

A. This Court has jurisdiction over the subject matter of this case and there is good cause to believe that the Court will have jurisdiction over the parties.

B. There is good cause to believe that defendants Seville Marketing, Ltd., and Gregory Stephen Wong have engaged in and are likely to engage in acts and practices that violate Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, and that the Commission is likely to prevail on the merits of this action.

C. There is good cause to believe that immediate and irreparable harm will result from defendants' ongoing violations of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, absent the entry of this Temporary Restraining Order ("Order").

D. Weighing the equities and considering the Commission's likelihood of success in its cause of action, entry of this Order is in the public interest.

E. Pursuant to Fed. R. Civ. P. 65(c), no security is required of any agency of the United States for issuance of a restraining order.

DEFINITIONS

For purposes of this Temporary Restraining Order, the following definitions shall apply unless otherwise indicated:

A. **"Defendants"** means Seville Marketing, Ltd., and Gregory Stephen Wong, and each of them, by whatever names each might be known.

B. **"Document"** is synonymous in meaning and equal in scope to the usage of the term in Fed. R. Civ. P. 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, electronic mail, 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.

C. **"Human immunodeficiency virus"** ("HIV") shall refer to all types or strains of the virus that causes acquired immunodeficiency syndrome ("AIDS"), an infectious disease characterized by immune system failure.

D. "HIV tests" shall refer to any product that is advertised, marketed, promoted, offered for sale, distributed, or sold with express or implied representations that the product will or may detect the presence or absence of any type or strain of HIV in any human.

E. "Person" means any individual, group, unincorporated association, limited or general partnership, corporation or other business entity.

PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that defendants and their successors and assigns, whether acting directly or through any entity, corporation, subsidiary, division, or other device, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby temporarily restrained and enjoined from:

A. Engaging, participating, or assisting in any manner whatsoever, directly or indirectly, in the advertising, marketing, promotion, offering for sale, distribution, or sale of any HIV test to any U.S. consumer.

B. Making, or assisting others in making, directly or by implication, any material false or misleading oral or written statement or representation in connection with the advertising, marketing, promotion, offering for sale, distribution, or sale of HIV tests to any U.S. resident, including but not limited to:

1. Misrepresenting to any U.S. resident, in any manner, directly or by implication, the accuracy of any HIV test;
2. Misrepresenting to any U.S. resident, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research; and
3. Misrepresenting to any U.S. resident any other fact material to a consumer's decision to purchase any HIV test.

SEIZURE OF PACKAGES BY UNITED STATES CUSTOMS AND BORDER PROTECTION

IT IS FURTHER ORDERED that United States Customs and Border Protection shall, upon receipt of a copy of this Order and for the duration of this Order, seize and forward to Nadine Samter,

Esq., at Federal Trade Commission, 915 Second Ave., Suite 2896, Seattle, WA 98174, all packages sent by or on behalf of defendants and addressed to a location within the United States. For the purposes of this Section, packages sent by or on behalf of defendants shall include but not be limited to those with the following origin or return addresses:

3017 Mountain Highway,
P.O. Box 16047
North Vancouver, British Columbia, V7N3T6

1811 Purcell Way
Suite 21
North Vancouver, British Columbia, V7J3H4

3505 Norwood Avenue,
North Vancouver, British Columbia V7N3T6

303 3187 Mountain Highway
North Vancouver, British Columbia, V7J3S9.

In order to protect the privacy interests of defendants' customers, the United States Customs and Border Protection shall not create or maintain any lists identifying the intended recipients of the packages seized pursuant to this Section and plaintiff's counsel shall keep such information confidential. If used in this litigation, information identifying defendants' customers shall be filed under seal.

INJUNCTION AGAINST PROVISION OF COMMERCIAL MAIL DELIVERY SERVICES

IT IS FURTHER ORDERED that all commercial mail delivery services, including but not limited to Federal Express, which are served with or have actual notice of this Order, are, for the duration of this Order, enjoined from providing handling, transport, or delivery services for packages provided by or on behalf of defendants for shipment to a location within the United States. For the purposes of this Section, packages provided by or on behalf of defendants shall include but not be limited to those with the Federal Express Origin ID "YBYA (604) 983-0120" and those with the following origin or return addresses:

3017 Mountain Highway,
P.O. Box 16047
North Vancouver, British Columbia, V7N3T6

1811 Purcell Way
Suite 21
North Vancouver, British Columbia, V7J3H4

3505 Norwood Avenue,
North Vancouver, British Columbia V7N3T6

303 3187 Mountain Highway
North Vancouver, British Columbia, V7J3S9.

INJUNCTION AGAINST USE OF WEB PAGES AND NEW ACCOUNT REGISTRATIONS

IT IS FURTHER ORDERED that:

A. Defendants or any company, entity, or person providing web hosting services for defendants shall:

1. Immediately take whatever steps are necessary to amend the "home" pages of the following web sites to include a clear and conspicuous statement that the products offered cannot be sold or shipped to persons located in the United States:
 - (a) <http://www.discreetest.com>;
 - (b) <http://www.aidshtest.com>; and
2. Prevent the destruction or erasure of any web page or website registered to or on behalf of defendant.

B. In connection with the advertising, promotion, offering for sale, or sale of HIV test kits on the Internet, the World Wide Web, or any web page or website, defendants are temporarily restrained and enjoined from registering any new domain names, websites, web pages, or e-mail accounts, Internet service accounts, or online payment service accounts, without notifying counsel for the FTC within 24 hours of such registrations. The notice shall be served by personal delivery or confirmed facsimile delivery to Nadine Samter, Esq., Federal Trade Commission, 915 Second Ave., Suite 2896, Seattle, WA 98174, (206) 220-6366 (fax number), and shall include:

1. The true identity of the account holder;
2. His or her true and accurate mailing address, e-mail address, and telephone number;
3. All registration information, including name(s), address(es), and e-mail address(es) of the purported account holder;
4. The name and address of the business with whom such account was registered; and
5. The screen name or username associated with the account.

FINANCIAL REPORTS

IT IS FURTHER ORDERED that:

A. Defendant Gregory Stephen Wong shall, within 7 business days after entry of this Order, prepare and deliver to plaintiff's counsel at Federal Trade Commission, 915 Second Ave., Suite 2896, Seattle, WA 98174, a completed financial statement on the form captioned "Form Re: Financial Statement for Individual Defendant," which is appended to this Order as Attachment A. This financial statement shall be accurate as of the date of entry of this Order; and

B. Defendant Seville Marketing, Ltd., shall, within 7 business days after entry of this Order, prepare and deliver to plaintiff's counsel at Federal Trade Commission, 915 Second Ave., Suite 2896, Seattle, WA 98174, a completed financial statement on the form captioned "Form Re: Financial Statement for Business Defendant," which is appended to this Order as Attachment B. This financial statement shall be accurate as of the date of entry of this Order.

PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that defendants and their successors and assigns, whether acting directly or through any entity, corporation, subsidiary, division, or other device, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are hereby temporarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any documents that relate to the business practices or business or personal finances of defendants; to the business practices or finances of entities directly or indirectly under the control of defendants; or to the business practices or finances of entities directly or indirectly under common control with any other defendant.

RECORD KEEPING/BUSINESS OPERATIONS

IT IS FURTHER ORDERED that defendants and their successors and assigns, whether acting directly or through any entity, corporation, subsidiary, division, or other device and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are hereby temporarily restrained and enjoined from:

A. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of money, beginning as of the time of effective service of this Order;

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

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

D. Creating, operating or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing the Commission with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers, and employees; and (4) a detailed description of the business entity's intended activities; and

E. Opening or maintaining any account or location for receiving mail for any defendant at any commercial mail receiving agency, without first providing the Commission with a written statement disclosing: (1) the name of the commercial mail receiving agency where the account or mail receiving location is situated; and (2) the address and telephone number of the commercial mail receiving agency where the account or mail receiving location is situated.

SERVICE OF ORDER

IT IS FURTHER ORDERED that:

A. Plaintiff shall serve this Order on defendants as soon as possible, but no later than the second business day from the date of entry; and

B. Plaintiff's agents or employees may serve this Order upon the United States Customs and Border Protection, Federal Express, any shipping service, or other entity or person as needed to enforce the terms of this Order

REQUIRED DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that named defendants shall immediately provide a copy of this Order to each affiliate, partner, division, sales entity, successor, assign, employee, independent contractor, agent, attorney, and representative of defendants and shall, within ten (10) days from the date of entry of this Order, serve upon plaintiff's counsel at 915 Second Ave., Suite 2896, Seattle, WA 98174, a sworn statement that they have complied with this provision of the Order, which statement shall include the names and addresses of each such person or entity who received a copy of the Order.

CONSUMER CREDIT REPORT

IT IS FURTHER ORDERED that pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), any consumer reporting agency served with this Order shall promptly furnish consumer reports concerning defendants Seville Marketing, Ltd., and Gregory Stephen Wong to counsel for the Commission.

DURATION OF TEMPORARY RESTRAINING ORDER

IT IS FURTHER ORDERED that this Order shall expire on June 2, 2004, unless within such time, the Order, for good cause shown or with the consent of the parties, is extended for an additional period.


ORDER TO SHOW CAUSE

IT IS FURTHER ORDERED that defendants are **ORDERED TO SHOW CAUSE**, if there is any, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint against defendants, enjoining them from further violations of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, and imposing such additional relief as may be appropriate. Defendants shall file and serve all memoranda, declarations, and other evidence in response to this Order to Show Cause no later than 4:30 p.m. (PDT) on May 25, 2004. Service on the Commission shall be performed by personal delivery, or confirmed facsimile delivery, to Nadine Samter, Esq., at Federal Trade Commission, 915 Second Ave., Suite 2896, Seattle, WA 98174, (206) 220-6366 (fax number). If defendants would like oral argument and/or an evidentiary hearing in connection with this Order to Show Cause, they shall include a request for argument or hearing on the first page of their responsive memorandum. Otherwise, this matter will be determined on the papers submitted. The FTC may file and serve its reply, if any, no later than 4:30 p.m. (PDT) on May 27, 2004.

RETENTION OF JURISDICTION

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

SO ORDERED, this 18th day of May, 2004, at 3 p.m.



Robert S. Lasnik,
United States District Judge