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~~CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON~~



05-CV-01979-ORD

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DEC 07 2005

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

C05-1979 JCC

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MATTHEW OLSON and JENNIFER LeROY,

Defendants.

Case No.

STIPULATED PRELIMINARY
INJUNCTION AND ORDER FOR
OTHER EQUITABLE RELIEF
AS TO MATTHEW OLSON AND
JENNIFER LeROY

Plaintiff Federal Trade Commission, 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 Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM Act"), 15 U.S.C. § 7706(a), has filed a Complaint for Injunction and Other Equitable Relief. Without any admission of any wrongdoing or violation of the law, the plaintiff and defendants have voluntarily agreed to the entry of the following stipulated order for preliminary injunction ("Order").

The Court, being advised in the premises, finds as follows:

FINDINGS OF FACT

1. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe that the Court will have jurisdiction over the parties;
2. Venue lies properly with this Court;

FEDERAL TRADE COMMISSION
915 Second Ave., Su. 2896
Seattle, Washington 98174
(206) 220-6350

1 3. Plaintiff's Complaint states a claim upon which relief may be granted against defendants
2 under Section 5(a) of the FTC Act, 15 U.S.C. §§ 45(a), and the CAN-SPAM Act, 15 U.S.C. § 7704(a);

3 4. The acts and practices of defendants are in or affecting commerce, as defined in
4 Section 4 of the FTC Act, 15 U.S.C. § 44; and

5 5. The Order is in the public interest.

6 **DEFINITIONS**

7 1. "Asset" or "Assets" means any legal or equitable interest in, right to, or claim to, any
8 real and/or personal property including, but not limited to, chattels, goods, instruments, equipment,
9 fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes,
10 accounts, credits, contracts, receivables, shares of stock, funds, monies, and all cash, wherever located,
11 including both within and outside the territorial United States, and shall include both existing assets
12 and assets acquired after the date of entry of this Order.

13 2. "Defendant" or "Defendants" means Matthew Olson and Jennifer LeRoy.

14 3. "Document" is synonymous in meaning and equal in scope to the usage of the term as
15 defined in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts,
16 photographs, audio and video recordings, computer records, and other data compilations from which
17 information can be obtained and translated, if necessary, through detection devices into reasonably
18 usable form. A draft or non-identical copy is a separate document within the meaning of the term.

19 4. "Financial institution" means any bank, savings and loan institution, credit union, or
20 any financial depository of any kind, including, but not limited to, any brokerage house, trustee,
21 broker-dealer, escrow agent, title company, payment processing company, commodity trading
22 company, or precious metal dealer.

23 5. "Header Information" is defined in 15 U.S.C. § 7702(8) and means the source,
24 destination, and routing information attached to an electronic mail message, including the originating
25 domain name and originating electronic mail address, and any other information that appears in the line
26 identifying, or purporting to identify, a person initiating the message.

27 6. "Initiating" or "Initiate" is defined in 15 U.S.C. § 7702(9) and means to originate or
28 transmit a commercial electronic mail message or to procure the origination or transmission of such

1 message, but does not include actions that constitute routine conveyance of such message. For
2 purposes of this definition, "procure," as defined in 15 U.S.C. § 7702(12), means intentionally to pay
3 or provide other consideration to, or induce, another person to initiate such a commercial electronic
4 mail message on one's behalf.

5 7. "Person" means a natural person, an organization or other legal entity, including a
6 corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any
7 other group or combination acting as an entity.

8 8. "Plaintiff" means the Federal Trade Commission ("Commission" or "FTC").

9 9. "Protected computer" is defined in 15 U.S.C. § 7702(13) and 18 U.S.C.
10 § 1030(e)(2)(B) and means a computer which is used in interstate or foreign commerce or
11 communication, including a computer located outside the United States that is used in a manner that
12 affects interstate or foreign commerce or communication of the United States.

13 **ORDER**

14 **I. PROHIBITED BUSINESS ACTIVITIES UNDER THE**
15 **CONTROLLING THE ASSAULT OF NON-SOLICITED PORNOGRAPHY AND**
16 **MARKETING ACT OF 2003**

17 **IT IS THEREFORE ORDERED** that the defendants, and their officers, agents, servants,
18 employees, attorneys, and all other persons or entities in active concert or participation with them who
19 receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting directly
20 or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby
21 temporarily restrained and enjoined from violating, the provisions contained in Sections 5 and 6 of the
22 CAN-SPAM Act, 15 U.S.C. §§ 7704 and 7705, as currently promulgated or as they may hereafter be
23 amended, or any rule, regulation, or requirement adopted pursuant thereto, including, but not limited to,
24 by initiating the transmission, to protected computers, of a commercial email message that:

25 A. Contains, or is accompanied by, header information that is materially false or
26 misleading in violation of Section 5(a)(1) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(1), including,
27 but not limited to, a message with header information that is misleading because the person initiating
28 the message knowingly uses another protected computer to relay or retransmit the message or inserts a
false connecting host for purposes of disguising its origin;

1 B. Contains subject headings that are likely to mislead a recipient, acting reasonably under
2 the circumstances, about a material fact regarding the contents or subject matter of the message, in
3 violation of Section 5(a)(2) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(2);

4 C. Fails to include a clear and conspicuous notice of the recipient's
5 opportunity to decline to receive further electronic mail messages from the sender, in violation of
6 Section 5(a)(5)(A)(ii) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(5)(A)(ii);

7 D. Fails to include a functioning return electronic mail address or other Internet-based
8 mechanism, clearly and conspicuously displayed, that a recipient may use to submit a reply electronic
9 mail message or other form of Internet-based communication requesting not to receive future
10 commercial electronic mail messages, from that sender, at the electronic mail address where the
11 message was received, and that remains capable of receiving such replies for no less than thirty (30)
12 days after the transmission of the original message, in violation of Section 5(a)(3)(A) of the CAN-
13 SPAM Act, 15 U.S.C. § 7704(a)(3)(A);

14 E. Advertises or promotes products or services but fails to include clear and conspicuous
15 identification that the message is an advertisement or solicitation, in violation of Section 5(a)(5)(A)(i)
16 of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(5)(A)(i); and

17 F. Advertises or promotes products or services but fails to include a valid physical postal
18 address of the sender in violation of Section 5(a)(5)(A)(iii) of the CAN-SPAM Act, 15 U.S.C.
19 § 7704(a)(5)(A)(iii).

20 II. ASSET FREEZE

21 **IT IS FURTHER ORDERED** that the defendants, and their officers, agents, servants,
22 employees, attorneys, and all other persons or entities in active concert or participation with them who
23 receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting directly
24 or through any trust, corporation, subsidiary, division, or other device, or any of them, except as agreed
25 to in writing by the parties or as directed by further order of the Court, are temporarily restrained and
26 enjoined from, except as provided in paragraph II.D:

27 A. Selling, liquidating, assigning, transferring, converting, loaning, encumbering, pledging,
28 concealing, dissipating, spending, disbursing, withdrawing, or otherwise disposing of any assets

1 wherever located, including any assets outside the territorial United States, that are:

- 2 1. In the actual or constructive possession of any defendant;
- 3 2. Owned or controlled by, or held for the benefit of, or subject to access by, or
4 belonging to, any defendant; or
- 5 3. In the actual or constructive possession of, owned or controlled by, subject to
6 access by, or belonging to, any corporation, partnership, trust, or any other entity
7 directly or indirectly owned, managed, or controlled by, or under common
8 control with, any defendant including, but not limited to, any assets held by or
9 for any defendant at any bank or savings and loan institution, credit union,
10 independent service organization, independent credit card processing company,
11 or with any broker-dealer, escrow agent, title company, commodity trading
12 company, precious metal dealer, common carrier, credit card processing agent,
13 customs broker, commercial mail receiving and/or forwarding agency,
14 commercial freight holding and/or forwarding agency, or financial institution or
15 depository of any kind.

16 B. Opening or causing to be opened any safe deposit boxes or storage facilities titled in the
17 name of any defendant, or subject to access by any defendant or under any defendant's control, without
18 providing plaintiff with prior notice and a reasonable opportunity to first inspect the contents in order
19 to determine whether they contain any assets covered by this Part;

20 C. Failing to hold and account for all assets, including, without limitation, payments, loans,
21 and gifts, received after service of this Order; and

22 D. Defendant Jennifer LeRoy may, without violating this section, use funds in Washington
23 Mutual Bank, account number 3743640258, which she included on her financial statement of
24 individual defendant dated and signed on November 27, 2005. Defendant Matthew Olson may,
25 without violating this section, use funds in Wells Fargo Online account, account number 2108105905,
26 which he included on his financial statement of individual defendant dated and signed on November
27 28, 2005. The asset freeze provisions may be further modified by agreement of the parties or by order
28 of the Court.

III. DUTIES OF THIRD PARTIES HOLDING DEFENDANTS' ASSETS

IT IS FURTHER ORDERED that, effective immediately upon notification of this Order, any financial institution, or any person or other entity served with a copy of this Order, or who otherwise has actual knowledge of this Order, that has possession, custody, or control of any account, asset, or document held on behalf of, or relating or belonging to, any defendant, shall, except as provided in paragraph II.D:

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, any defendant;
2. In any account maintained in the name of, or subject to withdrawal by, any defendant; or
3. Subject to access or use by, or under the signatory power of, any defendant;

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

1. Titled in the name, individually or jointly, or held on behalf or for the benefit, of any defendant; or
2. Subject to access by any defendant;

C. Provide to counsel for the Commission, within five (5) business days, by facsimile or by overnight delivery, a sworn statement setting forth:

1. The identification of each account or asset titled in the name, individually or jointly, or held on behalf or for the benefit, of any defendant;
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 otherwise subject to access or control by, any defendant; 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.

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

4 B. The FTC is granted leave, pursuant to Fed. R. Civ. P. 45, to subpoena documents
5 immediately from any such financial institution, account custodian, or other entity concerning the
6 nature, location, status, and extent of the defendants' assets, as well as compliance with this Order, and
7 such financial institution, account custodian, or other entity shall respond to such subpoena within five
8 (5) business days after service.

9 **IV. RECORD KEEPING/MAINTAINING BUSINESS RECORDS**

10 **IT IS FURTHER ORDERED** that the defendants, and their officers, agents, servants,
11 employees, attorneys, and all other persons or entities in active concert or participation with them who
12 receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting directly
13 or through any trust, corporation, subsidiary, division, or other device, or any of them, are temporarily
14 restrained and enjoined from:

15 A. Failing to make and keep books, records, accounts, bank statements, current
16 accountants' reports, general ledgers, general journals, cash receipts ledgers, cash disbursements
17 ledgers, documents indicating title to real or personal property, and any other data which, in reasonable
18 detail, accurately and fairly reflect the transactions and dispositions of the assets of defendants; and

19 B. Destroying, erasing, mutilating, concealing, altering, transferring or otherwise disposing
20 of, in any manner, directly or indirectly, contracts, agreements, customer files, customer lists, customer
21 addresses and telephone numbers, correspondence, advertisements, brochures, sales material, training
22 material, sales presentations, documents evidencing or referring to defendants' products or services,
23 data, computer tapes, disks, or other computerized records, books, written or printed records,
24 handwritten notes, telephone logs, video tape recordings, receipt books, invoices, postal receipts,
25 ledgers, personal and business canceled checks (fronts and backs) and check registers, bank statements,
26 appointment books, copies of federal, state or local business or personal income or property tax returns,
27 and other documents or records of any kind, including electronically stored materials, that relate to the
28 business practices or business or personal finances of any defendant or other entities directly or

1 indirectly under the control of any defendant. This provision applies documents and records wherever
2 located, including outside the territorial United States.

3 **V. REQUIRED DISTRIBUTION OF ORDER BY DEFENDANTS**

4 **IT IS FURTHER ORDERED** that the defendants shall, within three (3) calendar days after
5 service of this Order, provide a copy of this Order to each affiliate, partner, division, sales entity,
6 successor, assign, officer, director, employee, independent contractor, agent, attorney, and/or
7 representative of any defendant. Within five (5) calendar days following service of this Order by the
8 plaintiff, the defendants shall serve on the plaintiff an affidavit identifying the name, title, address,
9 telephone number, date of service, and manner of service of each person or entity the defendants served
10 with a copy of this Order in compliance with this provision.

11 **VI. SERVICE OF ORDER**

12 **IT IS FURTHER ORDERED** that copies of this Order may be served by facsimile
13 transmission, personal or overnight delivery, or by first class U.S. mail, by agents and employees of the
14 Commission or any state, federal or foreign law enforcement agency, or by private process server, on:
15 (1) any financial institution, entity, or person that holds, controls, or maintains custody of any
16 documents or assets of any defendant, or that held, controlled, or maintained custody of any documents
17 or assets of any defendant; or (2) any other person or entity that may be subject to any provision of this
18 Order. Service upon any branch or office of any financial institution or entity shall effect service upon
19 the entire financial institution or entity.

20 **VII. WAIVER OF SERVICE FOR COMPLAINT AND SUMMONS**

21 **IT IS FURTHER ORDERED** that the defendants waive service of the Complaint and
22 Summons. The Complaint, which defendants have received a copy of, was filed on the same day and
23 time as this Stipulated Preliminary Injunction.

24 **VIII. CREDIT REPORTS**

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


IX. RETENTION OF JURISDICTION

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

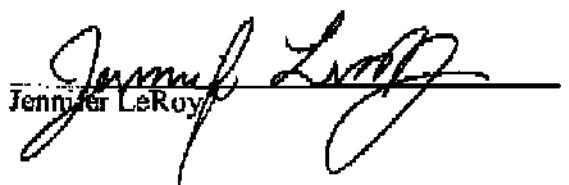
Dated this 7 day of Dec, 2005.


UNITED STATES DISTRICT JUDGE


Stipulated by:


Matthew Olson

Dated: 11/28/05


Jennifer LeRoy

Dated: 11/28/05


JOE LIPINSKY, WSBA #25446
MAXINE R SPANSELL, WSBA #9418
Attorneys for Plaintiff
Federal Trade Commission

Dated: 11/28/05