

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Federal Trade Commission,

Plaintiff,

v.

ERG Ventures, LLC, et. al.,

Defendants.

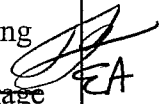
3:06-CV-00578-HDM-VPC

**STIPULATED PRELIMINARY INJUNCTION
AS TO DEFENDANT TIMOTHY P. TAYLOR**

Plaintiff, the Federal Trade Commission (“FTC” or the “Commission”), pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), filed a Complaint for Injunctive and Other Equitable Relief, and applied *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. On October 31, 2006, this Court granted the FTC’s application and entered a Temporary Restraining Order and Order to Show Cause against defendants ERG Ventures, LLC and d/b/a ERG Ventures, LLC2, Media

1 Motor, Joysticksavers.com, and PrivateinPublic.com; Elliott S. Cameron, individually and d/b/a
2 ERG Ventures, LLC2, Media Motor, Joysticksavers.com, and PrivateinPublic.com; Robert A.
3 Davidson, II, individually and d/b/a ERG Ventures, LLC2, Media Motor, Joysticksavers.com,
4 and PrivateinPublic.com; Garry E. Hill, individually and d/b/a ERG Ventures, LLC2, Media
5 Motor, Joysticksavers.com, and PrivateinPublic.com (the "ERG defendants"); and Timothy P.
6 Taylor, individually and d/b/a Team Taylor Made. The Court has considered the pleadings,
7 declarations, exhibits, and memoranda filed in connection with the Commission's motion for a
8 preliminary injunction and finds that:

9 **FINDINGS**

- 10 1. This Court has jurisdiction over the subject matter of this case, and there is good cause to
11 believe that it will have jurisdiction over all parties hereto;
- 12 2. There is good cause to believe that Defendant Timothy P. Taylor, individually and doing
13 business as Team Taylor Made ("Defendant Taylor"), has engaged ~~and is likely to engage~~ 
14 in acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and that the
15 Commission is therefore likely to prevail on the merits of this action;
- 16 3. The evidence set forth in the Commission's Memorandum of Law in Support of *Ex Parte*
17 Motion for Temporary Restraining Order and Order to Show Cause, supplemental
18 memoranda, and the accompanying declarations and exhibits demonstrates that the
19 Commission is likely to prove that Defendant Taylor has engaged in deceptive practices in
20 violation of Section 5 of the FTC Act. Working in tandem with the ERG Defendants,
21 Defendant Taylor has deceived consumers into downloading exploitive software by hiding
22 exploitive code within the free software he offers the public. This exploitive code created
23 by the ERG Defendants and silently bundled by Defendant Taylor causes significant harm
24 to consumers by surreptitiously downloading programs that: (a) change consumer's
25 default homepage; (b) add difficult-to-remove toolbars to the consumer's Internet
26 browsers that display advertising; c) track the consumer's Internet activity; d) generate

1 repeated and occasionally sexually-explicit pop up advertising; e) add advertising icons to
2 the consumer's Windows desktop; f) alter the consumer's Internet browser settings; g)
3 degrade computer performance; and h) attack and disable the consumer's anti-spyware
4 software. Consumers cannot reasonably avoid installing the exploitive code because
5 Defendant Taylor fails to disclose to consumers the presence of the exploitive code. Once
6 installed, the exploitive code and its accompanying malicious programs are extremely
7 difficult to uninstall or otherwise remove. The harm caused by Defendant Taylor is not
8 outweighed by any benefit to consumers or competition;

9 ~~4. There is good cause to believe that Defendant Taylor will continue to engage in such~~
10 ~~unlawful actions if he is not immediately restrained from doing so by Order of this Court;~~

- 11 5. Weighing the equities and considering the Commission's likelihood of ultimate
12 success, a preliminary injunction halting Defendant Taylor's unlawful conduct, preserving
13 business records, and providing other equitable relief, is in the public interest; and
- 14 6. No security is required of any agency of the United States for issuance of a preliminary
15 injunction. Fed. R. Civ. P. 65(c).

16 **DEFINITIONS**

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

- 18 1. **"Defendant Taylor"** means Timothy P. Taylor, individually and d/b/a
19 www.teamtayormade.com and Team Taylor Made.
- 20 2. **"Assets"** means any legal or equitable interest in, right to, or claim to, any real, personal,
21 or intellectual property of Defendant Taylor, wherever located, including, but not limited
22 to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects,
23 leaseholds, contracts, mail or other deliveries, shares of stock, inventory, checks, notes,
24 accounts, credits, receivables (as those terms are defined in the Uniform Commercial
25 Code), cash, and trusts, including but not limited to any other trust held for the benefit of
26 Defendant Taylor or Defendant Taylor's minor children, or spouse.

- 1 3. **“Document”** is synonymous in meaning and equal in scope to the usage of the term in
2 the Federal Rules of Civil Procedure 34(a), and includes writing, drawings, graphs,
3 charts, Internet sites, Web pages, Web sites, electronic correspondence, including e-mail
4 and instant messages, photographs, audio and video recordings, contracts, accounting
5 data, advertisements (including, but not limited to, advertisements placed on the World
6 Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup postings, World Wide
7 Web pages, books, written or printed records, handwritten notes, telephone logs,
8 telephone scripts, receipt books, ledgers, personal and business canceled checks and
9 check registers, bank statements, appointment books, computer records, and other data
10 compilations from which information can be obtained and translated. A draft or non-
11 identical copy is a separate document within the meaning of the term.
- 12 4. A **“Host”** or **“Hosting Company”** is the party that provides the infrastructure for a
13 computer service. With respect to web pages and web sites, a Host or Hosting Company
14 maintains “Internet servers” – the computers on which web sites, web pages, Internet
15 files, or resources reside. The Host or Hosting Company also maintains the
16 communication lines required to link the server to the Internet. Often, the content on the
17 servers (*i.e.*, content of the web pages) is controlled by someone other than the Host or
18 Hosting Company.
- 19 5. **“Affiliate marketer”** or **“sub-affiliate marketer”** means any person who provides or
20 has provided Defendant Taylor with assistance in marketing, advertising, distributing,
21 downloading, or installing software code or other goods or services.
- 22 6. **“Software”** means any file, program, application, content, code or set of instructions that
23 controls, directs, or assists in the operation of a computer.

24 **I**

25 **INJUNCTION AGAINST MISREPRESENTATION OF SOFTWARE**
26 **AS TO DEFENDANT TAYLOR**

27 **IT IS ORDERED** that in connection with marketing, distributing, and installing of
28

1 Software via the Internet, and assisting others in marketing, distributing, and installing of
2 Software via the Internet, Defendant Taylor, and those persons in active concert or participation
3 with him who receive actual notice of this Order by personal service or otherwise, are
4 preliminarily restrained and enjoined from, prior to the installation of any Software that is
5 installed on consumers' computers as a result of downloading and/or installing Software from
6 Defendant Taylor: 1) failing to clearly and conspicuously disclose the name and function of all
7 such Software (the "Required Disclosure"); and 2) failing to provide, immediately after the
8 Required Disclosure is made, a clearly and conspicuously disclosed option to prevent the
9 installation of all such Software, which when exercised by the consumer, prevents the installation
10 of all such Software.

11 **II**

12 **FINANCIAL REPORTS AND ACCOUNTING**

13 **IT IS FURTHER ORDERED** that, to the extent not already provided, Defendant
14 Taylor, within five (5) days of service of this Order, shall:

15 A. Provide the Commission with a completed financial statement, verified under oath
16 and accurate as of the date of entry of this Order, on the forms attached to this Order as
17 Attachments A and B.

18 B. Provide the Commission with a full accounting, verified under oath and accurate as
19 of the date of entry of this Order, of all funds, documents, and assets outside of the United States
20 that are: (1) in the name of Defendant Taylor; or (2) held by any person or entity for the benefit
21 of Defendant Taylor; or (3) under the direct or indirect control, whether jointly or singly, of
22 Defendant Taylor;

23 C. Prepare and provide to counsel for the Commission a detailed and accurate
24 statement, verified under oath and accurate as of the date of entry of this Order, that sets forth:

- 25 1. all payments, transfers, or assignments of assets made to Defendant Taylor
26 in the amount of \$500 or more since January 1, 2004. Such statement shall
27

1 include: (a) the amount transferred or assigned; (b) the name, address, and
2 telephone number of each transferor or assignor; (c) the name, address, and
3 telephone number of each transferor or assignor; (d) the date of the assignment or
4 transfer; and (e) the type and amount of consideration for any payment;

5 2. all payments, transfers, or assignments of assets made by Defendant Taylor
6 in the amount of \$500 or more since January 1, 2004. Such statement shall
7 include: (a) the amount transferred or assigned; (b) the name, address, and
8 telephone number of each transferor or assignor; (c) the name, address, and
9 telephone number of each transferee or assignee; (d) the date of the assignment or
10 transfer; and (e) the type and amount of consideration for any payment;

11 3. all gross revenues collected and obtained through Defendant Taylor's
12 Internet marketing and distribution activities, including, but not limited to, gross
13 revenues collected through participation in Affiliate programs, and the source of all
14 such revenues;

15 4. all net profits obtained from Defendant Taylor's Internet marketing and
16 distribution activities;

17 5. all revenues and profits obtained through Affiliate programs as an Affiliate
18 program operator, an affiliate marketer or a sub-affiliate marketer, broken down by
19 Affiliate program; and

20 6. since January 1, 2004, the full name and contact information for each company,
21 entity, or person who has paid Defendant Taylor in connection with any Internet
22 marketing and distribution activities.;

23 D. Provide the Commission with a statement, verified under oath and accurate as of
24 the date of entry of this Order, detailing the name, address, and telephone number for each
25 accountant, financial planner, investment advisor, stock broker, or other person who provided
26 Defendant Taylor with financial, business, or tax advice or services since January 1, 2004.

1 number, email address, instant messaging identification or “handle,” website, and affiliate
2 identification code) of all persons and/or entities that have provided Software that Defendant
3 Taylor has installed, either directly or through their affiliates, on consumers’ computers. This list
4 should include, but not be limited to, Media Motor and Addictive Technologies.

5
6 **V**

7 **RECORD KEEPING/BUSINESS OPERATIONS**

8 **IT IS FURTHER ORDERED** that Defendant Taylor is hereby preliminarily restrained
9 and enjoined from:

10 A. Failing to create and maintain documents that, in reasonable detail, accurately,
11 fairly, and completely reflect their incomes, disbursements, transactions, and use of money; and

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

18 **VI**

19 **DISTRIBUTION OF ORDER BY DEFENDANT TAYLOR**

20 **IT IS FURTHER ORDERED** that Defendant Taylor shall immediately provide a copy
21 of this Order to each affiliate marketer, sub-affiliate marketer, affiliate, subsidiary, hosting
22 company, email server, division, sales entity, successor, assign, officer, director, employee,
23 independent contractor, client company, agent, attorney, and spouse, and shall, within ten (10)
24 days from the date of entry of this Order, provide the Commission with a sworn statement that
25 this provision of the Order has been satisfied, which statement shall include the names, physical
26 addresses, and e-mail addresses of each such person or entity who received a copy of the Order.
27
28

VII

SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission and electronic mail, upon any financial institution or other entity or person that may have possession, custody, or control of any documents of Defendant Taylor, 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.

VIII

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 Defendant Taylor to the Commission.

IX

SERVICE UPON PLAINTIFF

IT IS FURTHER ORDERED that, with regard to any correspondence or pleadings related to this Order, service on the Commission shall be performed by overnight mail delivery to the attention of Colleen Robbins and Ethan Arenson at the Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room H-288, Washington, DC 20580.

X

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes. No security is required of any agency of the United States for the issuance of a restraining order. Fed. R. Civ. P. 65(c).

SO ORDERED, this 29th day of November, 2006, at 12:00 p.m.

Howard D McKibbin
UNITED STATES DISTRICT JUDGE

It is so stipulated:

Timothy P. Taylor
Pro Se Defendant
7114 Tulip Trail
Memphis, TN 38133-6112
901-377-2989

It is so stipulated:

Colleen B. Robbins
Ethan Arenson
Attorneys for Plaintiff
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580
(202) 326-2548; (202) 326-2204

Dated: 11-27-06

Dated: 11-28-06