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10 ATTORNEYS FOR PLAINTIFF
FEDERAL TRADE COMMISSION

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

14 FEDERAL TRADE COMMISSION,

Plaintiff,

17 iMALL, Inc.,
18 a corporation,

19 CRAIG R. PICKERING,
20 an individual,

21 and

22 MARK R. COMER,
an individual,

23 Defendants.

CIVIL ACTION NO. 99-03650

HLH

(RCX)

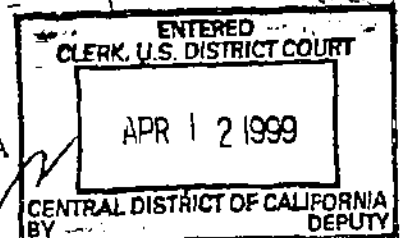
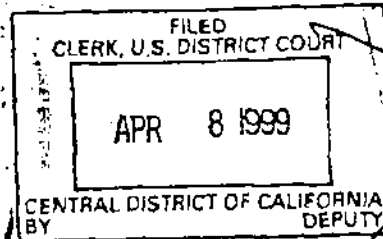
STIPULATED FINAL
JUDGMENT AND
ORDER FOR
PERMANENT
INJUNCTION

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24 Plaintiff, the Federal Trade Commission ("Commission"), has commenced this action by filing
25 its Complaint. The Commission and defendants iMall, Inc. ("iMall"), Craig R. Pickering ("Pickering"),
26 and Mark R. Comer ("Comer") have agreed to the Court's entry of this Stipulated Final Judgment and
27 Order for Permanent Injunction ("Order") to resolve all matters in dispute between them in this action,
28

4/12/99
ENTERED ON ICMS

APR 12 1999



1 without admission of liability, and without trial or adjudication of any issue of law or fact herein.
2 Plaintiff Commission and the defendants having requested the Court to enter this Order,

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

4 **I. FINDINGS**

5 1. This is an action by the Commission instituted under Sections 5, 13(b), and 19 of the
6 Federal Trade Commission Act ("the FTC Act"), 15 U.S.C. §§ 45, 53(b), and 57b. The complaint seeks
7 permanent injunctive relief and equitable monetary relief against the defendants for alleged deceptive
8 acts or practices in connection with the sale of business ventures.

9 2. The Court has jurisdiction over the subject matter of this case and over the defendants.
10 Venue in the Central District of California is proper under 28 U.S.C. §§ 1391(b) and (c) and 15 U.S.C.
11 § 53(b).

12 3. The Complaint states a claim upon which relief may be granted against the defendants
13 under Sections 5(a) and 13(b) of the FTC Act, as amended, 15 U.S.C. §§ 45 and 53(b).

14 4. The Commission has the authority under Section 13(b) of the FTC Act, 15 U.S.C.
15 § 53(b), to seek the relief it has requested.

16 5. The activities of the defendants as alleged in the Commission's complaint were or are
17 in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

18 6. Entry of this Order is in the public interest.

19 **II. DEFINITIONS**

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

21 1. "Franchise" means "franchise" as defined in Section 436.2(a) of the Commission's Trade
22 Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and
23 Business Opportunity Ventures" ("the Franchise Rule"), 16 C.F.R. § 436, a copy of which is attached
24 as Exhibit A. The term "franchise" in this Order shall also encompass any successor definition in any
25 later trade regulation rule promulgated by the Commission;

26 2. "Business venture" or "business opportunity" means any written or oral business
27 arrangement, however denominated, whether or not covered by the Franchise Rule, which consists of

1 the payment of any consideration for:

- 2 a. the right or means to offer, sell, or distribute goods or services (whether or not identified
3 by a trademark, service mark, trade name, advertising, or other commercial symbol); and
4 b. any assistance whatsoever to any person or entity in connection with or incident to the
5 establishment, maintenance, or operation of a new business or the entry by an existing
6 business into a new line or type of business;

7 3. "Person" means any natural person, organization or other legal entity, including a
8 corporation, partnership, association, cooperative, government or governmental subdivision or agency,
9 or any other group or combination acting as an entity; and

10 4. "Accredited investor" shall mean any person who comes within any of the following
11 categories, or who defendants reasonably believe comes within any of the following categories, at the
12 time of the sale of the business venture or business opportunity to that person:

- 13 a. any organization described in section 501(c)(3) of the Internal Revenue Code,
14 corporation, Massachusetts or similar business trust, or partnership with total assets in
15 excess of \$5,000,000;
16 b. any natural person whose individual net worth, or joint net worth with that person's
17 spouse, at the time of his purchase exceeds \$1,000,000;
18 c. any natural person who had an individual income in excess of \$200,000 in each of the
19 two most recent years or joint income with that person's spouse in excess of \$300,000
20 in each of those years and has a reasonable expectation of reaching the same income
21 level in the current year; or
22 d. any entity in which all of the equity owners are accredited investors.

23 III. PROHIBITED BUSINESS PRACTICES

24 **IT IS THEREFORE ORDERED** that defendant Pickering is hereby restrained and enjoined
25 from:

- 26 1. Engaging, participating, or assisting in any manner or in any capacity whatsoever,
27 whether directly or indirectly, in concert with others, or through any intermediary, business entity or

1 device, in the advertising, marketing, promoting, offering for sale or selling of any Internet-related
2 business venture or business opportunity;

3 2. Engaging, participating, or assisting in any manner or in any capacity whatsoever,
4 whether directly or indirectly, in concert with others, or through any intermediary, business entity or
5 device, in the advertising, marketing, promoting, offering for sale or selling of any business venture or
6 business opportunity that relates to any pay-per-call service, telephone-billed purchase, or service that
7 provides audio information or audio entertainment services, where the action of placing a call, receiving
8 a call, or comparable action of the caller results in a charge to a customer;

9 3. Engaging, participating, or assisting in any manner or in any capacity whatsoever,
10 whether directly or indirectly, in concert with others, or through any intermediary, business entity or
11 device, for a period of ten years from the date of entry of this Order, in the advertising, marketing,
12 promoting, offering for sale or selling of any franchise;

13 4. Violating any provision of the Franchise Rule, 16 C.F.R. § 436, as it is now written or
14 as it may hereinafter be amended; and

15 5. Misrepresenting any fact material to a consumer's decision to purchase any service or
16 product.

17 **IT IS FURTHER ORDERED** that defendant Comer is hereby restrained and enjoined from:

18 1. Engaging, participating, or assisting in any manner or in any capacity whatsoever,
19 whether directly or indirectly, in concert with others, or through any intermediary, business entity or
20 device, in the advertising, marketing, promoting, offering for sale or selling of any Internet-related
21 business venture or business opportunity;

22 2. Engaging, participating, or assisting in any manner or in any capacity whatsoever,
23 whether directly or indirectly, in concert with others, or through any intermediary, business entity or
24 device, in the advertising, marketing, promoting, offering for sale or selling of any business venture or
25 business opportunity that relates to any pay-per-call service, telephone-billed purchase, or service that
26 provides audio information or audio entertainment services, where the action of placing a call, receiving
27 a call, or comparable action of the caller results in a charge to a customer;

3. Engaging, participating, or assisting in any manner or in any capacity whatsoever, whether directly or indirectly, in concert with others, or through any intermediary, business entity or device, for a period of ten years from the date of entry of this Order, in the advertising, marketing, promoting, offering for sale or selling of any franchise;

4. Violating any provision of the Franchise Rule, 16 C.F.R. § 436, as it is now written or as it may hereinafter be amended; and

5. Misrepresenting any fact material to a consumer's decision to purchase any service or product.

IT IS FURTHER ORDERED that defendant iMall, its officers, agents, servants, employees, and attorneys, and all persons or entities directly or indirectly under its control or under common control with it, and all other persons or entities in active concert or participation with it, are hereby restrained and enjoined from:

1. Violating any provision of the Franchise Rule, 16 C.F.R. § 436, as it is now written or as it may hereinafter be amended;

2. Misrepresenting any material fact in connection with the sale of any business venture or business opportunity;

3. Misrepresenting any material fact in connection with the telemarketing of any product or service; and

4. Misrepresenting any material fact concerning:

a. the income, profits or sales volume that can be achieved through the use of any good or service;

b. the income, profits or sales volume that has been achieved through the use of any good or service; and

c. the length of time that it may or will take to recoup the cost of any good or service.

Nothing in this Order shall be construed so as to prohibit either defendant Pickering or defendant Comer from owning stock in iMall.

IV. CONSUMER REDRESS

IT IS FURTHER ORDERED that:

A. Judgment in the amount of FOUR MILLION DOLLARS (\$4,000,000) is hereby entered in favor of the Commission against the defendants for equitable monetary relief, including, but not limited to, consumer redress and for paying any attendant expenses of administering any redress fund;

B. While the defendants have indicated that defendant iMall's contribution to the redress payment shall be SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (\$750,000) and that defendants' Pickering and Comer's combined contribution shall be THREE MILLION AND TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$3,250,000), the obligation to satisfy the redress provisions set forth in Subparagraphs A and B of this section shall be joint and several as among each of the three defendants;

C. Notwithstanding the joint and several nature of the payment obligation, defendant iMall shall make a payment of SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (\$750,000) to the Commission or its designee within five (5) days of notice of entry of this Order. Defendants Pickering and Comer shall make a combined payment of THREE MILLION AND TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$3,250,000) to the Commission or its designee within thirty (30) days of notice of entry of this Order. If, at the end of the thirty (30) day period referred to above, defendants Pickering and Comer have not fully satisfied the THREE MILLION AND TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$3,250,000) payment obligation, the Commission shall be entitled to all lawful recourse, including demanding from defendant iMall immediate payment of the outstanding portion of this obligation;

D. The Commission will place the redress payments in a consumer redress fund. If the Commission, in its sole discretion, determines that payment of redress to consumers is wholly or partially impractical, any funds not so used shall be deposited in the United States Treasury. The parties acknowledge that this Judgment for relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture. The defendants forever disclaim all right, title, and interest in all sums paid pursuant to this Judgment, and no funds paid pursuant to this Judgment shall be returned to the

1 defendants. The defendants further agree that the facts as alleged in the complaint in this action shall
2 be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to
3 this Order, including, but not limited to, a nondischargeability complaint in any bankruptcy proceeding;
4 and

5 E. This action and the relief awarded herein, is in addition to and not in lieu of any other
6 civil or criminal remedies as may be provided by law, including any other proceedings the Commission
7 may initiate to enforce this Order.

8 V. PERFORMANCE BOND

9 **IT IS FURTHER ORDERED** that, for a five (5) year period commencing with the entry of this
10 Order, defendant Pickering, whether acting directly or indirectly, in concert with others, or through any
11 intermediary, business entity or device, is hereby restrained and enjoined from engaging in the
12 advertising, marketing, promoting, offering for sale or selling of any business venture or business
13 opportunity unless said defendant first obtains a performance bond in the principal sum of Five Hundred
14 Thousand Dollars (\$500,000).

15 A. The bond shall be conditioned upon compliance by defendant Pickering with Section 5(a)
16 of the FTC Act, 15 U.S.C. § 45(a), and the provisions of this Order. The bond shall be deemed
17 continuous and remain in full force and effect as long as defendant Pickering continues to engage in the
18 advertising, marketing, promoting, offering for sale or selling of any business venture or business
19 opportunity and for at least two (2) years thereafter. However, under no circumstances shall any bond
20 required by this Order remain in effect following the fifth anniversary date of the entry of this Order.
21 The bond shall cite this Order as the subject matter of the bond, and shall provide surety thereunder
22 against financial loss due, in whole or part, to any violation by defendant Pickering of Section 5(a) of
23 the FTC Act, 15 U.S.C. § 45(a), or the provisions of this Order.

24 B. The bond shall be an insurance agreement providing surety for financial loss issued by
25 a surety company that is admitted to do business in each of the states in which the defendant is doing
26 business and that holds a Federal Certificate of Authority as Acceptable Surety on Federal Bond and
27 Reinsuring. Such bond shall be in favor of both (1) the Federal Trade Commission for the benefit of any
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1 consumer injured as a result of any violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), or the
2 provisions of this Order made while engaging in the advertising, marketing, promoting, offering for sale
3 or selling of any business venture or business opportunity, and (2) any consumer so injured.

4 C. The bond required by this Paragraph shall be in addition to and not in lieu of any other
5 bond required by law.

6 D. Defendant Pickering shall provide a copy of the bond required by this Paragraph to the
7 Regional Director of the Boston Regional Office of the Federal Trade Commission at least ten (10) days
8 prior to the commencement of any activity or business for which the bond is required.

9 E. Defendant Pickering shall not disclose the existence of the bond to any consumer without
10 also disclosing clearly and prominently at the same time: "THIS BOND IS REQUIRED BY ORDER
11 OF THE U.S. DISTRICT COURT IN SETTLEMENT OF CHARGES THAT DEFENDANTS
12 ENGAGED IN A PATTERN AND PRACTICE OF MAKING FALSE AND MISLEADING
13 REPRESENTATIONS IN CONNECTION WITH THE SALE OF BUSINESS OPPORTUNITIES."
14 If triggered by a written representation, the required disclosure shall be set forth in a clear and
15 conspicuous manner, separated from all other text in 100% black ink against a light background, in print
16 at least as large as the main text of the sales material or document, and enclosed in a box containing only
17 the required disclosure.

18 F. The bond shall be executed in favor of the Commission if the Commission demonstrates
19 to this Court, or to a Magistrate thereof, by a preponderance of the evidence that, after the effective date
20 of this Order, defendant Pickering has, individually or through any other person or entity, violated any
21 condition of the bond.

22 G. Proceedings instituted under this Paragraph shall be in addition to and not in lieu of any
23 other civil or criminal remedies as may be provided by law, including any other proceedings the
24 Commission may initiate to enforce this Order.

25 **IT IS FURTHER ORDERED** that defendant Comer, for a five (5) year period commencing
26 with the entry of this Order, whether acting directly or indirectly, in concert with others, or through any
27 intermediary, business entity or device, is hereby restrained and enjoined from engaging in the

1 advertising, marketing, promoting, offering for sale or selling of any business venture or business
2 opportunity unless said defendant first obtains a performance bond in the principal sum of Five Hundred
3 Thousand Dollars (\$500,000).

4 A. The bond shall be conditioned upon compliance by defendant Comer with Section 5(a)
5 of the FTC Act, 15 U.S.C. § 45(a), and the provisions of this Order. The bond shall be deemed
6 continuous and remain in full force and effect as long as defendant Comer continues to engage in the
7 advertising, marketing, promoting, offering for sale or selling of any business venture or business
8 opportunity and for at least two (2) years thereafter. However, under no circumstances shall any bond
9 required by this Order remain in effect following the fifth anniversary date of the entry of this Order.
10 The bond shall cite this Order as the subject matter of the bond, and shall provide surety thereunder
11 against financial loss due, in whole or part, to any violation by defendant Comer of Section 5(a) of the
12 FTC Act, 15 U.S.C. § 45(a), or the provisions of this Order.

13 B. The bond shall be an insurance agreement providing surety for financial loss issued by
14 a surety company that is admitted to do business in each of the states in which the defendant is doing
15 business and that holds a Federal Certificate of Authority as Acceptable Surety on Federal Bond and
16 Reinsuring. Such bond shall be in favor of both (1) the Federal Trade Commission for the benefit of any
17 consumer injured as a result of any violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), or the
18 provisions of this Order made while engaging in the advertising, marketing, promoting, offering for sale
19 or selling of any business venture or business opportunity, and (2) any consumer so injured.

20 C. The bond required by this Paragraph shall be in addition to and not in lieu of any other
21 bond required by law.

22 D. Defendant Comer shall provide a copy of the bond required by this Paragraph to the
23 Regional Director of the Boston Regional Office of the Federal Trade Commission at least ten (10) days
24 prior to the commencement of any activity or business for which the bond is required.

25 E. Defendant Comer shall not disclose the existence of the bond to any consumer without
26 also disclosing clearly and prominently at the same time: "THIS BOND IS REQUIRED BY ORDER
27 OF THE U.S. DISTRICT COURT IN SETTLEMENT OF CHARGES THAT DEFENDANTS
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1 ENGAGED IN A PATTERN AND PRACTICE OF MAKING FALSE AND MISLEADING
2 REPRESENTATIONS IN CONNECTION WITH THE SALE OF BUSINESS OPPORTUNITIES."

3 If triggered by a written representation, the required disclosure shall be set forth in a clear and
4 conspicuous manner, separated from all other text in 100% black ink against a light background, in print
5 at least as large as the main text of the sales material or document, and enclosed in a box containing only
6 the required disclosure.

7 F. The bond shall be executed in favor of the Commission if the Commission demonstrates
8 to this Court, or to a Magistrate thereof, by a preponderance of the evidence that, after the effective date
9 of this Order, defendant Comer has, individually or through any other person or entity, violated any
10 condition of the bond.

11 G. Proceedings instituted under this Paragraph shall be in addition to and not in lieu of any
12 other civil or criminal remedies as may be provided by law, including any other proceedings the
13 Commission may initiate to enforce this Order.

14 PROVIDED, that the bond requirements in this Paragraph applicable to defendants Pickering
15 and Comer in connection with the advertising, marketing, promoting, offering for sale or selling of any
16 permitted business venture or business opportunity shall not apply where (1) the person(s) acquiring the
17 business venture or business opportunity are accredited investors, or (2) the number of acquiring persons
18 who are not accredited investors does not exceed thirty-five (35).

19 VI. RIGHT TO REOPEN

20 IT IS FURTHER ORDERED that, within five (5) days after the date of entry of this Order,
21 each defendant shall submit to the Commission a truthful sworn statement, in the form shown on Exhibit
22 B, that shall reaffirm and attest to the truth, accuracy, and completeness of the financial statement and
23 the related documents (together designated the "Financial Statement") that each defendant previously
24 signed and submitted to the Commission. The Commission's agreement to this Order is expressly
25 premised upon the truthfulness, accuracy, and completeness of these Financial Statements. The
26 Financial Statements contain material information upon which the Commission relied in negotiating and
27 agreeing to the amount and terms of the redress payment stated in this Order. The Commission shall
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1 treat the defendants' financial information as non-public and confidential under the Federal Trade
2 Commission Act and its Rules of Practice. The Commission may not disclose any part of the
3 defendants' financial information to any third party, except the Congress and government law
4 enforcement agencies, without prior notice to the parties and approval of this Court. If the Commission
5 shall have need to file the financial information as part of this proceeding or any subsequent related
6 proceeding, it shall do so under seal, which will remain in effect until otherwise provided by order of
7 this Court. If, upon motion by the Commission, the Court finds that any defendant failed to submit to
8 the Commission the sworn statement required by this Paragraph, failed to disclose any material asset,
9 materially misrepresented the value of any asset, or made any other material misrepresentation or
10 omission from the Financial Statement, the Judgment herein shall be reopened for the purpose of
11 modifying the amount and/or terms of the redress payment; *provided, however*, that in all other respects
12 this Judgment shall remain in full force and effect unless otherwise ordered by the Court, and *provided*
13 *further*, that proceedings instituted under this Paragraph shall be in addition to and not in lieu of any
14 other civil or criminal remedies as may be provided by law, including any other proceedings the
15 Commission may initiate to enforce this Order. Solely for purposes of this Paragraph, each defendant
16 waives any right to contest any of the allegations in the Commission's complaint.

17 VII. CUSTOMER LISTS

18 **IT IS FURTHER ORDERED** that the defendants, and their officers, agents, servants,
19 employees, and attorneys, and all other persons or entities in active concert or participation with them
20 who receive actual notice of this Order by personal service or otherwise, are restrained and enjoined
21 from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number,
22 credit card number, bank account number, e-mail address, or other identifying information of any person
23 who paid any money to any defendant, at any time prior to entry of this Order, in connection with the
24 sale of any business venture. *Provided, however*, that the defendants may disclose such identifying
25 information to a law enforcement agency or as required by any law, regulation, or court order.

26 VIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER

27 **IT IS FURTHERED ORDERED** that within five (5) business days after receipt of this Order
28

as entered by the Court, each defendant shall submit to the Commission a truthful, sworn statement, in the form shown on Exhibit C that shall acknowledge receipt of this Final Order.

IX. DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, in connection with any business where the defendant is the majority owner of the business or directly or indirectly manages or controls the business and where the business is subject to the Franchise Rule or sells a business venture or a business opportunity, each defendant shall:

A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from (as applicable), each officer or director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such person, for any such business; and

B. Maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipts of copies of this Order, as required in Subsection A of this Paragraph.

Nothing in this Order shall be construed so as to require defendants to provide a copy of this Order to persons that have purchased products or services from the defendants, which persons have been referred to at times as "Internet Consultants."

X. MONITORING COMPLIANCE OF SALES PERSONNEL

IT IS FURTHER ORDERED that each defendant, in connection with any business where the defendant is the majority owner of the business or directly or indirectly manages or controls the business and where the business is subject to the Franchise Rule or sells a business venture or a business opportunity, is hereby restrained and enjoined from:

A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Paragraph III of this Order. Such steps shall include adequate monitoring of sales presentations or other calls with customers, and shall also include, at a minimum, the following: (1) periodic monitoring of the oral

1 representations made by persons engaged in sales or other customer service functions; (2) establishing
2 a procedure for receiving and responding to consumer complaints; and (3) ascertaining the number and
3 nature of consumer complaints regarding transactions in which each employee or independent contractor
4 is involved; *provided* that this Paragraph does not authorize or require the defendant to take any steps
5 that violate any federal, state, or local laws;

6 B. Failing promptly to investigate fully any consumer complaint received by any business
7 to which this Paragraph applies; and

8 C. Failing to take corrective action with respect to any sales person whom the defendant
9 determines is not complying with this Order, which may include training, disciplining, and/or
10 terminating such sales person.

11 XI. ADMINISTRATION ASSISTANCE

12 **IT IS FURTHER ORDERED** that, within 45 days of the entry of this Order, defendant iMall
13 shall provide the Commission or its designated agent with the name, the last known address, and the last
14 known telephone number of each consumer who purchased an Internet consultant business venture from
15 iMall, as well as such other information regarding the defendant's customers (*e.g.*, the amount each paid
16 for the business venture) that the Commission or its designated agent deems relevant to the
17 administration of this Order. In addition, defendant iMall shall permit the Commission or its designated
18 agent reasonable access to all documents pertaining to the defendant's customers and shall cooperate
19 fully in procuring the assistance of any third party that the Commission or its designated agent may
20 deem necessary for the administration of this Order.

21 XII. RECORD KEEPING PROVISIONS

22 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this
23 Order, each defendant and each defendant's agents, employees, officers, and servants, corporations,
24 successors, and assigns, and those persons in active concert or participation with them who receive
25 actual notice of this Order by personal service or otherwise, in connection with any business where the
26 defendant is the majority owner of the business or directly or indirectly manages or controls the business
27 and where the business is subject to the Franchise Rule or sells a business venture or a business
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1 opportunity, are hereby restrained and enjoined from failing to create, and from failing to retain for a
2 period of three (3) years following the date of such creation, unless otherwise specified:

3 A. Books, records and accounts that, in reasonable detail, accurately and fairly reflect the
4 cost of goods or services sold, revenues generated, and the disbursement of such revenues;

5 B. Records accurately reflecting: the name, address, and telephone number of each person
6 employed in any capacity by such business, including as an independent contractor; that person's job title
7 or position; the date upon which the person commenced work; and the date and reason for the person's
8 termination, if applicable. The businesses subject to this Paragraph shall retain such records for any
9 terminated employee for a period of two (2) years following the date of termination;

10 C. Records containing the names, addresses, phone numbers (if known), dollar amounts
11 paid, quantity of items or services purchased, and description of items or services purchased for all
12 consumers to whom such business has sold, invoiced or shipped any goods or services;

13 D. Records that reflect, for every consumer complaint or refund request, whether received
14 directly or indirectly or through any third party:

- 15 1. the consumer's name, address, telephone number (if known), and the dollar amount paid
16 by the consumer;
- 17 2. the written complaint or refund request, if any, and the date of the complaint or refund
18 request;
- 19 3. the basis of the complaint, including the name of any salesperson complained against,
20 and the nature and result of any investigation conducted concerning any complaint;
- 21 4. each response and the date of the response;
- 22 5. any final resolution and the date of the resolution; and
- 23 6. in the event of a denial of a refund request, the reason for the denial; and

24 E. Copies of all sales scripts, training materials, advertisements, or other marketing materials
25 utilized; *provided* that copies of all sales scripts, training materials, advertisements, or other marketing
26 materials utilized shall be retained for three (3) years after the last date of dissemination of any such
27 materials.

Nothing in the foregoing Sections C or D shall be construed so as to apply to transactions or other dealings between non-parties to this Order, including transactions or other dealings between merchants on the iMail and customers.

XIII. COMPLIANCE REPORTING

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

A. For a period of five (5) years from the date of entry of this Order, each defendant shall notify the Commission of the following:

1. any changes in the defendant's residence, mailing address, and residential telephone number, within ten (10) days of the date of such change;
2. any changes in the defendant's employment status (including self-employment) within ten (10) days of such change. Such notice shall include the name and address of each business that the defendant is affiliated with or employed by, 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 proposed change in the structure of the corporate defendant or in the structure of any business entity owned or controlled by any defendant, such as creation, incorporation, dissolution, assignment, sale, merger, creation, dissolution of subsidiaries, proposed 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 Order, thirty (30) days prior to the effective date of any proposed change; *provided*, however, that, with respect to any proposed change in the corporation 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 learning of such proposed change;

B. One hundred eighty (180) days after the date of entry of this Order, each defendant shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which the defendant has complied and is complying with this Order. This report shall

1 include but not be limited to:

- 2 1. the defendant's then current residence address and residential telephone number;
- 3 2. the defendant's then current employment, business address and telephone number, a
- 4 description of the business activities of each employer, and the defendant's title and
- 5 responsibilities for each employer;
- 6 3. a copy of each acknowledgment of receipt of this Order obtained by the defendant
- 7 pursuant to Paragraph IX; and
- 8 4. a statement describing the manner in which the defendant has complied and is complying
- 9 with:
- 10 a. the prohibited business practices provisions set forth in Paragraph III;
- 11 b. the consumer redress provisions set forth in Paragraph IV; and
- 12 c. The administration assistance provisions set forth in Paragraph XI;

13 C. Upon written request by a representative of the Commission, each defendant shall submit
14 additional written reports (under oath, if requested) and produce documents on fifteen (15) days notice
15 with respect to any conduct subject to this Order;

16 D. For the purposes of this Order, each defendants shall, unless otherwise directed by the
17 Commission's authorized representatives, mail all written notifications to the Commission to:

18 Regional Director, Boston Regional Office
19 Federal Trade Commission
20 205 Portland Street
Boston, Massachusetts 02114

Re: FTC v. iMall, Inc.

21 E. For the purposes of this Paragraph, the term "employment" includes the performance of
22 services as an employee, consultant, or independent contractor; and the term "employers" includes any
23 individual or entity for whom a defendant performs services as an employee, consultant, or independent
24 contractor; and

25 F. For purposes of the compliance reporting required by this Paragraph, the Commission
26 is authorized to communicate directly with each defendant in writing after one hundred eighty (180)
27 days following the entry of this Order.

XIV. COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that the Commission is authorized to monitor each defendant's compliance with this Order by all lawful means, including but not limited to the following means:

A. The Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating each defendant's compliance with any provision of this Order;

B. The Commission is authorized to use representatives posing as consumers and suppliers to the defendant, the defendant's employees, or any other entity managed or controlled in whole or in part by the defendant, without the necessity of identification or prior notice; and

C. 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 investigate whether the defendant has violated any provision of this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

XV. ACCESS TO BUSINESS PREMISES

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, each defendant shall permit representatives of the Commission, within three (3) business days of receipt of written notice from the Commission:

A. Reasonable access during normal business hours to any office, or facility storing documents, of any business where the defendant is the majority owner of the business or directly or indirectly manages or controls the business and where the business is subject to the Franchise Rule or sells a business venture or a business opportunity. In providing such access, the defendant shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Order; and shall permit Commission representatives to remove documents relevant to any matter contained in this Order for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and

B. To interview, at reasonable times, the officers, directors, and employees, including all

1 personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether
2 designated as employees, consultants, independent contractors or otherwise, of any business to which
3 Subsection (A) of this Paragraph applies, concerning matters relating to compliance with the terms of
4 this Order. The person interviewed may have counsel present.

5 *Provided that*, upon application of the Commission and for good cause shown, the Court may
6 enter an *ex parte* order granting immediate access to the defendant's business premises for the purposes
7 of inspecting and copying all documents relevant to any matter contained in this Order.

8 **XVI. RETENTION OF JURISDICTION**

9 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for all
10 purposes.

11 **XVII. WAIVER OF CLAIMS**

12 Defendants iMall, Pickering, and Comer waive any claim that any of them may have held under
13 the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub.L. 104-121, 110 Stat. 847, 863-64
14 (1996), concerning prosecution of this action to the date of this Order.

15 **XVIII. ATTORNEY'S FEES**

16 Each party to this Judgment shall bear its own costs and attorney fees incurred in connection with
17 this action.

18 **XIX. ENTRY OF THIS JUDGMENT**

19 The parties hereby stipulate and agree, without further notice to any of them, to entry of the
20 foregoing Order, which shall constitute a Final Judgment against defendants iMall, Pickering, and
21
22
23
24
25
26
27
28

1 Comer in this action.

2 STIPULATED AND AGREED TO BY:

3 FEDERAL TRADE COMMISSION

4 *Andrew D. Caverly*
5 Andrew D. Caverly, Acting Director
6 Boston Regional Office

7 3/30/99
8 Date

9 *Daniel P. Barry*
10 Daniel P. Barry, Esq.
11 Sara V. Greenberg, Esq.
12 Federal Trade Commission
13 205 Portland Street
14 Boston, MA 02114
15 (617) 424-5960 (telephone number)
16 (617) 424-5998 (facsimile number)

17 3/30/99
18 Date

19 Designated Local Counsel
20 Federal Trade Commission
21 10877 Wilshire Blvd., Suite 700
22 Los Angeles, CA 90024
23 (310) 824-4343 (telephone number)
24 (310) 824-4380 (facsimile number)

25 ATTORNEYS FOR PLAINTIFF
26 FEDERAL TRADE COMMISSION

DEFENDANTS

Richard Rosenblatt, Chairman &
Chief Executive Officer
iMall, Inc.
4400 Coldwater Canyon Blvd., Suite 200
Studio City CA 91604
(904) 258-8111

Date

Peter L. Winik
Peter L. Winik, Esq.
Attorney for Defendant iMall, Inc.
Latham & Watkins
1001 Pennsylvania Ave., N.W., Suite 1300
Washington, D.C. 20004
(202) 637-2200 (telephone number)
(202) 637-2201 (facsimile number)

12-18-98
Date

Craig R. Pickering, Individually

Date

Timothy J. Waters 11/25/98
Timothy J. Waters, Esq.
Attorney for Craig R. Pickering
McDermott, Will & Emery
600 13th Street, N.W.
Washington, D.C. 20005
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(202) 756-8087 (facsimile number)

Date

Mark R. Comer, Individually

Date

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8 Date

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16 Date

17 Linda M. Stock
18 Linda M. Stock, Esq.
19 Federal Trade Commission
20 10877 Wilshire Blvd., Suite 700
21 Los Angeles, CA 90024
22 (310) 824-4316 (telephone number)
23 (310) 824-4380 (facsimile number)

24 Date

25 ATTORNEYS FOR PLAINTIFF
26 FEDERAL TRADE COMMISSION
27
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DEFENDANTS

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4400 Coldwater Canyon Blvd., Suite 200
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Mark R. Comer, Individually

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6 Boston Regional Office

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8 Date

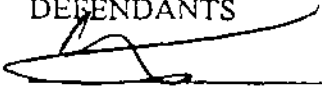
9 _____
10 Daniel P. Barry, Esq.
11 Sara V. Greenberg, Esq.
12 Federal Trade Commission
101 Merrimac Street
Boston, MA 02114
(617) 424-5960 (telephone number)
(617) 424-5998 (facsimile number)

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14 Date

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17 Federal Trade Commission
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iMall, Inc.
4400 Coldwater Canyon Blvd., Suite 200
Studio City CA 91604
(904) 258-8111 (2.0) 309-4000

12/1/98

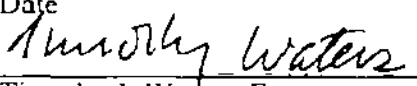
Date

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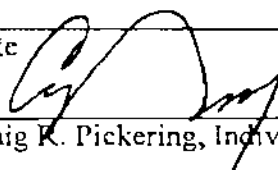
DEFENDANTS

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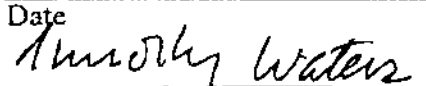
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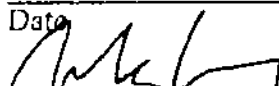
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Craig R. Pickering, Individually

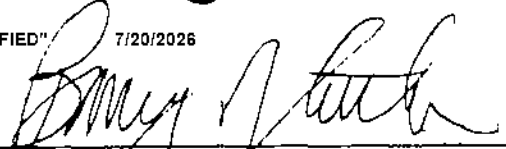
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(202) 756-8087 (facsimile number)

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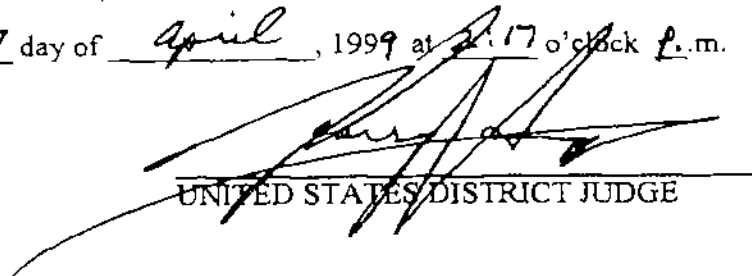
11-30-98
Date


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Baker & Hostetler
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(202) 861-1572 (telephone number)
(202) 861-1783 (facsimile number)

11/24/98
Date

SO ORDERED,

DATED this 7 day of April, 1999 at 2:17 o'clock P.m.


UNITED STATES DISTRICT JUDGE