

Apr 3 2006

CLARENCE MADDOX
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S. D. OF FLA. - MIAMI**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 03-61987--CIV--Marra/Seltzer

FEDERAL TRADE COMMISSION,

Plaintiff

v.

PLATINUM UNIVERSAL, LLC, also doing
business as UNIVERSAL CARD SERVICES
and UNIVERSAL MASTERCARD,PULSAR DATA, INC., also doing business as
UNIVERSAL CARD SERVICES and
UNIVERSAL MASTERCARD,

JEFFREY A. ULLMAN, and

MICHAEL KIRKOVICH,

Defendants.

**JOINT MOTION TO ENTER PROPOSED STIPULATED FINAL JUDGMENT AND
ORDER FOR PERMANENT INJUNCTION**

Plaintiff, the Federal Trade Commission, Defendants Platinum Universal, LLC, also doing business as Universal Card Services and Universal Mastercard, Pulsar Data, Inc., also doing business as Universal Card Services and Universal Mastercard, Jeffrey A. Ullman, and Michael Kirkovich (collectively the "Parties"), through counsel, file this Joint Motion to Enter the Proposed Stipulated Final Judgment and Order for Permanent Injunction as to said Defendants. As grounds therefor, these parties state that they have jointly agreed to entry of a

Stipulated Judgment and Order for Permanent Injunction. The proposed Stipulated Judgment and Order for Permanent Injunction is filed herewith.

Respectfully Submitted,

FOR PLAINTIFF FEDERAL TRADE COMMISSION:



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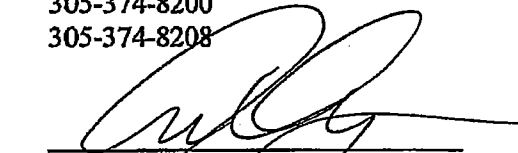
DATED: 4/3/06

FOR THE DEFENDANTS PLATINUM UNIVERSAL, LLC, ALSO DOING BUSINESS AS UNIVERSAL CARD SERVICES AND UNIVERSAL MASTERCARD, PULSAR DATA, INC., ALSO DOING BUSINESS AS UNIVERSAL CARD SERVICES AND UNIVERSAL MASTERCARD, JEFFREY A. ULLMAN, STEVEN M. KETOVER, AND MICHAEL KIRKOVICH



GUY RASCO (Florida Bar # 0727520)
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DATED: 4/3/06



SHELDON LUSTIGMAN
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DATED: 4/3/06

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 03-61987--CIV--Marra/Seltzer

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

PLATINUM UNIVERSAL, LLC, et, al.

Defendants.

STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION

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 6, 2003, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101 *et seq.*, and by filing an Amended Complaint on February 10, 2004, and this Court entered a Stipulated Preliminary Injunction against Defendants Platinum Universal, LLC and Pulsar Data, Inc., both also doing business as Universal Card Services and Universal MasterCard, Jeffrey A. Ullman, and Steven M. Ketover on November 18, 2003, pursuant to Rule 65(a) of the Federal Rules of Civil Procedure (Fed. R. Civ. P. 65). On June 13, 2005, after a joint motion, this Court dismissed Defendant Ketover from this action.

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The Commission, by and through its counsel, and Defendants, by and through their respective counsel, have agreed to 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:

FINDINGS OF FACT

1. This Court has jurisdiction of the subject matter of this case and all parties hereto;
2. Venue is proper as to all parties in the Southern District of Florida;
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 under Sections 5(a), 13(b) and 19 of the FTC Act, 15 U.S.C. § 45(a), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing Act, 15 U.S.C. §§ 6101 *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. 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, 863-65 (1996)*;

7. Defendants waive all rights to seek judicial review or otherwise to challenge or contest the validity of this Order, and further waive any claim Defendants may have against the Commission, or its employees and agents;
8. Entry of this Order is in the public interest;
9. This Order is remedial in nature and shall not be construed as the payment of a fine, penalty, punitive assessment or forfeiture; and
10. This Order does not constitute and shall not be interpreted to constitute an admission by Defendants, or a finding that Defendants have engaged in violations of any law or regulation, including the Federal Trade Commission Act and the Telemarketing Sales Rule.

ORDER

DEFINITIONS

1. "Corporate Defendants" means Platinum Universal, LLC and Pulsar Data, Inc., both also doing business as Universal Card Services and Universal MasterCard.
2. "Individual Defendant(s)" means Jeffrey A. Ullman and Michael Kirkovich.
3. "Defendants" means the Corporate Defendants and the Individual Defendants.
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 the 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. "Telemarketing," "telemarketer," "seller," and "material" are defined as in Section 310.2 of the Telemarketing Sales Rule, 16 C.F.R. § 310.2.
6. "Stored Value Card" means any card, including but not limited to a card accepted where MasterCard or Visa is accepted, which does not contain any extension of credit but is a prepaid card, that is funded by the consumer who must load funds in advance of use and may only be used for the amount loaded by the consumer, less any applicable fees.
7. "Credit Card" means a traditional bankcard which involves extension of credit.
8. "Credit-Related Goods or Services" means any good or service which is advertised, offered for sale or sold to consumers as a method by which consumers may establish or obtain any extension of credit, as "credit" is defined as in Section 310.2 of the Telemarketing Sales Rule, 16 C.F.R. § 310.2.

CONDUCT PROHIBITIONS

I. PERMANENT BAN

IT IS THEREFORE ORDERED that Defendant Ullman is permanently restrained and enjoined from engaging, participating, assisting, or facilitating in any manner or capacity whatsoever, directly or indirectly, individually or through any corporation, subsidiary, division, or other device, in the advertising, promotion, offering, marketing or sale of any Stored Value Card or Credit-Related Goods or Services.

II.

IT IS FURTHER ORDERED that, in connection with the advertising, promotion, offering, or sale of a Stored Value Card, or any Credit-Related Goods or Services by telephone, television or radio, on or through the Internet, the World Wide Web, any web site, or otherwise

in commerce, Defendants, 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 misrepresenting, expressly or by implication, orally or in writing, any material fact, including, but not limited to, misrepresenting that, after paying Defendants a fee, consumers will, or are highly likely to, receive a Credit Card.

III.

IT IS FURTHER ORDERED that, in connection with the advertising, promotion, offering, or sale of a Stored Value Card, or any Credit-Related Goods or Services by telephone, television or radio, on or through the Internet, the World Wide Web, any web site, or otherwise in commerce, Defendants, 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 violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, including, but not limited to:

- A. Requesting or receiving payment of a fee in advance of consumers obtaining a Credit Card when Defendants have guaranteed or represented to such consumers a high likelihood of success in obtaining a Credit Card; and
- B. Misrepresenting, directly or by implication, that after paying Defendants a fee, consumers will, or are highly likely to, receive a Credit Card.

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IV. REQUIRED PRACTICES

IT IS FURTHER ORDERED that Defendants, 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, in connection with the advertising, promotion, offering or sale of any Stored Value Cards by television, radio, telephone, or on or through the Internet, or otherwise in commerce, shall:

A. Use only advertisements that clearly and conspicuously disclose to consumers:

1. that the card they are offering or selling is not an extension of credit and not a credit line;

2. that the card they are offering or selling is a stored value, reloadable, prepaid card;

3. that the amount available for consumers to spend on the card is equal to the amount that they deposit on the card, less any applicable fees; and

4. any and all other material terms of the sale or offer, including but not limited to any refund policy;

B. Use only telemarketers, telemarketing materials and promotional material, including but not limited to sales scripts, customer service scripts, and pamphlets, that, prior to obtaining the consumer's banking account or other payment information (except the bank routing number), clearly and conspicuously disclose to consumers:

1. that the card they are offering or selling is not a credit card;

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2. that the card they are offering or selling is a stored value, reloadable, prepaid card;

3. that the amount available for consumers to spend on the card is equal to the amount that they deposit on the card, less any applicable fees; and

4. any and all other material terms of the sale, offer, or use of the card;

C. Use non-commissioned personnel to randomly monitor sales calls to assure compliance with the telemarketing sales materials and the provisions of this Order and to reject sales that fail to comply with the provisions of this Order;

D. Tape the verification portions of each telemarketing call to ensure that prior to obtaining the consumer's banking information, the consumer:

1. was properly informed that he/she is not purchasing or obtaining a credit card, credit line or other extension of credit,

2. was properly informed that the card Defendants are selling is a stored value, reloadable, prepaid card;

3. was properly informed that the amount available for consumers to spend on the card is equal to the amount that the consumer deposits on the card, less any applicable fees;

4. was properly informed of any and all other material terms of the sale, offer or use of the card;

5. expressly agreed to be charged using the specified bank account; and

E. Engage non-commissioned personnel to review all verification recordings to confirm that the consumer understood all terms and conditions specified in Subparagraph D

above, and expressly agreed to be charged using the specified bank account, and reject any sales where the consumer did not understand such terms and conditions and/or did not expressly agree to be charged.

V. CONSUMER REDRESS

IT IS FURTHER ORDERED that:

A. Judgment in the amount of \$900,000 (nine hundred thousand dollars) is hereby entered against Defendants, jointly and severally, for equitable monetary relief, including, but not limited to, consumer redress and/or disgorgement, and for paying any attendant expenses of administering any redress fund. Based upon Defendants' sworn representations in their financial statements and payment of the amount referred to in Subparagraph B below and subject to the provisions in Paragraph VI of this Order, this liability will be suspended;

B. Immediately upon entry of this Order, the Monitor, Gerald Wald, shall wire transfer the \$21,491.51 in Defendants' frozen funds held by the Monitor, to the Federal Trade Commission;

C. All funds paid pursuant to this Paragraph shall 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 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 the Defendants' practices alleged in the Complaint. Any funds not used for such

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equitable relief shall be deposited to the U.S. Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Paragraph;

D. Defendants expressly waive their rights to litigate the issue of disgorgement.

Defendants acknowledge and agree that all money paid pursuant to this Order is irrevocably paid to the Commission for purposes of settlement between Plaintiff and Defendants, and Defendants relinquish all right, title, and interest to assets held by the Monitor in connection with this case; and

E. The Commission and Defendants acknowledge and agree that no portion of this judgment for equitable monetary relief shall be deemed a fine, penalty, punitive assessment or forfeiture.

VI. RIGHT TO REOPEN

IT IS FURTHER ORDERED that

A. The Commission's agreement to, and the Court's approval of, this Order is expressly premised upon the truthfulness, accuracy, and completeness of the financial statements executed on November 20, 2003 (Defendant Platinum Universal, LLC), on November 12, 2003 (Defendant Ullman) and on March 11, 2004 (Defendant Kirkovich) (collectively designated the "Financial Statements"), provided to counsel for the Commission by Defendants, and reaffirmed by Defendants Pulsar Data, Inc., Platinum Universal, LLC on January 20, 2005 and January 3, 2006, Defendant Ullman on January 20, 2005 and December 15, 2005, and by Defendant Kirkovich on January 13, 2005, and December 15, 2005 which contain material information relied upon by the Commission in negotiating and agreeing to the terms of this Order;

B. If, upon notice and motion by the Commission, this Court finds that any of the Defendants' Financial Statements failed to disclose any material asset or source of income, or materially misrepresented the value of any asset or source of income, or made any other material misrepresentation or omission of assets, then, the amount of \$900,000 less the \$21,491.51 paid pursuant to Paragraph V.B, plus interest computed at the rate prescribed in 28 U.S.C. § 1961 which shall immediately begin to accrue on the unpaid balance, will be rendered immediately due and payable by any Defendant who is found to have failed to disclose any material asset or source of income, or materially misrepresented the value of any asset or source of income, or made any other material misrepresentation or omission of assets;

C. Defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Paragraph, including, but not limited to, a nondischargeability complaint filed in any bankruptcy proceeding;

D. Should this Order be modified pursuant to this Paragraph, this Order, in all other respects, shall remain in full force and effect unless otherwise ordered by this Court. Any 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 institute to enforce this Order; and

E. Unless already provided, the Defendants shall also furnish to the Commission, in accordance with 31 U.S.C. § 7701, their taxpayer identification numbers (social security number, social insurance number, employer identification number, or Revenue Canada identification

A handwritten signature in black ink, appearing to read 'JAM/MLC', is located in the bottom right corner of the page.

