

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

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CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

Case No. 6:04-cv-1395-Orl-22KRS

FEDERAL TRADE COMMISSION,
Plaintiff,

v.

AMADA GUERRA, individually and doing
business as AG Intercraft,

Defendant.

COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF

**EX PARTE TEMPORARY RESTRAINING ORDER WITH AN ASSET FREEZE, AN
ACCOUNTING, LIMITED EXPEDITED DISCOVERY, AND OTHER EQUITABLE
RELIEF AND ORDER FOR DEFENDANT TO SHOW CAUSE WHY PRELIMINARY
INJUNCTION SHOULD NOT ISSUE**

Plaintiff Federal Trade Commission (“FTC”), has filed a Complaint seeking a permanent injunction and other relief, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. § 6101 *et seq.*, and an ex parte motion for a temporary restraining order with an asset freeze, an accounting, expedited discovery, and other equitable relief, pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, and an order to show cause why a preliminary injunction should not be issued. This Court has considered the pleadings and exhibits filed in support of the FTC’s motion, and now being advised in the premises, finds that:

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

2. There is good cause to believe that Amada Guerra, an individual doing business as A.G. Interdraft, has engaged and is likely to continue to engage in acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, and that the FTC is therefore likely to prevail on the merits of this action;

3. There is good cause to believe that immediate and irreparable harm will result from Defendant’s ongoing violations of Section 5(a) of the FTC Act and the TSR unless Defendant is restrained and enjoined by order of this Court;

4. There is good cause to believe that immediate and irreparable damage to the Court’s ability to grant effective final relief in the form of consumer redress and disgorgement will occur from the transfer, dissipation or concealment by Defendant of her assets or business records unless Defendant is immediately restrained and enjoined by order of this Court, and that in accordance with Fed. R. Civ. P. 65(b) and Local Rule 4.05, the interest of justice requires that the FTC’s Motion be heard ex parte without prior notice to Defendant. Therefore, there is good cause for relieving the FTC of the duty to provide Defendant with prior notice of the FTC’s motion.

5. Good cause exists for ordering Defendant to provide an accounting of her business as set forth herein and permitting the FTC to take expedited discovery as to the existence and location of assets and the location of documents reflecting Defendant’s business transactions.

6. Weighing the equities and considering the FTC’s likelihood of ultimate success, a temporary restraining order with an asset freeze, accounting, expedited discovery as to the

existence and location of assets and documents, and other equitable relief, is in the public interest;

7. No security is required of any agency of the United States for issuance of a restraining order. Fed. R. Civ. P. 65(c); and

8. This temporary restraining order is in the public interest.

IT IS THEREFORE ORDERED AS FOLLOWS:

DEFINITIONS

For the purposes of this Order, the following definitions shall apply:

A. "Defendant" means Amada Guerra, doing business under the name A.G. Intercraft ("AGI") and her successors, assigns, agents, servants or employees, and those persons in active concert or participation with her who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, unless specified otherwise.

B. "Document(s)" or "record(s)" means

1. The original or a true copy of any written, typed, printed, electronically stored, transcribed, taped, recorded, filmed, punched, or graphic matter or other data compilations of any kind, including, but not limited to, letters, e-mail or other correspondence, messages, memoranda, interoffice communications, notes, reports, summaries, manuals, magnetic tapes or discs, tabulations, books, records, checks, invoices, work papers, journals, ledgers, statements, returns, reports, schedules, or files; and

2. Any information stored on any desktop personal computer ("PC") and workstations, laptops, notebooks, and other portable computers, whether assigned to individuals

or in pools of computers available for shared use; and home computers used for work-related purposes; backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether stored onsite with the computer used to generate them, stored offsite in another company facility or stored offsite by a third-party, such as in a disaster recovery center; and computers and related offline storage used by Defendant's participating associates, which may include persons who are not employees of the company or who do not work on company premises.

C. "Assets" means 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, mail or other deliveries, inventory, checks, notes, accounts, credits, receivables, funds, monies, and all cash, wherever located, and shall include both existing assets and assets acquired after the date of entry of this Order.

D. "Financial institution" means any bank, savings and loan institution, credit union, or any financial depository of any kind, including but not limited to any brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, commercial check cashing facility, or any entity or person that holds, controls, or maintains custody of any account or asset of any Defendant.

E. "Work-at-home business opportunity" means any program, plan, product or service that enables or purports to enable a participant or purchaser to earn money by working at home.

F. "Telemarketing" means the advertising, offering for sale, or sale of any good or service by use of one or more telephones, either exclusively or in conjunction with the use of other marketing techniques.

ORDER PROHIBITING CERTAIN CONDUCT

I. IT IS HEREBY ORDERED that:

A. Defendant is hereby restrained and enjoined from making, or assisting others in making, directly or by implication, any false or misleading oral or written statement or representation in connection with the advertising, marketing, promotion, offering for sale, distribution, or sale of work-at-home business opportunities, including but not limited to:

1. Misrepresenting, directly or by implication, that consumers who pay Defendant a fee are likely to earn a substantial level of earnings, such as \$600 to \$800 per week, assembling products at home for Defendant; and

2. Misrepresenting, directly or by implication, that consumers can easily obtain refunds of their initial deposits after assembling a specified number of crafts;

B. Defendant is hereby restrained and enjoined from violating or assisting others in violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, in the course of offering for sale and selling work-at-home business opportunities through telemarketing, including, but not limited to:

1. Misrepresenting, directly or by implication, material aspects of the performance, efficacy, nature, or central characteristic of goods or services including, but not limited to, the misrepresenting that consumers who pay Defendant a fee are likely to earn a substantial level of earnings, such as \$600 to \$800 per week, assembling products at home for Defendant,

2. Misrepresenting, directly or by implication, material aspects of the nature or terms of Defendant's refund policy, including that consumers can easily obtain refunds of their initial deposits after assembling a specified number of products, and

3. Failing to disclose, in a clear and conspicuous manner, all material terms and conditions of any refund, cancellation, exchange or repurchase policy.

ASSET FREEZE

II. IT IS FURTHER ORDERED that Defendant and her officers, agents, servants, employees, attorneys, and all persons or entities directly or indirectly under the control of any of them, and all other persons or entities acting in concert or participation with any of them who are served with a copy of this Order by personal service, facsimile, or otherwise, including any financial institution, are hereby temporarily restrained and enjoined from directly or indirectly:

A. Selling, liquidating, assigning, transferring, converting, loaning, encumbering, pledging, concealing, dissipating, spending, withdrawing, or otherwise disposing of any funds, real or personal property, or other assets or any interest therein, wherever located, including any assets outside the territorial United States, which are:

1. in the actual or constructive possession of Defendant; or

2. owned or controlled by, or held, in whole or in part for the benefit of, or subject to access by, or belong to Defendant; or

3. in the actual or constructive possession of, or owned or controlled by, or subject to access by, or belong to, any corporation, partnership, trust or other entity directly or indirectly under the control of Defendant.

B. Opening or causing to be opened any safe deposit boxes titled in the name of Defendant, or subject to access by Defendant.

C. Incurring charges on any credit card issued in the name, singly or jointly, of Defendant.

D. Notwithstanding the above, Defendant may pay from her personal funds reasonable, usual, ordinary, and necessary living expenses and attorney's fees, not to exceed \$5,000, prior to the hearing scheduled by Section XIII.

E. The funds, property and assets affected by this Paragraph shall include both existing assets and assets acquired after the effective date of this Order, including without limitation, those acquired by loan or gift. Defendant shall hold all assets, including without limitation, payments, loans, and gifts, received after service of this Order.

RETENTION OF ASSETS AND DOCUMENTS BY THIRD PARTIES

III. IT IS FURTHER ORDERED that, pending determination of the FTC's request for a preliminary injunction, any financial institution, or any person or other entity served with a copy of this Order shall:

A. Hold and retain within such entity's or person's control, and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation, or other disposal of any funds, documents, property, or other assets held by or under such entity's or person's control:

1. on behalf of, or for the benefit of, Defendant or other party subject to Section II above;

2. in any account maintained in the name of, or subject to withdrawal by, Defendant or other party subject to Section II above;

3. that are subject to access or use by, or under the signatory power of, Defendant or other party subject to Section II above;

B. Deny access to any safe deposit boxes that are either:

1. titled in the name, individually or jointly, of Defendant or other party subject to Section II above; or

2. subject to access by Defendant or other party subject to Section II above.

C. Provide to counsel for the FTC, within three (3) days, a statement setting forth:

1. the identification of each account or asset titled in the name, individually or jointly, or held on behalf of, or for the benefit of, Defendant or other party subject to Section II above, whether in whole or in part;

2. the balance of each such account, or a description of the nature and value of such asset;

3. the identification of any safe deposit box that is either titled in the name of, individually or jointly, or is otherwise subject to access or control by, Defendant or other party subject to Section II above, whether in whole or in part; and

4. if the account, safe deposit box, or other asset has been closed or removed, the date closed or removed and the balance on said date.

D. The accounts subject to this provision include existing assets and assets deposited after the effective date of this Order. This Section shall not prohibit transfers in accordance with any provision of this Order, or any further order of the Court.

E. The FTC is granted leave, pursuant to Fed. R. Civ. P. 45, to subpoena documents immediately from any such financial institution, account custodian, or other entity concerning the nature, location, status, and extent of Defendant's assets, and compliance with this Order, and such financial institution, account custodian or other entity shall respond to such subpoena within five business days after service. For purposes of this subsection, the FTC may serve any such subpoena by facsimile or overnight courier.

FINANCIAL STATEMENTS AND ACCOUNTING

IV. IT IS FURTHER ORDERED that, within five (5) business days following the service of this Order, Defendant shall provide counsel for the Commission:

A. A completed financial statement accurate as of the date of service of this Order upon Defendant (unless otherwise agreed upon with FTC counsel, Defendant shall include all financial information as requested in the Department of Treasury – Internal Revenue Service Collection Information Statement for Individuals (Form 433-A) located on the Internet at <http://www.irs.gov/pub/irs-pdf/f433a.pdf>); all information as requested in the corresponding Collection Information Statement for Businesses (Form 433 – B) located on the Internet at <http://www.irs.gov/pub/irs-pdf/f433b.pdf>); and

B. A completed statement, verified under oath, of all payments, transfers, or assignment of funds, assets, or property worth \$1,000 or more since January 1, 2001. Such statement shall include (a) the amount transferred or assigned; (b) the name of each transferee or assignee; (c) the date of the assignment or transfer; (d) the type and amount of consideration paid the Defendant. Each statement shall specify the name and address of each financial institution

and brokerage firm at which the Defendant has accounts or safe deposit boxes. Said statements shall include assets held in foreign as well as domestic accounts.

C. For all work-at-home business opportunities advertised, marketed, promoted, offered for sale, distributed, or sold by Defendant, a detailed accounting, verified under oath, of:

1. all gross revenues obtained from the sale of each such product or service (broken down by month) from inception of sales through the date of the issuance of this Order;
2. all net profits obtained from the sale of each such product or service (broken down by month) from inception of sales through the date of the issuance of this Order;
3. the total amount of each such product or service sold; and
4. the full names, addresses, and telephone numbers of all purchasers of each such product or service.

REPATRIATION OF FOREIGN ASSETS

V. **IT IS FURTHER ORDERED** that, within five (5) business days following the service of this Order, Defendant shall:

A. Provide the FTC with a full accounting of all assets, accounts or documents outside of the territory of the United States which are held either: (1) by her; (2) former benefit; (3) in trust by or for her, individually or jointly; or (4) underfed direct or indirect control, individually or jointly;

B. transfer to the territory of the United States all assets, accounts or documents in foreign countries held either: (1) by her; (2) former benefit; (3) in trust by or for her, individually or jointly; or (4) underfed direct or indirect control, individually or jointly;

C. hold and retain all repatriated assets, accounts or document and prevent any transfer, disposition, or dissipation whatsoever of any such assets or documents except as allowed by Section IV of this Order; and

D. provide the FTC access to Defendant's records and documents held by financial institutions outside the territorial United States, by signing the Consent to Release of Financial Records, which shall be provided by FTC counsel.

NONINTERFERENCE WITH REPATRIATION

VI. IT IS FURTHER ORDERED that Defendant and her successors, assigns, agents, servants or employees, and those persons in active concert or participation with her who receive actual notice of the Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby temporarily restrained and enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of foreign assets, or in the hindrance of the repatriation required by the preceding Section of this Order, including, but not limited to:

A. Sending any statement, letter, fax, email or wire transmission, or 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 V of this Order;

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 V of this Order.

EXPEDITED DISCOVERY

VII. IT IS FURTHER ORDERED that the FTC is granted leave to conduct certain expedited discovery, and that, commencing with the time and date of this Order, in lieu of the time periods, notice provisions, and other requirements of Rules 26, 30, 34, and 45 of the Federal Rules of Civil Procedure, and Local Rule 3.02, the FTC is granted leave to:

A. Take the deposition, on three (3) day's notice, of any person or entity, whether or not a party, for the purpose of discovering (1) the nature, location, status and extent of assets of Defendant or her affiliates or subsidiaries; (2) the nature and location of documents reflecting the business transactions of Defendant or her affiliates or subsidiaries; and (3) compliance with this Order. The limitations and conditions set forth in Fed. R. Civ. P. 30(a)(2)(B) and 31(a)(2)(B) regarding subsequent depositions shall not apply to depositions taken pursuant to this Section. Any such depositions taken pursuant to this Section shall not be counted toward the ten deposition limit set forth in Fed. R. Civ. P. 30(a)(2)(A) and 31(a)(2)(A). Service of discovery upon a party, taken pursuant to this Section, shall be sufficient if made by facsimile or by overnight delivery. Any deposition taken pursuant to this sub-section that has not been reviewed and signed by the deponent may be used by any party for purposes of the preliminary injunction hearing; and

B. Demand the production of documents, on five (5) days' notice, from any person or entity, whether or not a party, relating to (1) the nature, status, extent, or location of assets of Defendant or her affiliates or subsidiaries; (2) the nature and location of documents reflecting the business transactions of Defendant or her affiliates or subsidiaries; and (3) compliance with this Order. Provided that twenty-four (24) hours' notice shall be deemed sufficient for the production

of any such documents that are maintained or stored only as electronic data. Provided, further, that the authority to request documents pursuant to this sub-section is in addition to the requirement to produce documents pursuant to Section IX of this Order.

IMMEDIATE PRODUCTION OF DOCUMENTS

VIII. IT IS FURTHER ORDERED that

A. Defendant shall, immediately upon request by the FTC, produce at the curb of the residences located at 1911 Plumtree Drive, Deltona, Florida and 2777 Corrigan Drive, Deltona, Florida, all documents and records contained therein that refer or relate to (1) any work-at-home business opportunity advertised, marketed, promoted, offered for sale, distributed or sold by Defendant; (2) any business relationship between Defendant and any other business entity; (3) Defendant's financial status, including but not limited to, the nature or location of any bank account, safe deposit box, or other asset of Defendant; (4) any transaction, correspondence or other communication by or between any consumer and Defendant or any of her representatives, employees, agents, officers, servants, or assistants; and (5) any action, correspondence or other communication by or between any law enforcement agency, consumer group, or Better Business Bureau and Defendant or her representatives, employees, agents, officers, servants, or assistants. Defendant shall be precluded from using in any further proceeding in this case, directly or indirectly, any document within Defendant's possession, custody, or control at the time of service of this Order that is not produced pursuant to this Section VIII.

B. Defendant and any other person served with a copy of this Order shall permit the FTC's employees, agents, and assistants immediate access to Defendant's business premises and storage facilities (other than those located in a residence), whether owned, controlled or used by

any Defendant in whole or in part. The purpose of this access shall be to inspect, copy and inventory documents referring or relating to (1) any work-at-home business opportunity advertised, marketed, promoted, offered for sale, distributed or sold by Defendant; (2) any business relationship between Defendant and any other business entity; (3) Defendant's financial status, including but not limited to, the nature or location of any bank account, safe deposit box, or other asset of Defendant; (4) any transaction, correspondence or other communication by or between any consumer and Defendant or any of her representatives, employees, agents, officers, servants, or assistants; and (5) any action, correspondence or other communication by or between any law enforcement agency, consumer group, or Better Business Bureau and Defendant or her representatives, employees, agents, officers, servants, or assistants. Defendant shall provide FTC employees, agents and assistants with any necessary means of access to these documents, including but not limited to keys and lock combinations, computer access codes, and storage access information. Defendant is hereby enjoined and restrained from interfering with the FTC's right of access described herein.

C. The FTC shall be allowed to remove all such documents produced pursuant to this Section for a period not to exceed twenty-four (24) hours for the purposes of copying such documents.

RECORD KEEPING PROVISIONS

IX. IT IS FURTHER ORDERED that Defendant and her officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with Defendant who receive actual notice of this Order by personal service or otherwise, are hereby enjoined from:

A. Destroying, erasing, mutilating, concealing, altering, transferring or otherwise disposing of, in any manner, directly or indirectly, contracts, agreements, customer files, customer lists, customer addresses and telephone numbers, correspondence, advertisements, brochures, sales material, training material, sales presentations, documents evidencing or referring to Defendant's products, data, computer tapes, disks, or other computerized records, books, written or printed records, handwritten notes, telephone logs, "verification" or "compliance" tapes or other audio or video tape recordings, receipt books, invoices, postal receipts, 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, including electronically-stored materials, that relate to the business practices or business or personal finances of Defendant or other entity directly or indirectly under the control of Defendant; and

B. Failing to create and maintain books, records, and accounts which, in reasonable detail, accurately, fairly, and completely reflect the incomes, assets, disbursements, transactions and use of monies by Defendant or other entity directly or indirectly under the control of Defendant.

COMPLIANCE MONITORING

X. IT IS FURTHER ORDERED that, for purposes of monitoring compliance with any provision of this Order, the FTC is authorized to pose as customers or potential customers of Defendant, her employees, or any other entity managed or controlled in whole or in part by any of them without the necessity of identification or prior notice.

NOTICE TO EMPLOYEES

XI. IT IS FURTHER ORDERED that Defendant shall immediately provide a copy of this Order to each of her corporations, subsidiaries, affiliates, and participating associates. Within ten (10) calendar days following service of this Order by the FTC, Defendant shall provide the FTC with an affidavit identifying the names, titles, addresses, and telephone numbers of the persons and entities that Defendant has served with a copy of this Order in compliance with this provision.

CONSUMER REPORTS

XII. IT IS FURTHER ORDERED that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), the FTC is authorized to request a consumer report and any consumer reporting agency receiving such request shall furnish a consumer report concerning Defendant to the FTC.

ORDER TO SHOW CAUSE

XIII. IT IS FURTHER ORDERED, pursuant to Fed. R. Civ. P. 65(b), that Defendant shall appear on the 5th day of October, 2004, at 12:00 noon at the United States Courthouse, Courtroom 2, Orlando, Florida, to show cause, if any there be, why this Court should not enter a preliminary injunction, pending final ruling on the complaint, against Defendant enjoining her from further violations of the FTC Act and the TSR, continuing the freeze of her assets, and imposing such additional relief as may be appropriate.

EXPIRATION OF THIS ORDER

XIV. IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire on October 5, 2004, at 4:59 PM, 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 of time.

SERVICE OF PLEADINGS; EVIDENCE, WITNESS LISTS

XV. IT IS FURTHER ORDERED that

A. Defendant shall file any answering affidavits, pleadings, or legal memoranda with the Court and serve the same on counsel for the FTC no later than three business days prior to the preliminary injunction hearing in this matter. The FTC may file responsive or supplemental pleadings, materials, affidavits, or memoranda with the Court and serve the same on counsel for Defendant no later than one business day prior to the preliminary injunction hearing in this matter. Provided that service shall be performed by personal or overnight delivery or by facsimile, and documents shall be delivered so that they shall be received by the other parties no later than 4 p.m. (EDT) on the appropriate dates listed in this sub-paragraph.

B. The question of whether this Court should enter a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining Defendant during the pendency of this action shall be resolved, pursuant to Local Rule 4.06(b), on the pleadings, declarations, exhibits, and memoranda filed by and oral argument of the parties. Live testimony shall be heard only on further order of this Court on motion filed with the Court and served on counsel for the parties at least 72 hours prior to the preliminary injunction hearing in this matter. Such motion shall set forth the name, address, and telephone number of each proposed witness, a detailed summary or affidavit revealing the substance of each proposed witness' expected testimony, and an explanation of why the taking of live testimony would be helpful to this Court. Any papers opposing a timely motion to present live testimony or to present live testimony in response to

live testimony to be presented by another party shall be filed with this Court and served on the other parties at least two business days prior to the preliminary injunction hearing in this matter. Provided that service shall be performed by personal or overnight delivery or by facsimile, and documents shall be delivered so that they shall be received by the other parties no later than 4 p.m. (EDT) on the appropriate dates listed in this subsection.

CORRESPONDENCE WITH PLAINTIFF

XVI. IT IS FURTHER ORDERED that, for the purposes of this Order, all service on and correspondence to the FTC shall be addressed to: James A. Prunty, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room NJ-2122, Washington, DC 20580. Telephone: (202) 326-2438; Facsimile: (202) 326-2558.


SERVICE OF THIS ORDER

XVII. IT IS FURTHER ORDERED that copies of this Order may be served by facsimile transmission, email transmission, personal or overnight delivery, or U.S. Mail, by agents and employees of the FTC or any state or federal law enforcement agency or by private process server, on (1) Defendant, (2) any financial institution, entity or person that holds, controls, or maintains custody of any account or asset of Defendant, or has held, controlled or maintained custody of any account or asset of Defendant, or (3) any other person or entity that may be subject to any provision of this Order.

RETENTION OF JURISDICTION

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

IT IS SO ORDERED, this 21st day of September, 2004, at 4:45 p.m.



GREGORY A. PRESNELL for
ANNE C. CONWAY
United States District Judge