

**ORIGINAL**

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FEB 13 2001

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

LUTHER D. ... Clerk  
Deputy Clerk

**FEDERAL TRADE COMMISSION,**

**Plaintiff,**

**v.**

**1268957 ONTARIO INC.,  
1371772 ONTARIO INC.,  
both doing business as  
NATIONAL DOMAIN NAME  
REGISTRY, ELECTRONIC DOMAIN  
NAME MONITORING, AND  
CORPORATE DOMAIN NAME  
MONITORING, AND  
DARREN J. MORGENSTERN,  
individually and as officer and director  
of 1268957 Ontario Inc. and 1371772  
Ontario Inc.,**

**Defendants.**

Civil Action No. 1 01-CV-0423

**TEMPORARY  
RESTRAINING ORDER**

**JEC**

Plaintiff, the Federal Trade Commission ("Commission"), having filed its complaint for a permanent injunction and other relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and having moved *ex parte* for a Temporary Restraining Order pursuant to Rule 65 of the Federal Rules of Civil Procedure, Fed.

R. Civ. P. 65, and the Court having considered the complaint, declarations, exhibits, and memorandum of law filed in support thereof, 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 it will have jurisdiction over all parties hereto;

2. There is good cause to believe that the Defendants 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 Commission is therefore likely to prevail on the merits of this action;

3. 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 redress will occur from the sale, transfer, or other disposition or concealment by Defendants of their assets or records unless said Defendants are immediately restrained and enjoined by Order of this Court. There is thus good cause for relieving the Plaintiff of the duty to provide Defendants with prior notice of the Plaintiff's motion;

4. Weighing the equities and considering the Plaintiff's likelihood of ultimate success, a temporary restraining order with equitable relief is in the public interest; and

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

## **ORDER**

### **Definitions**

A. "Document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts,

photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

B. "Defendants" means 1268957 Ontario Inc. and 1371772 Ontario Inc., both doing business as National Domain Name Registry ("NDNR"), Electronic Domain Name Monitoring ("EDNM"), and Corporate Domain Name Monitoring ("CDNM"), Darren J. Morgenstern ("Morgenstern"), or each of them, 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.

C. "Material" means likely to affect a person's choice of, or conduct regarding, goods or services.

D. "Assets" mean any legal or equitable interest in, right to, or claim to, any real and personal property, including without limitation, chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash, wherever located.

I.

**PROHIBITED BUSINESS ACTIVITIES**

**IT IS THEREFORE ORDERED** that, in connection with the advertising, promotion, offering for sale, sale or provision of any goods or services, including domain name registration

services, the Defendants are hereby temporarily restrained and enjoined from making or assisting in the making of, 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:

A. Someone has applied for a domain name that is identical or similar to a domain name owned by the targeted consumer; and

B. Defendants are monitoring or have the ability to monitor applications for domain names by third parties.

## II.

**IT IS FURTHER ORDERED** that in connection with the advertising, promotion, offering for sale, sale or provision of any goods or services, including domain name registration services, the Defendants are hereby temporarily restrained and enjoined from sending or causing to be sent any unsolicited facsimiles.

## III.

**IT IS FURTHER ORDERED** that, pending determination of the Commission's request for a preliminary injunction, any party hosting any Web pages or websites for Defendants shall:

A. Immediately take whatever steps may be necessary to ensure that Web pages or websites operated, in whole or in part, under the names www.ndnregistry.com,

www.ndnregistry.net, www.ndnregistry.org, www.ndnr.org, www.ndnr.net, www.ednm.net,

www.ednm.org, and www.cdnmonitoring.com cannot be accessed by the public;

B. Prevent the destruction or erasure of Web pages or websites operated, in whole or in part, under the names www.ndnregistry.com, www.ndnregistry.net, www.ndnregistry.org,

www.ndnr.org, www.ndnr.net, www.ednm.net, www.ednm.org, and www.cdnmonitoring.com by preserving such documents in the format in which they are currently maintained; and

C. Immediately notify counsel for the FTC of any other Web page or website operated or controlled by Defendants.

#### IV.

**IT IS FURTHER ORDERED** that, pending determination of the Commission's request for a preliminary injunction, Network Solutions, Inc., and any other domain name registrar shall:

A. Immediately suspend the registration of www.ndnregistry.com, www.ndnregistry.net, www.ndnregistry.org, www.ndnr.org, www.ndnr.net, www.ednm.net, www.ednm.org, and www.cdnmonitoring.com; and

B. Immediately notify counsel for the FTC of any other Web page or website operated or controlled by Defendants.

#### **ASSET FREEZE**

#### V.

**IT IS FURTHER ORDERED** that Defendants are hereby restrained and enjoined, until further order of this Court, from:

A. Transferring, encumbering, selling, concealing, pledging, hypothecating, assigning, spending, withdrawing, disbursing, conveying, gifting, dissipating, or otherwise disposing of any funds, property, coins, lists of consumer names, shares of stock, or other assets, wherever located, that, are (1) owned or controlled by Defendants, in whole or in part; (2) in the actual or constructive possession of Defendants; (3) held by an agent of Defendants as a retainer for the agent's provision of services to Defendants; or (4) owned, controlled by, or in the actual or

constructive possession of, or otherwise held for the benefit of, any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by Defendants;

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

C. Incurring charges or cash advances on any credit or debit card issued in the name, singly or jointly, of Defendants or any corporation, partnership, or other entity directly or indirectly owned, managed or controlled by Defendants;

D. The assets affected by this Part shall include both existing assets and assets acquired after the effective date of the Order, including, without limitation, those acquired by loan or gift, and assets in the form of retainers paid to Defendants' agents as compensation for the provision of services to Defendants. Defendant Morgenstern, or any third party holding assets for the benefit of defendant Morgenstern, shall hold all assets, including without limitation, payments, loans and gifts, received after service of this Order, and must deposit payments received into a domestic account at a financial institution in Fulton County, Georgia that is titled in defendant Morgenstern's name and is designated by prior written notice to counsel for the Commission. Each business entity owned, managed or controlled by Morgenstern, other than EDNM/NDNR/CDNM, shall maintain only one such designated domestic account, unless the Commission stipulates otherwise in writing, and it shall be separate from defendant Morgenstern's personal designated account.

E. Notwithstanding the asset freeze provisions of Part V A-D above, Defendant Morgenstern may pay from his individual personal funds reasonable, usual, ordinary, and

necessary living expenses, and reasonable attorneys fees, after written prior approval by the Commission or by the Court.

**VI.**

**ACCESS TO PREMISES AND BUSINESS RECORDS**

**IT IS FURTHER ORDERED** that EBC Office Center, which is the lessor of defendants' business premises at 5555 Glenridge Connector, Atlanta, Georgia:

- A. Grant immediate access to Plaintiff for the purpose of inspecting and copying all books, records, accounts, and other property of defendants;
- B. Provide Plaintiff with any correspondence, contracts, or other documents concerning or relating to defendants; and
- C. Forward to Plaintiff, at the address designated in Part XIV of this Order, any mail received by EBC Office Center that is addressed to defendants.

**VII.**

**RECORD KEEPING PROVISIONS**

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

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

B. Failing to make and keep books, records, bank statements, documents indicating title to real or personal property, and any other data which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Defendants.

**VIII.**

**EXPEDITED DISCOVERY**

**IT IS FURTHER ORDERED** that any party may take the deposition of any other party or any third party upon 24 hours' notice.

**IX.**

**DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that Defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, successor, assign, officer, director, employee, independent contractor, Web master, agent, attorney, and representative of any Defendant, and shall, within ten (10) days from the date of entry of this Order, provide the Commission with a sworn statement that Defendants have complied with this provision of the Order, which statement shall include the names and addresses of each such person or entity who received a copy of the Order.

**X.**

**CREDIT REPORTS**

**IT IS FURTHER ORDERED** that Plaintiff Commission may obtain credit reports concerning Defendants 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 Plaintiff Commission.



XI.

ACCOUNTING PROVISIONS

**IT IS FURTHER ORDERED** that Defendants shall, within five (5) business days after service of this Order, prepare and deliver to counsel for the Commission:

A. A completed financial statement accurate as of the date of service of this Order upon Defendants (Defendant Morgenstern shall include all financial information as requested by the Federal Trade Commission's Financial Statement of Individual Defendant, appended hereto as Attachment A; the corporate defendants shall include all financial information requested by the Federal Trade Commission's Financial Statement of Corporate Defendant, appended hereto as Attachment B);

B. A complete statement, verified under oath, of all payments, transfers, or assignments of funds, assets, or property worth \$1,000 or more since January 1, 1999; and

C. A complete and accurate list of Defendants' customers including, if available, the customers' name, address, email address, website(s), date of purchase of Defendants' services, and the amount the customer paid Defendants.

XII.

ORDER TO SHOW CAUSE

**IT IS FURTHER ORDERED**, pursuant to Fed. R.Civ. P. 65(b), that Defendants shall appear before this Court on the 26<sup>th</sup> day of February, 2001 at 3:00 o'clock P.m., at the United States Courthouse, Room 2107 to show cause, if there is any, why this Court should not enter a preliminary injunction, in substantially the form of this order, pending final ruling on the Complaint against Defendants, enjoining them from further violations of

Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), and imposing such additional relief as may be appropriate.

Defendants shall serve answering pleadings or materials on counsel for the Commission not less than 5 business days prior to the hearing on the Commission's request for a preliminary injunction. Plaintiff may submit reply pleadings or materials by 2/23/01.

**XIII.**

**SERVICE OF ORDER**

**IT IS FURTHER ORDERED** that copies of this Order may be served by any means, including facsimile transmission or electronic mail, upon any entity or person that may have possession, custody, or control of any documents of the Defendants, or that may be subject to any provision of this Order.

**XIV.**

**CORRESPONDENCE WITH AND NOTICE TO PLAINTIFF**

**IT IS FURTHER ORDERED** that for the purposes of this Order, all correspondence and pleadings to the Commission shall be addressed to:

Stephen L. Cohen, Esq.  
Catherine Harrington-McBride, Esq.  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC 20580  
(202) 326-3395 (facsimile).

Notice may be provided by e-mail to [scohen@ftc.gov](mailto:scohen@ftc.gov) and [cmcbride@ftc.gov](mailto:cmcbride@ftc.gov).

XV.


IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire at 3:00 P.m, on February 24, 2001, unless, for good cause shown, the Order is extended, or unless, as to any Defendant, the Defendant consents that it should be extended for a longer period of time.

XVI.

RETENTION OF JURISDICTION

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

SO ORDERED, this 13 day of Feb, 2001, at 11:45 a.m.

  
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United States District Judge  
Northern District of Georgia  
Atlanta Division