

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Case No. 08CV5666
LANCE THOMAS ATKINSON,	)	
	)	Judge Virginia Kendall
INET VENTURES PTY LTD, an Australian proprietary company,	)	
	)	Magistrate Judge Maria Valdez
JODY MICHAEL SMITH,	)	
	)	
TANGO PAY INC., a Delaware corporation,	)	
	)	
CLICK FUSION INC., a Delaware corporation,	)	
	)	
TWOBUCKS TRADING LIMITED, a Cyprus limited liability company,	)	
	)	
Defendants.	)	

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**TEMPORARY RESTRAINING ORDER WITH ASSET FREEZE,  
OTHER EQUITABLE RELIEF, AND ORDER TO SHOW CAUSE  
WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

Plaintiff Federal Trade Commission (“FTC” or “Commission”), having filed its Complaint for Injunctive and Other Equitable Relief in this matter, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and Section 7(a) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (“CAN-SPAM” or “CAN-SPAM Act”), 15 U.S.C. § 7706(a), and having moved *ex parte* for a Temporary Restraining Order, Other Equitable Relief, and Order To Show Cause Why a Preliminary Injunction

Should Not Issue pursuant to Rule 65 of the Federal Rules of Civil Procedure, 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 that it has jurisdiction over the parties;

2. Venue properly lies with this Court;

3. There is good cause to believe that Defendants have engaged in and are likely to continue to engage in acts and practices that violate Section 5 of the FTC Act, 15 U.S.C. § 45 and Section 5 of CAN-SPAM, 15 U.S.C. § 7704, and that the Commission 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 for consumers in the form of monetary redress or disgorgement will occur from the sale, transfer, or other disposition or concealment by Defendants of their assets or records unless Defendants are immediately restrained and enjoined by Order of this Court. The evidence set forth in Plaintiff's Memorandum in Support of its Motion for Temporary Restraining Order, Order to Show Cause and Other Equitable Relief, and in the accompanying declarations and exhibits, demonstrates that Defendants have engaged in a concerted course of illegal activity by deceptively marketing products in violation of Section 5 of the FTC Act and by sending commercial email messages in violation of Section 5 of the CAN-SPAM, 15 U.S.C. § 7704 *et seq.* Defendants' practices have regularly involved the concealment of their identities to avoid detection. Defendants have retained ill-gotten gains derived from these and other practices. There is good cause to believe that unless they are restrained from doing so by order of this Court, Defendants will continue with these illegal actions, and they will attempt to conceal the scope of their illegal actions through the

destruction of evidence and secreting of assets. 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 the Plaintiff's likelihood of success, this Order is in the public interest; and

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

### DEFINITIONS

1. **"Advertising"** or **"Advertisement"** means any written or verbal statement, illustration, or depiction that is designed to effect a sale or create interest in the purchasing of goods or services, whether it appears in a brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, packaging insert, label, film, slide, radio, television or cable television, audio program transmitted over a telephone system, program-length commercial ("infomercial"), Internet website (including metatags), or in any other medium.

2. **"Asset"** or **"Assets"** mean any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, contracts, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.

3. **"Assisting others"** means: (1) performing customer service functions including, but not limited to, receiving or responding to consumer complaints; (2) providing, or arranging for the provision of, names of potential customers; (3) performing marketing services of any kind; (4)

acting as an officer or director of a business entity; or (5) providing credit or debit card account processing.

4. “**Clear(ly) and Prominent(ly)**” shall mean as follows:

- A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services and software), the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement. *Provided, however,* that in any advertisement presented solely through visual or audio means, the disclosure may be made through the same means in which the ad is presented. *Provided, further,* that in any advertisement communicated through interactive media which is presented predominantly through visual or audio means, the disclosure may be made through the same means in which the ad is predominantly presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual disclosure shall be of a size and shade, with a degree of contrast to the background against which it appears, and shall appear on the screen for a duration and in a location, sufficiently noticeable for an ordinary consumer to read and comprehend it. *Provided, however,* in the case of advertisements disseminated by means of an interactive electronic medium, such as software, the Internet, online service page, or other electronic page, “clear and prominent” disclosures do not include disclosures accessed or displayed through hyperlinks, pop-ups, or interstitials.
- B. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary

consumer to read and comprehend it, in print that contrasts with the background against which it appears.

C. The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

5. “**Commercial electronic mail message**” (or “**commercial email**”) “means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose).” 15 U.S.C. § 7702(2) (A) (2004).

6. “**Competent and reliable scientific evidence**” shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

7. “**Covered product or service**” shall mean any dietary supplement, food or drug, or any service purporting to provide health-related benefits.

8. “**Defendants**” means Lance Thomas Atkinson, Inet Ventures Pty Ltd., Jody Michael Smith, Tango Pay Inc., Click Fusion Inc. and TwoBucks Trading Limited.

9. “**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 writing, drawings, graphs, charts, Internet sites, Web pages, Web sites, electronic correspondence, 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.

10. **“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.” 15 U.S.C. § 7702(5).

11. **“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.” 15 U.S.C. § 7702(8).

12. **“Hoodia Products”** shall refer to any products that are advertised, marketed, promoted, offered for sale, distributed, or sold with express or implied representations that the product contains any form of Hoodia gordonii.

13. **“Male Enhancement Products”** shall refer to any products that are advertised, marketed, promoted, offered for sale, distributed, or sold with express or implied representations that the product may enhance or increase the size of a man’s penis, including, but not limited to, VPXL, ManSter, Xtrasize+, Megadik, Man XL, LNH Solutions, MaxGain+ and PowerEnlarge, or any other substantially similar products.

14. **“Product label”** means any label or other written, printed or graphic matter upon any product or accompanying any product, including package labels, bottle labels, and package inserts.

15. **“Sender”** means a person who initiates a commercial electronic mail message and whose product, service, or Internet website is advertised or promoted by the message. 15 U.S.C. § 7702(16).

## ORDER

### I. UNLAWFUL CLAIMS ABOUT MALE ENHANCEMENT PRODUCTS

**IT IS THEREFORE ORDERED** that Defendants Lance Thomas Atkinson and Inet Ventures Pty Ltd., directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, in connections with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Male Enhancement Products, in or affecting commerce, are hereby temporarily restraining and enjoined from making, or assisting others in making, directly or by implication, including through the use of a product name or endorsement, any:

A. False or misleading representation:

1. that the Male Enhancement Products are composed of a 100% natural herbal formula;
2. that the Male Enhancement Products are 100% safe with no side effects; or
3. that the Male Enhancement Products can permanently increase the size of a man's penis; or

B. Representation about the health benefits, performance, efficacy, or safety of such products unless, at the time of making such representation, Defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation.

## **II. UNLAWFUL CLAIMS ABOUT HOODIA PRODUCTS**

**IT IS THEREFORE ORDERED** that Defendants Lance Thomas Atkinson and Inet Ventures Pty Ltd., directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, in connections with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Hoodia Products, in or affecting commerce, are hereby temporarily restraining and enjoined from making, or assisting others in making, directly or by implication, including through the use of a product name or endorsement, any:

A. False or misleading representation:

1. that the Hoodia Products cause rapid and substantial weight loss, including as much as four to six pounds per week; or
2. that clinical research proves that the Hoodia Products cause substantial weight loss or reduction in a user's caloric intake; or

B. Representation about the health benefits, performance, efficacy, or safety of such products unless, at the time of making such representation, Defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation.

## **III. PROHIBITED PHARMACY CLAIMS AND PRACTICES**

**IT IS THEREFORE ORDERED** that Defendants, and their officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting



directly or through any trust, corporation, subsidiary, division, or other device, or any of them, in connection with the advertisement, promotion, offering for sale or sale of prescription drugs or pharmacy services over the Internet:

A. are hereby temporarily restrained and enjoined from misrepresenting, expressly or by implication:

1. that they are a bona fide U.S. licensed pharmacy that employ board certified urologists and endocrinologists;
2. that they dispense U.S. FDA approved drugs; or
3. any other material fact about the scope or nature of Defendants' goods, services or facilities.

B. shall not advertise, promote, offer to sell or sell prescription drugs over the Internet unless they disclose clearly and prominently on each Web page or commercial electronic mail message where prescription drugs or pharmacy services are advertised, promoted, offered for sale or sold:

1. the name, business address, and phone number of the pharmacy that will dispense the prescription drug, and the state or states where such pharmacy is licensed or registered to do business;
2. the name, address, and phone number of the physician who will review the information provided by the consumer for the purpose of determining whether to issue or authorize the prescription, if such service is offered, and the state or states where the physician is licensed or authorized to practice medicine;

3. the name, business address, phone number and a contact person for the entity offering the prescription drugs;
4. the state or states from which the entity will accept orders for prescription drugs; or
5. that “Dispensing a prescription drug without a valid prescription is a violation of Federal law. More information about purchasing prescription drugs online is available at *www.fda.gov*.”

#### **IV. OTHER PROHIBITED PRODUCT CLAIMS**

**IT IS THEREFORE ORDERED** that Defendants, and their officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of endorsements, about the health benefits, absolute or comparative benefits, performance, safety, or efficacy of such product or service unless, at the time the representation is made, Defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation.

#### **V. PROHIBITED SECURITY CLAIMS**

**IT IS THEREFORE ORDERED** that Defendants, and their officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting

directly or through any trust, corporation, subsidiary, division, or other device, or any of them, in connection with the advertisement, promotion, offering for sale or sale of any product or service over the Internet are hereby temporarily restrained and enjoined from misrepresenting, expressly or by implication, the security measures employed on any Web site, including, but not limited to, that the information customers provide to Defendants' Web sites is encrypted and that Defendants use an SSL secure connection when transmitting this information over the Internet.

## **VI. PROHIBITED CAN-SPAM PRACTICES**

**IT IS FURTHER ORDERED** that Defendants, and their officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby temporarily restrained and enjoined from violating, or assisting others in violating, the provisions contained in the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM Act"), 15 U.S.C. §§ 7704 and 7705, as currently promulgated or as it may hereafter be amended, or any rule, regulation, or requirement adopted pursuant thereto, including, but not limited to, initiating the transmission of a commercial electronic mail message that:

- A. Contains, or is accompanied by, false or misleading header information;
- B. Fails to include a clear and conspicuous notice of the opportunity to decline to receive further electronic mail messages from the sender; or
- C. Fails to include a valid physical postal address of the sender.

## **VII. INJUNCTION AGAINST NEW ACCOUNT REGISTRATIONS WITHOUT REPORTING**

**IT IS FURTHER ORDERED** that in connection with the promotion, advertising, marketing, sale, or offering for sale of any product or service, Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are temporarily restrained and enjoined from registering or creating any new domain names, Web sites, Web pages, email accounts, Internet service accounts, or online payment service accounts, without notifying counsel for the Commission within 72 hours of such registrations. The notice shall be sent in accordance with Section XXII of this Order, and shall include:

- A. The true identity of the registrant, account holder, or user, including the complete and accurate physical mailing address, email address, and telephone number;
- B. The means and source of payment for the registration, including the credit card number or bank account number used;
- C. The name and address of the person or entity to whom such registration was submitted;
- D. The date and time the registration was created; and
- E. The purpose of the domain names, Web sites, Web pages, or email accounts, Internet service accounts, or online payment service accounts registered.

## **VIII. INJUNCTION AGAINST USING ANY PERSONS OR ENTITIES TO SEND COMMERCIAL EMAIL WITHOUT REPORTING**

**IT IS FURTHER ORDERED** that in connection with the solicitation of consumers for personal information or in the promotion, advertising, marketing, sale, or offering for sale of any

product or service, Defendants are temporarily restrained and enjoined from using any affiliates, sub-affiliates, agents, mailers, vendors, employees, contractors, or other persons or entities to send commercial email messages on their behalf without notifying counsel for the Commission prior to the initiation of any commercial email message by such persons or entities. The notice shall be sent in accordance with Section XXII of this Order, and shall include:

- A. The identity of the affiliate, sub-affiliate, agent, mailer, vendor, employee, contractor, or other person or entity including the name of an individual, the complete and accurate physical mailing address, a working email address, a working telephone number, and any identification codes associated with or used by such person or entity;
- B. The amount of payment and information necessary to process such payment for the affiliate, sub-affiliate, agent, mailer, vendor, employee, contractor, or other person or entity, including the account name and number used;
- C. A copy of the body and subject line of each unique commercial email being sent by the affiliate, sub-affiliate, agent, mailer, vendor, employee, contractor, or other person or entity;
- D. A list of each of the email addresses from which the affiliate, sub-affiliate, agent, mailer, vendor, employee, contractor, or other person or entity will send the commercial email message;
- E. A list of the Web site addresses and/or domain names promoted in the commercial email message;
- F. A description of the procedures Defendants have to ensure that:

1. Such person or entity does not send commercial email messages to recipients who have previously requested not to receive commercial email messages from Defendants; and
  2. Defendants will receive all requests received by such persons or entities from email recipients who request not to receive commercial email messages from Defendants; and
- G. A certification that such person or entity has agreed, in writing, to comply with this Order and the provisions of the CAN-SPAM Act.

#### **IX. ASSET PRESERVATION**

IT IS FURTHER ORDERED that Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby 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 wherever located, inside or outside the United States of America, that are owned, controlled or held by, or for the benefit of, in whole or in part, any Defendant, or in the actual or constructive possession of any Defendant, including, but not limited to,
1. Accounts held at Wells Fargo Bank, N.A.;
  2. Accounts held at A.G. Edwards, Inc.;
  3. Accounts held at Deutsche Bank Trust Company Americas;

4. Accounts held at Marfin Popular Bank;
  5. Accounts held at ePassporte N.V.;
  6. Accounts held at National Australia Bank;
  7. Accounts held at JSC Cartu Bank;
  8. Accounts held at Israel Credit Cards Ltd.
  9. Accounts held at ChronoPay; and
  10. any assets held in any account at any bank or savings and loan institution, or any credit card processing agent, customer service agent, commercial mail receiving agency, or mail holding or forwarding company, or any credit union, online payment service, IRA custodian, money market or mutual fund, storage company, trustee, 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 boxes, commercial mail boxes, or storage facilities titled in the name of any Defendant, or subject to access by any Defendant or under any Defendant's control, without providing the Commission prior notice and an opportunity to inspect the contents in order to determine that they contain no assets covered by this Section; and
- C. Incurring liens or encumbrances on real property, personal property, or other assets in the name, singly or jointly, of any Defendant.
- D. Transferring any funds or other assets subject to this Order for attorney's fees or living expenses; **provided, however, that**, notwithstanding the above, any Defendant may pay, from funds subject to this Order, reasonable, usual, ordinary,

and necessary living expenses and attorney's fees, not to exceed \$1,000, prior to the Show Cause Hearing set forth in Section XXI of this Order. No such expenses, however, shall be paid from funds subject to this Order except from cash on the person of any Defendant, or from an account designated by written notice to counsel for the Commission; **provided further that**, any Defendant may pay reasonable, usual, ordinary, and necessary living expenses, and reasonable attorney's fees, but only after written prior approval by the Commission or as otherwise authorized by the Court.

#### **X. FINANCIAL REPORTS**

**IT IS FURTHER ORDERED** that each Defendant, at least three (3) calendar days prior to the Show Cause Hearing set forth in Section XXI of this Order, and in no event later than ten (10) days after entry of this Order, shall prepare and deliver to counsel for the Commission completed financial statements on the forms attached to this Order as Attachments A and B, for themselves individually and for each business entity under which they conduct business, or of which they are an officer, and for each trust of which they are a trustee. The financial statements shall be accurate as of the date of their completion.

#### **XI. IDENTIFICATION OF MARKETERS**

**IT IS FURTHER ORDERED** that Defendants, at least three (3) calendar days prior to the Show Cause Hearing set forth in Section XXI of this Order, and in no event later than ten (10) calendar days after entry of this Order, shall prepare and deliver to counsel for the Commission a completed statement identifying all affiliates, sub-affiliates, agents, mailers, vendors, employees, contractors, or other persons or entities who have sent commercial email



messages promoting Defendants' products since January 1, 2004, on the form attached to this Order as Attachment C. The statement shall be accurate as of the date of its completion.

## **XII. REPATRIATION OF FOREIGN ASSETS AND DOCUMENTS**

**IT IS FURTHER ORDERED** that within five (5) days following service of this Order, each Defendant shall:

- A. Repatriate to the United States all assets and all documents located in foreign countries held, directly or indirectly:
  - 1. by any Defendant;
  - 2. for any Defendant's benefit; or
  - 3. under any Defendant's direct or indirect ownership or control;
- B. On the same business day as any repatriation under Paragraph A above, notify the Commission of the name and location of the financial institution or other entity that is the recipient of such assets or documents and the corresponding account names or numbers; and
- C. Hold and retain all repatriated assets and documents and prevent any transfer, disposition, or dissipation whatsoever of any such assets.

**Provided, however,** Defendants may transfer any repatriated documents to the Commission as required by this Order.

**Provided further,** that each Defendant shall provide the Commission access to Defendants' records and documents held by financial institutions or other institutions outside the territorial United States, by signing the Consent to Release of Financial Records attached to this Order as Attachment D.

### **XIII. INTERFERENCE WITH REPATRIATION**

**IT IS FURTHER ORDERED** that Defendants are hereby temporarily restrained and enjoined from taking any action, directly or indirectly, which may result in the transfer, encumbrance, or dissipation of foreign assets, or in the hindrance of the repatriation required by Section XII 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 Section XII of this Order; and
- B. Notifying any trustee, protector or other agent of any foreign trust or other related entities 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 Section XII of this Order.

### **XIV. PRESERVATION AND MAINTENANCE OF RECORDS AND NOTICE OF NEW VENTURES**

**IT IS FURTHER ORDERED** that Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby temporarily restrained and enjoined from:

- A. Destroying, erasing, mutilating, falsifying, concealing, writing over, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any documents or records, including but not limited to, any and all 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 (including any and all equipment needed to read any such material), contracts, accounting data, registrations, correspondence, advertisements (including, but not limited to, advertisements placed on the World Wide Web or the Internet or sent via email), FTP logs, Service Access Logs, USENET Newsgroups postings, World Wide Web pages, email messages, 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 any Defendant;

- B. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of money; and
- C. 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, telephone number, email address, and Web site address of the business entity;

3. the names of the business entity's officers, directors, principals, managers, and employees;
4. the names and addresses of any persons or entities providing online marketing, advertising, or mailing services for the business entity; and
5. a detailed description of the business entity's intended activities.

**XV. DUTIES OF PERSONS OR ENTITIES HOLDING DEFENDANTS' ASSETS**

**IT IS FURTHER ORDERED** that, pending determination of the Commission's request for a preliminary injunction, any financial or brokerage institution, escrow agent, title company, commodity trading company, entity, trust, or person that holds, controls or maintains accounts or assets of, or on behalf of, any Defendant, or has held, controlled or maintained any account or asset of, or on behalf of, any Defendant at any time since January 1, 2004, that has been served with a copy of this Order, or otherwise has actual or constructive knowledge 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 Defendants access to any safe deposit box that is:
  1. titled in any Defendant's name, individually or jointly; or
  2. otherwise subject to access by any Defendant; and
- C. Provide the Commission, within five (5) 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, individually or jointly, of any Defendant, or held on behalf of, or for the benefit of the 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 was received, 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, individually or jointly, of any Defendant, or is otherwise subject to access by any Defendant; and
- D. Upon 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.

#### **XVI. 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, independent contractor, client company, agent, attorney, spouse, and representative of

Defendants, 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.

#### **XVII. SERVICE OF ORDER**

**IT IS FURTHER ORDERED** that copies of this Order may be served by any means, including transmission by facsimile or electronic mail message, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of any Defendant, or that may otherwise be subject to any provision of this Order. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution.

#### **XVIII. 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 Defendant to the Commission.

#### **XIX. EXPEDITED DISCOVERY**

**IT IS FURTHER ORDERED** that the parties are granted leave at any time after service of this Order and pursuant to Federal Rules of Civil Procedure 30(a), 34 & 45 to: (1) take the deposition of any person or entity for the purpose of discovering the nature, status, extent, location or other relevant information relating to Defendants' assets and the nature and location of documents reflecting the business transactions of Defendants or their affiliates; and (2)

demand the production of documents from any person or entity relating to the nature, status, extent, and location or other relevant information relating to Defendants' assets and the location of documents reflecting the business transactions of Defendants. Seventy-two (72) hours notice shall be deemed sufficient for any such deposition and production of documents from Defendants and any other person or entity, including but not limited to financial institutions, accountants, stock brokers, and financial planners.

The limitations and conditions set forth in Fed. R. Civ. P. 30(a)(2)(B) and 31(a)(2)(B) regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Section. Any such depositions taken pursuant to this Section shall not be counted toward any limit on the number of depositions under the Federal Rules of Civil Procedure, including those set forth in Fed. R. Civ. P. 30(a)(2)(A) and 31(a)(2)(A) or the Local Rules. Additionally, the production of documents submitted pursuant to this provision shall not in any way waive the Commission's rights to seek the production of additional documents.

## **XX. DURATION OF TEMPORARY RESTRAINING ORDER**

**IT IS FURTHER ORDERED** that the Temporary Restraining Order granted herein shall expire on OCTOBER 21, 2008 at 4:45 p.m., unless within such time, the Order, for good cause shown, is extended for an additional period not to exceed ten (10) days, or unless it is further extended pursuant to Federal Rule of Civil Procedure 65.

## **XXI. ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION**

**IT IS FURTHER ORDERED**, pursuant to Federal Rule of Civil Procedure 65, that each Defendant shall appear before this Court on the 21th day of OCTOBER, 2008, at 9 o'clock A.m., at the Dirksen Federal Courthouse, 219 S. Dearborn St., Chicago, Illinois, Courtroom, Room

\_\_\_\_\_, 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 FTC Act, 15 U.S.C. § 45(a) and Section 5 of the CAN-SPAM Act, 15 U.S.C. § 7704, continuing the freeze of their assets, and imposing such additional relief as may be appropriate.

**Provided that,** Defendants must file with the Clerk's Office and deliver to the counsel for the Commission any brief responding to the order to show cause why a preliminary injunction should not be entered no later than forty-eight (48) hours before the time scheduled for the hearing. An evidentiary hearing on the Commission's request for a preliminary injunction is not necessary unless Defendants demonstrate that they have, and intend to introduce, evidence that raises a genuine and material factual issue. *See, e.g., In re Aimster*, 334 F.3d 643, 653-54 (7th Cir. 2003); *Promatek Indus., Ltd. v. Equitrac Corp.*, 300 F.3d 808, 814 (7th Cir. 2002).

**Provided further 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 24 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' expected testimony, or the witness' affidavit revealing the substance of such witness' expected testimony.



**XXII. SERVICE UPON THE COMMISSION**

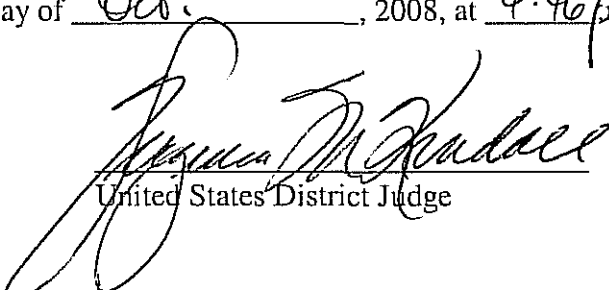
**IT IS FURTHER ORDERED**, with regard to any correspondence or pleadings related to this Order, that service on Plaintiffs shall be performed by overnight mail delivery, facsimile, or electronic mail message to the attention of:

Steven M. Wernikoff  
Federal Trade Commission  
55 W. Monroe St., #1825  
Chicago, IL 60603  
email to: [swernikoff@ftc.gov](mailto:swernikoff@ftc.gov)  
facsimile transmission to: (312) 960-5600

**XXIII. RETENTION OF JURISDICTION**

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

SO ORDERED, this 10th day of Oct., 2008, at 4:46 pm.

  
United States District Judge