

SUPREME COURT OF THE STATE OF NEW YORK -- NEW YORK COUNTY

PRESENT: Eileen Bransten  
Justice

PART 6

0404027/2003

PEOPLE OF THE STATE OF NY  
VS  
SYNERGY 6 INC.

INDEX NO. 404027/03  
MOTION DATE 5/28/04  
MOTION SEQ. NO. 01  
MOTION CAL. NO. \_\_\_\_\_

SEQ 1

OTHER RELIEFS

The following papers, numbered 1 to 1 were read on this ~~motion~~ <sup>petition</sup> ~~to~~ <sup>pursuant to</sup> Executive  
LED

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...

Answering Affidavits -- Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED
<u>1</u>

and  
Gen.  
Business  
LED

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this ~~motion~~ <sup>petition</sup> is resolved in accordance with the Consent Order and Judgment Submitted to the Court.

This constitutes the Decision, Order and Judgment of the Court.

Dated: July 12 2004

Eileen Bransten  
EILEEN BRANSTEN, S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS Part 6**

**THE PEOPLE OF THE STATE OF NEW YORK  
by ELIOT SPITZER, Attorney General of the State  
of New York,**

**Petitioners,**

**-against-**

**SYNERGY6, INC.,  
d/b/a SYNERGY6.COM, AMERICAN-  
GIVEAWAYS.COM, and  
HOTFREESAMPLES.COM,  
JUSTIN CHAMPION,  
OPTINREALBIG.COM, LLC,  
d/b/a OPTINREALBIG.COM,  
SCOTT RICHTER,  
DELTA SEVEN COMMUNICATIONS, LLC,  
PAUL BOES, and  
DENNY COLE,**

**Respondents.**

**CONSENT ORDER  
AND JUDGMENT**

**Index No. 404027/2003**

**Hon. Eileen Bransten, J.S.C.**

Petitioners having filed a Verified Petition pursuant to New York Executive Law § 63(12), and General Business Law (“GBL”) §§ 349 and 350 alleging that unsolicited emails sent on Respondents’ behalf contained false headers, false routing information, and deceptive subject lines; and

UPON the Notice of Verified Petition, dated December 17, 2003; the Verified Petition, verified on December 17, 2003 (“Verified Petition”) (TAB A); the affirmation of Assistant Attorney General Stephen Kline, dated December 17, 2003, together with the exhibits thereto; and

UPON the annexed Consent and Stipulation (TAB B); and

UPON all papers and proceedings heretofore had herein,

NOW, on motion of Eliot Spitzer, Attorney General for the State of New York, attorney for the Petitioners herein (Stephen Kline, Assistant Attorney General, of counsel), and upon the consent of the Respondents OptInRealBig.com, LLC, and Scott Richter, without admitting or denying the acts alleged, and the Consent and Stipulation dated May 27, 2004, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

**PARTIES SUBJECT TO THE ORDER**

1. This Consent Order and Judgment ("Order") shall extend to OptInRealBig.com, LLC ("OptInRealBig") d/b/a OptInRealBig.com, its principals, directors, officers, shareholders, employees, agents, assigns, successors, and heirs; to Scott Richter ("Richter"), individually and in his respective capacity as principal, director, officer, or shareholder of OptInRealBig or any other corporation, company, business entity or other entity or device in which Richter has an ownership interest that is involved in marketing on the Internet (collectively "Respondents"). OptInRealBig and Richter, shall be individually, jointly and severally liable for any amounts, costs, and penalties set forth herein.

**DEFINITIONS**

2. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that for the purposes of this Order the following definitions shall apply:

a. Commercial electronic mail message - The term "commercial electronic mail message" means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose).

b. Domain Name - The term "domain name" means any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.

c. Electronic Mail Address - The term "electronic mail address" means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the 'local part') and a reference to an Internet domain (commonly referred to as the 'domain part'), whether or not displayed, to which an electronic mail message can be sent or delivered.

d. Header Information - The term "header information" means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person initiating the message.

e. Initiate - The term "initiate," when used with respect to a commercial electronic mail message, means to originate or transmit such message or to procure the origination or transmission of such message, but shall not include actions that constitute routine conveyance of such message. For purposes of this Order, more than one person may be considered to have initiated a message.

f. Procure - The term "procure," when used with respect to the initiation of a commercial electronic mail message, means intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one's behalf.

g. Recipient - The term "recipient," when used with respect to a commercial electronic mail message, means an authorized user of the electronic mail address to which the

message was sent or delivered. If a recipient of a commercial electronic mail message has one or more electronic mail addresses in addition to the address to which the message was sent or delivered, the recipient shall be treated as a separate recipient with respect to each such address. If an electronic mail address is reassigned to a new user, the new user shall not be treated as a recipient of any commercial electronic mail message sent or delivered to that address before it was reassigned.

h. Sender- the term "sender," when used with respect to a commercial electronic mail message, means a person who initiates such a message and whose product, service, or Internet web site is advertised or promoted by the message.

### **PROHIBITED PRACTICES**

3. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Respondents, without admitting or denying the acts alleged, are hereby permanently enjoined from engaging in any of the fraudulent, deceptive, or illegal acts or practices alleged in paragraphs 15-28 of the Verified Petition, and any and all of the following acts or practices:

- a. Initiating a commercial electronic mail message that contains false or misleading header information;
- b. Initiating a commercial electronic mail message that contains false or misleading information in the "subject" line;
- c. Initiating a commercial electronic mail message that does not accurately identify a sender in the "from" line;
- d. Initiating a commercial electronic mail message with the intent to deceive or mislead recipients, or any Internet service provider, as to the origin of such a message;

e. Registering any domain name using information that materially falsifies the identity of the actual registrant; and

f. Falsely representing oneself to be the registrant or the legitimate successor in interest to the registrant of any Internet Protocol address, and initiating a commercial electronic mail message from such Internet Protocol address.

#### **PENALTIES AND COSTS**

4. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that within ten (10) days of entry of this Order Respondents shall tender to the Attorney General as penalties and costs the total of Fifty Thousand Dollars (\$50,000.00) by certified check payable to the State of New York and delivered to: Eliot Spitzer, Attorney General of the State of New York, 120 Broadway, New York, New York 10271, Attention: Stephen Kline, Internet Bureau. This sum shall represent: (a) civil penalties paid to the State of New York, pursuant to G.B.L. § 350-d, in the amount of forty thousand dollars (\$40,000.00); and (b) costs of investigation, in the sum of ten thousand dollars (\$10,000.00), paid to the State of New York.

#### **MONEY JUDGMENT UPON DEFAULT**

5. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that upon failure to pay penalties and costs as provided in the above paragraph within five (5) days of the date that payment is due pursuant to that paragraph, a money judgment in the amount due, fifty thousand dollars (\$50,000.00), plus interest, shall be entered in favor of Eliot Spitzer, Attorney General of the State of New York, 120 Broadway, New York, New York, 10271, and the Attorney General shall have execution thereof.

## COMPLIANCE AND MONITORING

### Record Keeping Provisions

6. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that for a period of three (3) years from the date of entry of this Order, Respondents are hereby required to create, retain, and provide to the Attorney General's Office Internet Bureau upon ten (10) business days written notice, the following records:

a. The name, address, and telephone number of each person employed or hired in any business capacity by such Respondent, 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 that person's termination, if applicable;

b. Customer names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased;

c. Complaints (whether received directly or through any third party) and any responses to those complaints; and

d. Copies of all advertisements, or other marketing materials initiated by Respondents.

### Respondents' Reporting Requirements

7. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that, in order that compliance with the provisions of this Order may be monitored, for a period of three (3) years from the date of entry of this Order, Respondents shall each notify the Attorney General's Office Internet Bureau of:

a. Any changes in their residence address, mailing address, and telephone number,

within thirty (30) days of the date of such change;

b. Any changes in their employment status (including self-employment) within thirty (30) days of such change. The notice shall include the name and address of each business with which such Respondent is affiliated or employed, a statement of the nature of the business, and a statement of duties and responsibilities in connection with the business or employment; and

c. Any change in the structure of any Internet-related business entity owned or controlled by Respondent, such as creation, incorporation, dissolution, assignment, sale, merger, creation or dissolution of subsidiaries, filing of bankruptcy petition, or change in the corporation name or address, or any other change that may affect compliance obligations arising out of this Order, within ten (10) days of the date of such change.

#### **ACKNOWLEDGMENT OF RECEIPT OF ORDER BY RESPONDENTS**

8. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that, within five (5) business days after receipt of this Order as entered by this Court, Respondents shall each submit to the Attorney General's Office Internet Bureau a truthful sworn and notarized statement acknowledging receipt of this Order as entered by this Court.

#### **CONSUMER RIGHTS**

9. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that nothing contained in this Order shall be construed to deprive any consumer or other person or entity of any rights or remedies under the law, including without limitation any private right of action.

#### **VIOLATIONS OF THIS ORDER**

10. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that this Court shall retain jurisdiction over any action, motion or application relating to this Order, including without

limitation any action for civil contempt alleging violation of any provisions of this Order.

**RELEASE**

11. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that no term of this Order, whether taken individually or together, shall estop or otherwise deprive the Attorney General of its standing or of any other right it may have to bring any claim on behalf of any person or entity except as otherwise set forth herein.

**SETTLEMENT**

12. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the State of New York and OptInRealBig and Richter hereby consent to the entry of the foregoing order which shall constitute a full, complete settlement of the action between these parties which was initiated by the Verified Complaint.

**NOTICE**

13. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that all notice given pursuant to this order shall be given by certified mail to: Office of the Attorney General, Internet Bureau, 120 Broadway, 3<sup>rd</sup> Floor, New York, New York 10271, Attn: Stephen Kline.

**FURTHER AND OTHER RELIEF**

14. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any party to this Order may apply to this Court for such other and further relief as may be necessary to effectuate the terms of this Order, upon ten (10) days written notice to all other parties, deliverable by certified mail.

Dated: New York, New York  
July 12, 2004

SO ORDERED AND ENTERED

  
Hon. Eileen Bransten J.S.C.