

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

FILED
U.S. DISTRICT COURT
MIDDLE GEORGIA

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DEPUTY CLERK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

K4 GLOBAL PUBLISHING, INC., d.b.a.
Instant Internet Empires,

KERN FAMILY ENTERPRISES, LLC, d.b.a.
Instant Internet Empires,

and

IRWIN F. KERN, IV, a.k.a. Frank Kern,

Defendants.

5:03-CV-140-3

ORDER ON PLAINTIFF'S EX PARTE MOTION FOR
A TEMPORARY RESTRAINING ORDER

Plaintiff, the Federal Trade Commission ("Commission") having filed its complaint for a permanent injunction and other equitable 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 and for a hearing on Plaintiff's request for a preliminary injunction 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 points and authorities filed in support thereof, 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, K4 Global Publishing, Inc. ("K4"), Kern Family Enterprises, LLC ("KFE"), and Irwin F. Kern, IV,

a.k.a Frank Kern ("Kern"), 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;

3. 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 the Defendants are immediately restrained and enjoined by Order of this Court. The evidence set forth in the Plaintiff's Motion for Temporary Restraining Order, Preliminary Injunction and Other Equitable Relief, and in the accompanying declarations and exhibits, shows that the Defendants have engaged in a concerted course of illegal activity in their dealings with consumers nationwide in connection with the marketing and sale of internet business opportunities in violation of Section 5 of the FTC Act, 15 U.S.C. § 45. Thus, there is good cause to believe that the Defendants will attempt to conceal the scope of their deliberate 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 the Plaintiff of the duty to provide the 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 asset freeze and other equitable relief is in the public interest; and

5. 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. "Defendants" means Irwin F. Kern, IV, a.k.a. "Frank Kern", individually and d/b/a Instant Internet Empires; K4 Global Publishing, Inc., Kern Family Enterprises, LLC, as well as their assigns, agents, servants, employees, 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.

B. "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.

C. "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, into reasonably usable form through detection devices. A draft or non-identical copy is a separate document within the meaning of the term.

D. "Business Opportunity" means any program, plan, product, or service that enables or purports to enable a participant or purchaser to earn money.

E. "Business Development Aid" means any program, plan, product, or service that assists or purports to assist a participant or purchaser to earn money.

F. "Chain Marketing Scheme" means any program, plan, product, or service in which the financial gains of participants or purchasers are primarily dependent on the successive recruitment of new participants or purchasers into the program, plan, product, or service, ensuring that at each step in the evolution of the program, plan, product, or service, the majority of participants or purchasers will not make money.

CONDUCT PROHIBITIONS

I.

PROHIBITION AGAINST FALSE OR MISLEADING STATEMENTS

IT IS THEREFORE ORDERED that, in connection with the advertising, promotion, offering for sale, or sale of any business opportunity or business development aid, Defendants and any person or entity to whom Defendants have sold or provided the "Instant Internet Empires" product or any product contained therein and who receives actual notice of this Order by personal service, facsimile, email, or

otherwise, are hereby temporarily restrained and enjoined from making any express or implied representation or omission of material fact that is false or misleading, in any manner, orally or in writing, to any consumer, including, but not limited to, the following:

- A. Any false or misleading representation that consumers who purchase Defendants' products are likely to earn substantial income from those products; and
- B. Any false or misleading representation that all consumers who purchase Defendants' products can earn a substantial income from those products.

II.
INJUNCTION AGAINST PROMOTING A CHAIN MARKETING SCHEME

IT IS FURTHER ORDERED that the Defendants and any person or entity to whom Defendants have sold or provided the "Instant Internet Empires" product or any product contained therein and who receives actual notice of this Order by personal service, facsimile, email, or otherwise, are hereby temporarily restrained and enjoined from engaging, participating or assisting in any manner or capacity whatsoever, directly, or in concert with others, individually or through any business entity or other device, in the sale, advertisement, promotion, marketing, offering, or provision of any chain marketing scheme or any good or service related thereto.

III.
**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 offering for sale or sale of any business opportunity or business development aid, 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:

- A. Any false or misleading representation that consumers who purchase certain

products are likely to earn substantial income from those products; and

B. Any false or misleading representation that all consumers who purchase certain products can earn a substantial income from those products.

IV. ASSET FREEZE

IT IS FURTHER ORDERED that Defendants 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 any Defendant, in whole or in part; (2) in the actual or constructive possession of any Defendant; 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 any Defendant, including but not limited to, any assets held by, for, or under the name, alias, or fictitious "doing business as" name of any Defendant 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 any Defendant, or subject to access by any Defendant;

C. Incurring charges or cash advances on any credit card, charge card, or debit card issued in the name, alias, or fictitious "doing business as" name, singly or jointly, of any Defendant;

D. Obtaining a personal or secured loan; and

E. Incurring liens or encumbrances on real property, personal property or other assets in the name, singly or jointly of any Defendant.

Provided, however, that the assets affected by this Paragraph IV shall include: (1) all of

the assets of the Defendants 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.

V.

**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:

- A. Within three (3) business days following service of this Order, take such steps as are necessary to transfer to the territory of the United States of America all documents and assets that are located outside of such territory and are held by or for any Defendant or are under any Defendant's direct or indirect control, jointly, severally, or individually; and
- B. Within three (3) business days following service of this Order, provide the Plaintiff with a full accounting of all documents and assets that are located outside of the territory of the United States of America and are held by or for any Defendant or are under any Defendant's direct or indirect control, jointly, severally, or individually; and
- C. Hold and retain all transferred documents and assets and prevent any transfer, disposition, or dissipation whatsoever of any such assets or funds; and
- D. Provide the Plaintiff access to the 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.

VI.

INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that Defendants are hereby temporarily restrained and enjoined from taking any action, directly or indirectly, that may result in the encumbrance or dissipation of foreign assets, or in the hindrance of the repatriation required by the preceding Section of this Order, including but not limited to:

- A. Sending any statement, letter, fax, email, 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 the preceding Section of this Order; and

B. Notifying any trustee, protector, or other agent of any foreign trust or other related entity of either 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 the preceding Section of this Order.

VII. FINANCIAL STATEMENTS

IT IS FURTHER ORDERED that not less than three (3) days prior to the scheduled date and time for the hearing on a preliminary injunction in this matter, but in no event later than ten (10) days after entry of this Order, each Defendant shall provide the Commission with a completed sworn financial statement. Kern shall provide an Individual Financial Statement on the form attached to this Order as Attachment B, and K4 and KFE shall provide Corporate Financial Statements on the form attached to this Order as Attachment C. The Defendants shall complete the corporate financial statement for K4 and KFE, and for each entity under which any Defendant conducts business, or for which any Defendant is an officer, manager, or director, and for any trust of which any Defendant is a trustee. All financial statements shall be accurate as of the date of entry of this Order. Defendants shall attach to these completed financial statements copies of all state and federal income and property tax returns, with attachments and schedules, as called for by the financial statements. Within ten (10) days of any material change in the information contained in any financial statement required above, or any other material change to any Defendant's financial condition, the Defendants shall make a sworn amendment to the financial statement to reflect such change.

**VIII.
IDENTIFYING INFORMATION RELATING TO ACCOUNTANTS,
FINANCIAL PLANNERS, INVESTMENT ADVISORS, STOCK BROKERS,
AND OTHERS**

IT IS FURTHER ORDERED that each Defendant, within forty-eight (48) hours after service of this Order, shall provide counsel for the Commission the name, address, and telephone number for each accountant, financial planner, investment advisor, stock broker, or other individual, corporation, or partnership from whom they have received or whom they have retained to provide financial, business, or tax advice or services since January 1, 2001.

**IX.
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 the Defendants to the Commission.

**X.
PLAINTIFF'S ACCESS TO BUSINESS RECORDS**

IT IS FURTHER ORDERED that the Defendants shall allow the Plaintiff's representatives, agents, and assistants immediate access to all of the Defendants' business records to inspect and copy documents so the Commission may prepare for the preliminary injunction hearing and identify and locate assets. Accordingly, Defendants shall, within seventy-two (72) hours of service of this Order:

A. Produce to the Plaintiff for inspection, inventory and/or copying, at the FTC's Southeast Regional Office located at 225 Peachtree Street, N.E., Suite 1500, Atlanta, Georgia 30303, or at any other location designated by the Plaintiff, all materials related or referring, directly or indirectly, to the Defendants' offer, sale or provision of internet business opportunities or business development aids, and/or any materials, information, products, or data related thereto, including, but not limited to, 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 Defendants' business or business practices; and

B. Produce to the Plaintiff for inspection, inventory and/or copying, at the FTC's Southeast Regional Office located at 225 Peachtree Street, N.E., Suite 1500, Atlanta, Georgia 30303, or at any other location designated by the Plaintiff, all computers and data in whatever form, used by the Defendants, in whole or in part, relating to the Defendants' business practices.

The Commission shall return materials so removed or produced by the Defendants, within five (5) business days of completing said inventory and copying.

XI. PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that the 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 the Defendants.

**XII.
MAINTENANCE OF CURRENT BUSINESS RECORDS**

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

- A. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect the 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.

**XIII.
RETENTION OF ASSETS AND RECORDS BY FINANCIAL INSTITUTIONS**

IT IS FURTHER ORDERED that, pending determination of the 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:

- 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 the 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; and

D. Upon the request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to each 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.

**XIV.
EXPEDITED DISCOVERY**

IT IS FURTHER ORDERED that, prior to the preliminary injunction hearing or the expiration of this Temporary Restraining Order, whichever occurs first, any party may depose or subpoena any party or third party, pursuant to Fed. R. Civ. P. 30 and 45,

upon forty-eight (48) hours' notice, but no sooner than three (3) days from the entry of this order. Any deposition taken pursuant to this provision is in addition to, and not subject to, the presumptive limits on depositions set forth in Fed. R. Civ. P. 30 and/or 31. Subpoenas may be served by agents or attorneys of the Commission and by agents of any process server retained by any of the parties. Nothing in this provision shall affect the Court's ability to further modify the discovery rules as they apply in this matter.

NOTIFICATION PROVISIONS

XV.

DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that the Defendants 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 "Instant Internet Empires" product 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 "Instant Internet Empires" product or any product contained therein.

XVI.

SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission and email transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of the Defendant, 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 the Defendant by any law enforcement officer, by any agent of

the Plaintiff, or by any agent of any process service retained by the Plaintiff.

PRELIMINARY INJUNCTION PROCEEDINGS

XVII.

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 set in this matter not later than 4:00 p.m. (EST) of the second business day prior to the hearing date. Service on the Commission shall be performed by delivery to the attention of Robert G. Schoshinski at the Federal Trade Commission, 600 Pennsylvania Ave., N.W., Room H-238, Washington, DC 20580, or by facsimile transmission to (202) 326-3395, or pursuant to any arrangement agreed upon by the parties.

XVIII.

WITNESS IDENTIFICATION

IT IS FURTHER ORDERED that, if any party to this action intends to present the testimony of any witness at the hearing on a preliminary injunction in this matter, that party shall, at least forty-eight (48) hours prior to the scheduled date and time of hearing, file with this Court and serve on all other parties a statement disclosing the name, address, and telephone number of any such witness, and either a summary of the witness's expected testimony, or the witness's affidavit or declaration revealing the substance of such witness's expected testimony. Service on the Commission shall be performed by personal delivery to the attention of Robert G. Schoshinski at the Federal Trade Commission, 600 Pennsylvania Ave., N.W., Room H-238, Washington, DC 20580, or by facsimile transmission to (202) 326-3395, or pursuant to any arrangement agreed upon by the parties.

XIX.

DURATION OF TEMPORARY RESTRAINING ORDER

IT IS FURTHER ORDERED that the Temporary Restraining Order granted

herein shall expire on May 22, 2003, at 11:59 P.M., unless within such time the Order, for good cause shown, is extended, or unless the Defendants consent that it should be extended for a longer period of time.

XX.

PRELIMINARY INJUNCTION HEARING

IT IS FURTHER ORDERED, pursuant to Fed. R. Civ. P. 65(b), that Defendants shall appear before this Court on the 22nd day of May, 2003 at 2 o'clock p.m., at the United States Courthouse, Courtroom D, Macon, Georgia for a hearing on Plaintiff's request for a preliminary injunction, pending final ruling on the Complaint against the Defendants, enjoining them from further violations of Sections 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), continuing the freeze of their assets, and imposing such additional relief as may be appropriate.

XXI.

SEEKING DISSOLUTION OR MODIFICATION OF THIS ORDER

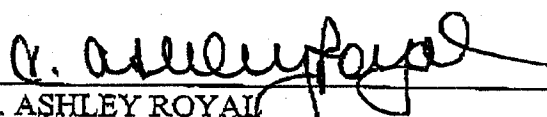
Defendants are advised that under Federal Rule of Civil Procedure 65(b), on two days' notice to Plaintiff, Defendants may appear and move for the dissolution or modification of this Order. If Plaintiff so moves, the Court will hear and determine the motion as expeditiously as the ends of justice require.

XXII.

RETENTION OF JURISDICTION

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

SO ORDERED, this 8 day of May, 2003, at 9:15 a.m.


C. ASHLEY ROYAL
United States District Judge
Middle District of Georgia