

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Case No. 12-cv-588
)	
v.)	Judge Kennelly
)	
APOGEE ONE ENTERPRISES LLC, a)	Magistrate Judge Denlow
Pennsylvania limited liability company,)	
d/b/a/ Apogee Enterprises LLC, Platinum)	
Trust Card, and Express Platinum Card, <i>et al.</i> ,)	
)	
Defendants.)	

STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION

Plaintiff, Federal Trade Commission (“FTC” or “Commission”), filed its Complaint for a Permanent Injunction and Other Equitable Relief in this matter, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, to secure temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, disgorgement of ill-gotten gains, and other equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation of the FTC’s Trade Regulation Rule entitled “Telemarketing Sales Rule” (“TSR”), 16 C.F.R. Part 310.

Plaintiff and Defendants Apogee One Enterprises LLC, also doing business as Apogee Enterprises LLC, Platinum Trust Card, and Express Platinum Card; Marquee Marketing LLC, also doing business as Express Platinum Card, Blake Rubin, also doing business as CR Ventures LLC, Platinum Trust Card, Express Platinum Card, and Maxim Management Group, LLC;

Chase Rubin, also doing business as CR Ventures LLC, Platinum Trust Card, Express Platinum Card, Maxim Management Group, LLC, and Oakmont Management Services, LLC; and Justin Diaczuk; by and through their attorneys, have agreed to entry of this Stipulated Final Judgment and Order for Permanent Injunction (“Order”) by this Court in order to resolve all claims against Defendants in this action. Plaintiff and Defendants have consented to entry of this Order without trial or adjudication of any issue of law or fact herein.

NOW THEREFORE, Plaintiff and Defendants, having requested the Court to enter this Order, and the Court having considered the Order reached between the parties, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. This is an action by the Commission instituted under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, the Telemarketing Act, 15 U.S.C. §§ 6101-6108, and the TSR, 16 C.F.R. Part 310. Pursuant to these Sections of the FTC Act and the Telemarketing Act, the Commission has the authority to seek the relief contained herein.

2. The Commission’s Complaint asserts a claim upon which relief may be granted under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b).

3. This Court has jurisdiction over the subject matter of this case and personal jurisdiction over the parties.

4. Venue, process, and service of process are proper.

5. The activities of Defendants, as alleged in the Complaint, are “in or affecting commerce” as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

6. Defendants, without admitting or denying the allegations set forth in the Commission's Complaint and without any admission or finding of liability thereunder, agree to entry of this Order and the findings that it contains.

7. Defendants waive: (a) all rights to seek judicial review or otherwise challenge or contest the validity of this Order; (b) any claim that any of them may have against the Commission, its employees, representatives, or agents; (c) all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, *as amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996); and (d) any rights to attorney's fees that may arise under said provision of law. The Commission and Defendants shall each bear their own costs and attorney's fees incurred in this action.

8. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

9. Entry of this Order is in the public interest.

DEFINITIONS

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

1. "Asset" or "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes," (as these terms are defined in the Uniform Commercial Code), lines of credit, chattels, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and all cash, wherever located.

2. "Assisting Others" includes, but is not limited to: (1) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any sales script or

other marketing material; (3) providing names of, or assisting in the generation of, potential customers; (4) performing or providing marketing or billing services of any kind; (5) acting as an officer or director of a business entity; or (6) providing telemarketing services.

3. **“Corporate Defendants”** or **“Receivership Defendants”** means Apogee One Enterprises LLC, also doing business as Apogee Enterprises LLC, Platinum Trust Card, and Express Platinum Card; Marquee Marketing LLC, also doing business as Express Platinum Card; and their successors and assigns, as well as any subsidiaries, and any fictitious business entities or business names created or used by these entities, or any of them, including CR Ventures LLC.

4. **“Credit”** means the right to defer payment of debt or to incur debt and defer its payment.

5. **“Credit card”** means any card, plate, or other single credit device that may be used from time to time to obtain credit including, without limitation, a catalog card or shopping card that may be used to purchase goods or serves on credit only from a particular retailer or from a particular website.

6. **“Credit card product or service”** means any product, service, plan, or program represented, expressly or by implication, to provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving, a credit card.

7. **“Defendants”** means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

8. **“Document”** or **“Documents”** means any materials listed in Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be

obtained and translated, if necessary, into reasonably usable form through detection devices. A draft or nonidentical copy is a separate Document within the meaning of the term.

9. **“Financial Institution”** means any bank, savings and loan institution, credit union, or any financial depository of any kind, including, but not limited to, any brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading company, or precious metal dealer.

10. **“Individual Defendants”** means Blake Rubin, also doing business as CR Ventures LLC, Platinum Trust Card, Express Platinum Card, and Maxim Management Group, LLC; Chase Rubin, also doing business as CR Ventures LLC, Platinum Trust Card, Express Platinum Card, Maxim Management Group, LLC, and Oakmont Management Services, LLC; and Justin Diaczuk; and by whatever other names each may be known.

11. **“Person”** means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

12. **“Plaintiff”** means the Federal Trade Commission (“Commission” or “FTC”).

13. **“Telemarketing”** means a plan, program, or campaign (whether or not covered by the TSR, 16 C.F.R. Part 310) that is conducted to induce the purchase of goods or services, or a charitable contribution, by use of one or more telephones.

I.

PERMANENT BAN ON TELEMARKETING

IT IS THEREFORE ORDERED that Defendants, whether acting directly or through any person, trust, corporation, partnership, limited liability company, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from

telemarketing, or assisting others engaged in telemarketing.

II.

PERMANENT BAN ON CREDIT CARD PRODUCTS AND SERVICES

IT IS FURTHER ORDERED that Defendants, whether acting directly or through any person, trust, corporation, limited liability company, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from engaging in, participating in, or assisting others engaged in the advertising, marketing, promotion, offering for sale, or sale of any type of credit card product or service.

III.

PROHIBITED BUSINESS ACTIVITIES RELATING TO ANY GOODS OR SERVICES

IT IS FURTHER ORDERED that Defendants, and their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any person, trust, corporation, limited liability company, subsidiary, division, or other device, or any of them, in connection with the marketing, advertising, promotion, offering for sale, or sale of any good or service, are hereby permanently restrained and enjoined from:

A. Making or assisting others in making, expressly or by implication, any false or misleading oral or written statement or representation of material fact;

B. Misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact, including, but not limited to:

1. the total cost to purchase, receive, or use the good or service;
2. any material restriction, limitation, or condition to purchase, receive, or

use the good or service;

3. any material aspect of the nature or terms of a refund, cancellation, exchange, or repurchase policy for the good or service; and
4. any material aspect of the performance, efficacy, nature, or central characteristics of the good or service.

C. Charging, causing to be charged, or assisting others in charging any consumer's credit card, or debiting, causing to be debited, or assisting others in debiting any consumer's bank account without the consumer's express informed consent for such charge or debit.

IV.

MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment is hereby entered in favor of the Commission and against Defendants, jointly and severally, for equitable monetary relief, including, but not limited to, consumer redress and/or disgorgement, in the amount of Seven Million Five Hundred Fifty Two Thousand Four Hundred Seventy Three Dollars (\$7,552,473), which is the total amount of consumer injury caused by the activities alleged in the FTC's Complaint. This amount shall be paid to the Commission or its designated agent by wire transfer within five (5) days of the date of entry of this Order and in accordance with wiring instructions to be provided by counsel for the Commission.

B. Time is of the essence for the payment specified above. In the event of default by Defendants on any obligation imposed under this section, interest computed pursuant to 28 U.S.C. §1961(a), as amended, immediately shall begin to accrue upon any unpaid balance. Defendants are jointly and severally liable for all payments required by this Section and any

interest on such payments.

C. All funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer redress, and any attendant expenses for the administration of such equitable relief. Defendants shall cooperate fully to assist the Commission in identifying consumers who may be entitled to redress pursuant to this Order. If the Commission determines, in its sole discretion, that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Section. Defendants shall have no right to contest the manner of distribution chosen by the Commission. This judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment or forfeiture.

D. Defendants relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law. Defendants shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.

E. Defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy case. Defendants further stipulate and agree that the facts alleged in the Complaint establish all

elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this Order shall have collateral estoppel effect for such purposes. Notwithstanding anything to the contrary in this Order, the Defendants expressly retain the right and ability to contest all or any of the facts alleged in the Complaint filed in this action in any proceeding to which the FTC is not a party.

F. In accordance with 31 U.S.C. § 7701, as amended, Defendants are hereby required, unless they already have done so, to furnish to the Commission their respective taxpayer identifying numbers (social security numbers or employer identification numbers), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendants' relationship with the government.

G. Upon Defendants' payment in full and fulfillment of all other terms and conditions of the equitable monetary judgement in Section IV.A, the judgment in this Section shall be deemed satisfied, and the Commission shall, within ten (10) days thereof, file an appropriate Notice of Satisfaction of Judgment with the Court.

V.

PROHIBITIONS REGARDING CONSUMER INFORMATION

IT IS FURTHER ORDERED that Defendants, and their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from:

A. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or

other financial account), of any person which any Defendant obtained prior to entry of this Order in connection with the marketing or sale of any credit card product or service; and

B. Failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

VI.

PROHIBITION ON COLLECTING ON ACCOUNTS

IT IS FURTHER ORDERED that Defendants, and their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly, or through any trust, corporation, partnership, limited liability company, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from attempting to collect, collecting, or assigning any right to collect payment from any consumer who purchased or agreed to purchase any of the credit card products or services described in the Complaint.

VII.

ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of

this Order:

A. Each Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 5 years after entry of this Order, each Individual Defendant for any business that such Defendant, individually or collectively with any other Defendant, is the majority owner or directly or indirectly controls, and each Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and managers; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

VIII.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants make timely submissions to the Commission:

A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury.

1. Each Defendant must: (a) designate at least one telephone number and an email, physical, and postal address as points of contact, which representatives of the Commission may use to communicate with

Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Individual Defendants must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission;

2. Additionally, each Individual Defendant must: (a) identify all telephone numbers and all email, Internet, physical, and postal addresses, including all residences; (b) identify all titles and roles in all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 20 years following entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that

Defendant has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, each Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify its name, physical address, and Internet address, if any.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW,

Washington, DC 20580. The subject line must begin: *FTC v. Apogee One Enterprises, LLC et al.* (X120011).

IX.

RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, Corporate Defendants and each Individual Defendant for any business in which that Defendant, individually or collectively with any other Defendants, is a majority owner or directly or indirectly controls, must maintain the following records:

- A. Accounting records showing the revenues from all goods or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;
- C. Complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- E. A copy of each advertisement or other marketing material.

X.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance with this Order, including any failure to transfer any assets as required by this Order:

A. Within 14 days of receipt of a written request from a representative of the Commission, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents, for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

XI.

COMPLETION OF RECEIVERSHIP

IT IS FURTHER ORDERED that the appointment of Wayne Geisser as Receiver over the Receivership Defendants pursuant to Section VI of the Preliminary Injunction Order entered on February 16, 2012, is hereby continued in full force and effect, except as modified by this Section. Within fourteen (14) days from the date of entry of this Order, the Receiver is directed and authorized to prepare and file with the Court a final report describing the Receiver's activities pursuant to this Order and the Preliminary Injunction, and, in the manner set forth in

Section VI.G of the Preliminary Injunction, a final application for compensation and expenses. Upon completion of this task, and Defendants' fulfillment of their obligations under Section IV.A and B of this Order, the duties of the Receivership shall terminate, and the Receiver shall be discharged.

XII.

DISSOLUTION OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze on the assets of Individual Defendants shall remain in effect until Defendants have complied with all requirements set forth in Section IV.A and B of this Order; *provided, however*, that Defendants, with the express written consent of counsel for the Commission, may transfer funds to the extent necessary to make all payments required by Section IV. Once Defendants have fully complied with the requirements of Section IV.A and B, the freeze against the assets of Individual Defendants shall be lifted permanently. A financial institution shall be entitled to rely upon a letter from Plaintiff stating that the freeze on the assets of Individual Defendants has been lifted.

The freeze against the assets of the Receivership Defendants shall remain in effect until such time as the Receiver receives payment of all Court-approved fees and expenses of the Receiver and the Receiver is discharged pursuant to Section XI of this Order.

XIII.

SEVERABILITY

IT IS FURTHER ORDERED that the provisions of this Order are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

XIV.

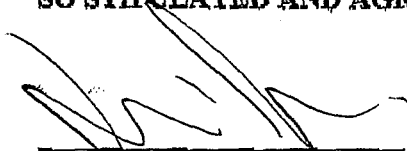
RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED, this 19th day of September, 2012.

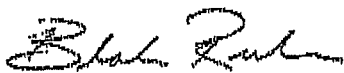
s/ Matthew F. Kennelly, USDJ
Hon. Matthew F. Kennelly
United States District Judge
Northern District of Illinois

SO STIPULATED AND AGREED:



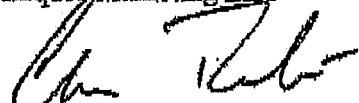
JAMES H. DAVIS
JOANNIE T. WEI
Attorneys for Plaintiff Federal Trade Commission

Date: 9-10-12



DEFENDANT BLAKE RUBIN, individually
and doing business as CR Ventures and
Marquee Marketing LLC

Date: 7-20-12



DEFENDANT CHASE RUBIN, individually
and doing business as CR Ventures and
Marquee Marketing LLC

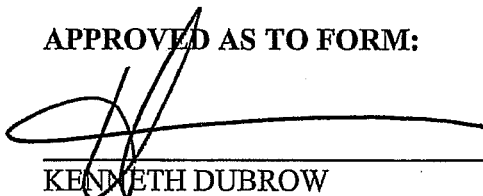
Date: 7/20/2012



DEFENDANT JUSTIN DIACZUK
Individually, and as an officer of
Defendant Apogee One Enterprises, LLC

Date: 7/26/2012

APPROVED AS TO FORM:



Date: 7/27/12

KENNETH DUBROW

Attorney for Defendants Apogee One Enterprises LLC;
Marquee Marketing LLC; Blake Rubin; Chase Rubin;
and Justin Diaczuk.