

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

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Case No. 03 C 2541
)	
v.)	Judge George W. Lindberg
)	
JAMES D. THOMPSON and)	Magistrate Judge Morton Denlow
SUSAN B. GERMEK,)	
)	
Defendants.)	
)	

**TEMPORARY RESTRAINING ORDER WITH ASSET FREEZE,
OTHER EQUITABLE RELIEF AND ORDER
SETTING PRELIMINARY INJUNCTION HEARING**

Plaintiff Federal Trade Commission (“Commission” or “FTC”), pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), filed a Complaint for Injunctive and Other Equitable Relief, including consumer redress, and moved *ex parte* for a Temporary Restraining Order (“TRO”) and Other Equitable Relief, and for an Order setting a preliminary injunction hearing pursuant to Rule 65 of the Federal Rules of Civil Procedure

FINDINGS OF FACT

The Court has considered the Complaint, declarations, exhibits and memorandum of law filed in support of the Commission’s motion and finds that:

1. This Court has jurisdiction over the subject matter of the case, and there is good cause to believe that the Court will have jurisdiction over the parties;
2. Venue properly lies with this Court;

3. There is good cause to believe that Defendants James D. Thompson and Susan B. Germek have engaged in 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 the FTC Trade Regulation Rule entitled “Mail or Telephone Order Merchandise Rule” (“the Telephone Order Rule”), 16 C.F.R. Part 435, and that the Commission is 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 will occur from the sale, transfer, assignment, 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 the FTC's *Ex Parte* Motion for Temporary Restraining Order, and in the accompanying legal memorandum, declarations and exhibits, shows that Defendants have engaged in a concerted course of illegal activity in connection with the advertisement and promotion of items through Internet auctions, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and the Telephone Order Rule, 16 C.F.R. Part 435. Defendants have repeatedly hid their true identity when advertising items for sale by Internet auction. Thus, there is good cause to believe that 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.

5. The Commission has not provided notice to Defendants due to the likelihood that advanced notice of this action will lead to the very irreparable harm, including dissipation of assets and destruction of evidence, that the Commission seeks to prevent through its application for an *ex parte* temporary restraining order. The Commission's request for this *ex parte* relief is not the result

of any lack of diligence on the part of the Commission, but is instead based on the nature of Defendants' unlawful conduct. There is good cause for relieving the Commission of the duty to provide Defendants with prior notice of the Commission's motion;

6. There is good cause for the Court to order an asset freeze against Defendants. Defendants have misrepresented their identity to consumers by posing as innocent third party consumers. Defendants have also repeatedly falsely claimed that they will deliver items sold on Internet auctions after winning bidders send payment. Defendants have retained ill-gotten gains derived from these practices, and an asset freeze is reasonably necessary in order to preserve the possibility of complete and meaningful relief at the conclusion of this litigation.

7. Weighing the equities and considering the Commission's likelihood of success, this Order is in the public interest; and

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

DEFINITIONS

1. "Defendants" means James D. Thompson and Susan B. Germek.

2. "Document" is synonymous in meaning and equal in scope to the term, as defined in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of this term.

3. "Asset" or "Assets" means any legal or equitable interest in, right to, or claim to, any real and/or personal property, including without limitation, chattels, goods, instruments, equipment,

fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash, wherever located.

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

5. "Plaintiff" means the Federal Trade Commission ("Commission").

CONDUCT PROVISIONS

I.

IT IS THEREFORE ORDERED that, in connection with the sale or offering for sale of any goods or services via the Internet, Defendants are hereby temporarily restrained and enjoined from:

A. Making, or assisting others in making, either expressly or by implication, orally or in writing, any false or misleading statement or representation, including but not limited to the following:

1. Defendants have in their possession or under their control goods or services available to be purchased;
2. Defendants will ship goods or provide services, within a reasonable time period, upon receipt of payment for those goods or services;
3. Defendants have shipped goods upon receipt of payment for those goods;

B. Violating or assisting others to violate any provision of the Telephone Order Rule, 16 C.F.R. Part 435, including but not limited to:

1. Soliciting orders for the purchase of goods via the Internet without a reasonable basis for believing that they can ship the goods within the time

stated in the solicitation, or if no time is stated, within thirty days of the solicitation, as required by 16 C.F.R. § 435.1(a)(1);

2. Failing to give consumers who have ordered goods from Defendants the option to accept a delay or cancel the order upon Defendants' discovery that they are unable to ship within the stated time period or within thirty days if no period was stated, as required by 16 C.F.R. § 435.1(b)(1);
3. Failing to deem an order canceled and provide a refund, where Defendants have failed to give a delay or cancellation option as required by 16 C.F.R. § 435.1(c);

C. Using any fictitious, false, or assumed title or name, other than their own proper name, or otherwise misrepresenting their true identity in the course of business dealings or in publicly filed documents.

II.

IT IS FURTHER ORDERED that in connection with the advertising, promotion, offering for sale of goods or services in commerce, Defendants, and any agent, servant, employee, salesperson, affiliate, successor, and any other person or entity in active concert or participation with Defendants who receives actual notice of this Order, are hereby temporarily restrained from using consumers' personal information without their authorization.

ASSET FREEZE

III.

IT IS FURTHER ORDERED that Defendants, and their officers, agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with

them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from:

A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, or otherwise disposing of any funds, property, coins, precious metals, lists of consumer names, artwork, shares of stock, uncashed checks or other assets, wherever located, that are:

- i. owned or controlled by Defendants, in whole or in part;
- ii. in the actual or constructive possession of Defendants;
- iii. held by an agent of Defendants as a retainer for the agent's provision of services to Defendants;
- iv. owned, controlled by, or in the actual or constructive possession of, or otherwise held for the benefit of, any corporation, partnership or other entity directly or indirectly owned, managed, or controlled by Defendants,

including, but not limited to, any assets held by or for Defendants in any account at any bank or savings and loan institution, credit card processing agent or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution of any kind, including, but not limited to, assets contained at the following institutions:

Archer Bank
Chicago, Illinois

George Washington Savings Bank
Oak Lawn, Illinois

United Trust Bank
Bridgeview, Illinois

PayPal, Inc.
Palo Alto, California

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

C. The provisions contained in this Section III shall also apply to any and all accounts opened by Defendants in the names of third parties without their authorization, including, but not limited to, any assets in the name of Angela Sink.

DUTIES OF ASSET HOLDERS

IV.

IT IS FURTHER ORDERED that any financial or brokerage institution, business entity or person having possession, custody or control of any records of any Defendant, or of any account, safe deposit box, or other asset titled in the name of any Defendant, either individually or jointly, or held for the benefit of any Defendant, or that has maintained any such account, safe deposit box, or other asset at any time since January 1, 2001, shall:

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

B. Deny any person or entity access to any safe deposit box titled individually or jointly in the name of any Defendant or otherwise held for the benefit of or subject to access by any Defendant;

C. Provide to counsel for the Plaintiff, within five (5) business days of notice of this Order, a sworn statement setting forth:

1. The identification of each account or asset titled in the name, individually or jointly, of any Defendant, or held on behalf of, or for the benefit of, any Defendant;
2. The balance of each account or a description of the nature and value of each asset as of the close of business on the day this Order is served, and, if the account or asset has been closed or moved, the date closed or removed, the total funds removed in order to close the account, and the person or entity to whom such account or other asset was remitted; and
3. The identification of any safe deposit box or storage facility that is either titled in the name of or subject to access by any Defendant.

D. Upon request of counsel for the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to 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; and

E. For the purposes of this Section, the Commission may properly serve this Order on any financial or brokerage institution, business entity or person that holds, controls or maintains custody of any account or asset of any Defendant or has held, controlled or maintained custody of any account or asset of any Defendant at any time since January 1, 2001, by facsimile transmission, hand delivery or overnight carrier.

RECORD KEEPING/MAINTAINING BUSINESS RECORDS

V.

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

A. Failing to make and keep books, records, accounts, bank statements, current accountants' reports, general ledgers, general journals, cash receipts ledgers, cash disbursements ledgers and source documents, documents indicating title to real or personal property, and any other data which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Defendants; and

B. Destroying, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, any books, records, tapes, discs, accounting data, checks (fronts and backs), correspondence, forms, advertisements, brochures, manuals, electronically stored data, banking records, customer lists, customer files, invoices, telephone records, ledgers, payroll records, or other documents of any kind, including information stored in computer-maintained form, in their possession, custody, or control.

CREDIT REPORTS

VI.

IT IS FURTHER ORDERED that Plaintiff Commission may obtain credit reports concerning Defendants pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), and that upon written request, any credit reporting agency from which such reports are requested shall provide them to Plaintiff Commission.

FINANCIAL REPORTS

VII.

IT IS FURTHER ORDERED that Defendants shall each, within five (5) business days after service of this Order, prepare and provide to counsel for the Commission a completed financial statement as appended hereto as **Attachment A**. The Financial Statements shall be accurate as of the date of the entry of this Order and shall be verified under oath.

EXPEDITED DISCOVERY

VIII.

IT IS FURTHER ORDERED that, notwithstanding the provisions of Federal Rules of Civil Procedure 26(d) and (f) and 30(a)(2)(C), and pursuant to Federal Rules of Civil Procedure 30(a), 34, and 45, the parties are granted leave, at any time after service of this Order, to:

A. Take the deposition, on three (3) days' notice, of any person, whether or not a party, for the purpose of discovering the nature, location, status, and extent of the assets of the Defendants, or their affiliates or subsidiaries; the nature and location of documents reflecting the Defendants' business transactions, or the business transactions of the Defendants' affiliates or subsidiaries; the location of any premises where Defendants, directly or through any third party, conduct business operations; the Defendants' whereabouts; and/or the applicability of any evidentiary privileges to this action. 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 the ten (10) deposition limit set forth in Fed. R. Civ. P. 30(a)(2)(A) and 31(a)(2)(A). Service of

discovery upon a party, taken pursuant to this Section, shall be sufficient if made by facsimile or by overnight delivery; and

B. Demand the production of documents, on five (5) days' notice, from any person, whether or not a party, relating to the nature, status, or extent of Defendants' assets, or of their affiliates or subsidiaries; the location of documents reflecting the business transactions of Defendants, or of their affiliates or subsidiaries; the location of any premises where Defendants, directly or through any third party, conduct business operations; the Defendants' whereabouts; and/or the applicability of any evidentiary privileges to this action, provided that twenty four (24) hours' notice shall be deemed sufficient for the production of any such documents that are maintained or stored only as electronic data.

ORDER SETTING PRELIMINARY INJUNCTION HEARING

IX.

IT IS FURTHER ORDERED, pursuant to Federal Rule of Civil Procedure 65(b), that the Defendants shall appear before this Court, on the 14th floor of the Dirksen Federal Courthouse, 219 S. Dearborn, Chicago, Illinois, on the 30th day of April 2003, at 1:30 o'clock p.m., for a preliminary injunction hearing on this matter. Defendants shall serve answering pleadings or materials on counsel for the Commission not less than 3 business days prior to the hearing on the Commission's request for a preliminary injunction. Plaintiff may submit reply pleadings or materials

by Monday April 28, 2003

CORRESPONDENCE WITH AND NOTICE TO PLAINTIFF

X.

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

Steven M. Wernikoff, Esq.
Federal Trade Commission
55 E. Monroe St., Suite 1860
Chicago, IL 60603
(312) 960-5600 (facsimile)

Notice may be provided by email to swernikoff@ftc.gov.

DURATION OF TEMPORARY RESTRAINING ORDER

XI.

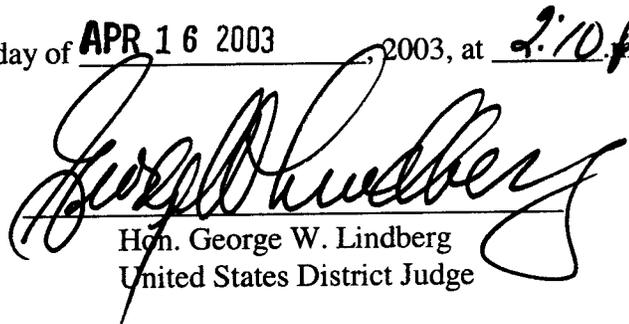
IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire on at 11:59 p.m., on April 30, 2003, unless, for good cause shown, the Temporary Restraining Order is extended, or unless, as to any Defendant, the Defendant consents that it should be extended for a longer period of time.

RETENTION OF JURISDICTION

XII.

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

IT IS SO ORDERED, this _____ day of **APR 16** 2003, 2003, at **2:10 PM**



Hon. George W. Lindberg
United States District Judge