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**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 THE ERG DEFENDANTS**

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, Judge McKibben of the District Court of Nevada 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 Motor, Joysticksavers.com, and PrivateinPublic.com;

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

8 **FINDINGS**

- 9 1. This Court has jurisdiction over the subject matter of this case, and there is good cause to  
10 believe that it will have jurisdiction over all parties hereto;
- 11 2. There is good cause to believe that Defendants ERG Ventures LLC, a Nevada Limited  
12 Liability Company d/b/a ERG Ventures LLC2, Media Motor, Joysticksavers.com, and  
13 PrivateInPublic.com; Elliott S. Cameron, individually and as an officer of ERG Ventures  
14 LLC; Robert A. Davidson, II, individually and as an officer of ERG Ventures LLC; Garry  
15 E. Hill, individually and as an officer of ERG Ventures LLC, (collectively the "ERG  
16 Defendants") have engaged and are likely to engage in acts or practices that violate  
17 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and that the Commission is therefore  
18 likely to prevail on the merits of this action;
- 19 3. The evidence set forth in the Commission's Memorandum of Law in Support of *Ex Parte*  
20 Motion for Temporary Restraining Order and Order to Show Cause, supplemental  
21 memoranda, and the accompanying declarations and exhibits demonstrates that the  
22 Commission is likely to prove that the ERG Defendants have engaged in deceptive and  
23 unfair practices in violation of Section 5 of the FTC Act. The Commission is likely to  
24 prove that the ERG Defendants have deceived consumers into downloading exploitive  
25 software by hiding exploitive code within the free software they offer the public. The  
26 Commission is likely to prove that the exploitive code created by the ERG Defendants and  
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1 silently bundled by both the ERG Defendants and its affiliates causes significant harm to  
2 consumers by downloading programs that: a) change consumer's default homepage;  
3 b) add difficult-to-remove toolbars to the consumer's Internet browsers that display  
4 advertising; c) track the consumer's Internet activity; d) generate repeated and occasionally  
5 sexually-explicit pop up advertising; e) add advertising icons to the consumer's Windows  
6 desktop; f) alter the consumer's Internet browser settings; g) degrade computer  
7 performance; and h) attack and disable the consumer's anti-spyware software. The  
8 Commission is likely to prove that the harm caused by the ERG Defendants is not  
9 reasonably avoidable by consumers because the ERG Defendants fail to disclose to  
10 consumers the presence of the exploitive code, and because the exploitive software  
11 installed by the ERG Defendants is extremely difficult to uninstall or otherwise remove.  
12 The Commission is likely to prove that the harm caused by the ERG Defendants is not  
13 outweighed by any benefit to consumers or competition;

14 4. There is good cause to believe that the ERG Defendants will continue to engage in such  
15 unlawful actions if they are not immediately restrained from doing so by Order of this  
16 Court;

17 5. There is good cause to believe that immediate and irreparable damage to the Court's  
18 ability to grant effective final relief in the form of monetary restitution will occur from the  
19 sale, transfer, or other disposition or concealment by the ERG Defendants of their assets or  
20 business records, unless the ERG Defendants are immediately restrained and enjoined by  
21 Order of this Court. The evidence set forth in the Plaintiff's *Ex Parte* Motion for a  
22 Temporary Restraining Order and Order to Show Cause, supplemental memoranda, and in  
23 the accompanying declarations and exhibits, is likely to prove that the ERG Defendants  
24 have engaged in a concerted course of unlawful activity in connection with the deceptive  
25 bundling and distribution of exploitive software in violation of Section 5 of the FTC Act,  
26 15 U.S.C. § 45. Furthermore, the evidence is likely to prove that: (1) the ERG Defendants  
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1 utilize post office boxes, a mail forwarding service, and anonymous email addresses that  
2 may have been used to hide from law enforcement and defrauded consumers; (2) the ERG  
3 Defendants utilize an anonymous domain registration service that may have been used to  
4 shield their identity from law enforcement and defrauded consumers; and (3) the ERG  
5 Defendants have ignored calls from the anti-spyware community to cease their unlawful  
6 and injurious activity. Thus, there is good cause to believe that the ERG Defendants will  
7 continue to engage in attempts to conceal the scope of their unlawful actions to avoid  
8 returning their ill-gotten gains to consumers injured by their unlawful practices if not  
9 restrained from doing so by Order of this Court;

10 6. There is good cause for the Court to continue the asset freeze against the ERG Defendants.  
11 Emails authored by the ERG Defendants and produced to the Court by the Commission  
12 demonstrate that the ERG Defendants reported more than one million dollars in gross  
13 profits between April 2004 and April 2005. There is good cause to believe that these  
14 funds were derived from activity that violates Section 5 of the FTC Act, including  
15 deceiving consumers into downloading exploitive software to their computers. An asset  
16 freeze as to the ERG Defendants is reasonably necessary in order to preserve the  
17 possibility of complete and meaningful relief in the form of disgorgement and/or consumer  
18 redress at the conclusion of this litigation;

19 7. Weighing the equities and considering the Commission's likelihood of ultimate  
20 success, a preliminary injunction halting the ERG Defendants' unlawful conduct,  
21 continuing the asset freeze as to the ERG Defendants, preserving business records, and  
22 providing other equitable relief, is in the public interest; and

23 8. No security is required of any agency of the United States for issuance of a preliminary  
24 injunction. Fed. R. Civ. P. 65(c).

1 **DEFINITIONS**

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

- 3 1. **“Defendants”** means, individually, collectively or in any combination: ERG Ventures  
4 LLC d/b/a ERG Ventures LLC2, Giant Ventures, LLC, Media Motor, IMGiant,  
5 Joysticksavers.com, and PrivateInPublic.com; Elliott S. Cameron d/b/a ERG Ventures  
6 LLC2, Giant Ventures, LLC, Media Motor, IMGiant, Joysticksavers.com, and  
7 PrivateInPublic.com, individually and as an officer of ERG Ventures LLC; Robert A.  
8 Davidson, II d/b/a ERG Ventures LLC2, Giant Ventures, LLC, Media Motor, IMGiant,  
9 Joysticksavers.com, and PrivateInPublic.com, individually and as an officer of ERG  
10 Ventures LLC; and Garry E. Hill d/b/a ERG Ventures LLC2, Giant Ventures, LLC,  
11 Media Motor, IMGiant, Joysticksavers.com, and PrivateInPublic.com, individually and as  
12 an officer of ERG Ventures LLC; and all persons or entities in active concert or  
13 participation with any of the foregoing who receive notice of this Order by personal  
14 service or otherwise. (Fed. R. Civ. P. 65(d)).
- 15 2. **“ERG Defendants”** means ERG Ventures LLC d/b/a ERG Ventures LLC2, Giant  
16 Ventures, LLC, Media Motor, IMGiant, Joysticksavers.com, and PrivateInPublic.com;  
17 Elliot S. Cameron d/b/a ERG Ventures LLC2, Giant Ventures, LLC, Media Motor,  
18 IMGiant, Joysticksavers.com, and PrivateInPublic.com; Robert A. Davidson d/b/a ERG  
19 Ventures LLC2, Giant Ventures, LLC, Media Motor, IMGiant, Joysticksavers.com, and  
20 PrivateInPublic.com; and Garry E. Hill d/b/a ERG Ventures LLC2, Giant Ventures, LLC,  
21 Media Motor, IMGiant, Joysticksavers.com, and PrivateInPublic.com, as well as their  
22 successors, assigns, affiliates, or subsidiaries.
- 23 3. **“Individual Defendants”** means Elliott S. Cameron d/b/a ERG Ventures LLC2, Giant  
24 Ventures, LLC, Media Motor, IMGiant, Joysticksavers.com, and PrivateInPublic.com;  
25 Robert A. Davidson, II d/b/a ERG Ventures LLC2, Giant Ventures, LLC, Media Motor,  
26 IMGiant, Joysticksavers.com, and PrivateInPublic.com; and Garry E. Hill d/b/a ERG  
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1 Ventures LLC2, Giant Ventures, LLC, Media Motor, IMGiant, Joysticksavers.com, and  
2 PrivateInPublic.com.

3 4. **“Corporate Defendants”** means ERG Ventures LLC d/b/a ERG Ventures LLC2, Giant  
4 Ventures, LLC, Media Motor, IMGiant, Joysticksavers.com, and PrivateInPublic.com.

5 5. **“Assets”** means any legal or equitable interest in, right to, or claim to, any real, personal,  
6 or intellectual property of any of the Corporate Defendants or Individual Defendants, or  
7 held for the benefit of any Corporate Defendants or Individual Defendants, wherever  
8 located, including, but not limited to, chattel, goods, instruments, equipment, fixtures,  
9 general intangibles, effects, leaseholds, contracts, mail or other deliveries, shares of stock,  
10 inventory, checks, notes, accounts, credits, receivables (as those terms are defined in the  
11 Uniform Commercial Code), cash, and trusts, including but not limited to any other trust  
12 held for the benefit of any Corporate Defendant or Individual Defendant, or any of the  
13 Individual Defendants’ minor children, or spouse.

14 6. **“Document”** is synonymous in meaning and equal in scope to the usage of the term in  
15 the Federal Rules of Civil Procedure 34(a), and includes writing, drawings, graphs,  
16 charts, Internet sites, Web pages, Web sites, electronic correspondence, including e-mail  
17 and instant messages, photographs, audio and video recordings, contracts, accounting  
18 data, advertisements (including, but not limited to, advertisements placed on the World  
19 Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup postings, World Wide  
20 Web pages, books, written or printed records, handwritten notes, telephone logs,  
21 telephone scripts, receipt books, ledgers, personal and business canceled checks and  
22 check registers, bank statements, appointment books, computer records, and other data  
23 compilations from which information can be obtained and translated. A draft or non-  
24 identical copy is a separate document within the meaning of the term.

25 7. A **“Host”** or **“Hosting Company”** is the party that provides the infrastructure for a  
26 computer service. With respect to web pages and web sites, a Host or Hosting Company  
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1 maintains "Internet servers" -- the computers on which web sites, web pages, Internet  
2 files, or resources reside. The Host or Hosting Company also maintains the  
3 communication lines required to link the server to the Internet. Often, the content on the  
4 servers (*i.e.*, content of the web pages) is controlled by someone other than the Host or  
5 Hosting Company.

6 8. "Affiliate marketer" or "sub-affiliate marketer" means any person who provides or  
7 has provided the ERG Defendants with assistance in marketing, advertising, distributing,  
8 downloading, or installing software code or other goods or services.

9 9. "Affiliate program(s)" is an arrangement under which any or all of the ERG Defendants  
10 pay or offer to pay another ("the affiliate") to market, advertise, distribute, download or  
11 install software or other goods or services on behalf of the ERG Defendants, with the  
12 affiliate being paid based on performance measures, including but not limited to the  
13 number of software installations or downloads.

14 10. "Software" means any file, program, application, content, code or set of instructions that  
15 controls, directs, or assists in the operation of a computer.

16 I

17 INJUNCTION AGAINST MISREPRESENTATION OF SOFTWARE  
18 AS TO THE ERG DEFENDANTS

19 IT IS THEREFORE ORDERED that in connection with marketing, distributing, and  
20 installing of Software via the Internet, and assisting others in marketing, distributing, and  
21 installing of Software via the Internet, the ERG Defendants, and those persons in active concert or  
22 participation with them who receive actual notice of this Order by personal service or otherwise,  
23 are preliminarily restrained and enjoined from, prior to the installation of any Software directly or  
24 indirectly installed on consumers' computers by the ERG Defendants: 1) failing to clearly and  
25 conspicuously disclose the name and function of all such Software (the "Required Disclosure");  
26 and 2) failing to provide, immediately after the Required Disclosure is made, a clearly and  
27 conspicuously disclosed option to prevent the installation of all such Software, which when  
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1 exercised by the consumer, prevents the installation of all such Software.

2 **II**

3 **INJUNCTION AGAINST UNFAIR INSTALLATION OF**  
4 **EXPLOITIVE SOFTWARE AS TO THE ERG DEFENDANTS**

5 **IT IS FURTHER ORDERED** that, in connection with marketing and distributing of  
6 Software via the Internet, the ERG Defendants, and those persons in active concert or  
7 participation with them who receive actual notice of this Order by personal service or otherwise,  
8 are preliminarily restrained and enjoined from publishing, disseminating, distributing, installing or  
9 downloading Software that interferes with consumers' computer use, including, but not limited to,  
10 software that:

- 11 A. tracks consumers' Internet activity;
- 12 B. changes consumers' preferred Internet homepage settings;
- 13 C. inserts an advertising toolbar onto consumers' Internet browsers;
- 14 D. generates numerous "pop up" advertisements on consumers' computer  
15 screens even when consumers' Internet browsers are closed;
- 16 E. adds advertising icons to the computer's desktop;
- 17 F. tampers with, disables or otherwise alters the performance of other  
18 programs, including anti-spyware and anti-virus programs; or
- 19 G. alters Internet browser security settings, including the list of safe or trusted  
20 websites.

21 **III**

22 **ASSET FREEZE AS TO THE ERG DEFENDANTS**

23 **IT IS FURTHER ORDERED** that the ERG Defendants, any person insofar as he or she  
24 is acting in the capacity of an officer, agent, representative, servant, employee or attorney of the  
25 ERG Defendants, and all persons or entities in active concert or participation with any of the  
26 foregoing who receive notice of this Order by personal service or otherwise are hereby  
27 preliminarily restrained and enjoined from:  
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1 A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling,  
2 concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security  
3 interest or other interest in, or otherwise disposing of any funds, real or personal property,  
4 accounts, contracts, consumer lists, shares of stock, or other assets, or any interest therein,  
5 wherever located, that are: (1) owned or controlled by any of the ERG Defendants, in whole or in  
6 part, for the benefit of any of the ERG Defendants; (2) in the actual or constructive possession of  
7 any of the ERG Defendants; or (3) owned, controlled by, or in the actual or constructive  
8 possession of any corporation, partnership, or other entity directly or indirectly owned, managed,  
9 or controlled by any of the ERG Defendants, including, but not limited to, any assets held by or  
10 for, or subject to access by, any of the ERG Defendants, at any bank or savings and loan  
11 institution, or with any broker-dealer, escrow agent, title company, commodity trading company,  
12 precious metals dealer, or other financial institution or depository of any kind;

13 B. Opening or causing to be opened any safe deposit boxes titled in the name of any  
14 of the ERG Defendants, or subject to access by any of them, except to the extent that the ERG  
15 Defendants, through their counsel, request and obtain written permission from Commission  
16 counsel which sets forth the personal documents they may retrieve;

17 C. Incurring charges or cash advances on any credit card issued in the name, singly or  
18 jointly, of any of the ERG Defendants;

19 D. Obtaining a personal or secured loan titled in the name of any of the ERG  
20 Defendants, or subject to access by any of them; and

21 E. Incurring liens or other encumbrances on real property, personal property, or other  
22 assets in the name, singly or jointly, of any of the ERG Defendants.

23 F. Both the Commission and the ERG Defendants acknowledge that, upon  
24 completion of the financial statements (Attachments B and C) and upon an adequate factual  
25 showing of need, the Commission's counsel will consider consenting to a motion requesting  
26 unfreezing a limited amount of assets for reasonable living expenses. To the extent that  
27 Commission's counsel does not consent, this Paragraph does not limit the ERG Defendants'

1 ability to seek relief from the Court.

2 *Provided, however,* that the assets affected by this Paragraph shall include: (1) all of the  
3 assets of the Corporate Defendants and Individual Defendants existing as of the date this Order  
4 was entered; and (2) for assets obtained after the date this Order was entered, only those assets of  
5 the Corporate Defendants and the Individual Defendants that are derived from the conduct  
6 prohibited by Sections I and II of this Order.

7 **IV**

8 **FOREIGN ASSET REPATRIATION**

9 IT IS FURTHER ORDERED that within five (5) business days following the service of  
10 this Order, each Corporate Defendant and Individual Defendant shall:

11 A. Provide the Commission with a full accounting of all funds, documents, and assets  
12 outside of the United States which are: (1) titled in the name, individually or jointly, of any  
13 Corporate Defendant or Individual Defendant; or (2) held by any person or entity for the benefit of  
14 any Corporate Defendant or Individual Defendant; or (3) under the direct or indirect control,  
15 whether jointly or singly, of any Corporate Defendant or Individual Defendant;

16 B. Transfer to the territory of the United States and deliver to Commission all funds,  
17 documents, and assets located in foreign countries which are: (1) titled in the name individually  
18 or jointly of any Corporate Defendant or Individual Defendant; or (2) held by any person or entity,  
19 for the benefit of any Corporate Defendant or Individual Defendant; or (3) under any Corporate  
20 Defendant's or Individual Defendant's direct or indirect control, whether jointly or singly;

21 C. To the extent not already provided, provide the Commission access to all records of  
22 accounts or assets of the Corporate Defendant and Individual Defendant held by financial  
23 institutions located outside the territorial United States by signing the Consent to Release of  
24 Financial Records attached to this Order as Exhibit A.

25 **V**

26 **INTERFERENCE WITH REPATRIATION**

27 IT IS FURTHER ORDERED that the ERG Defendants are hereby preliminarily

1 restrained and enjoined from taking any action, directly or indirectly, which may result in the  
2 encumbrance or dissipation of foreign assets, or in the hindrance of the repatriation required by  
3 the Paragraph IV of this Order, including but not limited to:

4 A. Sending any statement, letter, fax, e-mail or wire transmission, telephoning or  
5 engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee  
6 or other entity that a "duress" event has occurred under the terms of a foreign trust agreement,  
7 until such time that all assets have been fully repatriated pursuant to Paragraph IV of this Order;

8 B. Notifying any trustee, protector or other agent of any foreign trust or other related  
9 entities of either the existence of this Order, or of the fact that repatriation is required pursuant to  
10 a Court Order, until such time that all assets have been fully repatriated pursuant to Paragraph IV  
11 of this Order.

## 12 VI

### 13 FINANCIAL REPORTS AND ACCOUNTING

14 **IT IS FURTHER ORDERED** that, to the extent not already provided, each Individual  
15 Defendant and each Corporate Defendant, within five (5) days of service of this Order or, to the  
16 extent the information is on their servers, within five (5) days of obtaining access to their servers,  
17 shall:

18 A. Provide the Commission with completed financial statements, verified under oath  
19 and accurate as of the date of entry of this Order, on the forms attached to this Order as  
20 Attachment B for each Individual Defendant and Attachment C for each Corporate Defendant;

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

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

- 2 1. all payments, transfers, or assignments of assets made to each Individual Defendant  
3 and each Corporate Defendant in the amount of \$1000 or more since January 1,  
4 2004. Such statement shall include: (a) the amount transferred or assigned; (b) the  
5 name, address, and telephone number of each transferor or assignor; (c) the name,  
6 address, and telephone number of each transferor or assignor; (d) the date of the  
7 assignment or transfer; and (e) the type and amount of consideration for any  
8 payment;
- 9 2. all payments, transfers, or assignments of assets made by each Individual Defendant  
10 and each Corporate Defendant in the amount of \$1000 or more since January 1,  
11 2004. Such statement shall include: (a) the amount transferred or assigned; (b) the  
12 name, address, and telephone number of each transferor or assignor; (c) the name,  
13 address, and telephone number of each transferee or assignee; (d) the date of the  
14 assignment or transfer; and (e) the type and amount of consideration for any  
15 payment;
- 16 3. all gross revenues collected and obtained through the Individual Defendants'  
17 Internet marketing and distribution activities and the Corporate Defendants'  
18 business activities, including, but not limited to, gross revenues collected through  
19 participation in Affiliate programs, and the source of all such revenues;
- 20 4. all net profits obtained from the Individual Defendants' Internet marketing and  
21 distribution activities and the Corporate Defendants' business activities;
- 22 5. all revenues and profits obtained through Affiliate programs as an Affiliate program  
23 operator, an affiliate marketer or a sub-affiliate marketer, broken down by Affiliate  
24 program; and
- 25 6. since January 1, 2004, the full name and contact information for each company,  
26 entity, or person who has paid the Individual Defendants in connection with any  
27 Internet marketing and distribution activities, and the Corporate Defendants in

1 connection with any business activities.

2 D. To the extent not already provided, provide the Commission with all corporate  
3 balance sheets and corporate bank account statements from the Corporate Defendants' business  
4 activities.

5 E. Provide the Commission with a statement, verified under oath and accurate as of the  
6 date of entry of this Order, detailing the name, address, and telephone number for each  
7 accountant, financial planner, investment advisor, stock broker, or other person who provided  
8 each Corporate Defendant and each Individual Defendant with financial, business, or tax advice or  
9 services since January 1, 2004.

10 *Provided further*, the Commission is immediately authorized to issue subpoenas to  
11 demand the production of documents from any person or entity relating to the nature, status,  
12 extent, location, or other relevant information relating to the Corporate Defendants' and  
13 Individual Defendants' assets, income, and financial records.

14 **VII**

15 **RETENTION OF ASSETS AND RECORDS BY FINANCIAL INSTITUTIONS**

16 **IT IS FURTHER ORDERED** that, pending the conclusion of the litigation of this case,  
17 any financial or brokerage institution, business entity, or person served with a copy of this Order  
18 that holds, controls, or maintains custody of any account or asset of any of the ERG Defendants,  
19 or has held, controlled or maintained custody of any such account or asset at any time since the  
20 date of entry of this Order, shall:

21 A. Hold and retain within its control and prohibit the withdrawal, removal, assignment,  
22 transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of  
23 any such asset except by further Order of the Court;

24 B. Deny any of the Defendants access to any safe deposit box that is:

- 25 1. titled in the name of any of the ERG Defendants, individually or jointly; or  
26 2. otherwise subject to access by any of the ERG Defendants except to the  
27 extent provided in Section III.B;

1 C. Provide the Commission's counsel, within five (5) business days of receiving a copy  
2 of this Order, a sworn statement setting forth:

- 3 1. the identification number of each such account or asset titled in the name,  
4 individually or jointly, of any of the ERG Defendants, or held on behalf of,  
5 or for the benefit of any of the ERG Defendants;
- 6 2. the balance of each such account, and/or a description of the nature and  
7 value of each such asset as of the close of business on the day on which  
8 this Order is served, and, if the account or other asset has been closed or  
9 removed, the date closed or removed, the total funds removed in order to  
10 close the account, and the name of the person or entity to whom such  
11 account or other asset was remitted; and
- 12 3. the identification of any safe deposit box that is titled in the name,  
13 individually or jointly, of any of the ERG Defendants, or is otherwise  
14 subject to access by any of the ERG Defendants.

15 D. Upon request by the Commission, promptly provide the Commission with copies of  
16 all records or other documentation pertaining to each such account or asset, including but not  
17 limited to originals or copies of account applications, account statements, signature cards, checks,  
18 drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or  
19 slips, currency transaction reports, 1099 forms, and safe deposit box logs. Any such financial  
20 institution, account custodian, or other aforementioned entity may arrange for the Commission to  
21 obtain copies of any such records which the Commission seeks.

## 22 VIII

### 23 PRESERVATION OF RECORDS

24 **IT IS FURTHER ORDERED** that the Corporate Defendants and Individual Defendants  
25 are hereby preliminarily restrained and enjoined from altering, destroying, mutilating, falsifying,  
26 erasing, concealing, writing over, transferring, or otherwise disposing of, in any manner, directly  
27 or indirectly, any documents or records of any kind that relate to the business practices or business

1 or personal finances of the Defendants, including but not limited to: any and all computer data  
2 and storage media (including but not limited to floppy disks, hard drives, CD-ROMS, zip disks,  
3 punch cards, magnetic tape, backup tapes, and computer chips and any and all equipment needed  
4 to read any such material), contracts, accounting data, correspondence, advertisements (including,  
5 but not limited to, advertisements placed on the World Wide Web or the Internet), FTP logs,  
6 Service Access Logs, USENET Newsgroups postings, World Wide Web pages, books, written or  
7 printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers,  
8 personal and business canceled checks and check registers, bank statements, appointment books,  
9 copies of federal, state or local business or personal income or property tax returns, and other  
10 documents or records of any kind that relate to the business practices or business or personal  
11 finances of the Corporate Defendants or Individual Defendants.

12 **IX**

13 **IDENTIFICATION OF SOFTWARE PROVIDERS**

14 **IT IS FURTHER ORDERED** that, to the extent not already provided, the Corporate  
15 Defendants and Individual Defendants shall, within five (5) days of service of this Order, or, to  
16 the extent the information is on their servers, within five (5) days of obtaining access to their  
17 servers, prepare and deliver to the Commission a completed statement, verified under oath and  
18 accurate as of the date of entry of this Order, identifying with as much detail as possible  
19 (including, but not limited to, name, address, phone number, email address, instant messaging  
20 identification or "handle," website, and affiliate identification code) of all persons and/or entities  
21 that have provided Software that the Corporate Defendants and/or Individual Defendants have  
22 installed, either directly or through their affiliates, on consumers' computers. This list should  
23 include, but not be limited to, the persons and/or entities that provided the programs commonly  
24 known as: Look2Me, 7FaSSt, AdRotator, AdMedia, SearchingAll, the Mirar Toolbar,  
25 ClickSpring; UCmore; CasClient; Z-Quest; CmdServices; Purity Scan; Backdoor.DSNX,  
26 Webhancer, Ezula, CoolWebSearch, ABetterInternet, DyFuCA, e2give, Protect, Safesurfing,  
27 Qoologic, BookedSpace, begin2search, DollarRevenue, Popuppers, WebNexus, Yazzle and

1 Winsync.

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3 **IDENTIFICATION OF AFFILIATES AND CUSTOMERS**

4 **IT IS FURTHER ORDERED** that, to the extent not already provided, the ERG  
5 Defendants shall, within five (5) days of service of this Order, or, to the extent the information is  
6 on their servers, within five (5) days of obtaining access to their servers, prepare and deliver to the  
7 Commission a completed statement, verified under oath and accurate as of the date of entry of this  
8 Order, identifying with as much detail as possible (including, but not limited to, name, address,  
9 phone number, email address, instant messaging identification or "handle," website, and affiliate  
10 identification code) of all affiliate marketers, sub-affiliate marketers, agents, vendors, hosting  
11 companies, employees, and contractors that have worked with or been retained by the ERG  
12 Defendants in connection with the distribution of Software and/or are members of an Affiliate  
13 program operated by the ERG Defendants.

14 XI

15 **RECORD KEEPING/BUSINESS OPERATIONS**

16 **IT IS FURTHER ORDERED** that the Corporate Defendants and Individual Defendants  
17 are hereby preliminarily restrained and enjoined from:

- 18 A. Failing to create and maintain documents that, in reasonable detail, accurately,  
19 fairly, and completely reflect their incomes, disbursements, transactions, and use of money; and  
20 B. Creating, operating, or exercising any control over any business entity, including  
21 any partnership, limited partnership, joint venture, sole proprietorship, or corporation, without  
22 first providing the Commission with a written statement disclosing: (1) the name of the business  
23 entity; (2) the address and telephone number of the business entity; (3) the names of the business  
24 entity's officers, directors, principals, managers and employees; and (4) a detailed description of  
25 the business entity's intended activities.



1 XII

2 DISTRIBUTION OF ORDER BY DEFENDANTS

3 IT IS FURTHER ORDERED that the Corporate Defendants and Individual Defendants  
4 shall immediately provide a copy of this Order to each affiliate marketer, sub-affiliate marketer,  
5 affiliate, subsidiary, hosting company, email server, division, sales entity, successor, assign,  
6 officer, director, employee, independent contractor, client company, agent, attorney, and spouse of  
7 each defendant, and shall, within ten (10) days from the date of entry of this Order, provide the  
8 Commission with a sworn statement that this provision of the Order has been satisfied, which  
9 statement shall include the names, physical addresses, and e-mail addresses of each such person or  
10 entity who received a copy of the Order.

11 XIII

12 SERVICE OF ORDER

13 IT IS FURTHER ORDERED that copies of this Order may be served by any means,  
14 including facsimile transmission and electronic mail, upon any financial institution or other entity  
15 or person that may have possession, custody, or control of any documents of any Corporate  
16 Defendant or Individual Defendant, or that may otherwise be subject to any provision of this  
17 Order. Service upon any branch or office of any financial institution shall effect service upon the  
18 entire financial institution.

19 XIV

20 CONSUMER CREDIT REPORTS

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

24 XV

25 SERVICE UPON PLAINTIFF

26 IT IS FURTHER ORDERED that, with regard to any correspondence or pleadings  
27 related to this Order, service on the Commission shall be performed by overnight mail delivery to  
28

1 the attention of Colleen Robbins and Ethan Arenson at the Federal Trade Commission, 600  
2 Pennsylvania Avenue, NW, Room H-288, Washington, DC 20580.

3 XVI

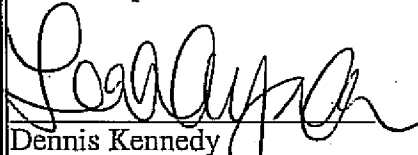
4 **RETENTION OF JURISDICTION**

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


8  
9 **SO ORDERED**, this 29th day of November, 2006, at 12:00 p.m.

10  
11   
12 UNITED STATES DISTRICT JUDGE

13  
14  
15 It is so stipulated:

16   
17  
18 Dennis Kennedy  
19 Leah Ayala  
20 Bailey Merrill LLP  
21 Attorney for ERG Ventures, LLC, Elliott  
22 Cameron, Robert Davidson, and Garry Hill  
23 8691 W. Sahara Ave., Suite 200  
24 Las Vegas, NV 89117-8820  
25 (702) 562-8820

It is so stipulated:

16   
17  
18 Colleen B. Robbins  
19 Ethan Arenson  
20 Attorneys for Plaintiff  
21 Federal Trade Commission  
22 600 Pennsylvania Avenue NW  
23 Washington, DC 20580  
24 (202) 326-2548; (202) 326-2204

25  
26  
27 Dated: 11/27/06

25  
26  
27 Dated: 11/27/06