

IN THE UNITED STATES DISTRICT COURT **FILED**
NORTHERN DISTRICT OF OKLAHOMA

AUG 31 2001 *SL*

FEDERAL TRADE COMMISSION,)
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 Plaintiff,)
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 v.)
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 SKYBIZ.COM, INC., et al.)
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 Defendants.)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

No: 01-CV-396-K(E) ✓

FINDINGS OF FACT AND CONCLUSIONS OF LAW
AND ORDER FOR PRELIMINARY INJUNCTION

This matter was heard by the Court during a Preliminary Injunction Hearing. Now, in accordance with Fed. R. Civ. P. 65, this Court enters its Order as to Defendants SkyBiz.com, Inc., World Service Corporation, WorldWide Service Corporation, James S. Brown, Stephen D. McCullough, Elias F. Masso, Kier F. Masso, and Ronald E. Blanton (collectively "Defendants"). The Court has resolved the issues relating to Defendants Nanci H. Masso and Nanci Corporation International (NCI) by prior order. *See* dkt # 157.

On May 30, 2001, Plaintiff filed suit against SkyBiz.com, Inc., World Service Corporation (WSC), WorldWide Service Corporation (WWSC), Nanci Corporation International, James S. Brown, Stephen D. McCullough, Elias F. Masso, Nanci Masso, Kier F. Masso, and Ronald E. Blanton alleging that Defendants: 1) made false and misleading earnings claims to consumers; 2) provided others with the means and instrumentalities to make the same deceptive claims; 3) failed to disclose to consumers that SkyBiz's pyramid structure would not allow many of SkyBiz's participants to achieve the benefits promised by Defendants; and 4) were operating a pyramid

scheme, all in violation of Section 5 of the FTC Act.¹ (Amended Complaint Counts 1, 2, 3, & 4.) After issuing an Order requiring the Defendants to show cause why a preliminary injunction should not issue, the Court held a hearing. Now having considered the complaint, the evidence presented, the exhibits, the proposed Findings of Fact and Conclusions of Law submitted by the parties, and the applicable law, the Court renders the following Findings of Fact and Conclusions of Law with respect to SkyBiz.com, Inc., WSC, and WWSC.

Plaintiff's application for preliminary injunction seeks to continue all the provisions of the previously entered Temporary Restraining Order (TRO) (dkt # 12) pending adjudication on the merits.

I. FINDINGS OF FACT

A. Identities of The Parties

1. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 et seq. The Commission enforces § 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce.

2. Defendant SkyBiz.com, Inc. (SkyBiz) is a Nevada corporation with its principal place of business at 6128 E. 38th Street, Suite 400, Tulsa, OK 74135. Plaintiff Exhibit (App. No. 1374-79); (App. No. 5540, 5542-43). It has operated as an e-commerce business and since at least 1999 was operated as a multi-level marketing (MLM) company. (App. No. 5547-52, 5554-

¹ Plaintiff filed an Amended Complaint adding SkyBiz International, Ltd., a British Virgin Islands corporation, as a Defendant. However, Plaintiff did not request any relief against SkyBiz International at the preliminary injunction hearing or in subsequently filed proposed orders. The Court therefore ignores the role, if any, of SkyBiz International for purposes of this Order.

58). Prior to the formation of SkyBiz in 1999, SkyBiz 2000, Inc., an Oklahoma corporation, conducted business as a MLM company since its formation in 1998. (App. No. 1394-96, 1398). To form SkyBiz.com, SkyBiz 2000, Inc. was merged into SkyBiz.com and ceased to maintain a separate existence. (App. No. 1397-99). SkyBiz.com, Inc. and SkyBiz 2000, Inc. will be referred to collectively as "SkyBiz." SkyBiz.com transacts business in the Northern District of Oklahoma. (App. No. 1375); (App. No. 3514, 3533).

3. Defendant World Service Corporation is a Nevada corporation. (App 1414-32, 1437); (App. No. 5443, 5449-64, 5473-80). It maintains its principal place of business at 6128 E. 38th Street, Suite 400, Tulsa, OK 74135. (App 1435-36); (App. No. 5446). WSC has been in business for over eight (8) years and currently provides management and administrative services to SkyBiz. Defendants' Proposed Findings of Fact and Conclusions of Law (DPFF) at ¶ 2.² It transacts business in the Northern District of Oklahoma. (App. No. 1435); (App. No. 5446).

4. Defendant WorldWide Service Corporation is a corporation organized under the laws of the State of Oklahoma with its principal place of business located in Tulsa, Oklahoma. WWSC was formed for the purposes of assuming the management and administrative functions of World Service Corporation. However, that event never occurred because this action was filed before the proposed transaction could be completed between the Defendants. DPFF at ¶ 3.

5. Defendant James S. A. Brown is one of the principals and is president of SkyBiz. (App. No. 1375-76); (App. No. 5557-61, 5567); (DPFF at ¶ 4). He resides and transacts business in the Northern District of Oklahoma. (App. No. 3511). Mr. Brown was one of the founders of

² Statements in proposed findings of fact are admissions admissible against the party that made them. *See United States v. Bedford*, 713 F.2d 895, 905 (2d Cir. 1983).

SkyBiz, and has traveled worldwide to actively promote it. He has made representations about the earning potential that can be reached by Associates. Numerous times, he has asserted that the average SkyBiz Associate makes \$240.00 per week. (DPFF at ¶ 56; App. No. 734). As pointed out by Plaintiff's expert, this number may be misleading. (Tr. 6/26/01 at 45-46; Vander Nat Testimony). Furthermore, the evidence presented does not support the Mr. Brown's claim that the majority of SkyBiz Associates earn roughly that amount. There has been a consistent failure on the part of Mr. Brown and other promoters of the SkyBiz Program to reveal the true likelihood of achieving financial success.

6. Defendant Stephen McCullough was a founder and vice president of marketing for SkyBiz until March, 2001. (App. No. 3524); (App. No. 4012); (App. No. 4040). He resides and transacts business in the Northern District of Oklahoma. (App. No. 3512). He has had no affiliation with any of the Defendants since departing SkyBiz.

7. Defendant Elias F. Masso, also known as Eli Masso, has held numerous positions as an officer and director of various corporate Defendants. He was a founder of SkyBiz and has served as its president, as shown in Oklahoma Tax Commission records. (App. No. 1401); (App. No. 1660). He eventually resigned from the companies, but continued to be involved in their operations as a consultant for SkyBiz and WSC. DPFF at ¶ 5. He resides and transacts business in the Northern District of Oklahoma. The evidence shows that his involvement with the Defendant companies was substantial, even after his resignation. Elias Masso was forced into bankruptcy by his creditors and in an opinion issued by the Bankruptcy Court of this district (Rasure, J.), the court speculates that Mr. Masso may have used NCI – and other entities with which he has or has had a relationship – to hide assets. (App. No. 2740).

8. Defendant Kier E. Masso is listed as a director, vice president, and secretary/treasurer of SkyBiz.com, Inc. on the SkyBiz website. He is also listed as such in bank records,(App. No. 1603), and in Oklahoma tax commission records. (App. No. 1398-99, 1401). He is the President, CEO, Secretary, Treasurer and sole Director of WSC. DPFF at ¶ 6. Kier Masso resides and transacts business in the Northern District of Oklahoma. (App. No. 5964); (App. No. 6880). Kier Masso is the son of Elias Masso and the step-son of Nanci Masso. He was one of the founders of the business and has variously held positions as an officer, director and shareholder of the corporate Defendants.

9. Ronald E. Blanton was at one time the president of WSC. (App. No. 1430, 1438); (App. No. 5443). He resides and transacts business in the Northern District of Oklahoma. (App. No. 3506). Mr. Blanton was listed as the president of WSC in 2000. He was actively involved in the operations of WSC and SkyBiz before his resignation in late 2000. He has reached a tentative agreement with the FTC wherein he is preliminarily enjoined from various activities with respect to the other Defendants. The Court has not been notified whether the FTC has accepted this stipulated preliminary injunction and the document is silent on the issue of his legal liability beyond the preliminary injunction's duration. The Court finds that Mr. Blanton is therefore not subject to legal or equitable action as enunciated by this Order, but shall remain in the case for purposes of trial unless he reaches an agreement to the contrary with Plaintiff. To the extent that Mr. Blanton's assets may have been frozen or encumbered by Order of this Court, such encumbrances shall hereby cease.

B. Procedural History

10. On May 30, 2001, Plaintiff filed a complaint alleging that Defendants violated Section 5 of the Federal Trade Commission Act by engaging in deceptive marketing practices.

11. On May 30, 2001, Plaintiff also moved for an *ex parte* TRO prohibiting further misrepresentations, appointing a Receiver over the Corporate Defendants, and freezing Defendants' assets.

12. On June 6, 2001, after an *ex parte* hearing, the Court issued a TRO prohibiting certain further conduct in the operation of its SkyBiz Program, appointing Robb Evans and Robb Evans & Associates as Receiver over the Corporate Defendants, and freezing Defendants' assets.

13. On June 8, 2001, certain Defendants filed an application for a status conference before the Court, which was held that same day. As a result of the status conference, the Court entered subsequent Orders (dkt ## 20-21) which gave the individual Defendants access to personal bank and credit card accounts for day-to-day personal living expenses, and permitted NCI and its wholly-owned subsidiary, Nanci Realty Company ("NRC"), to continue non-SkyBiz-related business, with Receiver oversight.

14. The Temporary Receiver filed a report on June 20, 2001 which outlines the findings of the Receiver and its staff during its term of receivership following the issuance of the TRO. *See* Report of the Receiver, dkt. # 45.

15. On June 26-28, 2001, the Court held a hearing on the Plaintiff's motion for a preliminary injunction. Plaintiff FTC offered live testimony from 9 witnesses, and presented 228 documents. Defendants offered live testimony from 4 witnesses, and presented 17 documents. Defendants Nanci Masso and NCI offered 14 documents and no live testimony from witnesses. Defendant McCullough offered no documents and no live testimony from witnesses. Having

reached a settlement agreement with the FTC, Defendant Blanton presented neither argument nor evidence at the hearing.

16. On August 2, 2001, the Court entered its Findings of Fact and Conclusions of Law with respect to Defendants Nanci Masso, NCI, and their related entities. *See* dkt # 157.

C. Structure of the Corporate Defendants

17. SkyBiz.com, Inc. was formed in 1999 from SkyBiz 2000, Inc., which was originally incorporated in 1998. It has conducted business since at least 1999 as a multi-level marketing company. (App. No. 5547-52, 5554-58). It is owned by Kier Masso and James Brown through SkyBiz Investment Co, LLC, and Annapolis Management. *See* Receiver's Report at App. 1.

18. WSC was incorporated in 1993. (App. No. 5444). Nanci and Elias Masso and their children jointly own WSC. This is accomplished through various entities. Nanci and Elias Masso own 50% of K.F.B.B. Limited Partnership. They also each own 45% of the Masso Limited Partnership (MLP). The remaining 10% of MLP is owned in equal parts by the four Masso children. MLP owns 50% of K.F.B.B. Limited Partnership. K.F.B.B. Limited Partnership owns 100% of WSC. *See* Receiver's Report at App. 1.

19. WSC contracts with SkyBiz to perform various functions, from administrative support to customer relations. According to the SkyBiz website, WSC "provides SkyBiz.com, Inc. with all the personnel, systems, and facilities of a large international corporation every day of the year . . . [WSC is] here to fulfill SkyBiz's plan for success." (App. No. 3505: *World Service Is . . .* , at <http://www.skybiz.com/2000homews.html> (last visited August 4, 2000)). Among the services WSC provides are: generating and distributing the daily newsletter, creating and distributing marketing materials, scheduling of presentations, and payment of commissions to Associates.

20. SkyBiz and WSC share office space in the Skyline Office Complex. Presently, SkyBiz holds a note receivable from NCI in the amount of \$713,034.31. This promissory note is secured by a mortgage on the Skyline Complex office building. NCI has a lease agreement with WSC (as a tenant) for the offices used by SkyBiz and WSC at the Skyline Complex.

E. Defendants' Business Strategy

21. Since its inception in 1998, all of the Defendants have been involved in some way with "The SkyBiz Program."

22. The SkyBiz Program is a MLM scheme which involves the sale of an Internet product called a Web Pak. The program is promoted as a work-from-home business opportunity whereby interested individuals ("Associates") can sell the Web Pak product and achieve unlimited success if they put forth a reasonable amount of diligence. If an individual does not wish to purchase a Web Pak, he may become a "Compensation Only" Associate and simply receive compensation for participating in the program. DX 1 (WSC 17-18), DX 3.

23. The Web Pak is a personal computer-related package which allegedly consists of the tools to create a 35 megabyte Internet website, various tutorials for beginner computer users, and an electronic mail account.

24. SkyBiz sells the Web Pak for \$100.00 per year, plus a one-time processing charge of \$25.00. (App. No. 3 ¶ 7); DPF at ¶ 7.

25. Associates buy the Web Pak which entitles them to participate in the SkyBiz Program. In order to earn income, they must recruit new Associates who purchase the SkyBiz Program from Defendants and who, in turn, recruit new Associates who purchase the SkyBiz Program from Defendants, and so on. (App. No. 3 ¶ 7); (App. No. 32 ¶ 9, 33 ¶ 14). Once an

Associate sells two Web Paks, he is eligible to receive commissions. DPFF at ¶ 9. In this way, each Associate creates a “downline” consisting of all the people sponsored directly or indirectly by that Associate. (App. No. 3 ¶ 8); (App 242:2-12); (App. No. 4177-78). Once an associate has personally sold nine (9) Web Paks, or has sold nine (9) indirectly through those in his “downline,” that Associate receives a commission check from SkyBiz. DPFF at ¶ 9; (App. No. 4178). As long as the Associate’s downlines recruit new members, the Associate can earn commissions. (App. No. 12 ¶ 22); (App. No. 161 ¶ 10); (App. No. 4177). A total of twenty-seven (27) sales must be made in an Associate’s downline before his initial \$125.00 is recouped. (Twenty-seven sales actually amounts to \$140.00.) (App. No. 4179).

26. Many new Associates are encouraged to buy more than one Web Pak at the outset because there is greater earning potential. (Tr. 6/26/01 at 100-01; Darlene Syrell testimony) (purchased three Web Paks at her recruiter’s urging); (Declaration of Bernadette Brannock, App. No. 72, 78-79 ¶¶ 4, 20). Some people were even convinced to buy more than three. (Tr. 6/26/01 at 84; Ken Klein testimony) (purchased five Web Paks); (Declaration of George Brackenrich, App. No. 29-33 ¶¶ 2, 7, 10, 12) (purchased six Web Paks -- two “3PAKs”; later persuaded to buy eight “7PAKs,” plus one more Web Pak for a total of sixty-three Web Paks at a total cost of over \$7000.00).

27. The SkyBiz Program is promoted both directly by the Defendants and through their network of recruited Associates. (App. No. 464:2-13); (App. No. 854:6-855:6); (App. No. 1105:18-23, 1108:5-16); (App. No. 1145:18-23); (App. No. 1256:17-23); (App. No. 4484:3-4485:25); (App. No. 4494). Defendants urge Associates to use word-of-mouth referrals to get potential recruits to attend in-person sales presentations given by SkyBiz officers, corporate-

sponsored presenters and more senior Associates. (Tr. 6/28/01 at 38-39; James Brown testimony); (App. No. 227:15-228:19).

28. In addition, Defendants sponsor conference calls and prerecorded calls to pitch the SkyBiz Program to prospective Associates. (App. No. 865:19-866:10); (App. No. 1109:4-5); (App. No. 1236:18-1238:17). To assist their Associates in recruiting new participants in the SkyBiz Program, Defendants sell CD-ROMs, computer disks, videos, and books promoting the SkyBiz Program, and they provide a PowerPoint presentation that Associates may download. (App. No. 77 ¶ 15); (App. No. 132 ¶ 5, 135 ¶ 14); (App. No. 347 ¶ 10, 350 ¶ 20); (App. No. 1266-1362); (App. No. 4494).

29. In their live presentations, telephone calls, marketing materials and on their websites, Defendants represent that participants are likely to receive substantial income by participating in the SkyBiz Program. (App. No. 73 ¶ 3, 74 ¶ 5, 76 ¶ 12, 77 ¶ 13, 78 ¶ 20); (App. No. 127 ¶ 2); (App. No. 238:18-25, 241:11-13, 249:21-25); (App. No. 346 ¶ 5). *See also* (App. No. 191-99 (Rule 1006 Chart of Misrepresentations)).

30. In their marketing materials and at seminars, Defendants have also featured “testimonials” from participants in the SkyBiz Program. In these testimonials, the individuals describe how successful they have become through participation in the SkyBiz Program. (App. No. 736:8-748:23).

31. Under SkyBiz’s structure, approximately 87% of SkyBiz participants at any given time will not be able to qualify for commissions. (Tr. 6/26/01 at 32; Vander Nat testimony); (App. No. 12-13 ¶¶ 23-24). This same structure also ensures that approximately 94% of SkyBiz’s members at any given time will not recoup their investment. (Tr. 6/26/01 at 32; Vander Nat testimony);

(App. No. 3 ¶ 7, 13-14 ¶¶ 25-26). These facts are concealed when the SkyBiz program is pitched.

32. SkyBiz Associates and others affiliated with SkyBiz (including at least some of its principals) who market its product made numerous representations to consumers – potential Associates – that by participating in the SkyBiz program, they could earn substantial amounts of money. These representations have come in various forms: verbal representations in-person at live seminars and in visits to individual homes; verbal representations over the phone and in conference calls; and written representations on some Associates’ websites. (App. No. 73 ¶ 3, 74 ¶ 5, 76 ¶ 12, 77 ¶ 13, 78 ¶ 20); (App. No. 127 ¶ 2); (App. No. 238:18-25, 241:11-13, 249:21-25); (App. No. 346 ¶ 5). *See also* (App. No. 191-99 (Rule 1006 Chart of Misrepresentations)). The promotional efforts of SkyBiz are designed to recruit new Associates by promising them the opportunity to achieve fabulous wealth with little or no effort through the recruitment of new Associates. (App. No. 7-8 ¶ 16); (App. No. 30 ¶ 4, 32 ¶ 10, 32-33 ¶ 11, 35-36 ¶ 19); (App. No. 75 ¶ 9, 76 ¶ 12, 78-79 ¶ 20); (App. No. 115 ¶ 4); (App. No. 127 ¶ 2, 129 ¶ 9); (App. No. 132-33 ¶ 5, 134 ¶ 10, 137 ¶ 18); (App. No. 160 ¶ 6, 162 ¶ 14); (App. No. 165 ¶ 5, 166 ¶ 9); (App. No. 169 ¶ 5, 172-73 ¶ 16); (App. No. 858:20-859:11); (App. No. 1037:4-19); (App. No. 1120:14-16, 1124:6-11); (App. No. 4179-82).

33. Although SkyBiz claims that its main function is to market the product, the emphasis of the seminars and Associate testimonials is on the earning potential one can realize if they become a SkyBiz Associate. Thus, the emphasis is placed on recruiting more Associates and not on selling the Web Pak.

34. The Receiver estimates that there are over 1.9 million Associates enrolled in the

SkyBiz program. Receiver's Report at 7.

35. The Receiver found that, out of all Web Pak sales, there have been only 428 sales of Web Paks to individuals who did not want to participate in the Compensation Plan. Receiver's Report at 7-8.

36. In a study prepared in connection with the prosecution of criminal charges against SkyBiz Associates in Canada, the Royal Canadian Mounted Police found that 85% of the assigned websites were never developed. (App. No. 1664-65 ¶ 9, 1680, 1734). The defense's expert in that same proceeding, whose expenses were paid by SkyBiz (Tr. 6/26/01 at 56), testified that 87% of all assigned websites were not developed. (App. No. 2254). Defendants' real product is the right to recruit new members. (App. No. 2-3 ¶ 6).

37. There is little, if any, evidence that the Web Pak alone is a sought-after product. The parties have a difficult time convincingly demonstrating that there are consumers who have bought the Web Pak without any intention of participating in the MLM scheme. Furthermore, Defendants have presented no evidence that a significant number of purchasers of Web Paks use, maintain or renew their websites. This information is solely within the control or knowledge of Defendants. This notable absence of information clarifies to the Court that the interest in SkyBiz appears to lie in the opportunity to make money, which comes only with the recruitment of more members.

38. There is sufficient evidence to conclude that the SkyBiz Program is a deceptive marketing scheme.

39. There is sufficient evidence to conclude that individuals associated with the SkyBiz Program made misrepresentations and misleading claims to consumers about the potential for

effortlessly earning great amounts of money.

To the extent any of these Findings of Fact are more properly characterized as Conclusions of Law, they should be so considered.

II. CONCLUSIONS OF LAW

40. This Order supersedes the June 6, 2001 *Ex Parte* Temporary Restraining Order (# 12).

41. This case was brought pursuant to Sections 5 and 13 of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 53(b).

42. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and the FTC Act.

43. The individual Defendants reside in Tulsa, Oklahoma and the principal place of business of the corporate Defendants is also Tulsa, Oklahoma.

44. This Court has personal jurisdiction over Defendants.

45. Venue is appropriate in the Northern District of Oklahoma pursuant to 28 U.S.C. § 1391(b)(1).

46. Section 5 of the FTC Act prohibits “unfair or deceptive acts or practices in or affecting commerce.” 15 U.S.C. § 45(a).

47. The parties dispute the appropriate standard for injunctive relief. Defendants cite the traditional four-prong test quoted in *Kikumura v. Hurley*, 242 F.2d 950, 955 (10th Cir. 2001). The Court finds this test inapposite. Section 13(b) of the FTC Act provides: “[u]pon a proper showing that, weighing the equities and considering the [FTC]’s likelihood of ultimate success, such action would be in the public interest . . . a preliminary injunction may be granted” 15 U.S.C. § 53(b). *See also F.T.C. v. University Health, Inc.*, 938 F.2d 1206, 1217 (11th Cir.

1991).

48. Congress intended this standard to depart from what it regarded as the then-traditional equity standard. *See FTC v. H.J. Heinz Co.*, 246 F.3d 708, 714 (D.C.Cir. 2001). The agency is not held to the high thresholds applicable where private parties seek interim restraining orders, in order that injunctive relief be broadly available to the FTC under a unique “public interest” standard. *See id.* Under this approach, it is not necessary for the FTC to demonstrate irreparable injury. *See Miller v. Calif. Med. Ctr.*, 19 F.3d 449, 459 (9th Cir. 1994) (“the passage of the statute is itself an implied finding by Congress that violations will harm the public”). Rather, in determining whether to grant a preliminary injunction, a court must (1) determine the likelihood that the FTC will ultimately succeed on the merits and (2) balance the equities. *See FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1029 (7th Cir. 1988).

49. As irreparable harm is presumed in a statutory enforcement action, the district court need only find some chance of probable success on the merits. *See F.T.C. v. World Wide Factors, LTD.*, 882 F.2d 344, 347 (9th Cir. 1989); *Gresham v. Windrush Partners, Ltd.*, 730 F.2d 1417, 1423 (11th Cir.), *cert. denied sub nom., Windrush Partners, Ltd. v. Metro Fair Housing Svcs.*, 469 U.S. 882 (1984). This will be satisfied by a prima facie showing of illegality. *See Commodity Futures v. Muller*, 570 F.2d 1296, 1300 (5th Cir. 1978).

50. Balancing the equities tips in favor of the public interest in issuing such relief to federal agencies like the FTC. *See World Wide Factors*, 882 F.2d at 347 (9th Cir. 1989).

51. The standard for likelihood of success on the merits is met if the FTC “has raised questions going to the merits so serious, substantial, difficult and doubtful as to make them fair ground for thorough investigation, study, deliberation and determination by the FTC in the first

instance and ultimately by the Court of Appeals.” *Heinz*, 246 F.3d at 714-15. When a district court balances the hardships of the public interest against a private interest, the public interest should receive greater weight. *See FTC v. Affordable Media, Inc.*, 179 F.3d 1228, 1236 (9th Cir. 1999). In the Findings of Fact listed above, when the Court states “there is sufficient evidence” regarding a certain proposition, reference is being made to the lenient standard under which the FTC may obtain injunctive relief.

52. Section 13(b) also empowers this Court to grant other equitable relief within the Court’s equitable powers. This may include appointment of a receiver, an asset freeze, or any measures that may be needed to make permanent relief possible. *See F.T.C. v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1433-34 (11th Cir. 1984). Unless otherwise provided by statute, all the Court’s inherent equitable powers are available for the proper and complete exercise of that jurisdiction. *See id.* And since the public interest is involved in a proceeding of this nature, those equitable powers assume an even broader and more flexible character than when only a private controversy is at stake. *See Virginian R. Co. v. System Federation*, 300 U.S. 515, 552 (1937). This Court thereby has power, in exercising this jurisdiction, “to do equity and to mould each decree to the necessities of the particular case.” *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944).

53. The FTC has also alleged that Defendants violated Section 5 of the FTC Act by engaging in deceptive practices in marketing the SkyBiz scheme, and is seeking permanent equitable relief. Such relief cannot be provided by this Order. At this stage, the Court can only grant preliminary relief pending adjudication on the merits or agreement of the parties. *See Amoco Oil Co. v. Rainbow Snow*, 748 F.2d 556, 557 (10th Cir. 1984) (a preliminary injunction’s function is to preserve the status quo pending trial on the merits, it is not a final determination of

the merits of the case) (citations omitted).

54. As demonstrated by testimony, Defendants marketed their program to consumers throughout the nation, thereby affecting the passage of property or messages from one state to another. Defendants also marketed their program to consumers throughout the world, thereby affecting the passage of property or messages from the United States to foreign nations. Such transactions are “in or affecting commerce among the several states or with foreign nations,” as required by the FTC Act. *See* 15 U.S.C. § 44.

55. The SkyBiz program was marketed by the business’ principals and its Associates. For purposes of liability under the FTC Act, it is of no consequence whether SkyBiz Associates would be considered at law as employees of the company or independent contractors. *See Goodman v. FTC*, 244 F.2d 584, 591-92 (9th Cir. 1957); *See FTC v. Five-Star Auto Club, Inc.*, 97 F.Supp.2d 502, 527 (S.D.N.Y. 2000). Despite Defendants’ argument about agency to the contrary, the law is clear that under the FTC Act, a principal is liable for misrepresentations made by his/her agents (*i.e.*, those with the actual or apparent authority to make such representations) regardless of the unsuccessful efforts of the principal to prevent such misrepresentations. *See Goodman v. FTC*, 244 F.2d at 591-593; *Standard Distributors v. FTC*, 211 F.2d 7, 13 (2d Cir. 1954). *See also Southwest Sunsites, Inc. v. FTC*, 785 F.2d 1431, 1438-39 (9th Cir.), *cert. denied* 479 U.S. 828 (1986). It would be inappropriate for Defendants to hold out SkyBiz Associates as SkyBiz representatives and to “reap the fruits from their acts and doings without incurring such liabilities as attach thereto.” *Goodman*, 244 F.2d at 592 (quotations omitted).

56. The misrepresentations made by Defendants and their Associates led consumers to believe that if they took part in the SkyBiz Program, they could earn substantial amounts of

money. It is reasonable to expect that consumers could rely on the express claims of the representatives of the SkyBiz Program. See *Five-Star Auto Club*, 97 F.Supp.2d at 528. SkyBiz representatives are aware that consumers will rely on these representations and, it is hoped, become participants.

57. Illegal pyramid schemes "are characterized by the payment by participants of money to the company in return for which they receive (1) the right to sell a product and (2) the right to receive in return for recruiting other participants into the program rewards which are unrelated to sale of the product to ultimate users." *In re Koscot Interplanetary, Inc.*, 86 F.T.C. 1106 (1975). Several courts have adopted the *Koscot* test for pyramid schemes. See, e.g., *U.S. v. Gold Unlimited, Inc.*, 177 F.3d 472, 480 (6th Cir. 1999); *Webster v. Omnitrition Intern., Inc.*, 79 F.3d 776, 781-82 (9th Cir. 1996).³

58. A lawful multi-level marketing program is distinguishable from an illegal pyramid scheme in the sense that the "primary purpose" of the enterprise and its associated individuals is to sell or market an end-product with end-consumers, and not to reward associated individuals for the recruitment of more marketers or "associates." See *Gold Unlimited*, 177 F.3d at 483-84 (suggesting that based on a statutory survey of state criminal laws against pyramid schemes, this is a difference). See also *Ger-Ro-Mar, Inc. v. FTC*, 518 F.2d 33, 36 (2d Cir. 1975) (explaining that

³ To date, the Tenth Circuit has not defined, nor has it adopted a definition for, a pyramid scheme. However, the Tenth Circuit defines a "Ponzi Scheme," which is a different sort of fraudulent enterprise than the one at bar, as:

an investment scheme in which returns to investors are not financed through the success of the underlying business venture, but are taken from principal sums of newly attracted investments. Typically, investors are promised large returns for their investments. Initial investors are actually paid the promised returns, which attract additional investors.

In re Hedged-Investments Associates, Inc., 48 F.3d 470, 471 n.2 (10th Cir. 1995).

the distributors profited by earning commissions from their own sales and those of their recruits); *In re Amway Corp.*, 93 F.T.C. 618, 716 (1979) (sponsors do not make money from their recruits' efforts until a newly recruited distributor begins to make wholesale purchases from his sponsor and sales to consumers).

59. Another distinction is that an unlawful pyramid scheme will saturate the market of potential participants to the point where it is unrealistic to expect that such a large number of individuals will become involved and the pyramid must therefore eventually collapse. A legitimate MLM does not have such a propensity for saturation. *See Five-Star Auto Club*, 97 F.Supp.2d at 518 (S.D.N.Y. 2000) (“[i]f . . . each Five Star participant recruited only three new members, Five Star would have 387,000,000 members . . . exceed[ing] the populations of the United States and Canada”); *Gold Unlimited*, 177 F.3d at 481; *Ger-Ro-Mar*, 518 F.2d at 36-38 (if even a small number of individuals are recruited each month by each member, after a year the number of members would exceed the population of the United States); *Amway*, 93 F.T.C. at 716-17.

60. While the Web Pak product marketed and sold by SkyBiz appears to have some value to customers interested in purchasing it, the Court is not convinced that the primary purpose of SkyBiz is to sell Web Paks and to have its Associates sell Web Paks. Instead, the primary purpose of SkyBiz appears to be recruitment of Associates and to reward its members for that recruitment. In addition, whether SkyBiz's product has inherent value is of little consequence. While the product value could affect the quantum of harm suffered by the consumer, the issue of consumer harm is irrelevant to the Court's inquiry when the FTC brings an enforcement action such as this. *See Miller, supra* at ¶ 48. Furthermore, simply because a MLM's product has value does not render an unlawful pyramid scheme lawful. The other elements of a legal MLM program

must also be present. *See Gold Unlimited, Ger-Ro-Mar, and In re Amway, supra*, at ¶ 58.

61. In addition, as pointed out by the FTC's expert, the structure of SkyBiz will ultimately result in the company's collapse. (Tr. 6/26/01 at 172-73; Vander Nat testimony).⁴ Because SkyBiz does not concentrate its business on sales of its single product, but instead on recruitment of members, the exponential growth which would be required to sustain the incomes anticipated by successful recruiters is impossible to attain and spells eventual collapse, or saturation, of the business.

62. There is good cause to believe that, under the more lenient standard, the FTC will ultimately prevail on the merits of this case and establish that Defendants have violated § 5(a) of the FTC Act. The Court is convinced that without the entry of preliminary relief, Defendants will continue to violate § 5(a) by making false or misleading representations about the SkyBiz program and its marketing plan which emphasizes potential for success for Associates who take part in the scheme.

63. Having found that the FTC will likely prevail on the merits, the Court must apply the second factor and weigh the equities. While the Court acknowledges that the Defendants will and have suffered a substantial burden when their business was taken over by the Receiver and their operations virtually entirely shut down pending trial, the potential harm to the public outweighs any harm that Defendants may suffer. Moreover, in weighing the equities between the public interest in preventing further violations of law and Defendants' private interest in continuing to operate their business unabated, the public equities are accorded much heavier weight. *See World Wide Factors*, 882 F.2d at 347, *supra* at ¶ 50 (when balanc[ing] hardships of public interest

⁴ The court in *FTC v. Five-Star Auto Club, supra*, also relied upon Dr. Vander Nat's testimony.

against private interest, public interest should receive greater weight); *World Travel*, 861 F.2d at 1030-31.

64. Once the FTC shows that an entity has violated § 5(a), individuals involved may be personally liable for injunctive relief for their involvement in the deception. *See FTC v. Publishing Clearing House, Inc.*, 104 F.3d 1168, 1170 (9th Cir. 1997); *F.T.C. v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1031 (7th Cir. 1988). The FTC is not required to show that a defendant intended to defraud consumers in order to hold that individual personally liable. *See Publishing Clearing House*, 104 F.3d at 1171. It must simply show that the individual(s): (1) had actual knowledge of material misrepresentations; (2) was recklessly indifferent to the truth or falsity of a misrepresentation; or (3) had an awareness of a high probability of fraud along with an intentional avoidance of the truth. *See id.* Some courts have held that a defendant's participation in corporation affairs is probative of knowledge. *See, e.g., FTC v. SlimAmerica, Inc.*, 77 F.Supp.2d 1263 (S.D.Fla. 1999); *FTC v. Kitco of Nevada, Inc.*, 612 F.Supp. 1282, 1292 (D.Minn. 1985). *See also F.T.C. v. Atlantex Associates*, 1987 WL 20384 (S.D.Fla. 1987); *FTC v. International Diamond*, 1983-2 Trade Cas. (CCH) Para. 65,725, at 69,708 (N.D.Cal.1983) ("[t]he relevant principle is that one may not enjoy the benefits of fraudulent activity and then insulate oneself from liability by contending that one did not participate directly in the fraudulent practices").

65. There is good cause to believe that the individual Defendants were sufficiently involved in the unlawful pyramid scheme that they may be personally liable for their association with SkyBiz. They had actual or constructive knowledge of the material representations, and participated in corporate affairs of SkyBiz.

66. There is good cause to appoint a receiver and to continue the asset freeze. As set forth in detail in the Findings of Fact, Plaintiff's evidence establishes a substantial likelihood that the Court will find Defendants' conduct deceptive and the consumer injury substantial. To allow Defendants to control their frozen assets and to operate their deceptive scheme would create an unreasonable risk that effective relief would be frustrated. *See World Wide Factors*, 882 F.2d at 348; *FSLIC v. Sahni*, 868 F.2d 1096, 1097 (9th Cir. 1989); *SEC v. Keller Corp.*, 323 F.2d 397, 403 (7th Cir. 1963).

67. In their Proposed Findings of Fact and Conclusions of Law, Defendants seek to avoid extraterritorial application of this Order. The Court finds that the terms of this Order may apply extraterritorially. *See Branch v. FTC*, 141 F.2d 31 (7th Cir. 1944) (holding that FTC Act applies to trade outside U.S. borders as a means of controlling domestic competition).

68. In addition, the Court hereby requires Defendants to repatriate all of their offshore assets (as set forth in more detail in the Order for Preliminary Injunction, below) and cease and desist from transferring any assets to extraterritorial entities.

To the extent any of these Conclusions of Law are more properly characterized as Findings of Fact, they should be so considered.

III. ORDER FOR PRELIMINARY INJUNCTION

A. Based on the above Findings:

1. There is good cause to believe that Defendants SkyBiz.com, Inc., World Service Corporation, WorldWide Service Corporation and their officers and directors, James S. Brown, Stephen D. McCullough, Elias F. Masso, Kier E. Masso, and Ronald E. Blanton, have engaged and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and that the Plaintiff is therefore likely to prevail on the merits of this action.

2. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of monetary restitution will occur from the sale, transfer, or other disposition or concealment by Defendants of their assets or corporate records, or those assets and corporate records under their control, unless Defendants are immediately restrained and enjoined by Order of this Court. There is thus good cause for issuing this Order pursuant to Federal Rules of Civil Procedure 65(b).

3. There is good cause for the Court to appoint a receiver.

4. Weighing the equities and considering plaintiff's likelihood of ultimate success, a preliminary injunction with asset freeze, appointment of a receiver, and other equitable relief is in the public interest.

5. Fed. R. Civ. P. 65(c) does not require security of the United States or an officer or agency thereof.

B. Definitions – For the purpose of this preliminary injunction, the following definitions shall apply:

1. “*Defendants*” means SkyBiz.com, Inc., World Service Corporation, WorldWide

Service Corporation and their officers and directors, James S. Brown, Stephen D. McCullough, Elias F. Masso, Kier E. Masso, and Ronald E. Blanton, and each of their successors, assigns, officers, agents, servants, employees, subsidiaries or affiliates, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, unless specified otherwise.

2. “**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,” “notes” (as these terms are defined in the Uniform Commercial Code), and all chattel, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and cash, wherever located.

3. “**Marketing Program**” includes, but is not limited to, any multi-level marketing program, sales program, business investment opportunity, pyramid marketing scheme, Ponzi scheme, or chain marketing scheme marketed by the Defendants.

4. “**Marketing Program Participant**” means anyone who makes a payment to Defendants and who is granted the right to market a product or the right to recruit other people into the Marketing Program.

5. “**Masso Bankruptcy Case**” means the bankruptcy case styled as *In Re Elias F. Masso*, U.S. Bankruptcy Court, Northern District of Oklahoma, Case No. 00-01332 (Chapter 7).

6. “**Masso Bankruptcy Estate**” means the bankruptcy estate that was created when an order for relief was entered pursuant to 11 U.S.C. § 303 (h) in the *Masso Bankruptcy Case*.

CONDUCT PROHIBITIONS

C. INJUNCTION AGAINST MISREPRESENTATIONS

IT IS ORDERED that in connection with the promotion of any Marketing Program, Defendants are hereby preliminarily restrained and enjoined from making or assisting in the making of, expressly or by implication, orally or in writing, any statement or representation of material fact that is false or misleading, such as:

1. representations that persons who participate in such programs will or can receive compensation related to recruitment;
2. representations that persons who participate in such programs will receive substantial income; and
3. representations that consumers who participate in such programs will or can receive compensation related to the purchase or sale of goods or services, unless such compensation meets the requirements set forth in Paragraph E of this Order.

D. INJUNCTION AGAINST MATERIAL OMISSIONS

IT IS FURTHER ORDERED that in connection with the promotion of any Marketing Program, Defendants are hereby preliminarily restrained and enjoined from failing to disclose, clearly and conspicuously, before any consumer becomes a Marketing Program Participant, all information material to a consumer's decision to participate in the Marketing Program, including but not limited to:

1. The number and percentage of current Marketing Program Participants who have made a profit through their participation in the Marketing Program, and the average amount of money made by each current Marketing Program Participant; and

2. That the structure of the Marketing Program prevents the vast majority of Marketing Program Participants from profiting from the Marketing Program by earning substantial income or receiving something else of value.

E. INJUNCTION AGAINST MAKING PAYMENTS RELATED TO RECRUITMENT

IT IS FURTHER ORDERED that Defendants are hereby preliminarily restrained and enjoined from operating any Marketing Program that:

1. Pays any compensation related to recruitment based on false or misleading representations to consumers;
2. Pays any compensation related to the purchase or sale of goods or services based on false or misleading representations to consumers; or
3. Otherwise constitutes a pyramid marketing scheme, Ponzi scheme, or chain marketing scheme.

F. INJUNCTION AGAINST PROVIDING OTHERS WITH THE MEANS AND INSTRUMENTALITIES TO VIOLATE SECTION 5 OF THE FTC ACT

IT IS FURTHER ORDERED that in connection with the promotion of any Marketing Program, Defendants are hereby preliminarily restrained and enjoined from providing to others the means and instrumentalities with which to make, expressly or by implication, orally or in writing, any false or misleading statement or representation of material fact, including, but not limited to representations that anyone who participates in any Marketing Program can receive substantial income.

G. INJUNCTION AGAINST PROVIDING CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendants are hereby preliminarily restrained and enjoined from (in the furtherance of a pyramid marketing scheme) selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, social security number, or other identifying information of any person recruited to become a Marketing Program Participant . However, Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

RECEIVER

H. APPOINTMENT OF RECEIVER

IT IS FURTHER ORDERED that ROBB EVANS and ROBB EVANS & ASSOCIATES are appointed as Receiver with the full power of an equity receiver, for SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation, and their affiliates and subsidiaries, not including Nanci Corporation International or its subsidiaries, and of all the funds, properties, premises, accounts and other assets directly or indirectly owned, beneficially or otherwise, by SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation, with directions and authority to accomplish the following:

1. Oversee the operation of SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation by monitoring the actions of Defendants James S. Brown, Elias F. Masso, Kier Masso and any other officer, independent contractor, employee, or agent of SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation;
2. Identify and monitor all of the funds, property, premises, accounts, mail and other assets of, or in the possession or under the control of SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation, wherever situated, the income and profits

therefrom, and all sums of money now or hereafter due or owing to SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation with power to, upon approval from the Court: collect, receive and take possession of all goods, chattels, rights, credits, monies, effects, lands, leases, books and records, work papers, records of accounts, including computer-maintained information, contracts, financial records, monies on hand in banks and other financial institutions, and other papers and documents of SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation and other individuals or corporations whose interests are now held by or under the direction, possession, custody or control of SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation;

3. Perform all acts necessary to conserve, hold, manage, and preserve the value of those assets in order to prevent any irreparable loss, damage and injury to consumers and business venture purchasers, and all acts incidental thereto, including, if necessary and with Court approval, the suspension of operations. (Such acts shall not impede defendants from attempting to operate a viable legal sales business);

4. Perform all acts necessary to ensure that SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation are in compliance with the provisions of this Order, including ceasing all advertising, marketing, offering or providing or assisting others in doing the same which contains any false or misleading statements of material fact or which fail to disclose all information material to a consumer's decision to participate in the Marketing Program;

5. Notify SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation's Marketing Program Participants about this Order, by posting this Order on

SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation's World Wide Web page, and providing information to Marketing Program Participants through SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation's meetings, conference calls, and seminars;

6. Enter into agreements in connection with administration of the receivership, including, but not limited to, the retention and employment of investigators, attorneys or accountants of the Receiver's choice, including, without limitation, members and employees of the Receiver's firm, to assist, advise, and represent the receiver;

7. Institute, prosecute, compromise, adjust, intervene in or become party to such actions or proceedings in state, federal or foreign courts that the Receiver deems necessary and advisable to preserve the value of the properties of SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order, and likewise to defend, compromise or adjust or otherwise dispose of any or all actions or proceedings instituted against the Receiver or SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation that the Receiver deems necessary and advisable to preserve the properties of SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under the terms of this Order.

8. The Receiver and all personnel hired by the Receiver as herein authorized, including counsel to the Receiver and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by or in the possession or control of, or which may be

received by, SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation. The Receiver shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation, with the first such request due prior to thirty days after the date of this Order. The Receiver shall not increase the Receiver's fee rate billed to the receivership estate without prior approval of the Court.

9. The Receiver shall file with the Clerk of this Court a bond in the sum of \$250,000.00 with sureties to be approved by the Court, conditioned that the Receiver will well and truly perform the duties of the office and abide by and perform all acts the Court directs.

I. ACCESS TO BUSINESS RECORDS

IT IS FURTHER ORDERED that Defendants shall allow the Receiver appointed herein and his/her representatives, agents, and assistants continued access to SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation's business premises and any other location where SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation's property or business records are located. Such locations specifically include, but are not limited to:

SkyBiz.com, Inc.
6128 E. 38 St., Suite 400
Tulsa, OK 74135

World Service Corporation
6128 E. 38 St., Suite 400
Tulsa, OK 74135.

After having been placed under the restrictions of the TRO previously entered, if any business records or property relating to SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation are *still* located in the personal residence of a Defendant and request to enter such residence is denied, then such Defendant shall immediately produce such items to the Receiver.

J. TURN OVER POSSESSION AND CUSTODY TO RECEIVER

IT IS FURTHER ORDERED that, immediately upon service of this Order upon them, Defendants, and any other person or entity served with a copy of this Order, shall forthwith, or within such time as permitted by the Receiver in writing, deliver over to the Receiver:

1. Location of all assets including, but not limited to, funds and property owned beneficially or otherwise, wherever situated, of SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation. The Receiver is not granted "possession and control" of all assets, as requested by Plaintiff, because the Court intends Defendants to have the ability to continue selling "Web-Paks" in a lawful fashion. The Receiver is granted authority to monitor all financial transactions and to raise alleged violations to the Court;

2. Possession and custody of all books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents, and other papers of SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation;

3. Possession and custody of all funds and other assets belonging to members of the public now held by SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation;

4. All keys, computer passwords, entry codes, combinations to locks required to open or gain access to any of the property or effects, and all monies in any bank deposited to the credit of SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation, wherever situated; and

5. Information identifying the accounts, employees, properties, or other assets or obligations of SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation.

K. STAY OF OTHER ACTIONS

IT IS FURTHER ORDERED that except by leave of this Court, during the pendency of the receivership ordered herein, Defendants and all customers, principals, investors, creditors, stockholders, lessors, and other persons seeking to establish or enforce any claim, right or interest against or on behalf of SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation, or any of its subsidiaries or affiliates, and all others acting for or on behalf of such persons, including attorneys, trustees, agents, sheriffs, constables, marshals, and other officers and their deputies, and their respective attorneys, servants, agents and employees be and are hereby stayed from:

1. Commencing, prosecuting, continuing or enforcing any suit or proceeding against SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation, or any of its subsidiaries or affiliates, except that such actions may be filed to toll any applicable statute of limitations;

2. Commencing, prosecuting, continuing or entering any suit or proceeding in the name or on behalf of SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation;

3. Accelerating the due date of any obligation or claimed obligation, enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of property of SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation, or any

property claimed by SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation, or attempting to foreclose, forfeit, alter or terminate any of SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation's interests in property, including, without limitation, the establishment, granting, or perfection of any security interest, whether such acts are part of a judicial proceeding or otherwise;

4. Using self-help or executing or issuing, or causing the execution or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with, or creating or enforcing a lien upon any property, wheresoever located, owned by or in the possession of SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation, or any of their subsidiaries or affiliates, or the Receiver appointed pursuant to this Order or any agent appointed by said Receiver; and

5. Acting in any way whatsoever to harass or interfere with the Receiver's duties in overseeing the operation and management of the property subject to this receivership; or to interfere in any manner with the exclusive jurisdiction of this Court over the property and assets of SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation, including the filing by the individual Defendants of a petition for relief under the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as to SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation.

6. *However*, nothing in this Paragraph shall prohibit any federal or state law enforcement or regulatory authority from commencing or prosecuting an action against SkyBiz.com, Inc., World Service Corporation, and WorldWide Service Corporation.

ASSET & RECORD RETENTION

L. ASSET FREEZE

IT IS FURTHER ORDERED that Defendants are hereby preliminarily restrained and enjoined from:

1. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, perfecting a security interest in, or otherwise disposing of any funds, property, accounts, contracts, shares of stock, lists of consumer names, or other assets, not including property of the Masso Bankruptcy Estate pursuant to 11 U.S.C. § 541, wherever located, including outside the United States, other than in the ordinary course of business. That is to say, the Court intends to permit Defendants to sell “Web-Paks” as a product and otherwise conduct the activities necessary for them to attempt to remain viable as a business. However, such activities may not involve those elements constituting a pyramid scheme. The draconian restrictions sought by the FTC would, in practical terms, mean the end of Defendants as business entities. The Receiver shall maintain his presence within the SkyBiz facilities and perform a monitoring function to ensure that only transactions constituting legitimate business activities (in keeping with the Court’s intent described above) are carried out. The Court does not intend to arbitrate disputes over each transaction and anticipates cooperation and reasonableness between the Defendants and the Receiver in striking the appropriate balance.

2. Opening or causing to be opened any safe deposit boxes, not including any safe deposit box the contents of which are property of the Masso Bankruptcy Estate pursuant to 11 U.S.C. § 541, titled in the name of any Defendant, or subject to access by any Defendant; and

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

4. The assets affected by this Paragraph shall include both existing assets and assets acquired after the effective date of this Order.

M. REPATRIATION OF ASSETS AND DOCUMENTS LOCATED IN FOREIGN COUNTRIES

IT IS FURTHER ORDERED that Defendants, whether acting through any trust, corporation, subsidiary, division, or other device, shall:

1. Take such steps as are necessary to transfer to the territory of the United States of America all documents and assets, not including property of the Masso Bankruptcy Estate pursuant to 11 U.S.C. § 541, that are located outside of such territory and are held by or for Defendants or are under Defendants' direct or indirect control, jointly, severally, or individually; and

2. Provide the Commission and Receiver with a full accounting of all documents and assets, not including property of the Masso Bankruptcy Estate pursuant to 11 U.S.C. § 541, that are located outside of the territory of the United States of America and are held by or for Defendants or are under Defendants' direct or indirect control, jointly, severally, or individually; and

3. Hold and retain all transferred documents and assets, not including property of the Masso Bankruptcy Estate pursuant to 11 U.S.C. § 541, and prevent any transfer, disposition, or dissipation whatsoever of any such assets or funds, except for transfers to the Receiver; and

4. Provide plaintiff access to Defendants' records and documents held by financial institutions outside the territorial United States, by signing the Consent to Release of Financial Records attached hereto as Attachment A.

N. INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that Defendants SkyBiz.com, Inc., World Service Corporation, WorldWide Service Corporation and their officers and directors, James S. Brown, Stephen D. McCullough, Elias F. Masso, Kier E. Masso, and Ronald E. Blanton, and each of them, and their officers, owners, directors, agents, servants, employees, salespersons, attorneys, corporations, subsidiaries, affiliates, successors, assigns, trusts and other entities or persons directly or indirectly under their control, and all persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service, facsimile or otherwise, are hereby preliminarily 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 Paragraph M of this Order, including but not limited to:

1. Sending any statement, letter, fax, e-mail or wire transmission, 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 Paragraph M of this Order; or

2. Notifying any trustee, protector or other agent of SkyBiz.com, Inc., World Service Corporation, WorldWide Service Corporation and their officers and directors, James S. Brown, Stephen D. McCullough, Kier E. Masso, and Ronald E. Blanton, or other related entities of 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 Paragraph M of this Order.

O. CONSUMER CREDIT REPORTS

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

P. PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that Defendants are hereby preliminarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any contracts, accounting data, correspondence, advertisements, computer tapes, discs, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, 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 that relate to the business practices or business or personal finances of the Defendants, individually and jointly.

Q. MAINTENANCE OF CURRENT BUSINESS RECORDS

IT IS FURTHER ORDERED that Defendants are hereby preliminarily restrained and enjoined from:

1. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of money; and
2. Creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing the Court, the Receiver, and the Commission with a written statement disclosing: (a) the name of the business entity; (b) the address and telephone number of the business entity; (c)

the names of the business entity's officers, directors, principals, managers and employees; and (d) a detailed description of the business entity's intended activities.

R. RETENTION OF ASSETS AND RECORDS

IT IS FURTHER ORDERED that any financial or brokerage institution, business entity, or person served with a copy of this Order that holds, controls or maintains custody of any account or asset of the Defendants, not including property of the Masso Bankruptcy Estate pursuant to 11 U.S.C. § 541, or has held, controlled or maintained custody of any such account or asset at any time since the date of entry of this Order shall:

1. Prohibit, pending notification of the Receiver or further Order of the Court, the withdrawal, removal, assignment, transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any such asset;

2. Deny Defendants access to any safe deposit box, not including any safe deposit box the contents of which are property of the Masso Bankruptcy Estate pursuant to 11 U.S.C. § 541, that is:

- a. titled in the name of any such Defendant, either individually or jointly; or
- b. otherwise subject to access by any such Defendant;

3. Provide, if not already provided pursuant to the TRO, the Commission's counsel and the Receiver appointed herein, within five (5) business days of receiving a copy of this Order, a sworn statement setting forth:

- a. the identification number of each such account or asset titled in the name,

individually or jointly, of any of the Defendants, or held on behalf of, or for the benefit of, any of the Defendants;

b. the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and

c. the identification of any safe deposit box that is either titled in the name, individually or jointly, of any Defendant, or is otherwise subject to access by any Defendant;

4. Upon the request by the Commission or the Receiver, promptly provide, if not already provided pursuant to the TRO, the Court, the Receiver, and the Commission with copies of all records or other documentation pertaining to such account or asset, including but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. Any such financial institution, account custodian, or other aforementioned entity may arrange for the Commission to obtain copies of any such records which the Commission seeks; and

5. Cooperate with all reasonable requests of the Receiver relating to implementation of this Order, including transferring funds at his direction, not including property of the Masso Bankruptcy Estate pursuant to 11 U.S.C. § 541.

NOTIFICATION PROVISIONS

S. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, agent, attorney, and representative of any Defendant.

T. SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of the Defendants, or that may be subject to any provision of this Order. Pursuant to Fed. R. Civ. P. 4(c)(2), this Order may be served upon any Defendant, upon the business premises of any Defendant, and upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of the Defendants, or that may be subject to any provision of this Order, by employees of the Commission, by employees of any other law enforcement agency, by any agent of plaintiff or of the Receiver, or by any agent of any process service retained by plaintiff or the Receiver.

U. MONITORING

IT IS FURTHER ORDERED that agents or representatives of the Commission may contact the Defendants or their agents or representatives directly and anonymously for the purpose of monitoring compliance with Provisions C through G of this Order for Preliminary Injunction, and may tape-record any oral communications that occur in the course of such contacts.

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

IT IS SO ORDERED this 31 day of AUGUST, 2001.

A handwritten signature in black ink, reading "Terry C. Kern", written over a horizontal line.

**TERRY C. KERN, CHIEF
UNITED STATES DISTRICT JUDGE**