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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

FEDERAL TRADE COMMISSION,  
  
Plaintiff,  
  
v.  
  
CASHIER MYRICKS JR. d/b/a  
MP3DOWNLOADCITY.COM,  
  
Defendant.

CV05-7013 CAS

FMOx

Case No.

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

Plaintiff, the Federal Trade Commission ("FTC" or "Commission") pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), has filed a complaint for injunctive and other relief, including consumer redress, applied *ex parte* for a temporary restraining order ("TRO"), and an order to show cause why a preliminary injunction should not issue pursuant to Rule 65 of the Federal Rules of Civil Procedure. Plaintiff's request for a TRO is hereby granted.

FINDINGS OF FACT

This Court has considered Plaintiff's Complaint, Ex Parte Application for a Temporary Restraining Order ("TRO Application"), Memorandum of Points and

1 Authorities, Declarations and Exhibits in support of Plaintiff's TRO Application,  
2 and all other papers filed herein. It appears to the satisfaction of the Court that:

3 a. This Court has jurisdiction over the subject matter of this case, and  
4 there is good cause to believe the Court will have jurisdiction over the parties.

5 b. Venue lies properly with this Court.

6 c. There is good cause to believe that Defendant Cashier Myricks d/b/a  
7 MP3DownloadCity.com has engaged in and is likely to engage in acts or practices  
8 that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). The Complaint states  
9 a claim upon which relief can be granted, and the Commission has the authority to  
10 seek the relief it has requested.

11 d. The Commission is likely to prevail on the merits of this action.

12 e. There is good cause to believe that immediate and irreparable harm  
13 will result from Defendant Myricks' ongoing violations of Section 5(a) of the FTC  
14 Act, 15 U.S.C. § 45(a), absent the entry of this TRO.

15 f. Weighing the equities and considering the Commission's likelihood  
16 of success in its cause of action, the Order is in the public interest.

17 **ORDER**

18 **DEFINITIONS**

19 For purposes of this order, the following definitions shall apply:

20 1. **"Assisting Others"** means knowingly providing any of the following  
21 goods or services to another entity: (a) performing customer service functions,  
22 including but not limited to, receiving or responding to consumer complaints; (b)  
23 formulating or providing, or arranging for the formulation or provision of, any  
24 marketing materials; (c) providing names of, or assisting in the generation of,  
25 potential customers; (d) hiring, recruiting or training personnel; (e) advising or  
26 consulting others on the commencement or management of a business venture; or  
27 (f) performing marketing services of any kind.

1           2.    **“Clearly and conspicuously”** shall mean:

2           A.    In an advertisement communicated through an electronic  
3 medium (such as television, video, radio, and interactive media such as the  
4 Internet, online services and software), the disclosure shall be presented  
5 simultaneously in both the audio and visual portions of the advertisement.  
6 *Provided, however,* that in any advertisement presented solely through visual or  
7 audio means, the disclosure may be made through the same means in which the ad  
8 is presented. The audio disclosure shall be delivered in a volume and cadence  
9 sufficient for an ordinary consumer to hear and comprehend it. The visual  
10 disclosure shall be of a size and shade, with a degree of contrast to the background  
11 against which it appears, and shall appear on the screen for a duration and in a  
12 location, sufficiently noticeable for an ordinary consumer to read and comprehend  
13 it; and

14           B.    In a print advertisement, promotional material, or instructional  
15 manual, the disclosure shall be in a type size and location sufficiently noticeable  
16 for an ordinary consumer to read and comprehend it, in print that contrasts with  
17 the background against which it appears.

18           3.    **“Commerce”** is synonymous in meaning and equal in scope to the  
19 usage of the term in Section 4 of the Federal Trade Commission  
20 Act, 15 U.S.C. § 44.

21           4.    **“Computer software program service”** shall mean any service  
22 wherein Defendant provides or promotes access to software programs for a fee.

23           5.    **“Defendant”** means Cashier Myricks, unless otherwise specified.

24           6.    **“Endorsement”** shall mean as defined in 16 C.F.R. § 255.0(b).

25           7.    **“Material”** means likely to affect a person’s choice of, or conduct  
26 regarding, goods or services.

1 **I. PROHIBITED BUSINESS PRACTICES**

2 **IT IS THEREFORE ORDERED** that Defendant, directly or through any  
3 corporation, partnership, subsidiary, division, trade name, or other device, and his  
4 officers, agents, servants, representatives, employees, and all persons or entities in  
5 active concert or participation with him who receive actual notice of this Order by  
6 personal service or otherwise, in connection with the advertising, promotion,  
7 offering for sale, sale, or distribution of any product or service, are hereby  
8 temporarily restrained and enjoined from:

9 A. Misrepresenting, or assisting others in misrepresenting, expressly or  
10 by implication, including through the use of a trade name or endorsement, any fact  
11 material to a consumer's decision to purchase any product or service, including  
12 but not limited to:

13 1. the legality of the possession, installation, or use of any computer  
14 software program or computer software program service, including any peer-to-  
15 peer file-sharing software program or software program service;

16 2. the legality of downloading movies that are currently playing in  
17 theaters;

18 3. the legality of downloading computer games, including games for  
19 Playstation, XBOX, Dreamcast, and Nintendo;

20 4. the legality of downloading music files; and

21 B. Failing to clearly and conspicuously disclose, prior to the time that a  
22 consumer purchases any good or service from Defendant, all material information  
23 relating to the consumer's decision to purchase any good or service, including,  
24 where applicable:

25 1. that persons who download copyrighted material, or who make it  
26 available to others, without the copyright owner's permission, may be liable for  
27 copyright infringement, which can result in significant monetary damages, fines,  
28 and even criminal penalties; and

1           2. that persons who subscribe to Defendant's  
2 MP3DownloadCity.com service do not thereby obtain a license to download  
3 copyrighted music, movies, or games.

## 4   **II. STAY OF ACTIONS**

5           **IT IS FURTHER ORDERED** that:

6           A. Except by leave of this Court, pending determination of the requested  
7 preliminary injunction, all entities are hereby stayed from taking any action to  
8 establish or enforce any claim, right, or interest for, against, on behalf of, in, or in  
9 the name of, Cashier Myricks d/b/a MP3DownloadCity.com, or any of his  
10 subsidiaries, affiliates, partnerships, assets, or documents, including, but not  
11 limited to, the following actions:

12                   1. commencing, prosecuting, continuing, entering, or enforcing  
13 any suit or proceeding, except that such actions may be filed to toll any applicable  
14 statute of limitations;

15                   2. accelerating the due date of any obligation or claimed  
16 obligation; filing, creating, perfecting, or enforcing any lien; enforcing any right of  
17 setoff; taking or attempting to take possession, custody, or control of any asset;  
18 attempting to foreclose, forfeit, alter, or terminate any interest in any asset,  
19 whether such acts are part of a judicial proceeding, are acts of self-help, or  
20 otherwise; and

21                   3. executing, issuing, serving, or causing the execution, issuance  
22 or service of, any legal process, including, but not limited to, attachments,  
23 garnishments, subpoenas, writs of replevin, writs of execution, or any other form  
24 of process whether specified in this Order or not;

25           B. This Section does not stay:

26                   1. the commencement or continuation of a criminal action or  
27 proceeding;

1           2.     the commencement or continuation of an action or proceeding  
2 by a governmental unit to enforce such governmental unit's police or regulatory  
3 power;

4           3.     the enforcement of a judgment, other than a money judgment,  
5 obtained in an action or proceeding by a governmental unit to enforce such  
6 governmental unit's police or regulatory power;

7           4.     the commencement of any action by the Secretary of the United  
8 States Department of Housing and Urban Development to foreclose a mortgage or  
9 deed of trust in any case in which the mortgage or deed of trust held by the  
10 Secretary is insured or was formerly insured under the National Housing Act and  
11 covers property, or combinations of property, consisting of five or more living  
12 units; and

13           5.     the issuance to Defendant of a notice of tax deficiency.

### 14                           **III. PRESERVATION OF RECORDS**

15           **IT IS FURTHER ORDERED** that Defendant, directly or through any  
16 corporation, partnership, subsidiary, division, trade name, or other device, and his  
17 officers, directors, agents, servants, employees, salespersons, independent  
18 contractors, corporations, subsidiaries, branches or business divisions, attorneys,  
19 successors, assigns, and all other persons or entities in active concert or  
20 participation with him who receive actual notice of this Order by personal service  
21 or otherwise, are hereby temporarily restrained and enjoined from destroying,  
22 erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in  
23 any manner, directly or indirectly, any documents that relate: to the business  
24 practices or the business or personal finances of Defendant; to the business  
25 practices or finances of entities directly or indirectly under the control of  
26 Defendant; or to the business practices or finances of entities directly or indirectly  
27 under common control with the Defendant.

1                                   **IV. RECORD KEEPING/BUSINESS OPERATIONS**

2           **IT IS FURTHER ORDERED** that Defendant, directly or through any  
3 corporation, partnership, subsidiary, division, trade name, or other device, and his  
4 officers, directors, agents, servants, employees, salespersons, independent  
5 contractors, corporations, subsidiaries, branches or business divisions, attorneys,  
6 successors, assigns, and all other persons or entities in active concert or  
7 participation with him who receive actual notice of this Order by personal service  
8 or otherwise, are each hereby temporarily restrained and enjoined from:

9           A.   Failing to create and maintain documents that, in reasonable detail,  
10 accurately, fairly, and completely reflect Defendant's incomes, disbursements,  
11 transactions, and use of money, beginning as of the time this Order is entered;

12           B.   Failing to make and keep books, records, accounts, bank statements,  
13 current accountants' reports, general ledgers, general journals, cash receipt  
14 ledgers, cash disbursement ledgers and source documents, documents indicating  
15 title to real or personal property, and any other data which, in reasonable detail,  
16 accurately and fairly reflect the transactions and dispositions of the assets of  
17 Defendant;

18           C.   Destroying, mutilating, concealing, altering, transferring, or otherwise  
19 disposing of, in any manner, any books, records, tapes, compact discs, computer  
20 disks, accounting data, checks (fronts and backs), correspondence, forms,  
21 advertisements, brochures, manuals, electronically stored data, banking records,  
22 customer lists, customer files, invoices, telephone records, ledgers, payroll  
23 records, or other documents of any kind, including information stored in  
24 computer-maintained form, of Defendant, in his possession, custody, or control;  
25 and

26           D.   Creating, operating, or exercising any control over any business  
27 entity, including any partnership, limited partnership, joint venture, sole  
28

1 proprietorship or corporation, without first providing the Commission with a  
2 written statement disclosing:

- 3 1. the name of the business entity;
- 4 2. the address and telephone number of the business entity;
- 5 3. the names of the business entity's officers, directors, principals,  
6 managers and employees; and
- 7 4. a detailed description of the business entity's intended  
8 activities.

#### 9 **V. REQUIRED DISTRIBUTION OF ORDER BY DEFENDANT**

10 **IT IS FURTHER ORDERED** that Defendant shall immediately provide a  
11 copy of this Order to each subsidiary, partner, branch, division, sales entity,  
12 successor, assign, employee, independent contractor, agent, attorney,  
13 representative, and any closely held corporation, partnership, or proprietorship  
14 owned, controlled, or managed by Defendant and shall, within ten (10) calendar  
15 days from the date of entry of this Order, serve upon counsel for the Commission a  
16 sworn statement that he has complied with this provision of the Order. The  
17 statement shall include the names and addresses of each such person or entity who  
18 received a copy of the Order.

#### 19 **VI. SERVICE OF ORDER**

20 **IT IS FURTHER ORDERED** that Plaintiff's agents or employees may  
21 serve this Order upon any financial institution, or other entity or person that may  
22 have possession, custody, control, or knowledge of any documents or assets of  
23 Defendant, or any other entity or person that may be otherwise subject to any  
24 provision of this Order, by delivering a copy of the Order by any means, including  
25 facsimile transmission and electronic mail, to any office, branch, or location.

#### 26 **VII. DURATION OF TEMPORARY RESTRAINING ORDER**

27 **IT IS FURTHER ORDERED** that the Temporary Restraining Order shall  
28 expire, pursuant to Fed. R. Civ. P. 6(a), on the tenth business day after issuance,

1 i.e., October 12, 2005, unless within such time, the Order, for  
2 good cause shown, is extended for an additional period not to exceed ten (10)  
3 business days pursuant to Fed. R. Civ. P. 6(a), or unless it is further extended with  
4 the consent of the parties.

### 5 **VIII. ORDER TO SHOW CAUSE**

6 **IT IS FURTHER ORDERED** that pursuant to Federal Rule of Civil  
7 Procedure 65(b) and Local Rule 65.1, Defendant shall appear before this Court, <sup>in</sup> ~~on~~ courtroom  
8 <sup>5 on</sup> ~~the~~ <sup>at 312 N. Spring St, Los Angeles, CA 90012</sup> ~~the 2nd~~ floor of the United States Federal Courthouse, on the 7th  
9 day of October, 2005, at 10:00 o'clock a.m., to show cause, if there is any,  
10 why this Court should not enter a preliminary injunction, pending final ruling on  
11 the Complaint against Defendant, enjoining him from further violations of Section  
12 5(a) of the FTC Act, 15 U.S.C. § 45(a), and imposing such additional relief as may  
13 be appropriate.

### 14 **IX. SERVICE OF DOCUMENTS AND EVIDENCE**

15 **IT IS FURTHER ORDERED** that Defendant, in responding to this  
16 Court's Order to Show Cause, shall serve all memoranda, affidavits, and other  
17 evidence on which he intends to rely not later than 4:00 p.m. of the fourth business  
18 day prior to the preliminary injunction hearing set in this matter. Service on the  
19 Commission shall be performed by personal delivery, or confirmed facsimile  
20 delivery, to Jennifer M. Brennan Esq. at the following address: Federal Trade  
21 Commission, 10877 Wilshire Blvd., Suite 700, Los Angeles, California 90024,  
22 (310) 824-4380 (fax number). The Commission may serve and file a supplemental  
23 memorandum of points and authorities based on evidence discovered subsequent  
24 to the filing of its Complaint by no later than 4:00 p.m. of the fourth business day  
25 prior to the preliminary injunction hearing, and may serve and file a reply to  
26 Defendant's opposition by no later than noon on the second business day prior to  
27 the preliminary injunction hearing.

