

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
Atlanta DIVISION

APR 23 2003

LUTHER D. THOMAS, Clerk
By: *[Signature]*
Deputy Clerk

FILED IN CHANCELLER
4/23/03
Luther D. Thomas, Clerk
By: *[Signature]*
Deputy Clerk

FEDERAL TRADE COMMISSION,)
)
Plaintiff,)
)
v.)
)
MORGAN ENGLE,)
)
Defendant.)

Case No.

1:03-CV-1072

JEC

TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION SHOULD NOT ISSUE

Plaintiff Federal Trade Commission ("Commission") has filed a Complaint seeking a permanent injunction and other relief, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and a motion for an ex parte temporary restraining order with equitable relief, pursuant to Rule 65 of the Federal Rules of Civil Procedure. This Court has considered the Complaint and the memoranda, declarations and exhibits filed in support of the Commission's motion, and now being advised in the premises, finds that:

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

2. There is good cause to believe that Defendant, Morgan

Engle, 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 Mail or Telephone Order Merchandise Rule ("Telephone Rule"), 16 C.F.R. Part 435.1, and that the Commission 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 Telephone Rule 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 will occur from the sale, transfer, assignment, or other disposition or concealment by Defendant of his 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), the interest of justice therefore requires that the Commission's motion be heard ex parte without prior notice to Defendant. There is thus good cause for relieving the Commission of the duty to provide Defendant with prior notice of the Commission's motion;

6. Weighing the equities and considering the Commission's likelihood of ultimate success, this Temporary Restraining Order and other equitable relief is in the public interest; and

7. No security is required of any agency of the United

States for issuance of a restraining order. Fed. R. Civ. P. 65(c).

DEFINITIONS

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

1. "Assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes" (as these terms are defined in the Uniform Commercial Code), and all chattel, leaseholds, contracts, mail or other deliveries, lists of consumer names, shares of stock, accounts, credits, receivables, and cash, wherever located;

2. "Defendant" means Morgan Engle, whether acting directly or through any corporation, subsidiary, division, or other device; and

3. "Prompt Refund" shall mean where a refund is sent to the buyer by first class mail: (1) within seven (7) working days of the date on which the buyer's right to refund vests under the provisions of 16 C.F.R. Part 435 or (2) within one (1) billing cycle from the date on which the buyer's right to refund vests under the provisions of 16 C.F.R. Part 435.

ORDER

I. PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that Defendant and any entity through which he does business, and his successors, assigns, officers, agents, servants, employees, and those other persons in active concert or participation with his who receive actual notice of this Order by personal service or otherwise are hereby restrained and enjoined from soliciting, advertising, offering for sale, and selling computer and musical equipment.

IT IS FURTHER ORDERED that Defendant and any entity through which he does business, and his successors, assigns, officers, agents, servants, employees, and those other persons in active concert or participation with his who receive actual notice of this Order by personal service or otherwise are hereby restrained and enjoined from making or assisting others in making, directly or by implication, any false or misleading oral or written representation and receiving payment of fees in connection with soliciting, advertising, offering for sale, or sale of merchandise via the Internet, including but not limited to:

A. Misrepresenting, expressly or by implication, that the consumers who submit the highest bids for or otherwise agree to purchase Defendant's merchandise and send him the agreed-upon payment will receive the offered merchandise;

B. Soliciting orders for the sale of merchandise to be

ordered by the buyer indirectly through the telephone or the Internet without a reasonable basis to expect that Defendant will be able to ship any ordered merchandise to the buyer within the time stated in the solicitation, or, if no time was clearly and conspicuously stated, within thirty days of receipt of a properly completed order;

C. Failing to offer to the buyer, clearly and conspicuously and without prior demand, an option either to consent to a delay in shipping or to cancel the order and receive a prompt refund in the event Defendant is unable to ship merchandise within the applicable time as set out in Section 435.1(a) (1) of the Telephone Order Rule;

D. Failing to make a "prompt refund", to buyers when Defendant has failed to offer to the buyer, clearly and conspicuously and without prior demand, an option either to consent to a delay in shipping or to cancel the order.

II. ASSET FREEZE

IT IS FURTHER ORDERED that:

A. Defendant and any entity through which he does business, and his successors, assigns, officers, agents, servants, employees, and those other persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise are hereby restrained and enjoined from:

1. Transferring, encumbering, selling, concealing, pledging, hypothecating, assigning, spending, withdrawing, disbursing, conveying, gifting, dissipating, or otherwise disposing of any assets that are (1) owned, controlled by, held for the benefit of, or in trust by or for, Defendant, in whole or in part; (2) in the actual or constructive possession of ny Defendant; or (3) owned, controlled by, in the actual or constructive possession of, in trust by or for, or otherwise held for the benefit of, any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by Defendant;
2. Opening or causing to be opened any safe deposit boxes titled in the name of Defendant, individually or jointly, or subject to access by Defendant; and
3. Incurring charges or cash advances on any credit or debit card issued in the name, individually or jointly, of Defendant;

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B. The assets affected by this Paragraph shall include both existing assets and assets acquired after issuance of this Order, including but not limited to those acquired by loan or gift. Defendant shall hold and account for such assets received by him after service of this Order. Defendant shall provide copies of all monthly bank statements or other statements as the

Commission may request to monitor Defendant's compliance with this provision; and

III. RETENTION OF ASSETS AND DOCUMENTS BY THIRD PARTIES

IT IS FURTHER ORDERED that any financial or brokerage institution, escrow agent, trustee, title company, commodity trading company, business entity, or person that holds, controls or maintains accounts or assets of Defendant, or has held, controlled or maintained any account or asset of Defendant at any time since January 1, 2001, shall:

A. Hold, retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, gift, or other disposal of any assets held by or on behalf of Defendant, in whole or in part, except as directed in writing by the Commission, or further order of this Court;

B. Deny access to anyone, other than the Commission, to any safe deposit box titled in the name of Defendant, individually or jointly, or subject to access by any Defendant;

C. Provide the Commission, within five business days of service of this Order, a sworn statement setting forth:

1. the identification of each account or asset titled in the name, individually or jointly, of Defendant, or held on behalf of, or for the benefit of, any

Defendant;

2. the balance of each such account or a description of the nature and value of each such asset as of the close of business on the day on which this Order is served;

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

4. if an account, asset or safe deposit box has been closed or removed, (a) the date closed or removed, (b) the balance on such date, and (c) the name of the person or entity to whom such asset or account was remitted; and

D. Allow Commission representatives immediate access to inspect and copy all records of Defendant and all documents relating to any account, safe deposit box or other asset of Defendant. Alternatively, any financial institution, other entity or person may arrange to deliver to the Commission copies of any records it seeks for a charge not to exceed fifteen cents (\$.15) per page copied.

The assets and funds affected by this Paragraph shall include both existing assets and assets acquired after issuance of this Order.

IV. FINANCIAL REPORT

IT IS FURTHER ORDERED that, within three business days after service of this Order, Defendant shall prepare and serve on the Commission a complete and accurate individual financial statement, signed under penalty of perjury, on the form attached to this Order as Attachment A.

V. REPATRIATION OF FOREIGN ASSETS

IT IS FURTHER ORDERED that, within five business days following the service of this Order, Defendant shall:

A. Provide the Commission with a full accounting of all assets, accounts or documents outside of the territory of the United States which are held either: (1) by him; (2) for his benefit; (3) in trust by or for him, individually or jointly; or (4) under his 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 him; (2) for his benefit; (3) in trust by or for him, individually or jointly; or (4) under his 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 required by

Paragraph II of this Order; and

D. Provide the Commission 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 attached to this Order as Attachment B.

VI. ACCESS TO BUSINESS PREMISES

IT IS FURTHER ORDERED that Defendant, and any other person served with a copy of this Order, shall permit the Commission's employees, agents, and assistants immediate access to Defendant's business premises and storage facilities, whether owned, controlled or used by Defendant in whole or in part. The purpose of this access shall be to inspect and photograph such premises and facilities and to inspect, copy and photograph any and all documents, records, and material relevant to this action or reasonably calculated to lead to admissible evidence. Defendant shall provide Commission employees, agents and assistants with any necessary means of access to these documents, records, and material, including but not limited to keys and lock combinations, computer access codes, and storage access information. The Commission may remove documents, records, and material from the business premises so they may be inspected and copied. The Commission shall return things so removed within five business days. Defendant is hereby enjoined and restrained from interfering with the Commission's right of access described

herein.

VII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED Defendant and any entity through which he does business, and his successors, assigns, officers, agents, servants, employees, and those other persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise are hereby restrained and enjoined from:

A. Destroying, erasing, mutilating, concealing, altering, transferring; or otherwise disposing of, in any manner, any: books; records; audio or video tape recordings; computer tapes or discs or other computerized records; correspondence; forms; advertisements; brochures; manuals; customer lists; customer files; invoices; telephone records; scripts; postal receipts; appointment books; accounting data; ledgers; payroll records; banking records; personal and business canceled checks (fronts and backs); state or federal income or property tax returns; or other documents of any kind in their possession, custody, or control that relate to the business practices or business or personal finances of Defendant; and

B. Failing to create and maintain books, records, bank statements, documents indicating title to real or personal property, and any other data which, in reasonable detail,

accurately and fairly reflect their income and transactions and dispositions of their assets.

VIII. NOTICE TO EMPLOYEES AND OTHERS

IT IS FURTHER ORDERED that Defendant shall immediately provide a copy of this Order to each of his corporations, subsidiaries, affiliates, directors, officers, employees, agents, and independent contractors and to each person and entity through which Defendant advertises or solicits goods. Within ten days after the date of service of this Order, Defendant shall serve on the Commission an affidavit identifying the names, titles, addresses, and telephone numbers of the persons and entities Defendant has served with a copy of this Order in compliance with this provision.

XIII. CREDIT REPORTS

IT IS FURTHER ORDERED that the Commission may obtain credit reports concerning Defendant Morgan Engle, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), and that upon written request, any credit reporting agency from which such reports are requested shall provide them to the Commission.

IX. ORDER TO SHOW CAUSE

IT IS FURTHER ORDERED that Defendant shall appear on the 1st day of May, 2003, at 11:00 a.m. at the United States Courthouse, Courtroom 2107, Atlanta, Georgia, 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 him from further violations of the Federal Trade Commission Act, continuing the freeze of his assets, and imposing such additional relief as may be appropriate.

X. SERVICE OF MEMORANDUM, EVIDENCE AND WITNESS LISTS

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 Commission no later than three business days prior to the preliminary injunction hearing in this matter. The Commission 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. (EST) on the appropriate dates listed in this sub-paragraph;
and

B. Any party who desires to present live testimony at the preliminary injunction hearing in this matter shall file with this Court and serve on all opposing parties, no later than three business days prior to the preliminary injunction hearing in this matter, a witness list that shall include the name, address, and telephone number of any such witness, and either a summary of, or the witness' declaration revealing the substance of, such witness' expected testimony. 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. (EST) on the date listed in the previous sentence.

XI. SERVICE OF THIS ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by facsimile transmission, personal or overnight delivery, or U.S. Mail, by agents and employees of the Commission, or any state or federal law enforcement agency, on (1) Defendant, (2) any financial or brokerage 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 at any time since January 1, 2001,

or (3) any other person or entity that may be subject to any provision of this Order.

XII. EXPIRATION DATE OF TEMPORARY RESTRAINING ORDER

IT IS FURTHER ORDERED that this Order shall expire on Wed, May 7,
_____, 2003, unless, within such time, for good
cause shown, it is extended for a like period, or unless
Defendant consents that it should be extended for a longer period
and the reasons therefore are entered of record.

XIII. RETENTION OF JURISDICTION

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

SO ORDERED this 23 day of April, 2003, at 11:05 am.

Ally Lewis
UNITED STATES DISTRICT JUDGE