

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

FILED ✓
9-16-04
CLERK, U. S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

Federal Trade Commission,

Plaintiff,

v.

Gregory Bryant, Jr., an individual, d/b/a Gregory Bryant & Associates, Dove Marketing Corporation, GBA Publishing, Inc., GBA Financing, Network Marketing, and DM Marketing Services, and

Nadira Bryant, an individual, d/b/a Gregory Bryant & Associates, Dove Marketing Corporation, GBA Publishing, Inc., GBA Financing, Network Marketing, and DM Marketing Services,

Defendants.

Case No. 3:04-cv-897-J-32MMH

**EX PARTE TEMPORARY
RESTRAINING ORDER
WITH ASSET FREEZE
AND EXPEDITED
DISCOVERY, AND
ORDER TO SHOW
CAUSE WHY A
PRELIMINARY
INJUNCTION SHOULD
NOT BE ENTERED**

Plaintiff Federal Trade Commission ("Commission") having filed its complaint for a permanent injunction and other relief in this matter pursuant to Section 7(a) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM Act"), 15 U.S.C. § 7706(a), Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and Section 4(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6103(a), and having moved ex parte for a temporary restraining order pursuant to Rule 65 of the Federal Rules of Civil Procedure, and the Court having considered the complaint, memorandum of law, affidavits and other materials filed in support thereof, and now

being advised in the premises, finds as follows:

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 the parties;

2. Venue is proper as to all parties in the Middle District of Florida under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b);

3. There is good cause to believe that Defendants, Gregory Bryant and Nadira Bryant, have engaged and are likely to engage in acts and practices that violate Section 5(a) of the CAN-SPAM Act, 15 U.S.C. § 7704(a), Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, and that Plaintiff is therefore likely to prevail on the merits of this action;

4. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief will occur from the sale, transfer, or other disposition or concealment by Defendants of their assets or business records unless Defendants are immediately restrained and enjoined by Order of this Court. The evidence set forth in the Commission’s Motion for Temporary Restraining Order With Asset Freeze and Expedited Discovery, and Order to Show Cause Why a Preliminary Injunction Should Not Be Entered, and in the accompanying declarations and exhibits, shows a substantial likelihood that the Commission will be able to prove that Defendants have engaged in a concerted course of illegal activity in their dealings with consumers nationwide in connection with the marketing and sale of business opportunities in violation of Section 5(a) of the CAN-SPAM Act, 15 U.S.C. § 7704(a), Section 5(a) of the

FTC Act, 15 U.S.C. § 45(a), and Sections 310.3 and 310.4 of the TSR, 16 C.F.R. §§ 310.3 and 310.4. Thus, there is good cause to believe that Defendants will attempt to conceal the scope of their illegal actions to avoid returning their ill-gotten gains to consumers injured by their unlawful practices, if not restrained from doing so by Order of this Court. There is thus good cause for relieving Plaintiff of the duty to provide Defendants with prior notice of Plaintiff's motion;

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

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

Definitions

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

A. "Asset" or "Assets" means any legal or equitable interest in, right to, or claim to any real or personal property of any Defendant, or held for the benefit of any Defendant, 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 chattels, leaseholds, contracts, mails or other deliveries, shares of stock, lists of consumers, accounts, credits, receivables, and cash, wherever located;

B. “Business Opportunity” means any program, plan, product, or service that enables or purports to enable a participant or purchaser to earn money;

C. “Commercial electronic mail message” means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including the content on an Internet website operated for commercial purposes);

D. “Defendants” means Gregory Bryant, Jr. and Nadira Bryant, individually and d/b/a Gregory Bryant & Associates, Dove Marketing Corporation, GBA Publishing, Inc., GBA Financing, Network Marketing, and DM Marketing Services, as well as their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, distributors, corporations, subsidiaries, affiliates, successors, assigns, 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 trust, corporation, subsidiary, division, or other device, or any of them, unless specified otherwise;

E. “Document” is synonymous in meaning and equal in scope to the usage of the term in Fed. R. Civ. P. 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, into reasonably usable form through detection devices. A draft or non-identical copy is a separate document within the meaning of the term;

F. “Electronic mail message” (or “e-mail”) means a message sent to a unique electronic mail address;

G. “Electronic mail address” means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the “local part”) and a reference to an Internet domain (commonly referred to as the “domain part”), whether or not displayed, to which an electronic mail message can be sent or delivered;

H. “Express verifiable authorization” means any of the verification methods provided in Section 310.3(a)(3) of the TSR, 16 C.F.R. §310.3(a)(3)(i)-(iii);

I. “Header information” means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person initiating the message;

J. “Initiate,” when used with respect to a commercial e-mail message, means to originate or transmit such message or to procure the origination or transmission of such message;

K. “Materially,” when used with respect to header information, includes the alteration or concealment of header information in a manner that would impair the ability of an Internet access service processing the message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond to a person who initiated the electronic mail message or to investigate the alleged

violation, or the ability of a recipient of the message to respond to a person who initiated the electronic message;

L. “Procure,” when used with respect to the initiation of a commercial e-mail message, means intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one’s behalf;

M. “Protected computer,” when used with respect to the initiation of a commercial e-mail message, means a computer which is used in interstate or foreign commerce or communication, including a computer located outside the United States that is used in a manner that affects interstate or foreign commerce or communication of the United States.

N. “Referring to” or “relating to” means discussing, describing, reflecting, containing, involving, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part;

O. “Telemarketing” shall mean any business activity, whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310, that involves attempts to induce consumers to purchase goods, services, or business opportunities, by means of inbound or outbound telephone calls, either exclusively or in conjunction with other forms of marketing; and

P. “Transactional or relationship message,” shall be defined according to the definition provided in Section 3(17) of the CAN-SPAM Act, 15 U.S.C. § 7702(17).

CONDUCT PROHIBITIONS

I. PROHIBITION AGAINST VIOLATING THE CAN-SPAM ACT

IT IS THEREFORE ORDERED that Defendants are hereby temporarily restrained and enjoined from violating, or assisting others in violating, any provision of the CAN-SPAM Act, 15 U.S.C. §§ 7701 et seq., including, but not limited to, by initiating the transmission, to a protected computer, of:

A. A commercial electronic mail message, or transactional or relationship message, that contains or is accompanied by, header information that is materially false or materially misleading in violation of Section 5(a)(1) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(1), including, but not limited to, “from” or “reply-to” lines containing electronic mail addresses that:

1. Are falsified;
2. Are registered to an unrelated third party; or
3. Were obtained by means of false or fraudulent pretenses or representations; and

B. A commercial electronic mail message that contains or includes a subject heading that is likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message in violation of Section 5(a)(2) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(2).

II.
PROHIBITION AGAINST FALSE OR MISLEADING STATEMENTS

IT IS FURTHER ORDERED that in connection with the advertising, promotion, offering for sale, or sale of goods or services in or affecting commerce, Defendants are hereby temporarily restrained and enjoined from making, or assisting others in making, any express or implied representation or omission of material fact that is false or misleading, in any manner, directly or indirectly, to any consumer or entity, including, but not limited to, the following:

- A. Representing that consumers are likely to earn a substantial amount of money from Defendants' business opportunity;
- B. Representing that Defendants will provide consumers with envelopes, postage, and mailing lists or sales leads;
- C. Representing that Defendants will pay consumers for each envelope they stuff and mail; and
- D. Representing that Defendants will fully refund fees paid by consumers to Defendants in connection with Defendants' business opportunity.

III.
PROHIBITION AGAINST VIOLATING THE TELEMARKETING SALES RULE

IT IS FURTHER ORDERED that Defendants are hereby temporarily restrained and enjoined from violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310 (attached hereto as **Attachment A**), including, but not limited to:

A. Causing consumers' billing information to be submitted for payment without consumers' express verifiable authorization in violation of 16 C.F.R. § 310.3(a)(3); and

B. Causing consumers' billing information to be submitted for payment without consumers' express informed consent in violation of 16 C.F.R. § 310.4(a)(6), including, but not limited to, making unauthorized withdrawals from consumers' bank accounts or placing unauthorized charges on consumers' credit cards.

**IV.
PROHIBITION 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 offering for sale or sale of any business opportunity, Defendants are hereby temporarily 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, the following misrepresentations or omissions:

A. That consumers are likely to earn a substantial amount of money from Defendants' business opportunity;

B. Representing that Defendants will provide consumers with envelopes, postage, and mailing lists or sales leads;

C. That Defendants will pay consumers for each envelope they stuff and mail;

and

D. That Defendants will fully refund fees paid by consumers to Defendants in connection with Defendants' business opportunity.

**V.
ASSET FREEZE**

IT IS FURTHER ORDERED that Defendants Gregory and Nadira Bryant are temporarily restrained and enjoined from:

A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, perfecting a security interest in, or otherwise disposing of any assets, including, but not limited to, funds, property, accounts, contracts, shares of stock, lists of consumer names, or other assets, wherever located, including outside the United States, that are: (1) owned or controlled, directly or indirectly, by either Defendant Gregory Bryant or Defendant Nadira Bryant, in whole or in part; (2) in the actual or constructive possession of either Defendant Gregory Bryant or Defendant Nadira Bryant; or (3) owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by either Defendant Gregory Bryant or Defendant Nadira Bryant, including, but not limited to, any assets held by, for, or under the name, alias, or fictitious "doing business as" name of either Defendant Gregory Bryant or Defendant Nadira Bryant at any bank or savings and loan institution, or with any broker-dealer, escrow

agent, title company, commodity trading company, precious metal dealer, or other financial institution or depository of any kind;

B. Opening or causing to be opened any safe deposit box titled in the name, alias, or fictitious "doing business as" name of either Defendant Gregory Bryant or Defendant Nadira Bryant, or subject to access by either Defendant Gregory Bryant or Defendant Nadira Bryant;

Provided, however, that the assets affected by this Paragraph V shall include: (1) all of the assets of Defendants Gregory and Nadira Bryant existing as of the date this Order was entered; and (2) for assets obtained after the date this Order was entered, only those assets that are derived from or otherwise related to the activities alleged in the Commission's complaint.

Provided further that, notwithstanding anything in this Order to the contrary, Defendants Gregory and Nadira Bryant may spend up to \$1,000.00 for necessary living expenses in the interim period between the time of service of this Order on them and the preliminary injunction hearing as set in Paragraph XVII and up to \$2,500.00 for retention of legal counsel to represent them in this matter, provided that Defendants produce an accounting of these expenditures to the Court at the preliminary injunction hearing.

(Defendants may seek Court assistance if necessary to implement this provision by filing a motion with the VI Court)

FINANCIAL STATEMENTS

IT IS FURTHER ORDERED that, no later than 5:00 p.m. on Thursday,

September 23, 2004, Defendants Gregory and Nadira Bryant shall prepare and deliver to counsel for Plaintiff, as provided in Paragraph XVIII of this Order, completed financial statements on the forms attached to this Order as **Attachments B and C**,¹ for themselves individually, and for each business entity under which they conduct business, or of which either of them is an officer, and for each trust of which either is a trustee. The financial statements shall be accurate as of the date of entry of this Order. Such financial statements shall include a full accounting of all assets and documents that are located inside or outside of the territory of the United States of America and are held by or for Defendant Gregory Bryant and Defendant Nadira Bryant or are under either Defendant's direct or indirect control, jointly, severally, or individually.

VII.
RETENTION OF ASSETS AND RECORDS BY FINANCIAL INSTITUTIONS

IT IS FURTHER ORDERED that, pending determination of Plaintiff's request for a preliminary injunction, 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 any Defendant, including but not limited to any account or asset held by, for, or under the name, alias, or fictitious "doing business as" name of any Defendant, 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 Defendants need not respond to those portions of Attachments B and C which have been stricken by the Court.

A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any such asset except by further order of the Court;

B. Deny Defendants access to any safe deposit box that is:

1. titled in any of their names, aliases, or fictitious “doing business as” names, individually or jointly; or

2. otherwise subject to access by any Defendant;

C. Provide the Commission’s counsel, within five (5) business days of receiving a copy of this Order, a sworn statement setting forth:

1. the identification number of each such account or asset titled in the name, alias, or fictitious “doing business as” name, individually or jointly, of any 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 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

3. the identification of any safe deposit box that is titled in the name, alias, or fictitious “doing business as” name, individually or jointly, of any Defendant, or is otherwise subject to access by any Defendant.

VIII.
CONSUMER CREDIT REPORTS

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

IX.
PLAINTIFF'S ACCESS TO BUSINESS RECORDS

IT IS FURTHER ORDERED that Defendants shall allow Plaintiff's representatives, agents, and assistants access to all of Defendants' business records to inspect and copy documents so that the Commission may prepare for the preliminary injunction hearing and identify and locate assets. Accordingly, Defendants shall, **no later than 5:00 p.m. on Tuesday, September 21, 2004:**

A. Produce to Plaintiff for inspection, inventory, and/or copying, at the U.S. Attorney's Office for the Middle District of Florida, 300 North Hogan Street, Suite 700, Jacksonville, Florida, 32202, or at another location designated by Plaintiff, all materials referring or related, directly or indirectly, to Defendants' offer, sale, or provision of their Business Opportunity, and/or any materials, information, products, or data related thereto, including, but not limited to, consumer identification or financial information obtained through or as a result of e-mail solicitations, telephone calls, or otherwise, computers, computerized files, storage media (including, but not limited to, floppy disks, hard drives, CD-ROMs, zip disks, punch cards, magnetic tape, backup tapes, and computer chips) on which information has been saved, any and all equipment needed to read any such

material, contracts, accounting data, correspondence (including, but not limited to, electronic correspondence), advertisements (including, but not limited to, advertisements placed on the World Wide Web), USENET Newsgroup postings, World Wide Web pages, books, written or printed records, handwritten notes, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, 1099 forms, and other documents or records of any kind that relate to Defendants' business practices; and

B. Produce to Plaintiff for inspection, inventory, and/or copying, at the U.S. Attorney's Office for the Middle District of Florida, 300 North Hogan Street, Suite 700, Jacksonville, Florida, 32202, or at another location designated by Plaintiff, all computers and data in whatever form, used by Defendants, in whole or in part, referring or relating to Defendants' business practices.

The Commission shall return materials produced by Defendants pursuant to this Paragraph within five (5) business days of the production of such materials.

X. PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that Defendants are hereby temporarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any computers, computerized files, storage media (including but not limited to floppy disks, hard drives, CD-ROMs, zip disks, punch cards, magnetic tape, backup tapes, and computer chips) on

which information has been saved, any and all equipment needed to read any such material, contracts, accounting data, correspondence (including, but not limited to, electronic correspondence), advertisements (including, but not limited to, advertisements placed on the World Wide Web), USENET Newsgroup postings, World Wide Web pages, customer lists, 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, 1099 forms, and other documents or records of any kind that relate to the business, business practices, or business or personal finances of Defendants.

**XI.
MAINTENANCE OF CURRENT BUSINESS RECORDS**

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

A. Failing to maintain documents that, in reasonable detail, accurately, fairly, and completely reflect Defendants' incomes, disbursements, transactions, and use of money; and

B. 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 Commission with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business

entity; (3) the names of the business entity's officers, directors, principals, managers, and employees; and (4) a detailed description of the business entity's intended activities.

**XII.
EXPEDITED DISCOVERY**

IT IS FURTHER ORDERED that, prior to the preliminary injunction hearing, any party may engage in expedited discovery. Any deposition taken pursuant to this paragraph may be taken on forty-eight (48) hours' notice. Any document production requests made pursuant to a Rule 30 or Rule 45 subpoena may require production within forty-eight (48) hours of service.

NOTIFICATION PROVISIONS

**XIII.
DISTRIBUTION OF ORDER BY DEFENDANTS**

IT IS FURTHER ORDERED that Defendants Gregory and Nadira Bryant shall immediately provide a copy of this Order to each of their affiliates, subsidiaries, divisions, sales entities, successors, assigns, officers, directors, employees, independent contractors, agents, attorneys, and representatives, as well as any person or entity to whom they have sold or provided the "Gregory Bryant & Associates" Business Opportunity or any product contained therein; and shall, within ten (10) days from the date of entry of this Order, provide the Commission with a sworn statement that they have complied with this provision of the Order, which statement shall include the names and addresses of each such person or entity to whom a copy of the Order was provided

and the names and addresses of each person or entity to whom they have sold or provided the "Gregory Bryant & Associates" Business Opportunity or any product contained therein.

**XIV.
SERVICE OF ORDER**

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission and e-mail 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 and the initial papers filed in this matter may be served on Defendants by any law enforcement officer, by any agent of the Commission, or by any agent of any process service retained by the Commission. **These papers should be served on Defendants forthwith, and Plaintiff should promptly file proof of service, noting the date, time and manner of service.**

PRELIMINARY INJUNCTION PROCEEDINGS

**XV.
SERVICE OF PLEADINGS**

IT IS FURTHER ORDERED that the parties shall serve all memoranda, affidavits and other evidence on which they intend to rely at the preliminary injunction hearing **no later than 5:00 p.m. on Thursday, September 23, 2004.**

XVI.
DURATION OF TEMPORARY RESTRAINING ORDER

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire on **September 27, 2004, at 11:59 p.m.**, unless within such time the Order, for good cause shown, is extended, or unless Defendants Gregory and Nadira Bryant consent that it should be extended for a longer period of time.

XVII.
PRELIMINARY INJUNCTION HEARING

IT IS FURTHER ORDERED, pursuant to Fed. R. Civ. P. 65(b), that Defendants Gregory and Nadira Bryant shall appear before this Court on **September 27, 2004 at 9:00 a.m., at the United States Courthouse, Courtroom 10B, Tenth Floor, 300 North Hogan Street, Jacksonville, Florida,**² to show cause, if there is any, why this Court should not enter a preliminary injunction, 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), the Telemarketing Sales Rule, 16 C.F.R. Part 310, and Section 5 of the CAN-SPAM Act, 15 U.S.C. § 7704, (and continuing the freeze of their assets) and imposing such additional relief as may be appropriate.

² All persons entering the Courthouse must present a valid photo I.D. Also, cellular telephones and laptop computers are not permitted in the building.

**XVIII.
SERVICE UPON PLAINTIFF**

Service of all correspondence, pleadings, or notifications related to this case or under this Order upon the Commission shall be performed by hand delivery, facsimile, overnight courier, or other means, as mutually agreed on by the parties (but not by U.S. Mail), to the attention of James Davis and Shaundra Watson, Federal Trade Commission, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Room H-238, Washington, DC 20580.

XIX. RETENTION OF COUNSEL

Defendants may, at their own expense, consult with legal counsel in connection with the requirements of this Order. Defendants may also be represented by counsel at the preliminary injunction hearing. **However, regardless of whether Defendants retain legal counsel, they are required timely to comply with the terms of this Order and to appear in person at the preliminary injunction hearing.**

SO ORDERED, this 17th day of September, 2004, at 8:25a.m.



TIMOTHY J. CORRIGAN
United States District Judge