission, the Court finds that Defendant failed to disclose any material asset, misrepresented the value of any material asset,



or made any material misrepresentation or omission in the financial disclosures, the suspension of the judgment entered pursuant to Paragraph A of this Section III shall be lifted and the judgment amount, less any payments made to the Commission pursuant to this Order, plus interest from the date of entry of this Order computed pursuant to 28 U.S.C. § 1961, shall become immediately due and payable. The Commission shall be permitted to execute upon the judgment immediately after the suspension is lifted and engage in discovery in aid of execution. Proceedings instituted under this Paragraph are in addition to and not in lieu of any other civil or criminal remedies as may be provided by law, including any other proceedings the Commission may initiate to enforce this Order. Solely for purposes of this Section, Defendant waives any right to contest any of the allegations in the Commission's Complaint.

E. In accordance with 31 U.S.C. § 7701, as amended, Defendant is hereby required, unless it has already done so, to furnish to the Commission its taxpayer employer identification number, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendant's relationship with the government.

F. In the event a monetary payment under this Stipulated Judgment



becomes due, Defendant relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Defendant shall make no claim to or demand return of the funds, directly or indirectly, through counsel or otherwise.

G. Defendant agrees that the facts as alleged in the Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy case. Defendant further stipulates and agrees that the facts alleged in the Complaint establish all elements necessary to sustain an action pursuant to, and that this Order shall have collateral estoppel effect for purposes of, Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A).

#### **IV. COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of (i) monitoring and investigating compliance with any provision of this Order, and (ii) investigating the accuracy of Defendant's financial statements upon which the Commission's agreement to this Order is expressly premised:

A. Within ten (10) days of receipt of written notice from a representative

of the Commission, Defendant shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in Defendant's possession or direct or indirect control to inspect the business operation.

B. In addition, the Commission is authorized to use all other lawful means, including, but not limited to:

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, 45, and 69; and

2. having its representatives pose as consumers and suppliers to Defendant, its employees, or any other entity managed or controlled in whole or in part by Defendant, without the necessity of identification or prior notice.

C. Defendant 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. *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, 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)).

## V. COMPLIANCE REPORTING

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

A. For a period of five (5) years from the date of entry of this Order, Defendant shall notify the Commission of any changes in structure of Defendant or any business entity that Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including, but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or a change in the business name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any such change in the business entity about which Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant 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 annually thereafter for a period of five (5) years, Defendant shall provide a written report to the FTC which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which it has complied and is complying with this Order. This report shall include, but not be limited to:

1. a copy of each acknowledgment of receipt of this Order, obtained pursuant to Section VII titled "Distribution of Order;" and
2. any other changes required to be reported under Subsection A of this Section.

C. Defendant shall notify the Commission of the filing of a bankruptcy petition by Defendant within fifteen (15) days of filing.

D. For the purposes of this Order, Defendant shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier all reports and notifications required by this Order to the Commission, to the following address:

Associate Director of Enforcement  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, Room NJ-2122  
Washington, DC 20580

Re: FTC v. ControlScan, Inc.

*Provided* that, in lieu of overnight courier, Defendant may send such reports or notifications by first-class mail, but only if Defendant contemporaneously sends an electronic version of such report or notification to the Commission at:

DEBrief@ftc.gov.

E. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Defendant.

## VI. RECORDKEEPING

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry of this Order, Defendant, with respect to its offering or providing seals or related products or services, is 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, telephone 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 or indirectly, such as through a third party) and any responses to those complaints or requests;

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and

F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order required by Sections VII and VIII, titled "Distribution of Order" and "Acknowledgment of Receipt of Order" and all reports submitted to the FTC pursuant to Section V, titled "Compliance Reporting."

## **VII. DISTRIBUTION OF ORDER**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Order, Defendant shall deliver copies of this Order as directed

below:

A. Defendant must deliver a copy of this Order to (1) all of its principals, officers, directors, and managers; (2) all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of Section V titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of Section V titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

B. Defendant must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

#### **VIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

**IT IS FURTHER ORDERED** that 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.

**IX. 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.

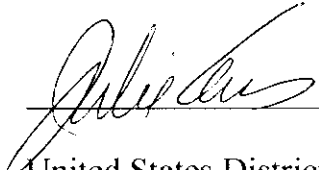
**X. NOTICE OF ENTRY OF ORDER**

**IT IS FURTHER ORDERED** that entry in the docket of this Order by the Clerk of Court shall constitute notice to Defendant of the terms and conditions of this Order, and that Defendant waives all rights to contest in any future proceeding whether Defendant was properly served with this Order.

The parties hereby stipulate to the entry of the foregoing Order, which shall constitute a final Order in this Action.

**IT IS SO ORDERED:**

Dated this 5 day of March, 2009.

  
\_\_\_\_\_  
United States District Judge



**STIPULATED AND AGREED TO BY:**

**FOR DEFENDANT CONTROLSCAN:**



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JOAN E. HERBIG  
CHIEF EXECUTIVE OFFICER  
CONTROLSCAN, INC.

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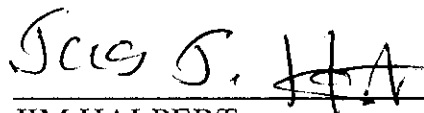
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(202) 799-5441 (facsimile)  
jim.halpert@DLAPiper.com

**STIPULATED AND AGREED TO BY:**

**FOR DEFENDANT CONTROLSCAN:**

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JOAN E. HERBIG  
CHIEF EXECUTIVE OFFICER  
CONTROLSCAN, INC.



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**FOR PLAINTIFF FEDERAL TRADE COMMISSION:**


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Jessica L. Rich  
Acting Associate Director,  
Division of Privacy and Identity Protection



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(404) 656-1353 (Couillou)  
(404) 656-1379 (facsimile)  
ccouillou@ftc.gov



**ATTACHMENT A**

**IMPORTANT NOTICE**

[insert date]

Dear [name of person with whom ControlScan has a business relationship]:

This letter is to tell you that we recently settled Federal Trade Commission (FTC) allegations that certain of our privacy and security seals were deceptive. Among other things, the FTC, the nation's consumer protection agency, alleged that our Privacy Protected, Privacy Reviewed, Business Background Reviewed, and Registered Member seals falsely claimed to consumers that we had verified the privacy and security of the websites displaying them, when, in many instances, we had not.

**We already have discontinued these seals, so you should not be displaying them. If you are still displaying any of these seals on your website, you must remove them immediately.**

**You may continue to display the Verified Secure seal.**

If you have questions about this matter, please contact [name of company representative] at [phone number].

Sincerely yours,

Joan Herbig  
Chief Executive Officer  
ControlScan, Inc.

