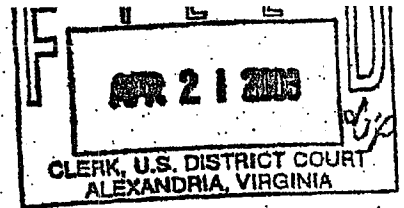


UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division



FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ONE OR MORE UNKNOWN PARTIES
DECEIVING CONSUMERS WHILE DOING
BUSINESS AS OR USING
PREMIER-ESCROW.COM,

Defendant(s).

Civil Action No. 03-488-A

**TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE
WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), having filed a Complaint for Injunctive and Other Equitable Relief pursuant to Sections 5(a), 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 53(b) and 57b, and the FTC's Mail or Telephone Order Merchandise Rule (the "Mail Order Rule" or the "Rule"), 16 C.F.R. Part 435, and having moved for an *ex parte* temporary restraining order ("TRO") pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65(b), and the Court having considered the pleadings and exhibits filed in support of the Plaintiff's motion, finds that:

1. This Court has jurisdiction of the subject matter of this case and there is good cause to believe it will have jurisdiction of all parties hereto.
2. There is good cause to believe that One or More Unknown Parties Deceiving Consumers While Doing Business as or Using Premier-Escrow.com (www.premier-escrow.com)

have engaged and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and/or the Mail Order Rule, 16 C.F.R. Part 435, and that the Commission is therefore likely to prevail on the merits of this action.

3. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief in the form of monetary restitution or disgorgement will occur from the transfer, disposition or concealment by Defendant(s) of their assets or business records unless Defendant(s) are immediately restrained and enjoined by Order of this Court. The evidence set forth in the Plaintiff's *Ex Parte* Motion for TRO and Other Equitable Relief, and in the accompanying exhibits, shows that Defendant(s) have engaged in a concerted course of illegal activity in their dealings with consumers nationwide in connection with the use or operation of fraudulent online escrow services, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and/or the Mail Order Rule, 16 C.F.R. Part 435. Thus, there is good cause to believe that Defendant(s) will attempt to conceal the scope of their illegal actions to avoid returning their ill-gotten gains to consumers injured by their unlawful practices if not restrained from doing so by Order of this Court. In addition, the identities of Defendant(s) are unknown. Thus, the Commission is relieved of the duty to provide Defendant(s) with prior notice of its application; and, in accordance with Fed. R. Civ. P. 65(b), the interest of justice requires that the Commission's motion for a TRO be heard *ex parte* without prior notice to Defendant(s).

4. There is good cause for ordering an asset freeze, permitting the FTC to take expedited discovery.

5. Weighing the equities and considering the Commission's likelihood of ultimate success, a TRO with an asset freeze, expedited discovery and other equitable relief is in the public interest.

6. As an agency of the United States, no security is required of the Commission for the issuance of a restraining order. *See* Fed. R. Civ. P. 65(c).

DEFINITIONS

For the purpose of this TRO, the following definitions shall apply:

1. "Defendant(s)" means One or More Unknown Parties Deceiving Consumers While Doing Business as or Using Premier-Escrow.com; their officers, agents, servants, employees and attorneys; and any person acting in active concert or participation with any of the foregoing who receives actual notice of this Order by personal service or otherwise. *See* Fed. R. Civ. P. 65(d).
2. "Assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to chattels, goods, instruments, equipment, fixtures, general intangibles, inventory, checks, notes, leaseholds, effects, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and cash, wherever located, whether in the United States or abroad.
3. "Document" is synonymous in meaning and equal in scope to the usage of the term 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, through detection devices into

reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

4. "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, title company, commodity trading company, or precious metal dealer.

5. "Online payment service" means any person, corporation, or other entity that operates via the Internet as an intermediary between two parties to transfer, directly or indirectly, credit card payments, bank account payments, or other forms of payment from actual or purported consumers or purchasers to actual or purported merchants, sellers, or suppliers of goods or services.

6. "Currency exchange service" means any person, corporation, or other entity that exchanges any currency, including other national currencies, precious metals, or digital or electronic gold, for another form of currency, including other national currencies, precious metals, or digital or electronic gold.

7. "Online escrow service" means any person that operates via the Internet as an intermediary between two parties to take custody of, hold, transfer, directly or indirectly, credit card payments, bank account payments, online payments, or other forms of payment from actual or purported consumers in exchange for goods or services from actual or purported merchants, sellers, or suppliers of goods or services.

8. "Person" means any natural person, corporation, partnership or other business association, and all other legal entity, including all members, officers, predecessors, assigns, divisions, affiliates and subsidiaries.

ORDER

I. PROHIBITION AGAINST VIOLATION OF SECTION 5

IT IS THEREFORE ORDERED that, in connection with (1) the advertising, promotion, offering for sale, sale, or purported sale, of any merchandise, or (2) the offering to purchase, purchase, or purported purchase, of any merchandise, Defendant(s) are hereby temporarily restrained and enjoined from violating or assisting others to violate Section 5 of the FTC Act, including but not limited to:

A. Misrepresenting that consumers who agree to purchase merchandise from Defendant(s) and send Defendant(s) the agreed-upon payment will receive the offered merchandise;

B. Misrepresenting that consumers who agree to sell their merchandise to Defendant(s) and send merchandise to Defendant(s) will receive the agreed-upon payment;

C. Misrepresenting to consumers who buy merchandise via the Internet that, after taking custody of buyers' funds, they will return such funds to the buyers if sellers fail to ship the merchandise; and

D. Misrepresenting to consumers who sell merchandise via the Internet that, after taking custody of buyers' funds, they will deliver such funds to sellers upon sellers' shipment of merchandise to buyers.

II. PROHIBITION AGAINST VIOLATION OF THE MAIL ORDER RULE

IT IS FURTHER ORDERED that Defendant(s) are hereby temporarily restrained and enjoined from violating or assisting others to violate any provisions of the Mail Order Rule, 16 C.F.R. Part 435, including but not limited to:

- A. Soliciting mail or telephone sales when Defendant(s) do not have a reasonable basis to expect that they will be able to ship the ordered merchandise either: (1) within the time stated by Defendant(s), or (2) if no time is stated, within thirty (30) days after receipt of a properly completed order;
- B. Failing to offer to the buyer, clearly and conspicuously and without prior demand, an option either to consent to a delay in shipping or to cancel the order and receive a prompt refund; or
- C. Failing to make a prompt refund if unable to ship the order to the buyer.

III. ORDER TO THIRD PARTIES TO TEMPORARILY DISABLE WEB SITES

IT IS FURTHER ORDERED that, pending determination of the Commission's request for a preliminary injunction, any person or entity hosting any web pages or web sites for Defendant(s) shall:

- A. Immediately take whatever steps may be necessary to ensure that any web pages or web sites operated, in whole or in part, under the name, www.premier-escrow.com, and any other web pages or web sites operated by Defendant(s) that advertise, market, or promote online escrow services cannot be accessed by the public;

B. Prevent the destruction or erasure of web pages or web sites operated, in whole or in part, under the name, www.premier-escrow.com, or any other web pages or web sites operated by Defendant(s) that advertise, market, or promote online escrow services, by preserving such documents in the format in which they are currently maintained; and

C. Immediately notify counsel for the FTC of any other web page or web site operated or controlled, in whole or in part, by Defendant(s).

IV. ORDER TO THIRD PARTIES TO TEMPORARILY SUSPEND INTERNET DOMAIN NAME REGISTRATIONS

IT IS FURTHER ORDERED that, pending determination of the Commission's request for a preliminary injunction, any Internet domain name registrar shall (1) suspend the registration of www.premier-escrow.com or any other Internet domain name registered by Defendant(s), and (2) immediately notify counsel for the FTC of any other Internet domain names registered by Defendant(s).

V. ASSET FREEZE

IT IS FURTHER ORDERED that Defendant(s) are hereby temporarily restrained and enjoined from directly or indirectly:

A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, or otherwise disposing of any assets, wherever located, including any assets outside the territorial United States, that are:

1. owned or controlled, in whole or in part, by any Defendant;
2. titled or held in the name, singly or jointly, of any Defendant;

3. in the actual or constructive possession of any Defendant; or
4. owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by, or under common control with, any Defendant, including, but not limited to, any assets held by or for any Defendant at or with any financial institution, online payment service, or currency exchange service;

B. Opening or causing to be opened any safe deposit boxes titled in the name of or subject to access by any Defendant;

C. Incurring charges or cash advances on any credit card, debit card, or checking card issued in the name, singly or jointly, of any Defendant;

D. Securing a loan with or incurring a lien on the real property, the personal property, or other asset in the name, singly or jointly, of any Defendant;

Provided, however, that the assets affected by this Section shall include: (1) all of the assets of Defendant(s) existing as of the date this Order was entered; and (2) for assets obtained after the date this Order was entered, only those assets of Defendant(s) that are derived from or otherwise related to the activities alleged in the Commission's Complaint.

Provided further that an asset is not subject to this Section upon a sufficient showing by Defendant(s) that it was obtained 1) after the date of this Order and 2) independently from the conduct proscribed by this Order and/or discussed in the Commission's Complaint.

VI. DUTIES OF ASSET HOLDERS

IT IS FURTHER ORDERED that, pending determination of the Plaintiff's request for a preliminary injunction, any financial institution, online payment service, currency exchange service, or any person or other entity that holds, controls or maintains custody of any account, document, or asset titled in the name of, held for the benefit of, or otherwise under the control of any Defendant, or has held, controlled or maintained custody of any such account, document, or asset shall:

A. Hold and retain within their control, and otherwise prevent any disposition, transfer, conversion, assignment, withdrawal, removal, disbursement, destruction, or dissipation whatsoever of any and all accounts, documents, or assets related to, connected to, or associated with Defendant(s) except by further order of the Court;

B. Deny any person or entity access to any safe deposit box that is titled in the name of any Defendant, either individually or jointly, or otherwise held for the benefit of or subject to access by Defendant(s).

C. Provide Commission's counsel, within five (5) business days of receiving a copy of this Order, a sworn statement that:

1. Identifies the location of any accounts, documents, or assets related to, connected to, or associated with Defendant(s), including any relevant account numbers, or names associated with the accounts;
2. Sets forth the balance of any account related to, connected to, or associated with Defendant(s);

3. Describes how such accounts or assets are related to, connected to, or associated with Defendant(s); and

4. Provides any available information concerning the Defendant(s) or any other persons or entities that are associated with or connected to Defendants, including but not limited to, names by which these parties are known, their business and residential addresses, their postal or commercial box numbers, their telephone numbers, their facsimile numbers, and their email addresses.

D. Upon the request of the Commission, promptly provide the Commission with copies or all records or other documentation pertaining to any accounts or assets, related to, connected to, or associated with Defendant(s). Any financial institution, online payment service, currency exchange service, or any other aforementioned entity may arrange for the Commission to obtain copies of any such records that the Commission seeks.

VII. PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that Defendant(s) are hereby temporarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any identification templates, false identification documents, computers, computerized files, storage media (including but not limited to floppy disks, hard drives, cd-roms, zip disks, punch cards, magnetic tape, backup tapes and computer chips) on which information has been saved, any and all equipment needed to read any such material, contracts, accounting data, correspondence (including, but not limited to, electronic correspondence), advertisements (including, but not limited to, advertisements placed

on the Internet), USENET Newsgroup postings, web pages, web sites, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, 1099 forms, and other documents or records of any kind that relate to the business practices or business or personal finances of Defendant(s).

VIII. FOREIGN ASSET REPATRIATION

IT IS FURTHER ORDERED that within five (5) business days following the service of this Order, Defendant(s) shall:

A. Transfer to the territory of the United States all funds, documents, and assets located in foreign countries which are: (1) titled in the name individually or jointly of any Defendant; or (2) held by any person or entity, for the benefit of any Defendant; or (3) under the direct or indirect control, whether jointly or singly, of any Defendant; and

B. Hold and retain all repatriated assets, accounts, or documents and prevent any transfer, disposition, or dissipation whatsoever of any such assets or documents.

IX. INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that Defendant(s) are hereby temporarily restrained and enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of foreign assets, or in the hindrance of the repatriation required by the preceding Section of this Order, including but not limited to:

A. Sending any statement, letter, fax, e-mail or wire transmission, telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a "duress" event has occurred under the terms of a foreign trust agreement until such time that all assets have been fully repatriated pursuant to the preceding Section of this Order;

B. Notifying any trustee, protector or other agent of any foreign trust or other related entities of either the existence of this Order, or of the fact that repatriation is required pursuant to a Court Order, until such time that all assets have been fully repatriated pursuant to the preceding Section of this Order.

X. SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, email transmission, personal or overnight delivery, or U.S. Mail, by agents and employees of the FTC or any state or federal law enforcement agency or by private process server, on: (1) Defendants; (2) any financial institution, online payment service, currency exchange service, entity or person that holds, controls or maintains custody of any account, document or asset of any Defendant, or has held, controlled or maintained custody of any account, document or asset of any Defendant; or (3) any other person or entity that may be subject to any provision of this Order.

XI. EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that in light of the need to promptly ascertain the possible consumer injury caused by Defendant(s)' deceptive practices as alleged by the Commission, the need to identify Defendant(s) and their whereabouts, the need to identify assets and documents subject to this Order, and the need to monitor compliance with this Order, the FTC is granted leave to conduct certain expedited discovery. Commencing with the time and date of this Order, in lieu of the time periods, notice provisions, and other requirements of Fed. R. Civ. P. 26, 30, 34, and 45, and Local Rules 26, 30, and 45, expedited discovery shall proceed as follows:

A. Pursuant to Fed. R. Civ. P. 30 and 45, and Local Rules 30 and 45, the FTC may take depositions upon oral examination of any person or entity, including any Defendant or third party regarding Defendant(s)' identities; their whereabouts; the nature, location, status, and extent of their assets; and the location of documents reflecting their business transactions. Forty-eight (48) hours notice shall be deemed sufficient for any such deposition, and five (5) days notice shall be deemed sufficient for the production of any such documents. This subsection shall not be construed in any manner to preclude the Commission's right to take subsequent depositions of the same witnesses on the merits of this action. Any deposition taken pursuant to this subsection is in addition to, and not subject to, the presumptive limits on depositions set forth in limitations and conditions set forth in Fed. R. Civ. P. 30(a)(2)(A).

B. Pursuant to Fed. R. Civ. P. 34(b) and 45, and Local Rule 45, Defendant(s) and any other person or entity shall produce documents relating to the above that are requested by the FTC, within five (5) days of service of such request, with production of documents made to such person or place as counsel for the FTC may directing in writing.

XII. CONSUMER CREDIT REPORTS

IT IS FURTHER ORDERED that, pursuant to Section 604 of the Fair Credit Reporting Act, 15 U.S.C. § 1681b, any consumer reporting agency may furnish the Commission with a consumer report concerning any Defendant.

XIII. SERVICE ON THE COMMISSION

IT IS FURTHER ORDERED that, with regard to any correspondence, pleadings, or notifications related to this Order, service on the Commission shall be performed by personal or facsimile delivery (but not delivery by U.S. Mail) before 4:45 p.m. (EST) of the day that such service is due to the attention of:

Delores G. Thompson
Staff Attorney
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room 238
Washington, DC 20580
facsimile number (202) 326-3395

XIV. PAPERS ON MOTION FOR PRELIMINARY INJUNCTION

IT IS FURTHER ORDERED that, pursuant to Fed. R. Civ. P. 6(d), memoranda and affidavits, if any, supporting or opposing the motion for preliminary injunction shall be served not later than one day before the preliminary injunction hearing.

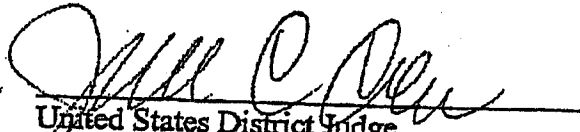
XV. PRELIMINARY INJUNCTION HEARING

IT IS FURTHER ORDERED that Defendant(s) shall appear before this Court on the 2 day of May, 2003, at 10:00 o'clock A.m. at the United States Courthouse, Room 1000, to show cause, if any there be, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint, against said Defendant(s) enjoining them from further violations of Sections 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), and the Mail Order Rule, 16 C.F.R. Part 435, continuing the freeze of their assets and imposing such additional relief as may be appropriate.

XVI. COURT'S RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for all purposes.

SO ORDERED, this 21 day of April, 2003, at this hour of 9:43 ^{AM} EST


United States District Judge
Eastern District of Virginia