

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT,
FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION**

**STATE OF FLORIDA,
DEPARTMENT OF LEGAL AFFAIRS,
OFFICE OF THE ATTORNEY GENERAL,**

CASE NO.: 05-02976

DIVISION: E

Plaintiff,

v.

**SCOTT J. FILARY, an individual, and
DONALD E. TOWNSEND, an individual,**

Defendants.

CONSENT JUDGMENT AND PERMANENT INJUNCTION

Pursuant to the Stipulation for entry of Consent Judgment and Permanent Injunction filed in this matter by Plaintiff, State of Florida, Department of Legal Affairs, Office of the Attorney General (the "Attorney General"), and Defendants, Scott J. Filary and Donald E. Townsend, individually and by and through their undersigned counsel, the parties have requested entry of a Consent Judgment. Therefore, upon the consent of the parties hereto, it is hereby ORDERED and ADJUDGED as follows:

I. JURISDICTION

This Court has jurisdiction of the subject matter of this action and of the parties. Plaintiff, State of Florida, Department of Legal Affairs, Office of the Attorney General (the "Attorney General") filed a Complaint For Injunction, Damages, Civil Penalties and Other Statutory Relief (the "Complaint") against Scott J. Filary and Donald E. Townsend, Defendants, on April 4, 2005, pursuant to Chapter 668, Part III, Florida Statutes, the Electronic Mail Communications Act, and

Chapter 501, Part II, Florida Statutes, the Deceptive and Unfair Trade Practices Act. The Complaint filed in this matter states claims upon which relief may be granted under the provisions of Chapter 501, Part II, Florida Statutes (2004) And Chapter 668, Part III, Florida Statutes (2004).

II. GENERAL PROVISIONS

2.1. Defendants. For purposes of this Consent Judgment, the term “Defendants” where not otherwise specified shall mean Defendant SCOTT J. FILARY, an individual, also known as J. Scott or James Scott, and doing business as or formerly doing business as dotcomboiz.com, downloaditall.com, Dotcomboiz, L.C., Dotcomboiz, LTD., Dotcomboiz, Inc., a Florida corporation, Apollo Industries, L.L.C., and J. Scott or James Scott doing business as Mango Direct, Riverside News Network, Download It Now, Riverside News, Internet News, Net News, Internet News Notification, Internet News Service, One Click Sales, Notification Service, Internet News Inc., Notification Service Inc., numerous websites and unknown other assumed names, more particularly described in the Complaint filed in this matter; and Defendant DONALD E. TOWNSEND, an individual and business partner of Defendant Filary in the business operations including, but not limited to, internet operations known as dotcomboiz.com and downloaditall.com, more particularly described in the Complaint filed in this matter.

2.2. Agreement to Settle. Plaintiff and Defendants are represented by counsel and have agreed on a basis for settlement of the matters alleged in the Complaint; including each Defendant’s course of conduct in their e-mailing activities and online pharmacy sales, and to the entry of this Consent Judgment (this “Judgment”) without the need for trial or adjudication of any issue of law or fact. Defendants have entered into this Judgment freely and without coercion.

Defendants further acknowledge that they have read the provisions of this Judgment and are able to abide by them.

2.3. Compliance with State Law. Nothing herein relieves the Defendants of their duty to comply with applicable laws of the State nor constitutes authorization by Plaintiff for the Defendants to engage in acts and practices prohibited by such laws.

2.4 Preservation of Law Enforcement Action. Nothing herein precludes the Plaintiff from enforcing the provisions of this Consent Judgment, or from pursuing any law enforcement action with respect to the acts or practices of the Defendants not covered by this Consent Judgment or any acts or practices of the Defendants conducted after the entry of this Consent Judgment

_____2.5. Waiver / Release. Defendants waive all rights to seek appellate review, rehearing, or otherwise challenge or contest the validity of this Judgment. Defendants further waive and release any and all claims they may have against the Attorney General, its employees, representatives or agents.

2.6 No Bond Required. Pursuant to Section 60.08, Fla. Stat, the Attorney General is not required to post a bond to obtain permanent injunctive relief under Section 501.207, Fla. Stat.

III. INJUNCTIVE RELIEF

ACTIVITIES PROHIBITED BY THE ELECTRONIC MAIL COMMUNICATIONS ACT OR THE DECEPTIVE OR UNFAIR PRACTICES ACT

3.1. Prohibited Acts. Defendants, and their agents and attorneys, and those persons in active concert or participation with them who receive actual notice of this Judgment, are hereby restrained and enjoined from making, or assisting others in making, expressly or by implication, any false or misleading oral or written statement or representation in connection with the

marketing, advertising, promotion, offering for sale, sale or provision of any products or services over the Internet, or through commercial electronic mail (“e-mail”), instant messaging, or in any trade or commerce, including, but not limited to:

- A. Initiating, assisting in the transmission, or procuring the initiation of a commercial electronic mail message that contains false or misleading information in the header.
- B. Initiating, assisting in the transmission, or procuring the initiation of a commercial electronic mail message that contains false or misleading information in the subject line of the e-mail.
- C. Registering any domain name or maintaining any domain name registration using information that is incorrect or falsifies the identity of the actual registrant.
- D. Making or assisting others in making any express or implied representation or omission of a material fact that is false or misleading in any e-mail or website promoting a product or service for the benefit of any Defendant.
- E. Promoting or facilitating the sale or delivery of any product or service through use of deceptive means for the benefit of any Defendant.
- F. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly (including engaging others to act on any Defendant’s behalf; but not including any hard drive crash caused by forces outside of the control of the Defendants. Defendants shall notify the Attorney General of any such occurrence within 48 hours; describing the

event, what data was lost and what data retrieval actions are being taken by Defendants), any documents, computers, computerized files, storage media on which information is stored or saved, contracts, accounting data, correspondence (including electronic correspondence), advertisements, webpages, customer lists, affiliate lists and codes, financial records and any other documents or records of any kind that relate to the acts and practices described in the Complaint and personal finances of each Defendant, acting individually or in concert with others for a period, the shorter of: (i) the 180 day period provided for compliance with subparagraph B of paragraph 4.1 of Section IV if the terms of such paragraph are fulfilled or (ii) 2 years from the date the Judgment is entered, provided that this provision does not effect applicable law requiring retention of records.

G. Forming a business or organizational identity as a method of avoiding the terms and conditions of injunctive relief.

H. Providing others the means and instrumentalities with which to make, expressly or by implication, orally or in writing, any false or misleading statement or representation of material fact, including, but not limited to the representations in connection with the marketing, advertising, promotion, offering for sale, sale or provision of any products or services over the Internet, or through commercial e-mail, instant messaging, or in any trade or commerce.

3.2. Construction. The provisions of paragraphs A and B of this Section III shall be construed to effect compliance with the requirements of the Electronic Mail Communications Act and CAN-SPAM, 15 U.S.C. 7701, et seq., compliance with which is required pursuant to the

terms of Sections 501.203 (3)(c) and 501.204, Fla. Stat. The specific conduct these injunctive terms are designed to preclude are stated with specificity in Counts I and II of the Attorney General's Complaint.

3.3. Effect on Temporary Injunction. This Court entered an Order Approving Stipulated Temporary Injunction on April 11, 2005; the Stipulated Temporary Injunction is superseded by the permanent injunctive relief in this Judgment.

IV. MONETARY RELIEF

4.1. Defendants shall pay FIFTY THOUSAND DOLLARS (\$50,000) to the Attorney General, as attorney's fees and costs, in accordance with the provisions of subparagraphs A and B of this paragraph and paragraph 4.2, and specifically subject to the right to reopen pursuant to 5.2 of Section V:

- A. Within five (5) business days after the date this Judgment is entered, Defendants shall pay THIRTY-FIVE THOUSAND DOLLARS (\$35,000) to the Attorney General; and
- B. On or before one hundred and eighty (180) days after the date this Judgment is entered, Defendants shall pay FIFTEEN THOUSAND DOLLARS (\$15,000) to the Attorney General.

4.2. Payments shall be made by cashier's check and made payable to the Department of Legal Affairs, and shall be delivered to Julia A. Harris or such other Assistant Attorney General so designated, at 3507 E. Frontage Road, Suite 325, Tampa, Florida 33607. Payments pursuant to paragraph 4.1 of this Section IV for attorney's fees and costs shall be deposited into the Legal Affairs Revolving Trust Fund, pursuant to Section 501.2101, Fla..Stat. Any other

payment for penalties, should such judgment be entered pursuant to Section V, shall be paid within five (5) business days after the date this Judgment is entered and shall be deposited into the General Revenue Fund, unallocated, pursuant to Section 501.2101, Fla. Stat.

4.3. Satisfaction of the monetary obligations in this Section IV shall not relieve any other obligations under other provisions of this Judgment.

V. RIGHT TO REOPEN AS TO MONETARY JUDGMENT

5.1. Within five (5) business days after the date this Judgment is entered, Defendants shall each submit to the Attorney General a truthful sworn statement, under oath, that shall reaffirm and attest to the truthfulness, accuracy, and completeness of the Financial Statement of Defendant Filary executed by Scott J. Filary on August 18, 2005, and the Financial Statement of Defendant executed by Defendant Donald E. Townsend on August 18, 2005. The Attorney General's agreement to this Judgment is expressly premised upon the financial condition of Defendants, as represented in the above referenced financial statements as reaffirmed as provided herein, which contain material information upon which the Attorney General relied in negotiating and agreeing upon this Judgment.

5.2. If, upon motion of the Attorney General, the Court finds that Defendants, or either Defendant, failed to file the sworn statement required by paragraph 5.1 of this Section V, or that either Defendant failed to disclose any material asset or misrepresented any material asset in the financial statements, or that Defendants failed to pay any amount provided by Section IV, paragraph 4.1, or that either Defendant failed to comply with the provisions in Section III, the Court shall

enter judgment against that Defendant in favor of the Attorney General, in the amount of ONE MILLION ONE HUNDRED THOUSAND DOLLARS (\$1,100,000), which shall become immediately due and payable as civil penalties, less any amount previously paid. Should this judgment be modified as to monetary liability of Defendants, in all other respects, this judgment shall remain in full force and effect, unless otherwise ordered by the Court.

- 5.3. Proceedings to reopen this case instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the Attorney General may initiate to enforce this Judgment. For purposes of reopening under this Section V, Defendants waive any right to contest any of the allegations set forth in the Complaint filed in this matter.
- 5.4. For purposes of any subsequent proceeding to enforce payments required by this Section V for penalties, including, but not limited to, any non-dischargeability complaint filed in a bankruptcy proceeding, Defendants waive any right to contest any allegations in the Attorney General's Complaint and agree that the facts as alleged in the Complaint filed in this action shall be taken as true and correct without further proof.

IV. COMPLIANCE MONITORING

For the purpose of monitoring and investigating compliance with any provision of this Judgment:

- 6.1. Within ten (10) days of receipt of written notice from a representative of the Attorney General, each Defendant each shall submit additional written reports,

sworn to under oath; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such Defendant's possession or indirect control to inspect the business operation;

- 6.2 In addition, the Attorney General is authorized to monitor compliance with this Judgment by all other lawful means, including but not limited to the following:
- A.. obtaining discovery from any person, without further leave of Court, using the procedures prescribed by Fla. R. Civ. P. 1.310, 1.320, 1.330, 1.340, 1.360, 1.370 and 1.370; and
 - B. posing as consumers and suppliers to Defendants, Defendant's employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice; and
- 6.3. Defendants shall permit representatives of the Attorney General to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Judgment. The person interviewed may have counsel present.

Provided, however, that nothing in this Judgment shall limit the Attorney General's lawful use of compulsory process, pursuant to Section 501.206, Fla. Stat. or any other applicable law to obtain any documentary material, tangible things, testimony, or information relevant to deceptive or unfair acts or practices as set forth in chapter 501, Part II, Fla. Stat.

VII. COMPLIANCE REPORTING BY DEFENDANTS

In order that compliance with the provisions of this Judgment may be monitored:

- 7.1. For a period of three (3) years from the date of entry of this Judgment, Defendant Scott J. Filary and Defendant Donald E. Townsend shall each, at the request of the Attorney General, provide an affidavit, acknowledging complete compliance with all provisions of this Consent Judgment and Permanent Injunction, provided that each Defendant shall:
- A. Notify the Attorney General of any change in residence, mailing addresses and telephone numbers, within thirty (30) days of the date of such change for the three year period after this Judgment is entered; and
 - B. Provide to the Attorney General an affidavit acknowledging complete compliance with this Judgment, his current residence, mailing address, and telephone number, 180 days after the date this Judgment is entered.
- 7.2. For the purposes of this Judgment, Defendants shall, unless otherwise directed by the Attorney General's authorized representatives, mail all written notifications to the Attorney General to:

Julia A. Harris
3507 E. Frontage Road, Suite 325
Tampa, FL 33607
Re: State of Florida v. Filary

VIII. DISTRIBUTION OF JUDGMENT BY DEFENDANTS

For a period of three (3) years from the date this Judgment is entered, Defendants shall deliver a copy of this Judgment as directed below:

- 8.1. Individual Defendants as Control Person: For any business that Defendant Scott J. Filary or Defendant Donald E. Townsend controls, directly or indirectly,

or in which either Defendant has a majority ownership interest, he must deliver a copy of this Judgment to all principals, officers, directors, and managers of that business. Defendant must also deliver copies of this Judgment to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Judgment. For current personnel, as applicable, delivery shall be within five (5) days of service of this Judgment upon the defendant. For new personnel, delivery shall occur *prior* to them assuming their responsibilities.

8.2 . Individual Defendants as employee or non-control person: For any business where Defendant Scott J. Filary or Defendant Donald E. Townsend is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Judgment, he must deliver a copy of this Judgment to all principals and managers of such business before engaging in such conduct.

8.3. Defendants must secure a signed and dated statement acknowledging receipt of the Judgment, within thirty days of delivery, from all persons receiving a copy of the Judgment pursuant to this Section VIII.

IX. RECORD KEEPING PROVISIONS

For a period of six (6) years from the date of entry of this Judgment, in connection with any business in which either Defendant Scott J. Filary or Defendant Donald E. Townsend is the majority owner of the business or, directly or indirectly, manages or controls the business, and the business is engaged in, or assists others in engaging in, the offering for sale or sale of any product or service over the Internet, or through commercial e-mail or instant messaging, Defendants and their agents, officers, corporations, successors, and assigns, and those persons in

active concert or participation with him who receive actual notice of this Judgment by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

- 9.1 Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- 9.2 Records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- 9.3. Customer files containing the names, addresses, telephone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- 9.4. Complaint and refund requests (whether received directly, indirectly or through any third party), and any responses to those complaints or refund requests; and
- 9.5. Copies of all sales scripts, training materials, advertisements, or other marketing materials, whether printed or in electronic form.

X. COOPERATION WITH ATTORNEY GENERAL

Defendants Scott J. Filary and Donald E. Townsend, in connection with this action or any concurrent or subsequent investigations or litigation related to or associated with the transactions or the occurrences that are the subject of the Complaint, shall cooperate in good faith with the

Attorney General's reasonable requests for documents and testimony. Upon written notice, Defendant Scott J. Filary or Defendant Donald E. Townsend, or both as directed, shall:

- 10.1. appear at such places and times as the Attorney General reasonably requests for interviews, conferences, pretrial discovery, review of documents, and for such other matters, after written notice; and
- 10.2. produce such documents and information in a manner as may be reasonably requested by the Attorney General.

If requested in writing by the Attorney General, Defendant Scott J. Filary or Defendant Donald E. Townsend, or both as directed, shall make himself, or themselves, available for trial testimony in any trial, deposition or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the necessity of service of civil investigative demand or subpoena. This provision, or any other provision in this Judgment, shall not operate as a waiver of any applicable privilege, including, but not limited to, the privilege against self-incrimination. Further, a Defendant's exercise of a privilege shall not operate as a violation of any provision of this Judgment.

XI. TRANSFER OF INFORMATION

Defendants are hereby restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who submitted such information to Defendants as a result of, derived from, or otherwise related to the activities alleged to be in violation of the Deceptive and Unfair Trade Practices Act in Counts I through V of the Attorney General's Complaint; provided, however, that Defendants may disclose such

information to a law enforcement agency, to the Attorney General, or as required by any law, regulation, or court Judgment.

XII. FEES AND COSTS

Except as otherwise provided in the monetary relief provisions herein, each party to this

Judgment hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

XII. RETENTION OF JURISDICTION

This Court shall retain jurisdiction over this matter for all purposes.

ORDERED AND ADJUDGED at Tampa, Hillsborough County, Florida, this _____ day of November, 2005.

Perry A. Little
Circuit Judge

Conformed copies to:
Julia A. Harris, Esq.
Ed Suarez, Esq.