

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RECEIVED
MAY 16 2005
JUDGE AMY ST. EVE
United States District Court

_____)
FEDERAL TRADE COMMISSION,)
)
Plaintiff,) Case No. 05C 2889
)
v.) Judge Amy J. St. Eve
)
CLEVERLINK TRADING LIMITED, a) Magistrate Judge Jeffrey Cole
Cyprus limited liability company;)
)
REAL WORLD MEDIA, LLC, a)
California limited liability company;)
)
BRIAN D. MUIR, individually, and as an officer)
or director of Cleverlink Trading Limited;)
)
JESSE GOLDBERG, individually, and)
as an officer or director of Cleverlink)
Trading Limited and Real World Media, LLC; and)
)
CALEB WOLF WICKMAN, individually, and)
as an officer or director of Cleverlink)
Trading Limited and Real World Media, LLC,)
)
Defendants.)
_____)

**TEMPORARY RESTRAINING ORDER, OTHER EQUITABLE RELIEF, AND ORDER
TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

Plaintiff Federal Trade Commission (“Commission” or “FTC”), having filed its
Complaint for Injunctive and Other Equitable Relief in this matter, pursuant to Sections 13(b)
and 19 the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and
Section 7(a) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of
2003 (“CAN-SPAM” or “the CAN-SPAM Act”), 15 U.S.C. § 7706(a), and having moved *ex*

parte for a Temporary Restraining Order, Other Equitable Relief, and Order To Show Cause Why a Preliminary Injunction Should Not Issue pursuant to Rule 65 of the Federal Rules of Civil Procedure, and the Court having considered the Complaint, declarations, exhibits, and memorandum of law filed in support thereof, and now being advised in the premises, finds that:

1. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe that it has jurisdiction over the parties;
2. Venue properly lies with this Court;
3. There is good cause to believe that Defendants have engaged in and are likely to continue to engage in acts and practices that violate Section 5 of the FTC Act, 15 U.S.C. § 45, Sections 5(a) and (d) of CAN-SPAM, 15 U.S.C. § 7704(a), (d), and the FTC's Adult Labeling Rule, 16 C.F.R. Part 316.4, and that the Commission is therefore likely to prevail on the merits of this action;
4. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of monetary redress or disgorgement will occur from the sale, transfer, or other disposition or concealment by Defendants of their assets or records unless Defendants are immediately restrained and enjoined by Order of this Court. The evidence set forth in Plaintiff's Memorandum in Support of its Motion for Temporary Restraining Order, Order to Show Cause and Other Equitable Relief, and in the accompanying declarations and exhibits, demonstrates that Defendants have engaged in a concerted course of illegal activity by sending commercial email messages in violation of Section 5 of the FTC Act, 15 U.S.C. 45, and Section 5 of the CAN-SPAM Act, 15 U.S.C. § 7704 *et seq.* Defendants' practices have regularly involved the concealment of their identities to avoid

detection. Defendants have retained ill-gotten gains derived from these and other practices. There is good cause to believe that unless they are restrained from doing so by Order of this Court, Defendants will continue with these illegal actions, and they will attempt to conceal the scope of their illegal actions through the destruction of evidence and secreting of assets. There is thus good cause for relieving Plaintiff of the duty to provide Defendants with prior notice of Plaintiff's motion;

5. Weighing the equities and considering the Plaintiff's likelihood of success, this Order is in the public interest; and

6. No security is required of any agency of the United States for the issuance of a temporary restraining order. *See* Fed. R. Civ. P. 65(c).

DEFINITIONS

1. "**Affirmative Consent**" with respect to a commercial email message, means that "the recipient expressly consented to receive the message, either in response to a clear and conspicuous request for such consent or at the recipient's own initiative;" and "if the message is from a party other than the party to which the recipient communicated such consent, the recipient was given clear and conspicuous notice at the time the consent was communicated that the recipient's electronic mail address could be transferred to such other party for the purposes of initiating commercial electronic mail messages." 15 U.S.C. § 7702(1).

2. "**Asset**" or "**Assets**" mean any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, contracts, mail or other deliveries,

shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.

3. **“Clear and conspicuous”** or **“clearly and conspicuously”** with regard to the display of a notice means that the information shall be presented in writing, in a type size, color, and location sufficient for an ordinary consumer to read and comprehend it, and shall be disclosed in a manner that would be easily recognizable and understandable in language and syntax to an ordinary consumer. If the information is contained in a multi-page print document, the disclosure shall appear on the first page.

4. **“Commercial electronic mail message”** (or **“commercial email”**) “means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose).” 15 U.S.C. § 7702(2) (A).

5. **“Defendants”** means Cleverlink Trading Limited; Real World Media, LLC; Brian D. Muir; Jesse Goldberg; and Caleb Wolf Wickman, or each of them.

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

7. **“Electronic mail address”** “means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the “local

part”) and a reference to an Internet domain (commonly referred to as the “domain part”), whether or not displayed, to which an electronic mail message can be sent or delivered.”

15 U.S.C. § 7702(5).

8. “**Header information**” “means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person initiating the message.” 15 U.S.C. § 7702(8).

9. “**Initiate**,” “when used with respect to a commercial email message, means to originate or transmit such message or to procure the origination or transmission of such message.” 15 U.S.C. § 7702(9).

10. “**Procure**,” when used with respect to the initiation of a commercial email message, means “intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one’s behalf.” 15 U.S.C. § 7702(12).

11. “**Protected computer**” means a computer which is used in interstate or foreign commerce or communication, including a computer located outside the United States that is used in a manner that affects interstate or foreign commerce or communication of the United States. 15 U.S.C. § 7702(13); 18 U.S.C. § 1030(e)(2)(B).

12. “**Sender**” means a person who initiates a commercial electronic mail message and whose product, service, or Internet Web site is advertised or promoted by the message. 15 U.S.C. § 7702(16).

13. “**Sexually oriented material**” means any material that depicts sexually-explicit conduct as that term is defined in 18 U.S.C. § 2256, unless the depiction constitutes a small and

insignificant part of the whole, the remainder of which is not primarily devoted to sexual matters. 15 U.S.C. § 7704(d)(4). Sexually-explicit conduct is defined by 18 U.S.C. § 2256 to mean actual or simulated:

- a. sexual intercourse, including genital-genital, oral-genital, or oral-anal, whether between persons of the same or opposite sex;
- b. bestiality;
- c. masturbation;
- d. sadistic or masochistic abuse; or
- e. lascivious exhibition of the genitals or pubic area of any person.

I.

PROHIBITIONS AGAINST MISREPRESENTATIONS

IT IS THEREFORE ORDERED that Defendants, and their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are temporarily restrained and enjoined from initiating the transmission of commercial email that:

- A. Contains, or is accompanied by, materially false or materially misleading header information, including but not limited to:
 1. an originating electronic mail address, domain name, or Internet Protocol address when the access to such originating electronic mail address, domain name or Internet Protocol address was obtained by means of false or fraudulent pretenses or representations; or

2. a “from” line (the line identifying or purporting to identify the person initiating the messages) that does not accurately identify any person who initiated the message; and/or
- B. Contains a subject heading likely to mislead recipients, acting reasonably under the circumstances, about material facts regarding the contents or subject matter of the message.

II.

PROHIBITIONS AGAINST OPT-OUT AND POSTAL ADDRESS VIOLATIONS

IT IS FURTHER ORDERED that Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are temporarily restrained and enjoined from initiating the transmission of a commercial email that:

- A. Does not include a clear and conspicuous notice of the recipient’s opportunity to decline to receive further commercial electronic mail messages from the sender at the recipient’s electronic mail address and describes the means by which the recipient can decline to receive future commercial email messages from the sender;
- B. Does not include a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that a recipient can use to submit a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from the sender at the electronic mail address where the message was

received, and that remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message;

- C. Does not include the sender's valid physical postal address; and/or
- D. Is sent to a recipient's email address, more than 10 business days after the sender receives a request from that email recipient not to receive future commercial electronic mail messages from the sender at the recipient's electronic mail address.

III.

PROHIBITIONS AGAINST FAILING TO IDENTIFY AN EMAIL MESSAGE AS AN ADVERTISEMENT OR SOLICITATION

IT IS FURTHER ORDERED that Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are temporarily restrained and enjoined from initiating the transmission of a commercial email that fails to provide clear and conspicuous identification that the message is an advertisement or solicitation.

PROVIDED, HOWEVER, that the requirements of this Section do not apply to commercial email messages transmitted only to recipients for whom Defendants have Affirmative Consent from such recipients.

IV.

PROHIBITION AGAINST VIOLATING THE ADULT LABELING RULE

IT IS FURTHER ORDERED that Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who

receive actual notice of this Order by personal service or otherwise, are temporarily restrained and enjoined from initiating the transmission of a commercial email that includes sexually oriented material:

- A. That does not contain the phrase “SEXUALLY-EXPLICIT: ” as the first nineteen (19) characters at the beginning of the subject line of the message;
- B. That includes sexually oriented materials within the subject line of the message;
- C. That includes sexually oriented materials within the content of the message that is initially viewable by the recipient, when the message is opened by the recipient and absent any further action by the recipient; and
- D. That does not contain only the following information within the content of the message that is initially viewable by the recipient, when the message is opened by the recipient and absent any further action by the recipient:
 - 1. the phrase “SEXUALLY-EXPLICIT: ” in a clear and conspicuous manner;
 - 2. clear and conspicuous notice that the message is an advertisement or solicitation;
 - 3. clear and conspicuous notice of the opportunity of the recipient to decline to receive further commercial email messages from the defendants;
 - 4. a functioning return email address or other Internet-based mechanism, clearly and conspicuously displayed, that (i) a recipient may use to submit, in a manner specified in the message, a reply email message or other form of Internet-based communication requesting not to receive future commercial email messages from that sender at the email address where

the message was received; and (ii) that remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message; and

5. clear and conspicuous display of a valid physical postal address of a defendant who initiated the message.

Provided, however, that the requirements of this Section do not apply to commercial electronic mail messages transmitted only to persons who have given prior affirmative consent to receipt of the message. The applicability of this Section to persons who have given prior affirmative consent does not obviate the requirement to include the information specified in Sections II and III of this Order.

V.

**INJUNCTION AGAINST NEW ACCOUNT REGISTRATIONS
WITHOUT REPORTING**

IT IS FURTHER ORDERED that in connection with the promotion, advertising, marketing, sale, or offering for sale of any product or service, Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are temporarily restrained and enjoined from registering or creating any new domain names, Web sites, Web pages, or email accounts, Internet service accounts, or online payment service accounts, without notifying counsel for the Commission within 24 hours of such registrations.

The notice shall include:

- A. The true identity of the registrant, account holder, or user, including the complete and accurate physical mailing address, email address, and telephone number;
- B. The means and source of payment for the registration, including the credit card number or bank account number used;
- C. The name and address of the person or entity to whom such registration was submitted;
- D. The date and time the registration was created; and
- E. The purpose of the domain names, Web sites, Web pages, or email accounts, Internet service accounts, or online payment service accounts registered.

VI.

INJUNCTION AGAINST USING ANY PERSONS OR ENTITIES TO SEND COMMERCIAL EMAIL WITHOUT REPORTING

IT IS FURTHER ORDERED that in connection with the promotion, advertising, marketing, sale, or offering for sale of any product or service, Defendants are temporarily restrained and enjoined from using any affiliates, sub-affiliates, agents, mailers, vendors, employees, contractors, or other persons or entities to send commercial email on their behalf without notifying counsel for the Commission prior to the initiation of any commercial email message by such persons or entities. The notice shall include:

- A. The identity of the affiliate, sub-affiliate, agent, mailer, vendor, employee, contractor, or other person or entity including the name of an individual, the complete and accurate physical mailing address, a working email address, a

working telephone number, and any identification codes associated with or used by such person or entity;

- B The amount of payment and information necessary to process such payment for the affiliate, sub-affiliate, agent, mailer, vendor, employee, contractor, or other person or entity, including the account name and number used;
- C. A copy of the body and subject line of each unique commercial email being sent by the affiliate, sub-affiliate, agent, mailer, vendor, employee, contractor, or other person or entity;
- D. A list of each of the email addresses from which the affiliate, sub-affiliate, agent, mailer, vendor, employee, contractor, or other person or entity will send the commercial email message;
- E. A list of the Web site addresses and/or domain names promoted in the commercial email message;
- F. A description of the procedures Defendants have to ensure that:
 - 1. Such person or entity does not send commercial email messages to recipients who have previously requested not to receive commercial email messages from Defendants; and
 - 2. Defendants will receive all requests received by such persons or entities from email recipients who request not to receive commercial email messages from Defendants; and
- G. A certification that such person or entity has agreed, in writing, to comply with this Order and the provisions of the CAN-SPAM Act.

VII.

ASSET PRESERVATION

IT IS FURTHER ORDERED that Defendants and their officers, agents, servants, employees, and attorneys, and those 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. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, perfecting a security interest in, or otherwise disposing of any assets wherever located, inside or outside the United States of America, that are owned, controlled or held by, or for the benefit of, in whole or in part, any Defendant; or in the actual or constructive possession of any Defendant, including, but not limited to,
1. account no. 037-6366787 in the name of Real World Media, LLC held at Wells Fargo Bank, N.A.;
 2. account no. 178 3311 9413 in the name of Cleverlink Trading Limited, at Laiki Bank LTD, International Business Centre, 50 Kennedy Ave., 1st Floor 1075, Nicosia, Cyprus;
 3. account no. 0155-41-249572-06 in the name of Cleverlink Trading Limited, held at the Bank of Cyprus, LTD, 28 Micalskopoulou St., 1075 Ayii Omologitae, Nicosia, Cyprus;
 4. account no. 221027261 in the name of Brian Muir d/b/a Muir Internet Productions, held at Wells Fargo Bank, N.A.;

5. accounts held in the name of any Defendant at Paypal;
 6. accounts held in the name of any Defendant at Paycom Billing Services, Inc. d/b/a Paycom.net;
 7. accounts held in the name of any Defendant at Electracash, Inc.; and/or
 8. any assets held in any account at any bank or savings and loan institution, or any credit card processing agent, customer service agent, commercial mail receiving agency, or mail holding or forwarding company, or any credit union, online payment service, IRA custodian, money market or mutual fund, storage company, trustee, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution or depository of any kind;
- B. Opening or causing to be opened any safe deposit boxes, commercial mail boxes, or storage facilities titled in the name of any Defendant, or subject to access by any Defendant or under any Defendant's control, without providing the Commission prior notice and an opportunity to inspect the contents in order to determine that they contain no assets covered by this Section; and
- C. Incurring liens or other encumbrances on real property, personal property or other assets in the name, singly or jointly, of any Defendant.
- D. Transferring any funds or other assets subject to this Order for attorney's fees or living expenses; **provided however that**, notwithstanding the above, any Defendant may pay, from funds subject to this Order, reasonable, usual, ordinary, and necessary living expenses and attorney's fees, not to exceed \$1,000, prior to

the Show Cause Hearing set forth in Section XIX of this Order. No such expenses, however, shall be paid from funds subject to this Order except from cash on the person of any Defendant, or from an account designated by written notice to counsel for the Commission; **provided further that**, any Defendant may pay reasonable, usual, ordinary, and necessary living expenses, and reasonable attorney's fees, after written prior approval by the Commission or as otherwise authorized by the Court.

VIII.

FINANCIAL REPORTS AND ACCOUNTING

IT IS FURTHER ORDERED that each Defendant, at least three (3) calendar days prior to the Show Cause Hearing set forth in Section XIX of this Order, and in no event later than ten (10) calendar days after entry of this Order, shall prepare and deliver to counsel for the Commission:

- A. Completed financial statements on the forms attached to this Order as **Attachments A and B**, for themselves individually and for each business entity under which they conduct business, or of which they are an officer, and for each trust of which they are a trustee. The financial statements shall be accurate as of the date of their completion; and
- B. A complete accounting of all gross and net profits obtained from, derived from, or related in any way to products, services, Web page memberships, or any other commercial venture promoted in any way through commercial electronic mail messages from January 1, 2004, to the submission of the accounting.

IX.

IDENTIFICATION OF MARKETERS

IT IS FURTHER ORDERED that Defendants, at least three (3) calendar days prior to the Show Cause Hearing set forth in Section XIX of this Order, and in no event later than ten (10) calendar days after entry of this Order, shall prepare and deliver to counsel for the Commission a completed statement identifying all affiliates, sub-affiliates, agents, mailers, vendors, employees, contractors, or other persons or entities that have sent commercial email on Defendants' behalf since January 1, 2004, on the form attached to this Order as **Attachment C**. The statement shall be accurate as of the date of its completion.

X.

REPATRIATION OF FOREIGN ASSETS AND DOCUMENTS

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

- A. Repatriate to the United States all assets and all documents located in foreign countries held, directly or indirectly:
 - 1. by any Defendant;
 - 2. for any Defendant's benefit; or
 - 3. under any Defendant's direct or indirect ownership or control;
- B. On the same business day as any repatriation under Paragraph A above, notify the Commission of the name and location of the financial institution or other entity that is the recipient of such assets or documents and the corresponding account names or numbers;

- C. Provide the Commission with a full accounting of all assets and documents outside of the territory of the United States held, directly or indirectly:
1. by any Defendant;
 2. for any Defendant's benefit; or
 3. under any Defendant's direct or indirect ownership or control; and
- D. Hold and retain all repatriated assets and documents and prevent any transfer, disposition, or dissipation whatsoever of any such assets.

Provided, however, Defendants may transfer any repatriated documents to the Commission as required by this Order.

Provided further, that each Defendant shall provided the Commission access to Defendants' records and documents held by financial institutions or other institutions outside the territorial United States, by signing the Consent to Release of Financial Records attached to this Order as **Attachment D**.

XI.

INTERFERENCE WITH REPATRIATION

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

- A. Sending any statement, letter, fax, email 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 Section X of this Order; and

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 Section X of this Order.

XII.

PRESERVATION AND MAINTENANCE OF RECORDS AND NOTICE OF NEW VENTURES

IT IS FURTHER ORDERED that Defendants and their officers, agents, servants, employees, and attorneys, and those 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. Destroying, erasing, mutilating, falsifying, concealing, writing over, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any documents or records, including but not limited to, any and all 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 (including any and all equipment needed to read any such material), contracts, accounting data, registrations, correspondence, advertisements (including, but not limited to, advertisements placed on the World Wide Web or the Internet or sent via email), FTP logs, Service Access Logs,

USENET Newsgroups postings, World Wide Web pages, email messages, 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, and other documents or records of any kind that relate to the business practices, or business or personal finances, of any Defendant;

- B. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of money; and
- C. 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, telephone number, email address, and Web site address of the business entity;
 - 3. the names of the business entity's officers, directors, principals, managers, and employees;
 - 4. the names and addresses of any persons or entities providing online marketing, advertising, or mailing services for the business entity; and
 - 5. a detailed description of the business entity's intended activities.

XIII.

DUTIES OF PERSONS OR ENTITIES HOLDING DEFENDANTS' ASSETS

IT IS FURTHER ORDERED that, pending determination of the Commission's request for a preliminary injunction, any financial or brokerage institution, escrow agent, title company, commodity trading company, entity, trust, or person that holds, controls or maintains accounts or assets of, or on behalf of, any Defendant, or has held, controlled or maintained any account or asset of, or on behalf of, any Defendant at any time since January 1, 2004, that has been served with a copy of this Order, or otherwise has actual or constructive knowledge of this Order, shall:

- A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any such asset except by further Order of the Court;
- B. Deny Defendants access to any safe deposit box that is:
 - 1. titled in any Defendant's name, individually or jointly; or
 - 2. otherwise subject to access by any Defendant; and
- C. Provide the Commission, within five (5) days of receiving a copy of this Order, a sworn statement setting forth:
 - 1. the identification number of each such account or asset titled in the name, individually or jointly, of any Defendant, or held on behalf of, or for the benefit of the Defendant;
 - 2. the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order was received, and, if the account or other asset has been closed or

removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and

3. the identification of any safe deposit box that is titled in the name, individually or jointly, of any Defendant, or is otherwise subject to access by any Defendant; and

D. Upon request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to each such account or asset, including but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

XIV.

DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, client company, agent, attorney, spouse, and representative of Defendants, and shall, within ten (10) days from the date of entry of this Order, provide the Commission with a sworn statement that Defendants 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.

XV.

SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of any Defendant, or that may otherwise be subject to any provision of this Order. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution.

XVI.

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 any Defendant to the Commission.

XVII.

EXPEDITED ASSET DISCOVERY

IT IS FURTHER ORDERED that the parties are granted leave at any time after service of this Order and pursuant to Federal Rules of Civil Procedure 30(a), 34 & 45 to: (1) take the deposition of any person or entity for the purpose of discovering the nature, status, extent, location or other relevant information relating to Defendants' assets and the nature and location of documents reflecting the business transactions of Defendants; and (2) demand the production of documents from any person or entity relating to the nature, status, extent, and location or other relevant information relating to Defendants' assets and the location of documents reflecting the business transactions of Defendants. Seventy-two (72) hours notice shall be deemed sufficient

for any such deposition and production of documents from Defendants and any other person or entity, including but not limited to financial institutions, accountants, stock brokers, and financial planners.

The limitations and conditions set forth in Fed. R. Civ. P. 30(a)(2)(B) and 31(a)(2)(B) regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Section. Any such depositions taken pursuant to this Section shall not be counted toward any limit on the number of depositions under the Federal Rules of Civil Procedure, including those set forth in Fed. R. Civ. P. 30(a)(2)(A) and 31(a)(2)(A) or the Local Rules. Additionally, the production of documents submitted pursuant to this provision shall not in any way waive the Commission's rights to seek the production of additional documents.

XVIII.

DURATION OF TEMPORARY RESTRAINING ORDER

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire on May 31, 2005 at 11:59 p.m., unless within such time, the Order, for good cause shown, is extended for an additional period not to exceed ten (10) days, or unless it is further extended pursuant to Federal Rule of Civil Procedure 65.

XIX.

ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION

IT IS FURTHER ORDERED, pursuant to Federal Rule of Civil Procedure 65, that each Defendant shall appear before this Court on the 25 day of May, 2005, at 2:00 o'clock p.m., at the Dirksen Federal Courthouse, 219 S. Dearborn St., Chicago, Illinois, Courtroom 1241, 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 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) and Section 5 of the CAN-SPAM Act, 15 U.S.C. § 7704, continuing the freeze of their assets, and imposing such additional relief as may be appropriate.

Provided that, Defendants must file with the Clerk's Office and deliver to the counsel for the Commission any brief responding to the order to show cause why a preliminary injunction should not be entered no later than forty-eight (48) hours before the time scheduled for the hearing. An evidentiary hearing on the Commission's request for a preliminary injunction is not necessary unless Defendants demonstrate that they have, and intend to introduce, evidence that raises a genuine and material factual issue. *See, e.g., In re Aimster*, 334 F.3d 643, 653-54 (7th Cir. 2003); *Promatek Indus., Ltd. v. Equitrac Corp.*, 300 F.3d 808, 814 (7th Cir. 2002).

Provided further that, if any party to this action intends to present the testimony of any witness at the hearing on a Preliminary Injunction in this matter, that party shall, at least 24 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' expected testimony, or the witness' affidavit revealing the substance of such witness' expected testimony.

XX.

SERVICE UPON THE COMMISSION

IT IS FURTHER ORDERED, with regard to any correspondence or pleadings related to this Order that service on Plaintiffs shall be performed by overnight mail delivery or facsimile to the attention of:

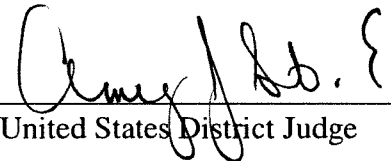
Steven M. Wernikoff
Jason K. Bowler
Federal Trade Commission
55 E. Monroe St., #1860
Chicago, IL 60603
facsimile transmission to (312) 960-5600

XXI.

RETENTION OF JURISDICTION

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

SO ORDERED, this 16th day of May, 2005, at 3:10 p.m.



United States District Judge