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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**FEDERAL TRADE COMMISSION,**

**Plaintiff,**

v.

**JOHN ZUCCARINI, individually and  
d/b/a Cupcake Party, Cupcake-Party,  
Cupcake Parties, Cupcake-Parties,  
Cupcake City, Cupcake Patrol,  
Cupcake-Patrol, Cupcake First-Patrol,  
Cupcake Show, Cupcake-Show,  
Cupcake Shows, Cupcake-Shows,  
Cupcake Parade, Cupcake-Parade,  
Cupcakes, Cupcake Confidential,  
Cupcake-Movies, Cupcake  
Real Video, The Cupcake Incident,  
The Cupcake Secret, Cupcake Message,  
Cupcake Messenger, The Country Walk,  
JZ Design and RaveClub Berlin,**

**Defendant.**

Civil Action No. 01cv4854

RECEIVED  
SEP 25 2001

FILED  
SEP 25 2001

**TEMPORARY RESTRAINING ORDER**

ENTERED

SEP 26 2001

CLERK OF COURT

Plaintiff, the Federal Trade Commission ("Commission") having filed its complaint for a permanent injunction and other equitable relief in this matter pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and having moved ex parte for a temporary restraining order and for an order to show cause why a preliminary injunction should not be granted pursuant to Rule 65(b) of the Federal Rules of Civil Procedure; and the Court, having considered the complaint, declarations, exhibits, and memorandum of law filed in support thereof, finds that:

1. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe it will have jurisdiction over all parties hereto;

2. There is good cause to believe that the Defendant, John Zuccarini, has engaged and is likely to engage in acts and practices that violate Section 5 of the FTC Act, 15 U.S.C. § 45, 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 will occur from the destruction, or other disposition or concealment by Defendant of his business records unless the Defendant is immediately restrained and enjoined by Order of this Court. The evidence set forth in the Commission's Memorandum of Points and Authorities in Support of its Ex Parte Motion for a TRO ("Memorandum"), and in the accompanying declarations and exhibits, demonstrates that the Defendant has engaged in a concerted course of unlawful activity involving the redirecting of consumers from their intended destinations on the World Wide Web to his own Web pages, where he traps consumers in multiple series of Web pages displaying advertisements for goods and services for his financial gain, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45. The

evidence in the Memorandum further shows that the Defendant previously has engaged in efforts to conceal both the scope of his illegal actions and his own whereabouts, by altering and/or destroying the content of his Web pages, attempting to evade service of process, and disregarding court orders in prior lawsuits. Thus, there is good cause to believe that the Defendant will attempt to conceal the scope of his deliberate illegal actions and to avoid returning his ill-gotten gains if not restrained from doing so by Order of this Court;

4. The Commission has not provided notice to the Defendant due to the likelihood that advance notice of this action will cause the Defendant to evade service of process and abscond with or destroy evidence. The Commission's request for this emergency ex parte relief is not the result of any lack of diligence on the Commission's part, but instead is based upon the nature of the Defendant's unlawful conduct;

5. Weighing the equities and considering the Commission's likelihood of ultimate success, a temporary restraining order with other equitable relief is in the public interest; and

6. Fed. R. Civ. P. 65(c) does not require security of the United States or an officer or agency thereof.

#### Definitions

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

- A. "Defendant" means John Zuccarini, individually and d/b/a Cupcake Party, Cupcake-Party, Cupcake Parties, Cupcake-Parties, Cupcake City, Cupcake Patrol, Cupcake-Patrol, Cupcake First-Patrol, Cupcake Show, Cupcake-Show, Cupcake Shows, Cupcake-Shows, Cupcake Parade, Cupcake-Parade, Cupcakes, Cupcake Confidential, Cupcake-Movies, Cupcake Real Video, The Cupcake Incident, The Cupcake Secret, Cupcake Message, Cupcake Messenger, The Country Walk, JZ Design, and RaveClub Berlin, whether acting

directly or through any entity, corporation, subsidiary, division, or other device, unless specified otherwise, as well as his assigns, agents, servants, employees, or affiliates; and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.

- B. "Asset" or "Assets" means any legal or equitable interest in, right to, or claim to any real or personal property of the Defendant, or held for the benefit of the Defendant, including, but not limited to "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes" (as these terms are defined in the Uniform Commercial Code), and all chattels, leaseholds, contracts, mails or other deliveries, shares of stock, lists of consumers, accounts, credits, receivables and cash, wherever located.
- C. "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, Internet sites, Web pages, Web sites, electronic correspondence, 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 reasonable usable form. A draft or non-identical copy is a separate document within the meaning of the term.
- D. "Internet" is an umbrella term used to describe the decentralized system that links computers around the world using a standardized set of communication protocols. The Internet includes, among other systems, the World Wide Web, electronic mail, newsgroups, telnet, file transfer protocol ("FTP"), Internet Relay Chat, and instant messaging.
- E. A "browser" is a software application used to view, download, upload, surf or otherwise

access documents (“pages” or “sites”) on the World Wide Web. Browsers read coded documents that reside on servers, and interpret the coding into what users see rendered as a Web page or Web site. A user may retrieve and view a Web page or site by entering the URL or domain name of the Web page in the address bar of the browser.

- F. The “World Wide Web” or the “Web” is a system used on the Internet for cross-referencing and retrieving information. Documents (“pages” or “sites”) on the World Wide Web are most frequently formatted in a language called HTML, or HyperText Markup Language, that supports links to other documents on the World Wide Web.
- G. A “Web site” is a set of electronic files or documents, usually a home page and subordinate pages, readily viewable on a computer by anyone with access to the Web and standard Internet browser software.
- H. A “Web page” is a single electronic document on the World Wide Web, readily viewable on a computer by anyone with access to the Internet and standard Internet browser software. Every Web page on the World Wide Web is identified by a globally unique address.
- I. Uniform Resource Locator or “URL” is the globally unique address of a resource, file or page on the World Wide Web. Each Web page has a distinct URL, such as *www.mp3123.com* or *www.cupcakeparty.com/celebrities-gone-wild.htm*, that serves as a unique Internet address for that Web page.
- J. A “domain name” is a unique alpha-numeric name used to locate a particular organization or other entity on the Internet. Domain names allow users connected to the Internet to find Web sites with familiar names without having to memorize the complex numerical addresses that computers read. In the URL *www.cupcakeparty.com/celebrities-gone-*

*wild.htm*, "cupcakeparty.com" is the domain name. Simply registering a domain name does not link the domain name with a Web site, particular location or computer on the Internet. The registrant must find a host (or "Web server") for the Web site and have the domain name indexed to the server so that a user can locate the Web site.

- K. A "Host" or "Hosting Company" is the party that provides the infrastructure for a computer service. With respect to Web pages and Web sites, a Host or Hosting Company maintains "Web servers" -- the computers on which Web sites and pages reside. The Host or Hosting Company also maintains the communication lines required to link the server to the Internet. Often, the content on the servers (i.e. the content of the Web pages) is controlled by someone other than the Host or Hosting Company.
- L. A "window" is an enclosed area on a computer's display screen, usually rectangular in shape. Most computers allow a user to divide a screen into several windows. Within each window, a user can run a different program or different copies of the same program. A user can minimize a window by replacing the entire window with an icon, a small picture that represents the program running in the window. Separate functions within a given program can also use windows, e.g. multiple documents within WordPerfect.
- M. "Redirecting" is the practice of diverting consumers to Web sites or Web pages that consumers did not intend to visit or access, using tactics including, but not limited to:
- (1) operating, publishing, or disseminating Web sites or pages with domain names that are misspellings of other domain names;
  - (2) operating, publishing, or disseminating Web sites or pages with domain names that transpose or invert words, terms, or phrases in other domain names; or

- (3) operating, publishing, or disseminating Web sites or pages with domain names that are confusingly similar to famous trademarks, service marks, or names.

N. "Obstructing" is the practice of impeding or preventing consumers from exiting Web sites or Web pages by means of disseminating to the public on the Internet or World Wide Web, Web sites, or Web pages that include code, programs, commands or directions of any kind, executed on or through consumers' computers or the Web server's computer, that impede or block consumers' ability to exit those pages or sites, including but not limited to:

- (1) directing, instructing, or causing multiple browser windows, pop-up windows, Web pages, Web sites, or multiple copies of consumers' browser software to launch or open when a consumer types a domain name or URL in the address bar of a browser, or functional equivalent thereof;
- (2) directing, instructing, or causing windows, Web pages, or Web sites to open, pop up, launch or otherwise appear on consumers' screen as a result of consumers' selection of the "Close," "Exit," "X," or "Back" button(s), or any functional equivalent thereof;
- (3) directing, instructing, or causing windows, Web sites or Web pages to open that cannot be viewed by consumers using standard browser software functions, including, but not limited to, the "right click" function of maximizing a window; or
- (4) directing, instructing or causing consumers' browser software to open or

launch new windows, Web pages or Web sites or additional copies of consumers' browser software without any action on the part of consumers.

### **PROHIBITED BUSINESS ACTIVITIES**

#### **I.**

**IT IS THEREFORE ORDERED** that, in connection with the advertising, promotion, offering for sale, sale, or provision of any goods or services on the Internet, the World Wide Web, and/or any Web page or Web site, the Defendant is hereby temporarily restrained and enjoined from both: (1) the combined practice of redirecting and obstructing consumers on the Internet or World Wide Web and (2) obstructing consumers on the Internet or World Wide Web.

#### **II.**

**IT IS FURTHER ORDERED** that, in connection with the advertising, promotion, offering for sale, sale, or provision of any goods or services on the Internet, the World Wide Web, and/or any Web page or Web site, the Defendant is hereby temporarily restrained and enjoined from representing that any of his Web pages, Web sites, domain names, goods or services, are endorsed by, or affiliated or associated with, any third party or any entity, including but not limited to any Web site, Web page, product, trademark or service mark, or celebrity, when in fact they are not. Such representation shall not be made expressly or by implication, including but not limited to launching the Web site or Web page belonging to an unrelated party in combination or association with any of Defendant's Web sites, Web pages or domain names without the express authorization of the third party or entity.



### III.

**IT IS FURTHER ORDERED** that, in connection with the advertising, promotion, offering for sale, sale, or provision of any goods or services on the Internet, the World Wide Web, and/or any Web page or Web site, the Defendant is hereby temporarily restrained and enjoined from registering any new domain names, either directly or through any third party, without notifying counsel for the Commission within 24 hours. Such notice shall be sent in accordance with Part XIII of this Order, and shall include:

- (3) the true identity of the domain name registrant;
- (4) his or her true and accurate mailing address, email address, and telephone number;
- (5) all registration information, including name(s), address(es), and email address(es) of the purported registrant, administrative contact, and billing contact listed on each registration; and
- (6) the name and address of the registrar.

### IV.

**IT IS FURTHER ORDERED** that the Defendant, and/or any agent, employee or associate of Defendant, or any Host or Hosting Company for Defendant shall:

- A. Immediately take whatever steps may be necessary to ensure that the following Web pages or Web sites operated, in whole or in part, by the Defendant cannot be accessed by the public:

- (1) *http://cupcakeparty.com/html/celebrities-gone-wild.html*;
- (2) *http://musiclyrics.net/mp3-music.html*; and
- (3) *http://www.sexyblondes.net/html/pussy-spankers.html*

Nothing in this Provision shall prevent the Defendant from republishing these Web pages or Web sites in compliance with all of the provisions of this Order.

- B. Prevent the destruction or erasure of any Web page or Web site registered to and/or operated, in whole or in part, by the Defendant, pursuant to Part V of this Order.

### **RECORDKEEPING PROVISIONS**

#### **V.**

#### **PRESERVATION OF BUSINESS RECORDS**

**IT IS FURTHER ORDERED** that the Defendant is hereby temporarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, documents or records of any kind that relate to the business practices or business or personal finances of the Defendant, including but not limited to 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 World Wide Web), FTP logs, Server Access Logs, USENET Newsgroup postings, World Wide Web pages, books, written or printed records, handwritten notes, telephone logs, 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, and 1099 forms, and documents or records of any kind that relate to Defendant's business practices.

## VI.

### MAINTENANCE OF CURRENT BUSINESS RECORDS

**IT IS FURTHER ORDERED** that, in connection with the advertising, promotion, offering for sale, sale, or provision of any goods or services on the Internet, the World Wide Web, and/or any Web page or Web site, the Defendant is hereby temporarily restrained and enjoined from:

- A. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect the Defendant's incomes, disbursements, transactions, and use of money; and
- B. Creating, operating, or exercising any control over any business entity, including but not limited to any partnership, limited partnership, joint venture, sole proprietorship, international business corporation, or any other 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.

VII.

PLAINTIFF'S ACCESS TO BUSINESS RECORDS

IT IS FURTHER ORDERED that the Defendant shall, within <sup>3 days</sup> ~~twenty-four (24)~~ hours of service of this Order:

- A. Produce to the Commission for inspection, inventory and/or copying, at a location designated by the Commission, all materials related or referring, directly or indirectly, to the Defendant's Web pages and Web sites, any materials, information, products or data related thereto, including, but not limited to, 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 World Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup postings, World Wide Web pages, 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 Defendant's business practices; and

- B. Produce to the Commission for inspection, inventory and/or copying, at a location designated by the Commission, all computers and data in whatever form, used by the Defendant, in whole or in part, relating to the Defendant's business practices.

The Commission shall return materials so removed, or produced by the Defendant, within three (3) business days of completing said inventory and copying.

### VIII.

#### **EXPEDITED DISCOVERY**

**IT IS FURTHER ORDERED** that, prior to the preliminary injunction hearing or the expiration of this Temporary Restraining Order, whichever occurs first, any party may depose or subpoena any third party, pursuant to Rules 30 and 45, upon twenty-four (24) hours notice. Any deposition taken pursuant to this provisions is in addition to, and not subject to, the presumptive limits on depositions set forth in Federal Rules 30 and/or 31. Nothing in this provision shall affect the Court's ability to further modify the discovery rules as they apply in this matter.

#### **ACCOUNTING PROVISIONS**

### IX.

**IT IS FURTHER ORDERED** that, in connection with the advertising, promotion, offering for sale, sale, or provision of any goods or services on the Internet, the World Wide Web, and/or any Web page or Web site, the Defendant shall, within five (5) business days after service of this Order, prepare and deliver to counsel for the Commission:

- A. A completed financial statement accurate as of the date of service of this Order, on the form attached to this Order as Attachment A;
- B. A complete statement, verified under oath, of all payments, transfers, or

assignments of funds, assets, or property worth \$1,000 or more since January 1, 2000;

- C. A signed Consent to Release of Financial Records, attached to this Order as Attachment B, in order to provide the Commission access to Defendant's records and documents held by financial institutions outside the territorial United States.

**X.**

**CONSUMER CREDIT REPORTS**

**IT IS FURTHER ORDERED** that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer report concerning the Defendant to the Commission.

**NOTIFICATION PROVISIONS**

**XI.**

**DISTRIBUTION OF ORDER BY DEFENDANT**

**IT IS FURTHER ORDERED** that the Defendant shall immediately provide a copy of this Order to each of his affiliates, clients, subsidiaries, divisions, sales entities, successors, assigns, officers, directors, employees, independent contractors, agents, attorneys, and representatives; and shall, within ten (10) days from the date of entry of this Order, provide the Commission with a sworn statement that he has 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.

**XII.**

**SERVICE OF ORDER**

**IT IS FURTHER ORDERED** that copies of this Order may be served by any means, including electronic mail and facsimile transmission, upon any entity or person that may have possession, custody, or control of any documents of the Defendant, or that may be subject to any provision of this Order. Pursuant to Fed. R. Civ. P. 4(c)(2), this Order and the initial papers filed in this matter may be served on the Defendant by any law enforcement officer, by any agent of the Commission, or by any agent of any process service retained by the Commission.

**XIII.**

**CORRESPONDENCE WITH AND NOTICE TO THE PLAINTIFF**

**IT IS FURTHER ORDERED** that, for purposes of this Temporary Restraining Order, all correspondence and pleadings to the Commission shall be addressed to:

Marc M. Groman, Esquire  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W., Room 238  
Washington, DC 20580  
(202) 326-2042 (voice)  
(202) 326-3395 (facsimile)

**PRELIMINARY INJUNCTION PROCEEDINGS**

**XIV.**

**ORDER TO SHOW CAUSE  
(PRELIMINARY INJUNCTION HEARING)**

**IT IS FURTHER ORDERED**, pursuant to Fed. R. Civ. P. 65(b), that the Defendant shall appear before this Court on the 9<sup>th</sup> day of Oct, 2001 at 4:30 o'clock P.m., at the United States Courthouse, Room     , to show cause, if there is any, why

this Court should not enter a preliminary injunction, pending final ruling on the complaint against the Defendant, enjoining him from further violations of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and imposing such additional relief as may be appropriate.

**XV.**

**SERVICE OF PLEADINGS**

**IT IS FURTHER ORDERED** that the parties shall serve all memoranda, affidavits and other evidence on which they intend to rely at the preliminary injunction hearing in this matter not later than 4:00 p.m. (EST) of the second day prior to the hearing date. Service on the Commission shall be performed by personal delivery to the attention of counsel at the address listed above in Part XIII of this Order, or pursuant to any arrangement agreed upon by the parties.

**XVI.**

**WITNESS IDENTIFICATION**

**IT IS FURTHER ORDERED** that, if any party to this action intends, with the permission of the Court, to present the testimony of any witness at the preliminary injunction hearing in this matter, that party shall, at least forty-eight (48) hours prior to the scheduled date and time of hearing, file with this Court and serve on all other parties a statement disclosing the name, address, and telephone number of any such witness, and either a summary of the witness's expected testimony, or the witness's affidavit or declaration revealing the substance of such witness's expected testimony. Service on the Commission shall be performed by personal delivery to the attention of counsel at the address listed above in Part XIII, or pursuant to any arrangement agreed upon by the parties.



XVII.

**DURATION OF TEMPORARY RESTRAINING ORDER**

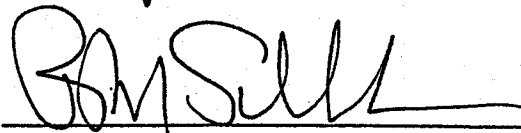
IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire on Oct 9, 2001, at 11:59 p.m., unless within such time the Order, for good cause shown, is extended, or unless the Defendant consents that it should be extended for a longer period.

XVIII.

**RETENTION OF JURISDICTION**

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

SO ORDERED, this 25<sup>th</sup> day of Sept, 2001, at 11<sup>00</sup> A.m.



United States District Judge  
Eastern District of Pennsylvania