

JUN 01 2005

Michael N. Milby, Clerk of Court

UN-SEALED PER # 1+8

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS**

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prohibited by court order.

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

TRUSTSOFT, INC.

and

DANILO LADENDORF,

Defendants.

Civil Action 05-1905

TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE

Plaintiff, the Federal Trade Commission ("FTC" or the "Commission"), pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Controlling the Assault of Non-Solicited Pornography and Marketing Act ("CAN-SPAM Act"), 15 U.S.C. §§ 7701 *et seq.*, has filed a Complaint for Injunctive and Other Equitable Relief, including consumer redress, and has moved *ex parte* for a temporary restraining order and for an order to show cause why a preliminary injunction should not be granted pursuant to Rule 65(b) of the Federal Rules of Civil Procedure.

FINDINGS OF FACT

The Court has considered the pleadings, declarations, exhibits, and memoranda filed in support of the Commission's motion and finds that:

1. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe that it will have jurisdiction over all parties hereto;
2. There is good cause to believe that defendants Trustsoft, Inc. and Danilo Ladendorf have engaged and are likely to engage in acts or practices that violate Section 5(a) of the FTC

Act, 15 U.S.C. § 45(a), and the Controlling the Assault of Non-Solicited Pornography and Marketing Act ("CAN-SPAM Act"), 15 U.S.C. §§ 7701 *et seq.* and that the plaintiff is therefore likely to prevail on the merits of this action;

3. The evidence set forth in the Commission's Memorandum of Points and Authorities in Support of its *Ex Parte* Motion for TRO ("Memorandum"), and the accompanying declarations and exhibits, demonstrates that defendants have engaged in deceptive acts or practices in violation of Section 5 of the FTC Act by making numerous materially deceptive representations in their marketing, selling, and distribution via the Internet of their spyware removal product, "SpyKiller." These misrepresentations include false reports of scans of consumers' computers for spyware, false reports of spyware found on consumers' computers, and false statements about the removal capabilities of SpyKiller. Additionally, defendants have initiated commercial email that fails to comply with the requirements of the CAN-SPAM Act. There is good cause to believe that defendants will continue with such illegal actions if not restrained from doing so by Order of this Court;
4. There also is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief will result 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;
5. The Commission has not provided notice to defendants due to the likelihood that advance notice of this action will cause defendants to abscond with or destroy discoverable evidence and conceal or dissipate assets. The Commission's request for this emergency *ex parte* relief is not the result of any lack of diligence on the Commission's part, but

instead is based upon the nature of defendants' unlawful conduct;

6. Weighing the equities and considering the plaintiff's likelihood of ultimate success, a temporary restraining order requiring an immediate freeze and accounting of assets, preserving business records, and providing other equitable relief is in the public interest; and
7. Fed. R. Civ. P. 65(c) does not require security of the United States or an officer or agency thereof for the issuance of a restraining order.

DEFINITIONS

For the purpose of this temporary restraining order ("TRO" or "Order"), the following definitions shall apply:

- A. **"Affiliate marketer"** or **"sub-affiliate marketer"** means any person who provides or has provided defendants with, or who refers or has referred to defendants, actual or potential customers, whether pursuant to defendants' "Affiliate Program" or otherwise.
- B. **"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, wherever located, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes" (as these terms are defined in the Uniform Commercial Code), chattels, leaseholds, contracts, mails, other deliveries, shares of stock, lists of participants, intellectual property, accounts, credits, receivables, cash, and trusts, including, but not limited to, any other trust held for the benefit of any defendant, any defendant's minor children, or any defendant's spouse.

- C. **“Commercial electronic mail message”** (or **“commercial email message”**) means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service and has the same meaning as defined in the CAN-SPAM Act, 15 U.S.C. § 7702(2)(A).
- D. **“Defendants”** means Trustsoft, Inc. and Danilo Ladendorf also doing business as “Swanksoft,” “SpyKiller,” and “spykiller.com.”
- E. **“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, but is not limited to, writings, drawings, graphs, charts, Internet sites, Web pages, Web sites, electronic correspondence, including e-mail and instant messages, photographs, audio and video recordings, computer records, whether active or inactive, and any 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.
- F. **“Plaintiff”** means the Federal Trade Commission.
- G. **“SpyKiller”** means SpyKiller 2003, Spykiller 2004, SpyKiller 2005, or any other spyware removal product marketed, sold, or distributed by defendants.
- H. **“Spyware,”** which includes “adware,” is defined by defendants in their marketing media as including programs that “hide on your computer and do a number of harmful and annoying things without your knowledge,” including “steal[ing] information from your computer such as credit card numbers, email addresses, addresses, [and] surfing habits” and which also may effectuate “PopUp web browser ads,” as well as banner

advertisements, hijack search engine results, and deliver advertisements to consumers' computers. The term includes, but is not limited to, the entries listed in defendants' "spyware encyclopedia" on defendants web site.

- I. **"Spyware removal product"** means any product, however denominated, including but not limited to "SpyKiller," that does or purports to identify, monitor, remove, block, or otherwise prevent spyware from residing on a computer.

PROHIBITED BUSINESS ACTIVITIES

I.

IT IS THEREFORE ORDERED that defendants, 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 directly or indirectly misrepresenting, expressly or by implication, before a consumer has downloaded any of defendants' computer software that defendants: (1) have scanned or otherwise examined a computer for the presence of spyware, or (2) have detected that spyware resides on a computer.

II.

IT IS FURTHER ORDERED that defendants, 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 directly or indirectly misrepresenting, expressly or by implication: (1) that a file or application on a consumer's computer is spyware when it is not; (2) any material feature of a spyware removal product including, but not limited to, the number of definitions incorporated in a spyware removal product, (3) the type of spyware detection

mechanism used by a spyware removal product, or (4) the spyware detected or removed by a spyware removal product.

III.

IT IS FURTHER ORDERED that defendants, 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 directly or indirectly misrepresenting, expressly or by implication: (1) that a “spyware removal product” detects, removes, blocks, or otherwise prevents all, or substantially all, spyware on a computer, or (2) that a “spyware removal product” detects, removes, blocks, or otherwise prevents “all traces” of particular spyware on a computer.

IV.

IT IS FURTHER ORDERED that defendants, 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 initiating commercial email messages that fail to comply with the CAN-SPAM Act including, but not limited to, initiating commercial email messages that:

- A. Contain, or are accompanied by, materially false or materially misleading header information;
- B. Do not include a clear and conspicuous notice of the recipient’s opportunity to decline to receive further commercial electronic mail messages from the sender at the recipient’s electronic mail address;
- C. Do not include a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that a recipient can use to submit a reply

electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from the sender at the electronic mail address where the message was received;

D. Do not include the sender's valid physical postal address; and

E. Do not provide clear and conspicuous identification that the message is an advertisement or solicitation.

ASSET FREEZE

V.

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

A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, consumer lists, shares of stock, or other assets, or any interest therein, wherever located, that are: (1) owned or controlled by defendants, in whole or in part, for the benefit of defendants; (2) in the actual or constructive possession of defendants; 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 or for, or subject to access by, any of defendants, at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metals dealer, or other financial institution or depository of any kind;

B. Opening or causing to be opened any safe deposit boxes titled in the name of any

defendant, or subject to access by any of them;

C. Incurring charges or cash advances on any credit card issued in the name, singly or jointly, of any defendant;

D. Obtaining a personal or secured loan; and

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

Provided further, that the assets affected by this Section shall include: (1) all assets of defendants as of the time this Order was entered; and (2) for assets obtained after the time this Order was entered, only those assets of defendants that are derived from the actions alleged in plaintiff's Complaint.

FINANCIAL REPORTS AND ACCOUNTING

VI.

IT IS FURTHER ORDERED that defendants within five (5) days of service of this Order, shall:

A. Provide the Commission with completed financial statements, verified under oath and accurate as of the date of entry of this Order, on the forms attached to this Order as Attachment A (for individual defendant Danilo Ladendorf) and Attachment B (for corporate defendant Trustsoft, Inc.);

B. Provide plaintiff Commission with 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 defendants or are under their direct or indirect control, jointly, severally, or individually;

C. Provide the Commission with a statement, verified under oath and accurate as of the date of entry of this Order, detailing the name, address, and telephone number for each accountant, financial planner, investment advisor, stock broker, or other person who provided any defendant with financial, business, or tax advice or services since January 1, 2003; and

D. Provide the Commission access to all records of accounts or assets of defendants held by financial institutions located outside the territorial United States by signing the Consent to Release of Financial Records attached to this Order (Attachment C).

Provided further, plaintiff is immediately authorized to issue subpoenas to demand the production of documents from any person or entity relating to the nature, status, extent, location or other relevant information relating to defendants' assets, income, and financial records.

RETENTION OF ASSETS AND RECORDS BY FINANCIAL INSTITUTIONS

VII.

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, 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 defendants' name, 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, individually or jointly, of a defendant, or held on behalf of, or for the benefit of a defendant;
2. the balance of each such account, or a description of the nature and value of each 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, individually or jointly, of a defendant, or is otherwise subject to access by a 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. 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.

ACCESS TO BUSINESS OFFICES AND RECORDS

VIII.

IT IS FURTHER ORDERED that defendants shall allow plaintiff's representatives immediate access to all business premises and storage facilities, owned, controlled, or used by defendants, including, but not limited to, 1330 Post Oak Blvd., Suite 2300, Houston, Texas. Plaintiff is authorized to employ the assistance of the United States Marshal or the Civil Division of Harris County Constable, as plaintiff deems necessary to effect service and peacefully implement this Order. The FTC may exclude defendants and defendants' employees from the business premises during the immediate access. The purpose of the immediate access shall be to effect service and to inspect and copy documents and computer data, including but not limited to, correspondence, emails, financial data, and other documents concerning defendants' business practices and assets.

A. Plaintiff and its representatives, agents, and assistants, shall have the right to remove documents from the above-listed premises in order that they may be inspected, inventoried, and copied;

B. Plaintiff shall return any removed documents to defendants within five (5) business days, or such time as is agreed upon by plaintiff and defendants;

C. Defendants and all employees or agents of defendants shall provide plaintiff with any necessary means of access to documents and records, including, without limitation, the locations of defendants' business premises, keys and combinations to locks, computer access

codes, and storage area access information;

Furthermore, if at the time of service of this Order: (1) documents concerning defendants' business practices or assets, or (2) computers that are being used or have been used in connection with defendants' business practices or assets, are located in a place other than a business location of defendants, including, but not limited to, the personal residence of defendant Ladendorf, then defendants shall, within 72 hours of service of this Order (excluding weekends), produce such documents and computers for copying and inspection to the Regional Office of the Attorney General at 808 Travis, Suite 300, Houston Texas 77002. In order to prevent the destruction of computer data, upon service of this order upon defendants, any such computers shall be powered down (turned off) in the normal course for the operating systems used on such computers and shall not be used until produced for copying and inspection, along with any codes needed for access.

PRESERVATION OF RECORDS

IX.

IT IS FURTHER ORDERED that defendants, 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 destroying, erasing, mutilating, concealing, altering, transferring, writing over, or otherwise disposing of, in any manner, directly or indirectly, any documents or records of any kind that relate to the business practices or business or personal finances of defendants, including but not limited to, computerized files and storage media on which information has been saved (including, but not limited to, floppy disks, hard drives, CD-

ROMS, zip disks, punch cards, magnetic tape, backup tapes, and computer chips), contracts, accounting data, correspondence, advertisements (including, but not limited to, advertisements placed on the World Wide Web or the Internet), 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 defendants.

IDENTIFICATION OF AFFILIATES AND CUSTOMERS

X.

IT IS FURTHER ORDERED that defendants shall:

A. Within five (5) days of service of this Order, prepare and deliver to plaintiffs a completed statement, verified under oath and accurate as of the date of entry of this Order, identifying by name, address, phone number, and any affiliate code used in connection with the sale of spyware removal products, all affiliates marketers, sub-affiliates marketers, agents, vendors, employees, and contractors, that have worked with defendants in connection with the sale of spyware removal products.

B. Within ten (10) days of service of this Order, prepare and deliver to counsel for plaintiff a completed statement, verified under oath and accurate as of the date of entry of this Order, detailing the number and identity of members of the public who purchased from defendants, whether directly, or through affiliate marketers or sub-affiliate marketers, any spyware removal product, including such purchaser's name, address, phone number, and e-mail address,

date of purchase, associated affiliate marketer code (if any), and the total funds received from each such purchaser.

RECORD KEEPING/BUSINESS OPERATIONS

XI.

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

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

DISTRIBUTION OF ORDER BY DEFENDANTS

XII.

IT IS FURTHER ORDERED that defendants shall immediately provide a copy of this Order to each affiliate marketer, sub-affiliate marketer, 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, physical addresses, and e-mail addresses of each such person or entity who received a copy of the Order.

SERVICE OF ORDER

XIII.

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents 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.

CONSUMER CREDIT REPORTS

XIV.

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 defendants Trustsoft, Inc. and Danilo Ladendorf to plaintiff Commission.

SERVICE OF PLEADINGS

XV.

IT IS FURTHER ORDERED that plaintiff shall serve on defendants Trustsoft, Inc. and Danilo Ladendorf copies of this Order, complaint, and supporting memoranda, affidavits and

other evidence. Defendants shall serve on the Commission all memoranda, affidavits and other evidence on which defendants intend to rely at the preliminary injunction hearing set in this matter not later than 4:00 p.m. (Eastern time) on the third day prior to the hearing date.

DURATION OF TEMPORARY RESTRAINING ORDER

XVI.

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire on June 11, 2005 at 10:00 a.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.

ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION

XVII.

IT IS FURTHER ORDERED, pursuant to Federal Rule of Civil Procedure 65(b), that defendants shall appear before this Court on the ___ day of June 7, 2005, at 9:00 o'clock a.m., 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 and the CAN-SPAM Act, continuing the freeze of their assets, and imposing such additional relief as may be appropriate.

SERVICE UPON PLAINTIFF

XVIII.


IT IS FURTHER ORDERED that, with regard to any correspondence or pleadings related to this Order, service on the Commission shall be performed by overnight mail delivery to the attention of Robert Kaye at the Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room H-238, Washington, DC 20580.

RETENTION OF JURISDICTION

XIX.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes. No security is required of any agency of the United States for the issuance of a restraining order. Fed. R. Civ. P. 65(c).

SO ORDERED, this _____ day of June, 2005, at 10:28 a.m.



Lynn N. Hughes
United States District Judge

ATTACHMENT "A"

FEDERAL TRADE COMMISSION
FINANCIAL STATEMENT OF INDIVIDUAL DEFENDANT

Instructions:

1. Complete all items. Enter "None" or "N/A" ("Not Applicable") where appropriate. If you cannot fully answer a question, explain why. "Assets" and "Liabilities" include ALL assets and liabilities, located within the United States or elsewhere, whether held individually or jointly. Attach continuation pages as needed. Initial each page in the space provided in the lower right corner. Sign and date the completed financial statement on the last page.

BACKGROUND INFORMATION

Item 1. Information About You

Your Full Name _____ Social Security # _____
 Current Address _____ From (Date) _____
 Identify any other name(s) and/or social security number(s) you have used, and the time period(s) during which they were used _____ Marital status _____

Item 2. Information About Spouse, Dependents

►Name _____ Date of Birth _____
 Relationship _____ Social Security No. _____

►Name _____ Date of Birth _____
 Relationship _____ Social Security No. _____

Item 3. Employment Information

Provide the following information for this year-to-date and for each of the previous three full years, for each company of which you were a director, officer, employee, agent, or consultant at any time during that period.

►Company Name & Address _____
 Position Held and Dates Employed: _____

►Company Name & Address _____
 Position Held and Dates Employed: _____

►Company Name & Address _____
 Position Held and Dates Employed: _____

FINANCIAL INFORMATION: ASSETS AND LIABILITIES

REMINDER: "Assets" and "Liabilities" include ALL assets and liabilities, located within the United States or elsewhere, whether held individually or jointly.

Item 4. Safe Deposit Boxes

List all safe deposit boxes, located within the United States or elsewhere, held by you, your spouse, or any of your dependents, or held by others for the benefit of you, your spouse, or any of your dependents. *On a separate page, describe the contents of each box.*

<u>Owner's Name</u>	<u>Name & Address of Depository Institution</u>	<u>Box No.</u>

Item 5. Cash, Bank Accounts, Money Market Accounts, Certificates of Deposit

List cash and all bank accounts, money market accounts, certificates of deposit, held by you, your spouse, or your dependents, or held by others for the benefit of you, your spouse, or your dependents. The term "cash" includes currency and uncashed checks.

Cash on Hand \$ _____ Cash Held For Your Benefit \$ _____

<u>Name on Account</u>	<u>Name & Address of Financial Institution</u>	<u>Account No.</u>	<u>Current Balance</u>

Item 6. Publicly Traded and Government Securities

List all securities, including but not limited to, stocks, stock options, registered and bearer bonds, state and municipal bonds, and mutual funds, held by you, your spouse, or your dependents, or held by others for the benefit of you, your spouse, or your dependents. In the alternative, attach the most recent brokerage statement for each account.

<u>Name of Security</u>	<u># of units owned</u>	<u>Owner of security</u>	<u>Location of Security</u>	<u>Current Value</u>

Item 7. Other Business Interests

List all other business interests, including but not limited to, non-public corporations, general or limited partnership interests, sole proprietorships, and oil and mineral leases, in which you, your spouse, or your dependents, are an officer, director, or have an ownership interest.

► Business Format _____ Business' Name & Address _____
 Ownership % _____ Officer/Director _____
 Owner (e.g., self, spouse) _____ Current Fair Market Value \$ _____

► Business Format _____ Business' Name & Address _____
 Ownership % _____ Officer/Director _____
 Owner (e.g., self, spouse) _____ Current Fair Market Value \$ _____

Item 8. Amounts Owed to You, Your Spouse, or Your Dependents

List all amounts owed to you, your spouse, or your dependents.

Debtor's Name, Address, & Telephone No. _____
Original Amount Owed \$ _____ Current Amount Owed \$ _____ Monthly Payment \$ _____

Item 9. Personal Property

List all personal property, by category, whether held for personal use or for investment, including but not limited to, furniture and household goods of value, computer equipment, electronics, coins, stamps, artwork, gemstones, jewelry, bullion, other collectibles, copyrights, patents, and other intellectual property, held by you, your spouse, or your dependents, or held by others for the benefit of you, your spouse, or your dependents.

<u>Property Category</u> (e.g., artwork, jewelry)	<u>Name of Owner</u>	<u>Property Location</u>	<u>Acquisition Cost</u>	<u>Current Value</u>
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____

Item 10. Cars, Trucks, Motorcycles, Boats, Airplanes, and Other Vehicles

List all cars, trucks, motorcycles, boats, airplanes, and other vehicles owned or operated by you, your spouse, or your dependents, or held by others for the benefit of you, your spouse, or your dependents.

▶ Vehicle Type _____ Make _____ Model _____ Year _____
Registered Owner's Name _____ Registration State & No. _____
Current Value \$ _____ Current Loan Balance \$ _____ Monthly Payment \$ _____

▶ Vehicle Type _____ Make _____ Model _____ Year _____
Registered Owner's Name _____ Registration State & No. _____
Current Value \$ _____ Current Loan Balance \$ _____ Monthly Payment \$ _____

▶ Vehicle Type _____ Make _____ Model _____ Year _____
Registered Owner's Name _____ Registration State & No. _____
Current Value \$ _____ Current Loan Balance \$ _____ Monthly Payment \$ _____

Item 11. Real Property

List all real estate held by you, your spouse, or your dependents, or held by others for the benefit of you, your spouse, or your dependents.

▶ Type of Property _____ Property's Location _____
Name(s) on Title and Ownership Percentages _____
Current Value \$ _____ Balance On First Mortgage \$ _____ Monthly Payment \$ _____ \$
Other Loan(s) (describe) _____ Current Balance \$ _____
Monthly Payment \$ _____ Rental Unit? _____ Monthly Rent Received \$ _____

▶ Type of Property _____ Property's Location _____
Name(s) on Title and Ownership Percentages _____
Current Value \$ _____ Balance On First Mortgage \$ _____ Monthly Payment \$ _____ \$
Other Loan(s) (describe) _____ Current Balance \$ _____
Monthly Payment \$ _____ Rental Unit? _____ Monthly Rent Received \$ _____

Item 12. Credit Cards

List each credit card held by you, your spouse, or your dependents. Also list any other credit cards that you, your spouse, or your dependents use.

<u>Name of Credit Card (e.g., Visa, MasterCard, Department Store)</u>	<u>Account No.</u>	<u>Name(s) on Account</u>	<u>Current Balance</u>	<u>Minimum Monthly Payment</u>
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____

Item 13. Loans and Liabilities

List all loans or liabilities in your, your spouse's, or your dependents' names.

►Name & Address of Lender/Creditor _____
 Nature of Liability _____ Name(s) on Liability _____
 Date of Liability _____ Amount Borrowed \$ _____ Current Balance \$ _____
 Payment Amount \$ _____ Frequency of Payment _____

►Name & Address of Lender/Creditor _____
 Nature of Liability _____ Name(s) on Liability _____
 Date of Liability _____ Amount Borrowed \$ _____ Current Balance \$ _____
 Payment Amount \$ _____ Frequency of Payment _____

OTHER FINANCIAL INFORMATION

Item 14. Tax Returns

List all federal tax returns that were filed during the last three years by or on behalf of you. *Provide a copy of each signed tax return that was filed during the last three years.*

<u>Tax Year</u>	<u>Refund Expected</u>
_____	\$ _____
_____	_____
_____	_____

Item 15. Transfers of Assets

List each person to whom you have transferred, in the aggregate, more than \$5000 in funds or other assets during the previous three years by loan, gift, sale, or other transfer. For each such person, state the total amount transferred during that period.

<u>Transferee's Name, Address, & Relationship</u>	<u>Property Transferred</u>	<u>Aggregate Value</u>	<u>Transfer Date</u>	<u>Type of Transfer (e.g., Loan, Gift)</u>
_____	_____	\$ _____	_____	_____
_____	_____	\$ _____	_____	_____
_____	_____	\$ _____	_____	_____
_____	_____	\$ _____	_____	_____
_____	_____	\$ _____	_____	_____

SUMMARY FINANCIAL SCHEDULES

Item 16. Combined Balance Sheet for You, Your Spouse, and Your Dependents. "You" includes yourself, your spouse, and your dependents.

<u>ASSETS</u>		<u>LIABILITIES</u>	
Cash on Hand	\$ _____	Credit Cards Balances	\$ _____
Cash in Financial Institutions	\$ _____	Motor Vehicles, Boats, Airplanes - Liens	\$ _____
Securities	\$ _____	Real Property - Mortgages .	\$ _____
Other Business Interests	\$ _____	Loans Against Securities	\$ _____
Amounts Owed to You	\$ _____	Taxes Owed by You	\$ _____
Personal Property You Own	\$ _____	Other Loans and Liabilities (Itemize)	\$ _____
Value of Vehicles, Boats, Airplanes You Own	\$ _____		
Value of Real Property You Own	\$ _____		\$ _____
Other Assets You Own (Itemize)	\$ _____		\$ _____
	\$ _____		\$ _____
	\$ _____		\$ _____
	\$ _____		\$ _____
Total Assets	\$ _____	Total Liabilities	\$ _____

Item 17. Combined Average MONTHLY Income and Expenses for You, Your Spouse, and Your Dependents for the Last 6 Months

Provide the average monthly income and expenses for you, your spouse, and your dependents for the last 6 months. Do not include credit card payments separately; rather, include credit card expenditures in the appropriate categories.

<u>INCOME</u>		<u>EXPENSES</u>	
Salary - After Taxes	\$ _____	Mortgage Payments for Residence(s)	\$ _____
Fees, Commissions, and Royalties	\$ _____	Property Taxes for Residence(s)	\$ _____
Interest	\$ _____	Rental Property Expenses, Including Mortgage Payments, Taxes, and Insurance	\$ _____
Dividends and Capital Gains	\$ _____	Car or Other Vehicle Lease or Loan Payments	\$ _____
Gross Rental Income	\$ _____	Food Expenses	\$ _____
Profits from Sole Proprietorships	\$ _____	Clothing Expenses	\$ _____
Distributions from Partnerships, S-Corporations, and LLCs	\$ _____	Utilities	\$ _____
Distributions from Trusts and Estates	\$ _____	Medical Expenses, Including Insurance	\$ _____
Social Security Payments	\$ _____	Other Insurance Premiums	\$ _____
Alimony/Child Support Received	\$ _____	Other Transportation Expenses	\$ _____
Other Income (Itemize)	\$ _____	Other Household Expenses	\$ _____
		<u>Other Expenses (Itemize)</u>	
		_____	\$ _____
	\$ _____	_____	\$ _____
	\$ _____	_____	\$ _____
	\$ _____	_____	\$ _____
Total Income	\$ _____	Total Expenses	\$ _____

I am submitting this financial statement with the understanding that it may affect action by the Federal Trade Commission or a federal court. I have used my best efforts to obtain the information requested in this statement. The responses I have provided to the items above are true and contain all the requested facts and information of which I have notice or knowledge. I have provided all requested documents in my custody, possession, or control. I know of the penalties for false statements under 18 U.S.C. § 1001, 18 U.S.C. § 1621, and 18 U.S.C. § 1623 (five years imprisonment and/or fines). I certify under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on:

(Date)

Signature

ATTACHMENT "B"

FEDERAL TRADE COMMISSION
FINANCIAL STATEMENT OF CORPORATE DEFENDANT

Instructions:

1. Complete all items. Enter "None" or "N/A" ("Not Applicable") where appropriate. If you cannot fully answer a question, explain why. In completing this financial statement, "the corporation" refers not only to this corporation but also to each of its predecessors that are not named defendants in this action. When an Item asks for information about assets or liabilities "held by the corporation," include ALL such assets and liabilities, located within the United States or elsewhere, held by the corporation or held by others for the benefit of the corporation. Attach continuation pages as needed. On the financial statement, state next to the Item number that the Item is being continued. On the continuation page(s), identify the Item number being continued.
2. An officer of the corporation must sign and date the completed financial statement on the last page and initial each page in the space provided in the lower right corner.

BACKGROUND INFORMATION

Item 1. General Information

Corporation's Full Name _____
 Primary Business Address _____ From (Date) _____

Provide all other current addresses, & previous addresses for past five years, including post office boxes and mail drops:

Address _____ From/Until _____
 Address _____ From/Until _____
 Address _____ From/Until _____

List all predecessor companies for past five years:

Name & Address _____ From/Until _____
 Name & Address _____ From/Until _____
 Name & Address _____ From/Until _____

Item 2. Legal Information

Federal Taxpayer ID No. _____ State Tax ID No. _____

Item 3. Principal Stockholders

List all persons and entities that own at least 5% of the corporation's stock.

<u>Name & Address</u>	<u>% Owned</u>
_____	_____
_____	_____
_____	_____

Item 4. Officers

List all of the corporation's officers, including *de facto* officers (individuals with significant management responsibility whose titles do not reflect the nature of their positions).

<u>Name & Address</u>	<u>% Owned</u>

Item 5. Businesses Related to the Corporation

List all corporations, partnerships, and other business entities in which this corporation has an ownership interest.

<u>Name & Address</u>	<u>Business Activities</u>	<u>% Owned</u>

Item 6. Businesses Related to Individuals

List all corporations, partnerships, and other business entities in which the corporation's principal stockholders and officers (i.e., the individuals listed above) have an ownership interest.

<u>Individual's Name</u>	<u>Business Name & Address</u>	<u>Business Activities</u>	<u>% Owned</u>

Item 7. Related Individuals

List all related individuals with whom the corporation has had any business transactions during the three previous fiscal years and current fiscal year-to-date. A "related individual" is a spouse, sibling, parent, or child of the principal stockholders and officers (i.e., the individuals listed above).

<u>Name and Address</u>	<u>Relationship</u>	<u>Business Activities</u>

Item 8. Outside Accountants

List all outside accountants retained by the corporation during the last three years.

<u>Name</u>	<u>Firm Name</u>	<u>Address</u>	<u>CPA/PA?</u>

Item 9. Corporation's Recordkeeping

List all individuals within the corporation with responsibility for keeping the corporation's financial books and records for the last three years.

Name, Address, & Telephone Number

Position(s) Held

Item 10. Attorneys

List all attorneys retained by the corporation during the last three years.

Name

Firm Name

Address

Item 11. All litigation involving the Corporation

List all pending lawsuits in which the corporation is involved in court or before an administrative agency.

Opposing Party's Name & Address _____

Court's Name & Address _____

Docket No. _____ Relief Requested _____ Nature of Lawsuit _____

Status _____

Opposing Party's Name & Address _____

Court's Name & Address _____

Docket No. _____ Relief Requested _____ Nature of Lawsuit _____

Status _____

FINANCIAL INFORMATION

Item 12. Tax Returns

List all federal and state corporate tax returns filed for the last three complete fiscal years. *Attach copies of all returns.*

<u>Federal/ State/Both</u>	<u>Tax Year</u>	<u>Tax Due Federal</u>	<u>Tax Paid Federal</u>	<u>Tax Due State</u>	<u>Tax Paid State</u>	<u>Preparer's Name</u>
_____	_____	\$ _____	\$ _____	\$ _____	\$ _____	_____
_____	_____	\$ _____	\$ _____	\$ _____	\$ _____	_____
_____	_____	\$ _____	\$ _____	\$ _____	\$ _____	_____

Item 13. Safe Deposit Boxes

List all safe deposit boxes, located within the United States or elsewhere, held by the corporation, or held by others for the benefit of the corporation. *On a separate page, describe the contents of each box.*

<u>Owner's Name</u>	<u>Name & Address of Depository Institution</u>	<u>Box No.</u>

Item 14. Financial Statements

List all financial statements that were prepared for the corporation's last three complete fiscal years and for the current fiscal year-to-date. *Attach copies of all statements, providing audited statements if available.*

<u>Year</u>	<u>Balance Sheet</u>	<u>Profit & Loss Statement</u>	<u>Cash Flow Statement</u>	<u>Changes in Owner's Equity</u>	<u>Audited?</u>

Item 15. Financial Summary

For each of the last three complete fiscal years and for the current fiscal year-to-date for which the corporation has not provided a profit and loss statement in accordance with Item 14 above, provide the following summary financial information.

	<u>Current Year-to-Date</u>	<u>1 Year Ago</u>	<u>2 Years Ago</u>	<u>3 Years Ago</u>
<u>Gross Revenue</u>	\$ _____	\$ _____	\$ _____	\$ _____
<u>Expenses</u>	\$ _____	\$ _____	\$ _____	\$ _____
<u>Net Profit After Taxes</u>	\$ _____	\$ _____	\$ _____	\$ _____
<u>Payables</u>	\$ _____	[REDACTED]		
<u>Receivables</u>	\$ _____			

Item 16. Cash, Bank, and Money Market Accounts

List cash and all bank and money market accounts, including but not limited to, checking accounts, savings accounts, and certificates of deposit, held by the corporation. The term "cash" includes currency and uncashed checks.

Cash on Hand \$ _____ Cash Held for the Corporation's Benefit \$ _____

<u>Name & Address of Financial Institution</u>	<u>Signator(s) on Account</u>	<u>Account No.</u>	<u>Current Balance</u>
			\$ _____
			\$ _____
			\$ _____
			\$ _____

Item 17. Real Estate

List all real estate, including leaseholds in excess of five years, held by the corporation.

Type of Property _____ Property's Location _____
 Name(s) on Title and Ownership Percentages _____
 Current Value \$ _____ Loan or Account No. _____
 Lender's Name and Address _____
 Current Balance On First Mortgage \$ _____ Monthly Payment \$ _____
 Other Loan(s) (describe) _____ Current Balance \$ _____
 Monthly Payment \$ _____ Rental Unit? _____ Monthly Rent Received \$ _____

Type of Property _____ Property's Location _____
 Name(s) on Title and Ownership Percentages _____
 Current Value \$ _____ Loan or Account No. _____
 Lender's Name and Address _____
 Current Balance On First Mortgage \$ _____ Monthly Payment \$ _____
 Other Loan(s) (describe) _____ Current Balance \$ _____
 Monthly Payment \$ _____ Rental Unit? _____ Monthly Rent Received \$ _____

Item 18. Other Assets

List all other property, by category, with an estimated value of \$5000 or more, held by the corporation, including but not limited to, inventory, machinery, equipment, furniture, vehicles, customer lists, computer software, patents, and other intellectual property.

<u>Property Category</u>	<u>Property Location</u>	<u>Acquisition Cost</u>	<u>Current Value</u>
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____

Item 19. Trusts and Escrows

List all persons and other entities holding funds or other assets that are in escrow or in trust for the corporation.

<u>Trustee or Escrow Agent's Name & Address</u>	<u>Description and Location of Assets</u>	<u>Present Market Value of Assets</u>
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

Item 20. Monetary Judgments and Settlements Owed By and To the Corporation

List all monetary judgments and settlements, recorded and unrecorded, owed by and to the corporation.

Opposing Party's Name & Address _____
Court's Name & Address _____ Docket No. _____
Nature of Lawsuit _____ Date of Judgment _____ Amount \$ _____

Opposing Party's Name & Address _____
Court's Name & Address _____ Docket No. _____
Nature of Lawsuit _____ Date of Judgment _____ Amount \$ _____

Item 21. Government Orders and Settlements

List all existing orders and settlements between the corporation and any federal or state government entities.

Name of Agency _____ Contact Person _____
Address _____ Telephone No. _____
Agreement Date _____ Nature of Agreement _____

Name of Agency _____ Contact Person _____
Address _____ Telephone No. _____
Agreement Date _____ Nature of Agreement _____

Item 22. Credit Cards

List all of the corporation's credit cards and retail charge accounts and the individuals authorized to use them.

<u>Name of Credit Card or Store</u>	<u>Names of Authorized Users and Positions Held</u>
_____	_____
_____	_____
_____	_____
_____	_____

Item 23. Compensation of Employees

List all compensation and other benefits paid by the corporation to the five most highly compensated employees, independent contractors, and consultants, for the two previous fiscal years and current fiscal year-to-date.

"Compensation" includes, but is not limited to, salaries, commissions, consulting fees, bonuses, dividends, distributions, royalties, pensions, and profit sharing plans. "Other benefits" include, but are not limited to, loans, loan payments, rent, car payments, and insurance premiums, whether paid directly to the individuals, or paid to others on their behalf.

<u>Name/Position</u>	<u>Current Fiscal Year-to-Date</u>	<u>1 Year Ago</u>	<u>2 Years Ago</u>	<u>Compensation or Type of Benefits</u>
_____	\$ _____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	\$ _____	_____

Item 24. Compensation of Board Members and Officers

List all compensation and other benefits received from the corporation by Board Members and Officers for the current fiscal year-to-date and the two previous fiscal years. "Compensation" includes, but is not limited to, salaries, commissions, consulting fees, dividends, distributions, royalties, pensions, and profit sharing plans. "Other benefits" include, but are not limited to, loans, loan payments, rent, car payments, and insurance premiums, whether paid directly to the individuals, or paid to others on their behalf.

<u>Name/Position</u>	<u>Current Fiscal Year-to-Date</u>	<u>1 Year Ago</u>	<u>2 Years Ago</u>	<u>Compensation or Type of Benefits</u>
	\$	\$	\$	
	\$	\$	\$	
	\$	\$	\$	
	\$	\$	\$	
	\$	\$	\$	
	\$	\$	\$	
	\$	\$	\$	
	\$	\$	\$	
	\$	\$	\$	

Item 25. Transfers of Assets Including Cash and Property

List all transfers of assets over \$5,000 made by the corporation, other than in the ordinary course of business, during the previous three years, by loan, gift, sale, or other transfer.

<u>Transferee's Name, Address, & Relationship</u>	<u>Property Transferred</u>	<u>Aggregate Value</u>	<u>Transfer Date</u>	<u>Type of Transfer (e.g., Loan, Gift)</u>
		\$		
		\$		
		\$		

I am submitting this financial statement with the understanding that it may affect action by the Federal Trade Commission or a federal court. I have used my best efforts to obtain the information requested in this statement. The responses I have provided to the items above are true and contain all the requested facts and information of which I have notice or knowledge. I have provided all requested documents in my custody, possession, or control. I know of the penalties for false statements under 18 U.S.C. § 1001, 18 U.S.C. § 1621, and 18 U.S.C. § 1623 (five years imprisonment and/or fines). I certify under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on:

(Date)

Signature

Corporate Position

Attachment "C"

Consent to Release of Financial Records, Individual

I, _____, do hereby direct any bank, trust company, or financial institution, at which I have an account of any kind upon which I am authorized to draw, and its officers, employees, and agents, to disclose all information and deliver copies of all documents of every nature in their possession or control that relate to any such account to any attorney of the Federal Trade Commission, and to give evidence relevant thereto, in the matter of the Federal Trade Commission v. TrustSoft, et al., now pending in the United States District Court for the Southern District of Texas and this shall be irrevocable authority for so doing.

This direction is intended to apply to the laws of countries other than the United States that restrict or prohibit the disclosure of financial information without the consent of the holder of the account, or its officers, and shall be construed as consent with respect thereto.

Dated: _____, 2005

Signature: _____

Consent to Release of Financial Records, Corporate

I, _____, as an officer of _____, do hereby direct any bank, trust company, or financial institution, at which _____ has an account of any kind upon which _____ is authorized to draw, and its officers, employees, and agents, to disclose all information and deliver copies of all documents of every nature in their possession or control that relate to any such account to any attorney of the Federal Trade Commission, and to give evidence relevant thereto, in the matter of the Federal Trade Commission v. TrustSoft, et al., now pending in the United States District Court for the Southern District of Texas, and this shall be irrevocable authority for so doing.

This direction is intended to apply to the laws of countries other than the United States that restrict or prohibit the disclosure of financial information without the consent of the holder of the account, or its officers, and shall be construed as consent with respect thereto.

Dated: _____, 2005

Signature: _____

Name: _____

Title: _____