

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**FEDERAL TRADE COMMISSION,**  
600 Pennsylvania Ave., N.W., Washington, DC 20580, Plaintiff,

v.

**TOYSMART.COM, LLC,**  
170 High Street, Waltham, MA, 02453, a Delaware corporation, and  
**TOYSMART.COM, INC.,**  
170 High Street, Waltham, MA, 02453, a Delaware corporation, Defendants.

**CIVIL ACTION NO. 00-11341-RGS**

**STIPULATED CONSENT AGREEMENT AND FINAL ORDER**

On July 10, 2000, plaintiff, the Federal Trade Commission ("Commission" or "FTC") commenced this action by filing its complaint against defendants Toysmart.com, LLC and Toysmart.com, Inc. (collectively, "Toysmart" or "Defendants"). The Complaint alleges that Toysmart engaged in deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a), by disclosing, selling or offering for sale personal customer information, contrary to the terms of its privacy policy that personal information would never be disclosed to third parties. The Complaint seeks a permanent injunction and other equitable relief pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b).

The Commission and the Defendants, by and through their counsel, have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issues of fact or law.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** as follows:

**FINDINGS**

1. This Court has jurisdiction over the subject matter of this case and has jurisdiction over Defendants. Venue in this district is proper.
2. The Commission has the authority under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), to seek the relief it has requested.
3. The Complaint states a claim upon which injunctive relief may be granted against the Defendants under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).
4. Defendants' activities are in or affecting commerce, as defined in 15 U.S.C. § 44.
5. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendants also waive any claim that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996), concerning prosecution of this action to the date of this Order.
6. This agreement is for settlement purposes only and does not constitute an admission by Defendants that the law has been violated as alleged in the Complaint or that the facts as alleged in the Complaint

are true.

7. Entry of the Final Order is in the public interest.

## DEFINITIONS

For purposes of this Order:

1. "Defendants" means Toysmart.com, LLC and Toysmart.com, Inc.
2. "Customer Information" means information of or relating to consumers collected by Toysmart, including, but not limited to, name, address, billing information, shopping preferences, order history, gift registry selections, family profile information, and information about consumers' children, such as name, gender, birthday, and toy interests.
3. "Third Party" shall mean any individual, firm, or organization other than a Qualified Buyer and its successors, except to the extent that disclosure of Customer Information to such an individual, firm, or organization is necessary to maintain the technical functioning of the Toysmart Web site or to fulfill a consumer's request. "Third Party" includes any affiliates of a Qualified Buyer.
4. "Qualified Buyer" shall mean an entity that (1) concentrates its business in the family commerce market, involving the areas of education, toys, learning, home and/or instruction, including commerce, content, product and services, and (2) expressly agrees to the obligations set forth in the Stipulation and Order Establishing Conditions on Sale of Customer Information, entered by the Honorable Carol J. Kenner, Bankruptcy Judge for the United States Bankruptcy Court for the District of Massachusetts, on July \_\_\_\_, 2000, in *In re: Toysmart.com, LLC*, Case No. 00-13995-CJK (the "Bankruptcy Order"), attached hereto as Exhibit A.

### I. PROHIBITION AGAINST MISREPRESENTATIONS

**IT IS HEREBY ORDERED** that Defendants and their officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby restrained and enjoined from violating Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), by:

- A. Making, or assisting in making, directly or by implication, in connection with the collection of Customer Information, any false or misleading representation about whether such information will be shared with Third Parties; and
- B. Disclosing, selling or offering for sale to any Third Party, any Customer Information collected by Defendants, except as expressly provided in the Bankruptcy Order.

### II. REQUIREMENT THAT DEFENDANTS DELETE PERSONAL CUSTOMER INFORMATION

**IT IS FURTHER ORDERED** that, absent approval by the Bankruptcy Court on or before July 31, 2001, of the sale of the Customer Information to a Qualified Buyer or of a reorganization plan, Defendants and their officers, agents, servants, and employees shall, on or before August 31, 2001, delete or destroy all Customer Information in their possession, custody or control, and provide written confirmation to the FTC, sworn to under penalty of perjury, that all such Customer Information has been deleted or destroyed.

### **III. REQUIREMENT THAT DEFENDANTS COMPLY WITH THE CHILDREN'S ONLINE PRIVACY PROTECTION ACT**

**IT IS HEREBY ORDERED** that Defendants and their officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby restrained and enjoined from violating the Children's Online Privacy Protection Act of 1998, 15 U.S.C. §§ 6501 *et seq.* and its implementing regulations, and are hereby required to delete or destroy any and all information collected in violation of 16 C.F.R. Part 312 *et seq.* within ten (10) days of the entry of this Order.

### **IV. FTC'S RIGHT TO FILE ACTION**

**IT IS FURTHER ORDERED** that the Commission's agreement to and the Court's approval of this Order is expressly premised upon the truthfulness, accuracy, and completeness of the declaration sworn to under penalty of perjury provided by Toysmart and attached hereto as Exhibit B, stating that after diligent investigation it is not aware of any disclosures of customer information to third parties or other material violations of the Toysmart Privacy Statement prior to May 22, 2000, as the Commission relied upon this material information in negotiating and agreeing to the terms of this Order.

**IT IS FURTHER ORDERED** that nothing shall preclude the Commission from filing an action against Toysmart in this Court within the next one (1) year from the date of this Order, should the Commission subsequently obtain evidence that Toysmart in the above-referenced declaration failed to disclose a material violation of the Toysmart Privacy Statement, or made any other material misrepresentation or omission.

### **V. DOCUMENT RETENTION**

**IT IS FURTHER ORDERED** that Defendants shall maintain for at least one (1) year from the date of service of this Order and, upon written request by FTC employees, make available to the FTC for inspection and copying:

- A. All records and documents necessary to demonstrate fully their compliance with each provision of this Order;
- B. A sample copy of any advertising and promotional material, including e-mail, regarding the sale of Defendants' tangible and intangible assets, other than the sale of such assets in the bankruptcy case; and
- C. Copies of any complaints received by Defendants regarding Defendants' alleged disclosure, sale or offering for sale of personal customer information.

### **VI. NOTICE TO RELATED PERSONS AND ENTITIES**

**IT IS FURTHER ORDERED** that, for a period of one (1) year from the date of entry of this Order, Defendants shall:

- A. Deliver a copy of this Order to all of Defendants' current and future principals, officers, directors, and managers, and to all of Defendants' current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this Order, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. Defendants shall deliver this Order to their current personnel within thirty (30) days after the

date of service of this Order, and to their future personnel within thirty (30) days after the person assumes such position or responsibilities; and

B. Maintain for a period of one (1) year after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of the Order.

## VII. COMPLIANCE REPORTING AND MONITORING

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Order may be monitored:

A. Sixty (60) days after the date of entry of this Order, Defendants shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order;

B. For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director, Division of Financial Practices

Federal Trade Commission

600 Pennsylvania Ave., N.W.

Washington, D.C. 20580

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C. The Commission is authorized, without further leave of Court, for a period of one (1) year from the date of entry of this Order, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating Defendants' compliance with any provision of this Order;

D. The Commission is authorized to use representatives posing as consumers and suppliers to Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part by defendants, without the necessity of identification or prior notice;

E. Nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to investigate whether defendants have violated any provision of this Order or Section 5 of the FTC Act, 15 U.S.C. § 45;

F. For a period of one (1) year from the date of entry of this Order, for the purpose of further determining compliance with this Order, Defendants shall permit representatives of the Commission, within three (3) business days of receipt of written notice from the Commission, access during normal business hours to any office or facility within the Defendants' custody, possession, or control storing documents and to permit inspection and copying of all documents within the Defendants' custody, possession or control relevant to any matter contained in this Order.

## VIII. RETENTION OF JURISDICTION

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

**STIPULATED AND AGREED TO BY:**

FOR THE PLAINTIFF:

Dated: \_\_\_\_\_, 2000

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Attorneys for Plaintiff

FOR DEFENDANT TOYSMART.COM, LLC:

Dated: \_\_\_\_\_, 2000

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Attorneys for Defendant

Dated: \_\_\_\_\_, 2000

DAVID N. LORD  
Chief Executive Officer, Toysmart.com, LLC

FOR DEFENDANT TOYSMART.COM, INC.:

Dated: \_\_\_\_\_, 2000

DAVID N. LORD  
Chief Executive Officer, Toysmart.com, Inc.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2000

Honorable Richard G. Stearns  
UNITED STATES DISTRICT JUDGE