

Complaint

IN THE MATTER OF

SUPERIOR MORTGAGE CORP.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-4153; File No. 0523136**Complaint, December 14, 2005--Decision, December 14, 2005*

This consent order, among other things, prohibits Respondent Superior Mortgage Corp., a New Jersey mortgage lender, from misrepresenting the extent to which it maintains and protects the privacy, confidentiality, or security of any personal information collected from or about consumers, and from violating the Safeguards Rule. The consent order also requires the respondent, for ten years, to secure biennial assessments and reports to ensure that its security program complies with the Safeguards Rule and is sufficiently effective to provide reasonable assurance that the security, confidentiality, and integrity of personal information is protected.

Participants

For the Commission: *Laura Mazzarella, Molly K. Crawford, Jessica L. Rich, Joel Winston and Louis Silversin.*

For the Respondent: *Phillip Schulman, Kirkpatrick, Lockhart, Nicholson & Graham LLP*

COMPLAINT

The Federal Trade Commission (“Commission”), having reason to believe that Superior Mortgage Corp. has violated the provisions of the Commission’s Standards for Safeguarding Customer Information Rule (“Safeguards Rule”), 16 C.F.R. Part 314, issued pursuant to Title V of the Gramm-Leach-Bliley Act (“GLB Act”), 15 U.S.C. § 6801 *et seq.*, and the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Superior Mortgage Corp. (“Superior Mortgage”) is a New Jersey corporation with its principal office or place of business at 1395 Route 539, Tuckerton, New Jersey 08087. In

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addition to conducting business from its headquarters location in Tuckerton, Superior Mortgage conducts business through forty (40) branch offices located in ten different states, as well as through six separate websites.

2. Respondent is a direct lender that specializes in residential mortgage loans. As such, it is a “financial institution,” as that term is defined in Section 509(3)(A) of the GLB Act, and is therefore subject to the requirements of the Safeguards Rule.
3. The acts and practices of respondent 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.

SAFEGUARDS RULE

4. The Safeguards Rule, which implements Section 501(b) of the GLB Act, was promulgated by the Commission on May 23, 2002, and became effective on May 23, 2003. The Rule requires financial institutions to protect the security, confidentiality, and integrity of customer information by developing a comprehensive written information security program that contains reasonable administrative, technical, and physical safeguards, including:
 - A. Designating one or more employees to coordinate the information security program;
 - B. Identifying reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information, and assessing the sufficiency of any safeguards in place to control those risks;
 - C. Designing and implementing information safeguards to control the risks identified through risk assessment, and regularly testing or otherwise monitoring the effectiveness of the safeguards’ key controls, systems, and procedures;

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- D. Overseeing service providers, and requiring them by contract to protect the security and confidentiality of customer information; and
- E. Evaluating and adjusting the information security program in light of the results of testing and monitoring, changes to the business operation, and other relevant circumstances.

VIOLATIONS OF THE SAFEGUARDS RULE

- 5. Through its offices and websites, respondent has collected sensitive customer information in connection with the mortgage application process, including customer names, Social Security numbers, credit histories, and bank and credit card account numbers. Since the Rule's effective date until at least May 2005, respondent failed to implement reasonable policies and procedures to protect the security and confidentiality of the information it collects.
- 6. For example, respondent failed to (a) assess risks to its customer information until more than a year after the Rule's effective date; (b) institute appropriate password policies to control access to company systems and documents containing sensitive customer information; and (c) encrypt or otherwise protect sensitive customer information before sending it by email. Respondent also failed to take reasonable steps to ensure that its service providers were providing appropriate security for customer information and addressing known security risks in a timely fashion.
- 7. By failing to implement reasonable security policies and procedures, respondent engaged in violations of the Safeguards Rule, including but not limited to:
 - A. Failing to identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information;

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- B. Failing to design and implement information safeguards to control the risks to customer information and failing to regularly test and monitor them; and
 - C. Failing to oversee service providers to ensure that they implement safeguards to protect respondent's customer information.
8. A violation of the Safeguards Rule constitutes an unfair or deceptive act or practice in violation of Section 5(a)(1) of the FTC Act.

VIOLATIONS OF THE FTC ACT

9. Since at least 2002, respondent has collected personal information from consumers through its Online Application Form at www.supmort.com. Since at least 2003, respondent has operated five additional websites that collect personal information from consumers by linking them to the Online Application Form. This online form serves as an initial step for many consumers seeking a loan through respondent.
10. The Online Application Form collects from consumers personal information, including, but not limited to, name, address, date of birth, Social Security number, credit history, and bank and credit card account numbers.
11. Since at least 2002, respondent has disseminated or caused to be disseminated on www.supmort.com the following statement regarding the privacy and confidentiality of personal information collected through respondent's website:

All information submitted is handled by SSL encryption - see the yellow padlock at the bottom of your browser.

Exhibit A (Superior Mortgage webpage dated October 25, 2004).

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12. Through the means described in paragraph 11, respondent has represented, expressly or by implication, that the personal information it obtained from consumers through www.supmort.com was encrypted using SSL from the time of submission until receipt by respondent.
13. In truth and in fact, the personal information obtained from consumers through www.supmort.com was not encrypted using SSL from the time of submission until it was received by respondent. Instead, respondent encrypted sensitive personal information only while it was being transmitted between a visitor's web browser and the website's server (using SSL); once the information reached the server, it was decrypted and emailed to respondent's headquarters and branch offices in clear, readable text. Therefore, the representation set forth in paragraph 12 was false or misleading.
14. The acts and practices of respondent as alleged in this complaint constitute unfair or 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 14th day of December, 2005, has issued this complaint against respondent.

EXHIBIT A



Superior Mortgage

Our Success Is Built On Service



To Apply
For A Loan

Mortgages 101

Buying A Home

Refinancing
A Home

Office
Locations

About Us

Members
Only

Contact
Us

Home

Site Map



site design: E-
Maxed

If you are already dealing with a loan officer at Superior Mortgage, please [click here](#) to go to his/her page first.

For your convenience we've provided this Online Application Form. If you prefer, we can mail (or e-mail) you a form that may be completed offline. If you have any questions, please call the office number provided at the bottom of this page to speak to one of our helpful loan consultants.

After completing this form, you will be presented with a disclosure statement in which you must acknowledge reading, else your application **WILL NOT** be submitted to Superior Mortgage.

(All information submitted is handled by SSL encryption - see the yellow padlock at the bottom of your browser)

Borrower Information

Borrower Name: First: MI: Last:

Daytime Phone (with area code): 1-

Evening Phone (with area code): 1-

Cell Phone (with area code): 1-

Street:

Own ☐ Rent ☐

City:

State:

of Years:

Zip:

Date of Birth:

Email:

Self Employed? Occupation:

Employer:

of Years:

Social Security #:

Gross Monthly Income \$

Total Liquid Assets (include cash, bank accounts, etc) \$

Co-Borrower Information

Co-Borrower Name: First: MI: Last:

Daytime Phone (with area code): 1-

Evening Phone (with area code): 1-

Street:

Own ☐ Rent ☐

City:

State:

of Years:

Zip:

Date of Birth:

Self Employed? Occupation:

Employer:

of Years:

Social Security #:

Gross Monthly Income \$

Total Liquid Assets (include cash, bank accounts, etc) \$

Property Information

Purchase Price: \$ Type of Loan:

Property Type: Occupancy Type:

Additional Property Information:

Loan Amount: \$

Property Street Address: City: State:

Have you been working with a Realtor®? If yes, please supply:

Realtor Name: Agency Name:

Have you spoken to or been referred to a Superior Mortgage Loan Consultant?

If yes, please supply his or her name:

Please help us serve our clients better!

How did you hear about Superior Mortgage?

If you chose **Other** above, please specify:

Misc. Information

How would you like to be contacted? Please Choose One:

Email to contact:

Before completing this form, please read the
[Disclosure Regarding Application](#)

Decision and Order

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and respondent having been furnished thereafter with a copy of a draft Complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of the Federal Trade Commission Act, 15 U.S.C. § 45 *et seq.* and the Federal Trade Commission's Standards for Safeguarding Customer Information Rule ("Safeguards Rule"), 16 C.F.R. Part 314, issued pursuant to Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 *et seq.*; and

Respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, 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 has reason to believe respondent has violated the said Act and Rule, and that a Complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its Complaint, makes the following jurisdictional findings and enters the following Order:

Decision and Order

1. Respondent Superior Mortgage Corp. is a New Jersey corporation with its principal office or place of business at 1395 Route 539, Tuckerton, New Jersey 08087.

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

ORDER

DEFINITIONS

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

1. “Personal information” shall mean individually identifiable information from or about an individual consumer including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name that reveals an individual’s email address; (d) a telephone number; (e) a Social Security number; (f) a credit history; (g) a bank or credit card account number; or (h) any other information from or about an individual consumer that is combined with (a) through (g) above.

2. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

3. Unless otherwise specified, “respondent” shall mean Superior Mortgage Corp., its successors and assigns and its officers, agents, representatives, and employees.

4. All other terms are synonymous in meaning and equal in scope to the usage of such terms in the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 *et seq.*

Decision and Order

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, in or affecting commerce, shall not misrepresent in any manner, expressly or by implication, (a) the extent to which personal information submitted by consumers through respondent's websites is protected by SSL encryption, or (b) the extent to which respondent maintains and protects the privacy, confidentiality, or security of any personal information collected from or about consumers.

II.

IT IS FURTHER ORDERED that respondent shall not, directly or through any corporation, subsidiary, division, website, or other device, violate any provision of the Gramm-Leach-Bliley Act's ("GLB Act") Standards for Safeguarding Customer Information Rule ("Safeguards Rule"), 16 C.F.R. Part 314.

In the event the Safeguards Rule is hereafter amended or modified, respondent's compliance with this Rule as so amended or modified shall not be a violation of this order.

III.

IT IS FURTHER ORDERED that, in connection with its compliance with the Safeguards Rule, respondent shall obtain an assessment and report (an "Assessment") from a qualified, objective, independent third-party professional, using procedures and standards generally accepted in the profession, within one hundred and eighty (180) days after service of the order, and biennially thereafter for ten (10) years after service of the order, that:

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A. sets forth the specific administrative, technical, and physical safeguards that respondent has implemented and maintained during the reporting period;

B. explains how such safeguards are appropriate to respondent's size and complexity, the nature and scope of respondent's activities, and the sensitivity of the nonpublic personal information collected from or about consumers;

C. explains how such safeguards meet or exceed the protections required by the Safeguards Rule; and

D. certifies that respondent's security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of nonpublic personal information is protected and, for biennial reports, has so operated throughout the reporting period.

Each Assessment shall be prepared by a person qualified as a Certified Information System Security Professional (CISSP); a person qualified as a Certified Information Systems Auditor (CISA); a person holding Global Information Assurance Certification (GIAC) from the SysAdmin, Audit, Network, Security Institute (SANS); or by a similarly qualified person or organization approved by the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission.

Respondent shall provide the first Assessment, as well as all plans, reports, studies, reviews, audits, audit trails, policies, training materials, and assessments, whether prepared by or on behalf of respondent, relied upon to prepare such Assessment to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, within ten (10) days after the Assessment has been prepared. Respondent shall retain all subsequent biennial Assessments until the order is terminated and shall retain all materials relied upon in preparing each such Assessment, as listed above, for a period of three (3) years after the date of preparation of such Assessment.

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Respondent shall provide such subsequent Assessments and related materials to the Associate Director of Enforcement within ten (10) days of request.

IV.

IT IS FURTHER ORDERED that respondent 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 supervisory responsibilities with respect to the subject matter of this order. Respondent shall deliver this order to such current personnel within thirty (30) days after the date of service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

IT IS FURTHER ORDERED that respondent 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, a 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 to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

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VI.

IT IS FURTHER ORDERED that respondent shall within one hundred eighty (180) days after 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. This report shall include a copy of the initial biennial Assessment required by Part III of this order.

VII.

This order will terminate twenty (20) years from the date of its issuance, 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 that 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.

Analysis

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted a consent agreement, subject to final approval, from Superior Mortgage Corp. (“Superior Mortgage”). Superior Mortgage is a mortgage lender specializing in residential mortgage loans with headquarters in Tuckerton, New Jersey. Superior Mortgage collects sensitive customer information, including customer names, Social Security numbers, credit histories, and bank and credit card account numbers, and is a “financial institution” subject to the Gramm-Leach-Bliley Act’s Standards for Safeguarding Customer Information Rule, 16 C.F.R. Part 314 (“Safeguards Rule”).

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 and take other appropriate action or make final the agreement’s proposed order.

This matter concerns Superior Mortgage’s alleged violations of the Safeguards Rule, as well as alleged security misrepresentations to consumers on Superior Mortgage’s website. The Safeguards Rule, which became effective on May 23, 2003, requires financial institutions to implement reasonable policies and procedures to ensure the security and confidentiality of customer information, including:

- Designating one or more employees to coordinate the information security program;
- Identifying reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information, and assessing the sufficiency of any safeguards in place to control those risks;
- Designing and implementing information safeguards to control the risks identified through risk assessment, and regularly testing or otherwise monitoring the effectiveness of the

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safeguards' key controls, systems, and procedures;

- Overseeing service providers, and requiring them by contract to protect the security and confidentiality of customer information; and
- Evaluating and adjusting the information security program in light of the results of testing and monitoring, changes to the business operation, and other relevant circumstances.

The Commission's complaint alleges that Superior Mortgage failed to implement the protections required by the Safeguards Rule and, specifically, that it failed to: (1) assess risks to its customer information until more than a year after the Safeguard Rule's effective date; (2) institute appropriate password policies to control access to company systems and documents containing sensitive customer information; (3) encrypt or otherwise protect sensitive customer information before sending it by email; and (4) take reasonable steps to ensure that its service providers were providing appropriate security for customer information and addressing known security risks in a timely fashion.

The complaint also alleges that Superior Mortgage violated Section 5 of the Federal Trade Commission Act ("FTC Act") by representing that the personal information it obtained from consumers through www.supmort.com was encrypted using SSL from the time of submission until receipt by Superior Mortgage, when in fact that information was encrypted only while it was being transmitted between a visitor's web browser and the website's server (using SSL); once the information reached the server, it was decrypted and emailed to Superior Mortgage's headquarters and branch offices in clear, readable text.

The proposed order contains provisions designed to prevent Superior Mortgage from future practices similar to those alleged in the complaint. Specifically, Part I of the proposed order prohibits Superior Mortgage from misrepresenting the extent to which it maintains and protects the privacy, confidentiality, or security of any personal information collected from or about consumers. Part II of the proposed order prohibits Superior

Analysis

Mortgage from violating the Safeguards Rule. Part III of the proposed order requires that Superior Mortgage obtain, within 180 days after being served with the final order approved by the Commission, and on a biennial basis thereafter for ten (10) years, an assessment and report from a qualified, objective, independent third-party professional, certifying that: (1) Superior Mortgage has in place a security program that provides protections that meet or exceed the protections required by the Safeguards Rule, and (2) Superior Mortgage's security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of nonpublic personal information has been protected. This provision is substantially similar to comparable provisions obtained in prior Commission orders under the Safeguards Rule and Section 5 of the FTC Act. *See, e.g., Sunbelt Lending Servs., Inc.*, FTC Docket No. C-4129 (Jan. 7, 2005); *Tower Records*, FTC Docket No. C-4110 (June 2, 2004).

Part III of the proposed order also requires Superior Mortgage to retain documents relating to compliance. For the assessments and supporting documents, Superior Mortgage must retain the documents for three (3) years after the date that each assessment is prepared.

Parts IV through VII of the proposed order are reporting and compliance provisions. Part IV requires dissemination of the order now and in the future to persons with supervisory responsibilities. Part V ensures notification to the FTC of changes in corporate status. Part VI mandates that Superior Mortgage submit compliance reports to the FTC. Part VII is a provision "sunsetting" the order after twenty (20) 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 proposed order or to modify its terms in any way.

Complaint

IN THE MATTER OF

**THE PROCTER & GAMBLE COMPANY, AND THE
GILLETTE COMPANY**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-4151; File No. 0510115**Complaint, September 29, 2005--Decision, December 15, 2005*

This consent order addresses the acquisition by Respondent The Procter & Gamble Company – one of the largest and most diversified suppliers of consumer products in the world – of Respondent The Gillette Company, another large supplier of consumer products. The order, among other things, requires the respondents to divest Gillette's Rembrandt® at-home teeth whitening business to a Commission-approved acquirer, within three months. The order also requires the respondents to divest Procter & Gamble's Crest® SpinBrush™ battery-powered and rechargeable toothbrush business to Church & Dwight or another Commission-approved acquirer, and to divest Gillette's Right Guard® men's antiperspirant/deodorant business to a Commission-approved acquirer within four months. In addition, the order requires Procter & Gamble to amend its joint venture agreement with Philips Oral Healthcare, Inc. -- regarding the Crest® Sonicare® IntelliClean System rechargeable toothbrush -- to allow Philips to independently market and sell the IntelliClean product. An accompanying Order to Maintain Assets requires the respondents to maintain the viability of the Rembrandt and Right Guard businesses as competitive operations until the businesses are transferred to acquirers approved by the Commission.

Participants

For the Commission: *Norman A. Armstrong, Jr., Stephanie C. Bovee, Andrew J. Forman, Stephanie A. Parks, Sylvia M. Brooks, Daniel Kane, Jacob Swanton, Matthew J. Reilly, Michael R. Moiseyev, Kenneth Libby, David von Nirschl, Michele Cerullo, Roberta Baruch, John Yun, Steven Tenn, Michael G. Vita and Mark Frankena.*

For the Respondent: *Joe Sims, Jones Day, and Arthur F. Golden, Davis Polk & Wardwell.*