

Complaint

IN THE MATTER OF

VOICE MEDIA INCORPORATED, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-4012; File No. 0023003
Complaint, May 23, 2001--Decision, May 23, 2001

This consent order addresses representations by Respondent Voice Media Incorporated and its two officers and owners, Respondents Ron Levi and Paul Lesser -- who own and operate several adult entertainment web sites and sell memberships to their sites -- concerning the membership fees charged for those sites. The order, among other things, prohibits the respondents from making any false or misleading representation of material fact -- or omitting material information -- in connection with the advertising, promotion, offering for sale, or sale of any goods or services via the Internet, including, but not limited to, false or misleading representations that they will not charge consumers for goods or services during any free-trial period; (b) that their goods or services are “free,” “without risk,” “without charge,” or words of similar import; or that a request for a consumer’s credit or debit card number is for age verification only. The order also prohibits the respondents from requesting any payment information, other than for purposes of age verification, from any consumer before ensuring that the consumer has received prior notice of a number of material terms and conditions. In addition, the order prohibits the respondents from billing any consumer who has not agreed to purchase goods or services, and from unilaterally changing any terms or conditions of a given offer to a consumer in a way that would increase the consumer’s financial obligations.

Participants

For the Commission: *Nicholas J. Franczyk, John C. Hallerud, Rolando Berrelez, Steven Baker, and [Bureau of Economics].*

For the Respondents: *James Steele, Steele & Persoff.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Voice Media Incorporated, and Ron Levi and Paul Lesser, individually and as officers of the corporation (“Respondents”), have violated the provisions of the Federal Trade Commission

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Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Voice Media Incorporated is a Nevada corporation with its principal office or place of business at 2533 North Carson Street, Suite 1091, Carson City, Nevada 89706.
2. Respondent Ron Levi is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Voice Media Incorporated.
3. Respondent Paul Lesser is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Voice Media Incorporated.
4. At all times relevant to this complaint, the Respondents have maintained a substantial course of trade in the advertising, offering for sale, and sale of Internet-based adult entertainment programs.
5. The acts and practices of the Respondents alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFINITIONS

6. “World Wide Web” or “web” means a system used on the Internet for cross-referencing and retrieving information. A “web site” is a set of electronic documents, usually a home page and subordinate pages, readily viewable on a computer by anyone with access to the Web, standard software, and knowledge of the web site’s location or address.

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7. “Internet” means a worldwide system of linked computer networks that have a common protocol (TCP/IP) to deliver and receive information. The Internet includes, but is not limited to, the following forms of electronic communication: electronic mail, the World Wide Web, newsgroups, Internet Relay Chat, and file transfers.

I.

8. Since at least August 1996, Respondents have operated and promoted one or more web sites offering adult entertainment programs, including, but not necessarily limited to, the following: cybererotica (<http://www.cybererotica.com>), FF5 (<http://www.FF5.com>), clubpix (<http://www.clubpix.com>), boobtropolis (<http://www.boobtropolis.com>), and xxxpassword (<http://www.xxxpassword.com>).

9. Respondents have disseminated, or caused to be disseminated, advertisements for their adult entertainment programs over the Internet. These advertisements contain statements that include, but are not limited to, “100% FREE MEMBERSHIP CLICK HERE!” and “Join Now For Free!”

10. Respondents’ Internet sites instruct consumers to participate in the “free” membership offer by “clicking” hypertext links that state “100% Free Membership Click Here!” or “Next.” Consumers who click on the hypertext links are taken to registration screens. The registration screens instruct consumers to provide identifying information and a credit card number to verify that they are of legal age to access and view adult images, prompt consumers to select a user name and password for access to the online programs, and provide details about the terms and conditions of the free membership. The registration screens associated with Respondents’ Internet sites contain statements that include, but are not limited to:

You are joining us for 1 Week Membership – Free!!!

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* * *

By clicking on the submit button, you are agreeing to the following:

I have read and agree to the TERMS and CONDITIONS of Membership.

* * *

Free trial membership renews at monthly rates unless canceled within 7 days; and

Complete this form to become a member of CyberErotica.

You are joining us for 1 Week Membership -- FREE! If you choose to remain a member beyond the Trial period, your membership will renew at \$34.95/month until cancelled.

11. Through the means described in Paragraphs 9 and 10, Respondents have represented, expressly or by implication, that they will not charge membership fees to consumers who cancel their free trial memberships within seven days of providing credit or debit card information and agreeing to participate in the free trial membership offers.

12. In truth and in fact, Respondents have:

- a. immediately charged consumers' credit or debit cards for one month's membership fee effective as of the date that the consumers first provided credit or debit card information and agreed to participate in the free trial membership offers; and
- b. in numerous instances, charged monthly membership fees to consumers who canceled within seven days of agreeing to participate in the free trial membership offers.

13. Therefore, the representation set forth in Paragraph 11 was, and is, false or misleading.

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II.

14. Through the means described in Paragraphs 9 and 10, Respondents have represented, expressly or by implication, that consumers may obtain free access to goods or services and may cancel access to those goods and services without being assessed any fees.

15. In numerous instances, Respondents have failed to disclose clearly and conspicuously:

- a. that Respondents immediately charge consumers' credit or debit cards for one month's membership fee effective as of the date that the consumers first provide credit or debit card information and agree to participate in the free trial membership offers; and
- b. that Respondents treat consumers' submission of credit or debit card information as authorization for Respondents to bill consumers' credit or debit accounts.

16. The facts set forth in Paragraph 15 would be material to consumers in their purchase or use of Respondents' goods or services. The failure to disclose these facts, in light of the representations made, was, and is, a deceptive practice

17. The acts or practices of Respondents as alleged in this complaint constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this twenty-third day of May 2001, has issued this complaint against Respondents.

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DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Midwest Region proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Voice Media Incorporated is a Nevada corporation with its principal office or place of business at 2533 North Carson Street, Suite 1091, Carson City, Nevada 89706.

2. Respondent Ron Levi is an owner and officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of

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the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Voice Media Incorporated.

3. Respondent Paul Lesser is an owner and officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Voice Media Incorporated.

4. The acts and practices of the respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

5. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

Definitions

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

1. "Age verification fee" shall mean any fee charged by Respondents to verify that a consumer is of a legal age to view adult entertainment goods or services. Use of an age verification fee shall not preclude Respondents from advertising, promoting, or offering a "free" or "trial" period so long as the amount of the age verification fee is clearly and conspicuously disclosed immediately prior to any "free" or "trial" offer.

2. "Cancellation" shall mean a consumer has communicated to Respondents, in any manner allowed by the cancellation provisions of the terms and conditions of Respondents' offer, the decision to discontinue his or her contractual relationship with Respondents.

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3. “Check-off procedure” shall mean a process by which a consumer is required to click on an item of information, thereby indicating that the consumer has received the information or has agreed to the stated terms.

4. “Clear(ly) and conspicuous(ly)” shall mean of a size and shade appearing on the Web page in a manner so as to be reasonably unavoidable, and is presented prior to the consumer incurring any financial obligation, and uses language and syntax sufficient for an ordinary consumer to read and understand the disclosure. Moreover, nothing contrary to, inconsistent with, or that otherwise interferes with a consumer’s understanding of the disclosure shall be used in any advertisement. Further, a subsequent disclosure only limits or qualifies a prior disclosure and cannot cure a false claim.

5. “Hyperlink” shall mean a link on a Web page that leads to another Web page on the same or a different Web site. Such link must be clear and conspicuous, appear in close proximity to the information it modifies and must be labeled in a manner that conveys the importance, nature and relevance of the information to which it leads.

6. “In or affecting commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

7. “Internet” shall mean a worldwide system of linked computer networks that use a common protocol (TCP/IP) to deliver and receive information. The “Internet” includes but is not limited to the following forms of electronic communication: electronic mail and e-mail mailing lists, the World Wide Web, Web sites, newsgroups, Internet Relay Chat, and file transfers protocols thereon, and remote computer access from anywhere in the world thereto.

8. “Notice” shall mean any method reasonably calculated to inform a consumer, including, but not limited to: by U.S. mail, e-mail, or through a Web site.

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9. “World Wide Web” or “Web” shall mean a system used on the Internet for cross-referencing and retrieving information. A “web site” is a set of electronic documents, usually a home page and subordinate pages, readily viewable on computer by anyone with access to the Web, standard software, and knowledge of the web site’s location or address.

I.

IT IS ORDERED that Respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, or sale of any goods or services, shall not make or assist in the making of any false or misleading representation of material fact, or omission of material information, directly or by implication, orally or in writing, including, but not limited to, any false or misleading representation:

- A. That Respondents will not charge consumers for goods or services during any free-trial period;
- B. That Respondents are offering goods or services that are “free,” “without risk,” “without charge,” or described by words of similar import denoting or implying the absence of any obligation on the part of the recipient of such offer to pay for the goods or services;
- C. That a request for a consumer’s credit or debit card number is for age verification only; and
- D. Concerning the purpose or use for which the Respondents request a consumer’s payment, billing, or other personal identifying information.

II.

IT IS FURTHER ORDERED that Respondents, directly or through any corporation, subsidiary, division, or other device, in

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connection with the advertising, promotion, offering for sale, or sale of any goods or services on or through the Internet, shall not request any payment information, except for purposes of age verification, from any consumer prior to ensuring that the consumer has accessed the following material terms and conditions, which shall be stated clearly and conspicuously, separately from all other disclosures, and in a manner that requires a consumer to separately acknowledge, by a check-off procedure, having received notice of each of the following:

- A. The monthly, or other applicable recurring membership cost, and the length of any free or trial membership;
- B. The way(s) in which a consumer may cancel, including any limitation on the time period during which a consumer must cancel in order to avoid charges;
- C. A telephone number, facsimile number, and e-mail address where consumers can contact Respondents; and
- D. Access to the complete terms and conditions of Respondents' offer, which may be posted on a separate Web page as long as a consumer can obtain access to the page through a direct hyperlink and the information is set forth clearly and conspicuously.

III.

IT IS FURTHER ORDERED that Respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, or sale of any goods or services on or through the Internet, shall not:

- A. Bill any consumer who has not affirmatively agreed to purchase such goods or services; and

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- B. Bill any consumer after the expiration of any free or trial offer of any length without having first clearly and conspicuously posted notice of the expiration of the offer or provided access to such information by means of a clear and conspicuous hyperlink on Respondents' log-in page. Such a hyperlink should take a consumer directly to a means by which the consumer can immediately learn the expiration date or days remaining in the offer. Such notice shall appear on Respondents' Web site at least once between ten (10) days and three (3) days before the date the consumer's right to cancel any free or trial offer expires. The notice shall inform the consumer that he or she must cancel before the expiration date to avoid incurring any charges, and shall include a clear and conspicuous hyperlink to Respondents' cancellation Web page.

IV.

IT IS FURTHER ORDERED that Respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, or sale of any goods or services, shall not:

- A. Unilaterally change any terms or conditions of Respondents' offer in a way that would increase the consumer's financial obligations to Respondents; or
- B. Materially alter the cancellation or refund procedures or terms,

without first providing a consumer with fifteen (15) days notice and an opportunity to cancel. Such notice shall be made clearly and conspicuously.

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V.

IT IS FURTHER ORDERED that Respondent Voice Media Incorporated, and its successors and assigns, and Respondents Ron Levi and Paul Lesser, shall, for a period of five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying upon receipt of reasonable notice of not less than seven (7) calendar days:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VI.

IT IS FURTHER ORDERED that Respondent Voice Media Incorporated, and its successors and assigns, and Respondents Ron Levi and Paul Lesser, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

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VII.

IT IS FURTHER ORDERED that Respondent Voice Media Incorporated, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including, but not limited to, dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail or other means of return receipt delivery to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VIII.

IT IS FURTHER ORDERED that Respondents Ron Levi and Paul Lesser, for a period of four (4) years after the date of issuance of this order, shall each notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment where the duties and responsibilities of such employment are subject to the provisions of this order. The notice shall include Respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

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IX.

IT IS FURTHER ORDERED that Respondent Voice Media Incorporated, and its successors and assigns, and Respondents Ron Levi and Paul Lesser, shall within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

X.

This order will terminate on May 23, 2021, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any Respondent who is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Analysis

Analysis of Proposed Consent Order to Aid Public Comment

Issued when the Commission tentatively approved a proposed consent order on December 15, 2000

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Voice Media Incorporated and its two officers and owners, Ron Levi and Paul Lesser (the “respondents”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The respondents own and operate several adult entertainment web sites. They sell paid memberships to their sites, and promote them by periodically offering “free” trial memberships. This matter concerns allegedly false and deceptive representations about those trial memberships. The Commission’s proposed complaint alleges that the respondents falsely claimed that they would not charge membership fees to consumers who canceled their trial memberships within seven days of providing credit card information and agreeing to participate in the free trial membership offers. In fact, in numerous instances, the respondents charged monthly membership fees to consumers who canceled within seven days of agreeing to participate in the trial membership offers.

The complaint also alleges that the respondents failed to disclose clearly and conspicuously: (a) that they immediately charge consumers’ credit or debit cards for one month’s membership fee effective as of the date that the consumers first provide credit or debit card information and agree to participate in the free trial membership offers; and (b) that they treat consumers’ submissions of credit or debit card information as authorization to bill consumers’ credit or debit accounts.

Analysis

Part I of the proposed order prohibits the respondents from making any false or misleading representation of material fact, or omission of material information in connection with the advertising, promotion, offering for sale, or sale of any goods or services via the Internet, including, but not limited to, false or misleading representations: (a) that they will not charge consumers for goods or services during any free-trial period; (b) that their goods or services are “free,” “without risk,” “without charge,” or words of similar import denoting or implying the absence of any obligation on the part of the recipient of such offer to pay for the goods or services; and (c) that a request for a consumer’s credit or debit card number is for age verification only.

Part II of the proposed order prohibits the respondents from requesting any payment information, other than for purposes of age verification, from any consumer before ensuring that the consumer has received notice of each of the following material terms and conditions: (a) the applicable membership cost and the length of any free or trial membership; (b) the way in which a consumer may cancel, including any limitation on the time period during which a consumer must cancel in order to avoid charges; (c) a telephone number, facsimile number, and e-mail address where consumers can contact the Proposed Respondents; and (d) access to the complete terms and conditions of the respondents’ offer.

Part III of the proposed order prohibits the respondents from: (a) billing any consumer who has not agreed to purchase goods or services; and (b) billing any consumer after the expiration of any free or trial offer without having first clearly and conspicuously posted notice of the expiration of the offer or provided access to that information by means of a clear and conspicuous hyperlink on their log-in page.

Part IV of the proposed order prohibits the respondents from: (a) unilaterally changing any terms or conditions of their offer in a way that would increase the consumer’s financial obligations; or

Analysis

(b) materially altering the cancellation or refund procedures or terms, without first providing a consumer with fifteen (15) days notice and an opportunity to cancel. The notice must be made clearly and conspicuously.

Parts VI through IX of the proposed order are reporting and compliance provisions. Part X is a provision “sun setting” the order after twenty years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

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IN THE MATTER OF

**ETABLISSEMENTS DELHAIZE FRERES
ET CIE “LE LION” S.A., ET AL.**CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3962; File No. 9910308
Complaint, July 24, 2000--Decision, May 30, 2001*

This consent order addresses the acquisition by Respondent Etablissements Delhaize Freres et Cie “Le Lion” S.A. and its subsidiary, Respondent Delhaize America – a North Carolina corporation that operates most of its stores under the names of “Food Lion” and “Kash N’ Karry” in the Southeast and Mid-Atlantic regions of the United States – of Hannaford Bros. Company, which operates stores under the “Hannaford” or “Shop ‘N Save” banner in New England, New York, Virginia and North Carolina. The order, among other things, requires the respondents to divest 37 Hannaford supermarkets and one Hannaford supermarket site in the relevant markets to three different buyers selected by the respondents – The Kroger Company, Lowe’s Food Stores, Inc., and the Sylvester Group – subject to the approval of the Commission. The order also requires the respondents, for ten years, to provide written notice to the Commission prior to acquiring supermarket assets located in, or any interest in any entity that owns or operates a supermarket located in, the county or counties that include the relevant geographic markets. An accompanying Order to Maintain Assets requires the respondents to maintain the viability, competitiveness and marketability of the assets to be divested, and prohibits them from causing the wasting or deterioration of those assets, pending completion of the required divestitures.

Participants

For the Commission: *Alan B. Loughnan, Michael Joel Bloom, Kay Taylor Hightower, Susan E. Raitt, Theodore Zang, Dara Diomande, Barbara Anthony, David A. von Nirschl, Roberta S. Baruch and Daniel Hosken.*

For the Respondents: *Andrew Berg and Anthony Swisher, Akin, Gump, Strauss, Hauer & Feld, L.L.P., and Christopher MacAvoy, Howrey, Simon, Arnold & White.*