

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

RECEIVED

SEP 17 2003

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

CAMERON OWNBEY, individually
and d/b/a/ Ultimus and First National
Investments,

Defendant.

CIVIL ACTION

030 6590

JUDGE NORDBERG

MAGISTRATE SIDNEY I. SCHENKIER

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF AND
FOR CIVIL PENALTIES UNDER THE
COMMODITY EXCHANGE ACT, AS AMENDED

I. SUMMARY

1. On July 18, 2001, the Plaintiff, Commodity Futures Trading Commission ("Commission" or "CFTC") commenced an administrative enforcement action against the Defendant, Cameron Ownbey ("Ownbey"), alleging that from at least March 1998 through October 1999, Ownbey and his commodity trading advisor firm committed fraud by using misleading and fraudulent advertising to solicit clients to purchase pork belly futures trading recommendations generated by a commodity futures trading system. An administrative law judge found in a non-final, initial decision that Ownbey and his firm had committed fraud.

2. The Commission once again charges Ownbey with violating provisions of the Act and the Commission's Regulation. In January 2001, Ownbey began doing business under the names Ultimus and First National Investments ("FNI"). Using these

names, Ownbey solicited and obtained clients to purchase his trading service that directs the trading in clients' accounts for compensation (hereinafter "directed trading service") from January 2001 to the present. Ownbey also solicited and obtained clients who received specific buy and sell trade instructions directly from him or his agents via e-mail ("e-mail trading service"). During these solicitations, Ownbey engages in solicitation fraud. To date, Ownbey has taken in approximately \$200,000 from approximately 45 directed trading clients and e-mail service clients. Further, Ownbey directed the trading in clients' accounts without being registered with the Commission.

3. Consequently, defendant has engaged, is engaging, or is about to engage in acts or practices which violate the anti-fraud and certain registration sections of the Commodity Exchange Act ("Act"), as amended, 7 U.S.C. §§ 6b(a)(i) and (iii), 6o(1) and 6m(1) (2001), and certain Commission Regulations thereunder regarding required disclosures to customers, 17 C.F.R. §§ 4.31 and 4.36 (2003).

4. Accordingly, the Commission brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, to enjoin the defendant's unlawful acts and practices and to compel his compliance with the Act. In addition, the Commission seeks disgorgement of the defendant's ill-gotten gains, restitution to clients, a civil monetary penalty and such other relief as this Court may deem necessary or appropriate.

5. Unless restrained and enjoined by this Court, the defendant is likely to continue to engage in the acts and practices alleged in this Complaint and similar acts and practices, as more fully described below.

II. JURISDICTION AND VENUE

6. The Act prohibits fraud in connection with the trading of commodity futures contracts and establishes a comprehensive system for regulating the purchase and sale of commodity futures contracts and options on commodity futures contracts. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

7. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a(e), because the defendant is found in, inhabits, or transacts business, among other places, in this district, or the acts and practices in violation of the Act have occurred, are occurring, or are about to occur, among other places, within this district. Specifically, defendant: (1) transacts the majority of his business within this district; (2) makes phone calls and sends faxes, U.S. mail, and e-mail from this district; and (3) maintains an active bank account in connection with his business enterprise within this district.

III. THE PARTIES

8. Plaintiff Commission is the independent federal regulatory agency responsible for administering and enforcing the provisions of the Act and the Regulations promulgated thereunder.

9. Defendant Cameron S. Ownbey, a resident of Chicago, Illinois, is not presently registered with the Commission in any capacity. He was doing business as

Ultimus from early 2001 until the spring of 2002. From the spring of 2002 to the present, Ownbey has been doing business as FNI, which he operates from his residence.

10. Ownbey was previously registered as an associated person ("AP") of Global Telecom, Inc. ("GTI"), a registered commodity trading advisor ("CTA") that Ownbey owned and operated. GTI sold a trading system to the public from June 1998 through October 1999. Ownbey was also registered as an AP of RB&H Financial Services LP, from June 25, 1998 until March 20, 2000, when he voluntarily terminated this registration. He was also registered as an AP and listed as a principal of Global Trading Information, Inc., a registered CTA that offered educational seminars on how to trade futures, from May 19, 1999 until October 5, 1999, when he terminated that registration.

11. On July 18, 2001, the Commission brought an administrative enforcement action against Ownbey and GTI styled *In re Global Telecom, Inc., et al.*, CFTC Docket No. 01-18. After an administrative hearing, the presiding Administrative Law Judge ("ALJ") issued an initial decision on January 17, 2003 finding that Ownbey had violated the anti-fraud provisions of the Act, including Sections 4b(a)(2)(i) and (iii), 4o(1), and 6c of the Act, 7 U.S.C. §§ 6b(a)(i) and (iii), 6o(1), and 13a-1, and Regulation 4.41(a), 17 C.F.R. § 4.41(a). The ALJ ordered Ownbey's and GTI's registrations revoked and held Ownbey jointly and severally liable to pay restitution up to \$265,000. This administrative decision is pending before the Commission on appeal.

IV. FACTS RELEVANT TO ALL COUNTS

A. Statutory Background

12. A commodity trading advisor (“CTA”) means, in part, any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility. Section 1a(6) of the Act, 7 U.S.C. § 1a(6).

13. Pursuant to § 4m(1) of the Act, 7 U.S.C. § 6m(1), and subject to certain exceptions not applicable here, a person who comes within the statutory definition of a CTA must be registered with the Commission. Further, pursuant to Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9), a person is required to register as a CTA if he directs the trading in a client’s account.

14. Pursuant to Regulation 4.31, 17 C.F.R. § 4.31, prior to, or at the time of, soliciting a prospective client or entering into any agreement to direct a client or prospective client’s commodity interest account or to guide the client’s commodity interest trading, any CTA required to register under the Act must deliver to the client or prospective client a true and accurate Disclosure Document containing the risk, performance and other general information prescribed by Regulations 4.34 and 4.35, 17 C.F.R. §§ 4.34 and 4.35.

B. Operation of Ultimus and FNI

15. In early 2001, Ownbey started doing business as Ultimus, holding it out as a firm that both directed the trading in clients’ accounts for compensation or profit (“directed trading service clients”) and provided an e-mail trading service that issued

specific buy and sell trade instructions directly to clients ("e-mail trading service clients"). Ownbey offered these services to the public for \$5,500 a year. Directed trading service clients and e-mail clients could purchase a second year of the trading services for a \$3,500 fee, but no client accepted this offer.

16. After directed trading service clients purchased the service and agreed to allow Ultimus to direct the trading in their accounts, Ownbey referred these clients to various registered futures commission merchants ("FCMs") to open individual trading accounts. These clients then executed letters of direction authorizing the FCM to trade on their behalf pursuant to the Ultimus directed trading service. Until recently, Ownbey referred a majority of his directed trading service clients to one particular FCM, where at least twenty-five clients opened accounts with a minimum of \$3,000 to trade E-mini S&P 500 Index futures contracts ("E-mini") and \$15,000 to trade S&P 500 Stock Index futures contracts ("S&P 500").

17. In early 2001, both the directed trading service and e-mail trading service were based upon trading signals that were generated by an individual, Barry Viljoen ("Viljoen"), using his own personal software program.¹ For the directed trading service clients, Viljoen e-mailed his trading instructions to the FCM where Ownbey's clients had opened accounts at that time. For the e-mail trading service clients, Viljoen e-mailed the trading signals directly to that client.

18. Approximately one year ago, Viljoen's work relationship with Ownbey ended.

¹ Viljoen has never been registered with the Commission in any capacity. Ownbey testified that he did not know how Viljoen's software program worked and never asked Viljoen to explain it to him.

19. Shortly before that relationship ended, Ownbey began operating under the name FNI. While doing business as FNI, Ownbey continued to sell both his directed trading service and e-mail trading service for \$5,500 a year. Instead of generating trading signals using the software program, Ownbey self-generated trading advice on the basis of market observation.

20. Aside from the FCM mentioned above, Ownbey also referred clients to two other FCMs. Eleven clients have opened accounts at one FCM and at least two clients have opened accounts at the other.

21. At least thirty-six of Ownbey's clients executed letters of direction provided by the FCMs. These letters of direction authorized the FCMs to execute the trading directives provided by Ownbey in the directed trading service clients' accounts. Approximately nine individuals purchased Ownbey's e-mail trading service.

C. Ownbey Made Misrepresentations to Clients and Prospective Clients Regarding Profits, His Performance Record, and the Source of The Trading Recommendations.

22. Ownbey promoted his directed trading service and e-mail trading service through weekly e-mails he drafted and issued to clients and e-mail clients and prospective clients and e-mail clients called the "S&P 500 Newsletter." These e-mails made false claims of profit achievement and potential, such as:

- a) Wow, you would have made over one million dollars in the last 5 years;
- b) On average we make about 300% return a year;
- c) Year after year we have returns of over 250% to 350%;
- d) Please note that during any 12 month period our profitability is well over 200%; and

e) Did you know that we have averaged \$4,477.08 in profits per month for the last five and a half years?

23. In some S&P 500 Newsletters, Ownbey explains that the profit claims are based on FNI's "trading performance track record." Upon request only, Ownbey provides a separate document listing FNI's hypothetical trades to clients and prospective clients, which he refers to as FNI's "trading performance track record." In that document, Ownbey represents that "during any 12 month period our profitability is well over 200%." However, the actual trading performance of the system does not support this profit claim or any of Ownbey's other profit claims contained in the S&P 500 Newsletter. The S&P 500 Newsletter profit claims are based on a combination of trades that Ownbey fabricated along with some of the system provider's hypothetical trades.

24. In addition to distributing the S&P 500 Newsletter, Ownbey has made a variety of misrepresentations of material facts to individual clients and prospective clients. These included representations that, for example:

- a) Clients could earn \$20,000 per month if they traded pursuant to "FNI's" trading recommendations;
- b) Ownbey traded his own account pursuant to "FNI's" trading recommendations and had made a lot of money; and
- c) The track record reflected actual trading.

25. In fact, at least 32 of Ownbey's directed trading service clients lost money trading pursuant to Ownbey's trading instructions; Viljoen's software program never earned 300% or even 200% during the time he was generating the trading recommendations for Ownbey; Ownbey's subsequent trading decisions never generated

the claimed returns; and Ownbey has never traded for his own account using the his or Viljoen's trading advice.

26. Since approximately January 2001, Ownbey has consistently represented to directed trading service clients and e-mail trading service clients that the directed trading service and e-mail trading service utilizes a computerized trading system operated by a third party. However, for at least the past year, Ownbey has used no such system and has generated the trading directives himself pursuant to his "gut feeling" about the market movement. When certain clients asked about the identity of the individual generating the trading instructions, Ownbey responded that his identity was "proprietary."

27. In December 2002, Ownbey told a client that he hired a broker to analyze FNI's trading directives before he released them for client use, and that he paid the broker a lot of money for his services. Ownbey would not reveal the name of the broker to the client. In fact, Ownbey has not hired any such broker.

E. Ownbey Did Not Provide Required Disclosure Documents to Clients

28. Ownbey did not provide disclosure documents that discussed the risks of commodity futures trading to his directed trading service clients that comported with the requirements of Commission Regulations ("Regulations") 4.34 and 4.35. Ownbey did provide the one page disclaimer attached to the S&P 500 Newsletters and copies of the track record. However, that disclaimer did not satisfy the requirements of Regulations 4.34 and 4.35 in that it did not contain a detailed risk disclosure statement, a description of the trading program and the fees that the CTA will charge, disclosure of material

information, trading performance disclosures for the system, and a cautionary statement that the CFTC has not passed upon the merits of participating in the trading program.

29. Ownbey also did not provide directed trading service clients and prospective clients with updated disclosure documents as required by Regulation 4.36.

F. Ownbey's Recent Omissions and Misrepresentations

30. Ownbey has continued to solicit directed trading service clients and e-mail clients to purchase and renew their FNI S&P 500 directed trading service and e-mail trading service without disclosing the existence or contents of the pending administrative action and the adverse ALJ decision in that action entered on January 17, 2003.

31. Additionally, on April 7, 2003, Ownbey issued an S&P 500 Newsletter via e-mail explaining that he was offering trading recommendations focusing on futures contracts with respect to the Dow. The newsletter claimed "\$706,460.00 profit in the last 5 1/2 years" and 70% of the trades are profitable." This claim was false.

**V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT
AND COMMISSION REGULATIONS**

COUNT ONE

**VIOLATIONS OF SECTIONS 4b(a)(2)(i) AND (iii) OF THE ACT: FRAUD BY
MISREPRESENTATIONS AND FALSE STATEMENTS**

32. The allegations set forth in paragraphs 1 through 31 are re-alleged and incorporated herein.

33. Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), make it unlawful for any person to cheat or defraud or attempt to cheat or defraud; or willfully deceive or attempt to deceive by any means whatsoever other persons in or in connection with orders to make, or the making of, contracts of sale of commodities, for

future delivery, made, or to be made, for or on behalf of such other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped or received in interstate commerce for the fulfillment thereof.

34. Defendant willfully violated §§ 4b(a)(2)(i) and (iii) of the Act by making the following misrepresentations or misleading statements to directed trading service clients: (1) that his directed trading service generated large profits; (2) that his directed trading service clients would receive trading instructions from a third party's computerized trading system; (3) that Ownbey was earning large profits for his own account using these same trading instructions; and (4) that the purported performance record Ownbey provided to his clients reflected actual trading results.

35. Defendant further violated Sections 4b(a)(2)(i) and (iii) of the Act by failing to disclose to directed trading service clients and potential directed trading service clients that an initial administrative decision had been entered against him finding that he defrauded the public in connection with promotion and sales of another commodity futures trading system.

36. Each material misrepresentation or omission made from January 2001 to the present (the "relevant time period"), including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(i) and (iii) of the Act.

COUNT TWO

**VIOLATIONS OF SECTION 4o(1) OF THE ACT:
FRAUD BY A COMMODITY TRADING ADVISOR**

37. The allegations set forth in paragraphs 1 through 31 are re-alleged and incorporated herein.

38. Beginning in or about January 2001 and continuing through the present, defendant, while acting as a CTA, has violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1), in that he directly or indirectly employed or is employing a device, scheme or artifice to defraud clients or potential clients, or has engaged or is engaging in transactions, practices or a course of business which operated as a fraud or deceit upon clients or potential clients by using the mails or other means or instrumentalities of interstate commerce. His fraudulent acts included, but were not limited to the following misrepresentations or misleading statements to customers: (1) that his directed trading service and e-mail trading service generated large profits; (2) that his clients would receive trading instructions from a third party's computerized trading system; (3) that Ownbey was earning large profits for his own account using these same trading instructions; and (4) that the purported performance record Ownbey provided to his clients reflected actual trading results.

39. Defendant further violated Sections 4o(1) of the Act by failing to disclose to clients and potential clients that an initial administrative decision had been entered against him finding that he defrauded the public in connection with promotion and sales of another commodity futures trading system.

40. The acts and omissions in this Count were effected by the use of the mails and other means or instrumentalities of interstate commerce, namely, phone calls, and e-mail transmissions.

COUNT THREE

**VIOLATIONS OF SECTION 4m(1) OF THE ACT:
FAILURE TO REGISTER AS A COMMODITY TRADING ADVISOR**

41. Paragraphs 1 through 31 are re-alleged and incorporated herein.
42. During the relevant time period, defendant has been and is acting as a CTA, in that for compensation or profit, he has engaged in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility.
43. During the relevant time period, defendant directed the trading of clients' accounts by providing specific trading instructions to the FCMs via e-mail, and used or is using the mails and other means or instrumentalities of interstate commerce, directly or indirectly, to engage in business as a CTA.
44. Defendant has engaged and continues to engage in these activities without the benefit of registration, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).
45. Each use of the mails or any means or instrumentality of interstate commerce in connection with the business of a CTA without proper registration during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4m(1) of the Act.

COUNT FOUR**VIOLATIONS OF REGULATIONS 4.31 AND 4.36:
FAILURE TO PROVIDE DISCLOSURE DOCUMENTS**

46. The allegations set forth in paragraphs 1 through 31 are re-alleged and incorporated herein.

47. During the relevant time, defendant, while acting as a CTA, failed to deliver to his directed trading service clients or prospective directed trading service clients a true and accurate Disclosure Document containing the information set forth in Regulations 4.34 and 4.35, 17 C.F.R. §§ 4.34 and 4.35, in violation of Regulation 4.31, 17 C.F.R. §§ 4.31.

48. Pursuant to Regulation 4.31, prior to, or at the time of, soliciting a prospective client or entering into any agreement to direct a client or prospective client's commodity interest account or to guide the client's commodity interest trading, any CTA required to register under the Act must deliver to the client or prospective client a true and accurate Disclosure Document containing the information set forth in Regulations 4.34 and 4.35. Further, pursuant to Regulation 4.36, 17 C.F.R. § 4.36, defendant was required to provide his directed trading service clients with disclosure documents that contained information that was accurate as of the date of the document. When soliciting and accepting funds, Ownbey did not give these clients disclosure documents, consequently, he violated Regulation 4.31. Ownbey also did not provide these clients with accurate and updated disclosure documents and therefore he violated Regulation 4.36.

49. Each failure to deliver a true and accurate Disclosure Document containing the information set forth in Regulations 4.34 and 4.35 during the relevant time

period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 4.31, and each failure to deliver an updated Disclosure Document during the relevant time period, including those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 4.36.

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to its own equitable powers:

- A. Find that defendant violated Sections 4b(a)(2)(i) and (iii), 4m(1), and 4o(1) of Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), 6m(1), and 6o(1) (2001), and Regulations 4.31 and 4.36, 17 C.F.R. §§ 4.31 and 4.36 (2003);
- B. Enter a restraining order and/or an order of preliminary injunction restraining and enjoining defendant and all persons insofar as they are acting in the capacity of his agents, servants, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with him who receive actual notice of such order by personal service or otherwise, from directly or indirectly:
 1. Destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of defendant, wherever located, including all such records concerning defendant's business operations;

2. Refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of defendant, wherever located, including all such records concerning defendant's business operations; and
 3. Withdrawing, transferring, removing, dissipating, concealing or disposing of, in any manner, any funds, assets, or other property, wherever situated, including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the control, or in the name of defendant.
- C. Enter orders of preliminary and permanent injunctions prohibiting the defendant and any other person or entity associated with him, including any successor thereof, from:
1. engaging in conduct, in violation of Sections 4b(a)(2)(i) and (iii), 4m(1), and 4o(1) of Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), 6m(1) and 6o(1) (2001) and Regulations 4.31 and 4.36, 17 C.F.R. §§ 4.31 and 4.36 (2003);
 2. engaging in, controlling, or directing the trading of any commodity futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise; and

3. applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2003), or acting as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration with the Commission, except as provided for in Regulation 4.14(a)(9). This includes, but is not limited to, soliciting, accepting, or receiving any funds, revenue or other property from any other person, giving commodity trading advice for compensation, except as provided in Regulation 4.14(a)(9), or soliciting prospective customers related to the purchase or sale of commodity futures or options.
- D. Enter an order directing the defendant and any successor thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act or Regulations, as described herein, and interest thereon from the date of such violations;
- E. Enter an order directing the defendant to make full restitution to every customer whose funds were received by him as a result of acts and practices which constituted violations of the Act and Regulations, as described herein, and interest thereon from the date of such violations;

- F. Enter an order assessing a civil monetary penalty against defendant in the amount of not more than the higher of \$120,000 or triple the monetary gain to the defendant for each violation by the defendant of the Act or Regulation;
- G. Enter an order directing that the defendant make an accounting to the court of all his assets and liabilities, together with all funds he received from and paid to clients and other persons in connection with commodity futures transactions or purported commodity futures transactions, and all disbursements for any purpose whatsoever of funds received from commodity clients, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from, but not limited to, January 2001 to and including the date of such accounting;
- H. Enter an order requiring defendant to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and

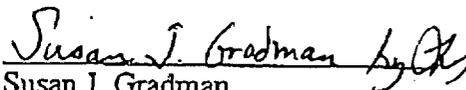
- I. Order such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: September 16 2003

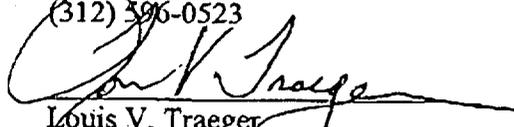
Respectfully submitted,

ATTORNEYS FOR PLAINTIFF
COMMODITY FUTURES TRADING
COMMISSION

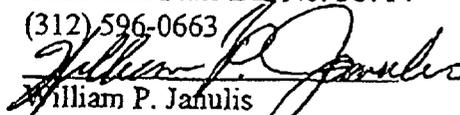
525 West Monroe Street
Suite 1100
Chicago, Illinois 60661
(312) 596-0714 facsimile



Susan J. Gradman
Senior Trial Attorney
Illinois ARDC No. 6225060
(312) 596-0523



Louis V. Traeger
Senior Trial Attorney
California State Bar No. 38714
(312) 596-0663



William P. Janulis
Supervisory Trial Attorney
Illinois ARDC No. 1326449
(312) 596-0545



Rosemary Hollinger
Regional Counsel and Associate Director
Illinois ARDC No. 03123647
(312) 596-0520