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E-Filed on 4/8/10

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Jose Division**

**FEDERAL TRADE COMMISSION,**

**Plaintiff,**

**v.**

**PRICEWERT LLC D/B/A 3FN.NET,  
TRIPLE FIBER NETWORK, APS  
TELECOM AND APX TELECOM, APS  
COMMUNICATIONS, AND APS  
COMMUNICATION,**

**Defendant.**

**Case No. C-09-2407 RMW**

**ORDER APPOINTING  
LIQUIDATING RECEIVER AND  
ENTERING PERMANENT  
INJUNCTION AND MONETARY  
JUDGMENT**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed its complaint for injunctive and other equitable relief against defendant Pricewert LLC, also d/b/a 3FN.net, Triple Fiber Network, APS Telecom and APX Telecom, APS Communications, and APS Communication, pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a), 53(b). The Court ordered an *ex parte* Temporary Restraining Order (“TRO”) on June 2, 2009, and a Preliminary Injunction on June 15, 2009. Defendant Pricewert LLC (“Pricewert”) failed to answer or otherwise respond to the Commission’s Complaint, and, as a result, the Clerk entered the default of Pricewert on July 30, 2009. On August 25, 2009, the Commission moved for default judgment against Pricewert. Having reviewed the Commission’s

Order Appointing Liquidating Receiver and Entering  
Perm. Inj. and Monetary Judgment  
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1 motion for default judgment and its memorandum and points and authorities in support thereof,  
2 and the papers filed by Suren Ter-Saakov and Tsuren LLC as parties given elevated amicus  
3 status, **IT IS HEREBY ORDERED:**

#### 4 **I. FINDINGS**

5 1. This Court has jurisdiction over the subject matter of this case, and it has  
6 jurisdiction of all parties pursuant to 15 U.S.C. §§ 45(a), 53(b), and 28 U.S.C. §§ 1331, 1337(a),  
7 and 1345;

8 2. Venue is proper as to all parties in the Northern District of California pursuant to  
9 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c);

10 3. The activities alleged in the Complaint are in or affecting “commerce” as that term  
11 is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;

12 4. The facts the FTC has stated in its Complaint state a claim upon which relief may  
13 be granted under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b);

14 5. This Order shall have no preclusive effect as to any action brought by any state or  
15 federal law enforcement agency;

16 6. This Order is remedial in nature and no portion of any payments paid herein shall  
17 be deemed or construed as payment of a fine, damages, penalty, or punitive assessment; and

18 7. Entry of this Order is in the public interest.

#### 19 **II. DEFINITIONS**

20 For the purpose of this order, the following definitions shall apply:

21 1. **“Botnet”** means a network of computers that have been compromised by  
22 malicious code and surreptitiously programmed to follow instructions issued by a Botnet  
23 Command and Control Server.

24 2. **“Botnet Command and Control Server”** means a computer or computers used to  
25 issue instructions to, or otherwise control, a Botnet.

26 3. The term **“Child Pornography”** shall have the same meaning as provided in 18  
27 U.S.C. § 2256.

1           4.       **“Data Center”** means any person or entity that contracts with third parties to  
2 house computer servers and associated equipment, and provides the infrastructure to support such  
3 equipment, such as power or environmental controls.

4           5.       **“Defendant”** means Pricewert LLC also d/b/a 3FN.net, Triple Fiber Network, APS  
5 Telecom, APX Telecom, APS Communications, APS Communication, and any other names  
6 under which it does business, and any subsidiaries, corporations, partnerships, successors,  
7 assigns, or other entities directly or indirectly owned, managed, or controlled by Pricewert LLC.

8           6.       **“Phishing”** means the use of email, Internet web sites, or other means to mimic or  
9 copy the appearance of a trustworthy entity for the purpose of duping consumers into disclosing  
10 personal information, such as account numbers and passwords.

11          7.       **“Representatives”** means the following persons or entities who receive actual  
12 notice of this preliminary injunction by personal service or otherwise: (1) the Defendant’s  
13 officers, agents, servants, employees, and attorneys; and (2) all other persons who are in active  
14 concert or participation with Defendant or its officers, agents, servants, employees, or attorneys.  
15 A Data Center or Upstream Service Provider that continues to provide services to Defendant after  
16 receiving actual notice of this preliminary injunction is a Representative.

17          8.       **“Securely Deleted”** means the elimination of data from a data storage device in a  
18 manner that renders the data permanently unrecoverable.

19          9.       **“Spyware”** means any type of software that is surreptitiously installed on a  
20 computer and, without the consent of the user, could collect information from a computer, could  
21 allow third parties to control remotely the use of a computer, or could facilitate botnet  
22 communications.

23          10.       **“Trojan Horse”** means a computer program with an apparent or actual useful  
24 function that contains additional, undisclosed malicious code, including but not limited to  
25 spyware, viruses, or code that facilitates the surreptitious download or installation of other  
26 software code.



1 necessary or advisable, any director, officer, independent contractor, employee, or agent of  
2 Pricewert from control of, management of, or participation in, the affairs of Pricewert;

3         3.       Take all steps necessary or advisable to locate and liquidate all assets of Pricewert  
4 for the purpose of paying the expenses and costs incurred in this proceeding and to pay the  
5 amount of disgorgement awarded. Prior to liquidating any of Pricewert's computer equipment  
6 and transferring it to a purchaser, the Receiver shall take reasonable and appropriate measures to  
7 ensure that any data residing on Pricewert's computer equipment is Securely Deleted in the most  
8 cost-efficient manner available. Except as provided in Paragraph V, the Receiver shall be  
9 authorized to destroy the data storage component of Pricewert's computer equipment if the  
10 Receiver determines that this method is the most cost-efficient available, will not unduly detract  
11 from the liquidation value of the computer equipment, and will result in the data stored on  
12 Pricewert's computer equipment being Securely Deleted.

13         4.       Make payments and disbursements from the Receivership estate that are necessary  
14 or advisable for carrying out the directions of, or exercising the authority granted by, this Order;

15         5.       Perform all acts necessary or advisable to complete an accounting of the  
16 Receivership assets, and prevent unauthorized transfer, withdrawal, or misapplication of assets;

17         6.       Enter into contracts and purchase insurance as advisable or necessary;

18         7.       Maintain bank accounts created as designated depositories for funds of Pricewert,  
19 and make all payments and disbursements from the Receivership estate from such an account;

20         8.       Perform all incidental acts that the Receiver deems to be advisable or necessary,  
21 which includes retaining, hiring, or dismissing any employees, independent contractors, or agents;

22         9.       Cooperate with reasonable requests for information or assistance from any state or  
23 federal law enforcement agency; and

24         10.      Dispose of, or arrange for the disposal of, the paper records of Pricewert no later  
25 than six months after the Court's approval of the Receiver's final report. To safeguard the  
26 privacy of consumers, records containing personal financial information shall be shredded,  
27 incinerated, or otherwise disposed of in a secure manner. For paper records that must be retained,

1 the Receiver may elect to retain records in their original form or to retain photographic or  
2 electronic copies so long as said records are: 1) kept in a secure, locked area; 2) stored  
3 electronically on a computer network or drive with restricted access or an encrypted electronic  
4 storage device; or 3) redacted of all personally identifiable information including dates of birth,  
5 Social Security numbers, driver's license numbers or other state identification numbers, passport  
6 numbers, financial account numbers, or credit or debit card numbers. *Provided, however,* that the  
7 Receiver may not sell, rent, lease, transfer, disclose, use, or otherwise benefit from the name,  
8 address, telephone number, credit card number, bank account number, e-mail address, or other  
9 identifying information of any person who has contracted with Pricewert, except that the Receiver  
10 may disclose such identifying information to a law enforcement agency, or as required by any  
11 law, regulation, or court order.

#### 12 **V. NOTICE OF INTENT TO DESTROY**

13 1. The FTC or Receiver shall serve a copy of this Order upon Special Agent Chris  
14 Calderon of the San Jose office of the Federal Bureau of Investigation ("FBI") via electronic mail  
15 and overnight delivery. The FBI shall have ten days from the date of entry of this Order to file  
16 with this Court an objection to the liquidation or destruction of Pricewert's assets, including its  
17 computer equipment, as provided for in this Order.

18 2. The Receiver shall serve a copy of this Order, with this subparagraph 2 and  
19 subparagraph 4 below highlighted, via electronic mail and overnight delivery or other means  
20 reasonably calculated to provide notice, to any entity or person known to have legitimate data  
21 stored on Pricewert's computer equipment and who has not previously obtained a copy of that  
22 data from the Receiver. The noticed entity or person shall have ten days from the date of entry of  
23 this Order to file with this Court an objection to the liquidation of any of Pricewert's computer  
24 equipment on which said party's data is stored.

25 3. The Receiver shall serve a copy of this Order, with this subparagraph 3  
26 highlighted, via electronic mail and overnight delivery or other means reasonably calculated to  
27 provide notice, to Kronenberger Burgoyne, LLP, 150 Post Street, Suite 520, San Francisco, CA  
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1 94108 (e-mail: [karl@KBInternetLaw.com](mailto:karl@KBInternetLaw.com) and [jeff@KBInternetLaw.com](mailto:jeff@KBInternetLaw.com)), counsel for Suren Ter-  
2 Saakov and Tsuren LLC who have claimed an ownership interest in particular servers seized by  
3 the Receiver. Suren Ter-Saakov and Tsuren LLC shall file with the Court and the Receiver  
4 within 10 days from the date of this order any objection they have to the sale of any such server  
5 and any claim they have to an ownership interest in any particular server. If Suren Ter-Saakov or  
6 Tsuren LLC claim an ownership interest in any server but do not object to its sale, they should so  
7 notify the Court and the Receiver of that fact. The Receiver will segregate any such server  
8 identified by Suren Ter-Saakov or Tsuren LLC, or the proceeds of the sale of any such server, as  
9 appropriate, until the ownership interest has been determined or further order of this court.  
10 Within thirty days of filing a claim of ownership, Suren Ter-Saakov and Tsuren LLC shall file  
11 with the Court and Receiver any documents they have supporting a claim of ownership. The  
12 Receiver will thereafter determine whether the claim is valid. If the Receiver finds that it is not,  
13 Suren Ter-Saakov and Tsuren LLC may appeal to this Court for a *de novo* determination of the  
14 ownership question.

15 4. If an objection is filed pursuant to subsection 1 or 2 above, the Receiver shall  
16 refrain from selling or otherwise disposing of Pricewert's computer servers, or taking any action  
17 that could jeopardize the data stored on those servers, until the Court makes a ruling on the  
18 objection. If no objection is filed, the Receiver shall proceed to liquidate Pricewert's assets as  
19 provided in this Order.

## 20 **VI. STAY OF OTHER ATTEMPTS TO EXECUTE** 21 **ON DEFENDANT'S ASSETS**

22 Except by leave of this Court, during pendency of the Receivership ordered herein,  
23 Defendant, its Representatives, and all investors, creditors, stockholders, lessors, customers, and  
24 other persons seeking to execute on any claim or judgment against or on behalf of Defendant, and  
25 all others acting for or on behalf of such persons, are hereby enjoined from enforcing any  
26 judgment against Defendant that would interfere with the exclusive jurisdiction of this Court over  
27 the assets or documents of the Defendant, including, but not limited to:



1 serve on all counsel of record in this proceeding its motion to approve the Final Report and Final  
2 Accounting, and its motion to approve and authorize the payment of its compensation and  
3 expenses associated with the performance of its duties as Receiver under this Order and the June  
4 15, 2009 Order and the compensation and expenses of its attorneys. The Receiver shall send  
5 notice of the motion to approve the Final Report and Final Accounting and notice of the motion to  
6 approve and authorize payment of the Receiver's and its counsel's compensation and expenses to  
7 all known creditors of Pricewert.

8 3. The Court will review the Final Report and Final Accounting, and the motions  
9 described in subsection 2, above, and issue an order lifting the Asset Freeze and directing the  
10 Receiver to:

11 A. Pay from the receivership estate the compensation and expenses of the  
12 Receiver and its counsel to the extent approved and authorized by the Court.

13 B. Pay from the receivership estate the amount to reimburse plaintiff FTC for its  
14 initial funding of the Receivership, pursuant to the Court's June 15, 2009 Order Appointing  
15 Temporary Receiver.

16 C. Pay all remaining funds as specified in Paragraph X of this Order.

#### 17 **VIII. TERMINATION OF THE RECEIVERSHIP**

18 Upon completion by the Receiver of the tasks set forth in this Order, the Receivership  
19 over the Defendant in this matter shall be dissolved and the Receiver discharged.

#### 20 **IX. MONETARY JUDGMENT**

21 1. Judgment in the amount of \$1,080,000.00 (one million eighty thousand dollars) is  
22 hereby entered against the Defendant in favor of the FTC for disgorgement of ill-gotten gains.  
23 This amount shall be deposited to the United States Treasury.

24 2. The Defendant relinquishes all dominion, control, and title to the funds paid to the  
25 fullest extent permitted by law. The Defendant shall make no claim to or demand for the return of  
26 funds, directly or indirectly, through counsel or otherwise.  
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