

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA

Case No. 5:03-CV-0140-3-CAR

FILED  
U.S. DISTRICT COURT  
MIDDLE GEORGIA

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*[Signature]*  
DEPUTY CLERK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

K4 GLOBAL PUBLISHING, INC.,

dba

Instant Internet Empires,

KERN FAMILY ENTERPRISES, LLC,

dba

Instant Internet Empires,

and

IRWIN F. KERN, IV,

aka

Frank Kern

Defendants.

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~~PROPOSED~~ <sup>CAT</sup> STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT  
INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("Commission"), commenced this action by filing its Complaint for permanent injunction and other relief pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a) and 53(b), charging that Defendants, K4 Global Publishing, Inc., Kern Family Empires, LLC., and Irwin F. Kern, IV, engaged in deceptive business practices in violation of Section 5 of the FTC Act,

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15 U.S.C. § 45, in connection with the sale of business opportunities and business development aids. The Defendants were served with copies of the Complaint in this matter on May 8, 2003.

The Commission and Defendants have agreed to entry of this Stipulated Final Judgment and Order for Permanent Injunction ("Final Order") by the Court to resolve all matters in dispute in this action without trial. Pursuant to agreement and stipulation, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

### FINDINGS

1. This Court has jurisdiction over the subject matter of this case, and over all parties hereto.
2. Venue in this district is proper under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).
3. The Commission's Complaint states claims upon which relief may be granted against Defendants under Section 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b).
4. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe it will have jurisdiction over all parties hereto.
5. This Order does not constitute and shall not be interpreted to constitute an admission by Defendants that they have engaged in violations of any law or regulations, including but not limited to the Federal Trade Commission Act.
6. This Order is remedial in nature and any payment made under the Order shall not be construed as the payment of a fine, penalty, punitive assessment, or forfeiture.
7. The acts and practices of Defendants were or are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
8. Entry of this order is in the public interest.

9. Defendants enter into this Order freely and without coercion, and acknowledge that they understand the provisions of this Order and are prepared to abide by them.

10. Plaintiff and Defendants have agreed that the entry of this Order resolves all matters of dispute between them arising from the Complaint in this action, up to the date of entry of this Order.

11. Defendants waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Defendants further waive and release any claim they may have against the Commission, its employees, representatives, or agents.

12. Defendants have agreed that this Order does not entitle them to seek or obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996), and Defendants further waive any rights to attorneys' fees that may arise under said provision of law.

### Definitions

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

A. "Defendants" means Irwin F. Kern, IV, a.k.a. "Frank Kern", individually and d/b/a Instant Internet Empires, K4 Global Publishing, Inc., Kern Family Enterprises, LLC, as well as their assigns, agents, servants, employees, or affiliates, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, unless specified otherwise.

B. "Asset" or "Assets" means any legal or equitable interest in, right to, or claim to

any real or personal property of any Defendant, or held for the benefit of any Defendant, including, but not limited to “goods,” “instruments,” “equipment,” “fixtures,” “general intangibles,” “inventory,” “checks,” or “notes” (as these terms are defined in the Uniform Commercial Code), and all chattels, leaseholds, contracts, mails or other deliveries, shares of stock, lists of consumers, accounts, credits, receivables, and cash, wherever located.

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

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

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

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

## **CONDUCT PROHIBITIONS**

### **I.**

#### **PROHIBITION AGAINST FALSE OR MISLEADING STATEMENTS**

**IT IS THEREFORE ORDERED** that, in connection with the advertising, promotion, offering for sale, or sale of any business opportunity or business development aid, Defendants and any person or entity in active concert or participation with them who receive actual notice of the Order by personal service or otherwise are hereby restrained and enjoined from making any express or implied representation or omission of material fact that is false or misleading, in any manner, orally or in writing, to any consumer, including, but not limited to, the following:

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

### **II.**

#### **INJUNCTION AGAINST PROMOTING A CHAIN MARKETING SCHEME**

**IT IS FURTHER ORDERED** that the Defendants and any person or entity in active concert or participation with them who receive actual notice of the Order by personal service or otherwise are hereby restrained and enjoined from engaging, participating or assisting in any manner or capacity whatsoever, directly, or in concert with others, individually or through any business entity or other device, in the sale, advertisement, promotion, marketing, offering, or provision of any chain marketing scheme.

### III.

#### **INJUNCTION AGAINST PROVIDING OTHERS WITH THE MEANS AND INSTRUMENTALITIES TO VIOLATE SECTION 5 OF THE FTC ACT**

**IT IS FURTHER ORDERED** that in connection with the offering for sale or sale of any business opportunity or business development aid, Defendants are hereby restrained and enjoined from providing to others the means and instrumentalities with which to make, expressly or by implication, orally or in writing, any false or misleading statement or representation of material fact, including, but not limited to the following:

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

### IV.

#### **MONITORING COMPLIANCE OF SALES PERSONNEL**

**IT IS FURTHER ORDERED** that in connection with the offering for sale or sale of any business opportunity or business development aid, Defendants are permanently enjoined and restrained from:

- A. Failing to take reasonable steps sufficient to monitor and ensure that all of Defendants' sales personnel, including agents, representatives, employees, or independent contractors, comply with Paragraphs I, II, and III of this Order. Reasonable steps shall include, at a minimum, establishing and maintaining a compliance program which includes spot, blind testing of the oral representations made by any representative or independent contractor; spot checking

of consumers to ensure that no misrepresentations were made; and ascertaining the number and nature of any consumer complaints concerning any marketing material used by Defendants or the failure of any product sold by Defendants to meet any representation made in any marketing material used by Defendants. Defendants shall, for a period of five (5) years, submit to the Commission, on an annual basis, no later than fifteen (15) days after the anniversary of the date of entry of this Order, a summary report indicating their efforts to comply with the requirements of this Paragraph. These annual reports shall be submitted to the Commission's Associate Director for Marketing Practices at the address listed in Paragraph XI of this Order.

B. Failing promptly to investigate any consumer complaint concerning any marketing material used by Defendants or the failure of any product sold by Defendants to meet any representation made in any marketing material used by Defendants received by Defendants, their successors, assigns, officers, agents, servants, employees and distributors, and those persons in active concert or participation with them who receive actual notice of this Order and promptly to notify the consumer of the proposed resolution of the complaint and the reason therefore.

**V.**

**REDRESS AND OTHER EQUITABLE RELIEF**

**IT IS FURTHER ORDERED** that,

A. Judgment is entered jointly and severally against Defendants in the amount of \$634,222.45, which represents the Defendants' total sales revenue from any product known as "Instant Internet Empires" as stated in the affidavit of Defendant Irwin F. Kern, IV dated June 23, 2003 and submitted to the Commission; Defendants shall pay the Commission \$247,275.32, on or before the fifth (5<sup>th</sup>) business day following the date of this Order.

B. Upon timely making the payment provided in this Paragraph, the remainder of the judgment shall be suspended.

C. All funds released pursuant to this Final Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to consumer redress and any attendant expenses for the administration of any redress fund.

In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may pay any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the defendants practices as alleged in the complaint. Any funds not used for such equitable relief shall be deposited into the United States Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Paragraph.

## VI.

### RIGHT TO REOPEN

**IT IS FURTHER ORDERED** that,

A. The Commission's agreement to this Final Order is expressly premised upon the financial condition of Defendants as represented in the sworn financial statements provided to the Commission and dated May 15, 2003 and any amendments thereto submitted to the Commission through June 20, 2003 which include material information upon which the Commission relied in negotiating and consenting to this Final Order. Defendants state that those financial statements and any amendments thereto are complete and accurate representations of their financial conditions as of June 20, 2003. If, upon motion by the Commission, this Court should find that any Defendant made a material misrepresentation or

omitted material information concerning their respective financial condition, then the Court shall enter a modified judgment holding that any such defendant is liable to the Commission in the amount of \$634,222.45, which Defendants and the Commission stipulate, for the sole purpose of enforcement of this provision of the Order, is the amount of consumer injury caused by Defendants. This amount, less the sum of payments made by all Defendants to this action, shall become immediately due and payable by any such defendant, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance.

B. Defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true for the sole purpose of any subsequent litigation filed by the Commission to enforce its rights pursuant to this Order, including, but not limited to, a nondischargeability complaint filed in any bankruptcy proceeding.

C. Any proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the FTC may initiate to enforce this Order.

## VII.

### LIFTING OF ASSET FREEZE

**IT IS FURTHER ORDERED** that the freeze against the assets of Defendants pursuant to Section IV of the TRO entered by this Court on May 8, 2003 as amended by the Order entered by this Court on May 22, 2003 and any subsequent Order of this Court, shall be lifted for the sole purpose of transferring funds to the FTC pursuant to Paragraph V of this Final Order, and thereafter dissolved upon transfer of all such funds.

## VIII.

## **TRANSFER OF CUSTOMER LISTS**

**IT IS FURTHER ORDERED** that the Defendants are hereby permanently restrained and enjoined from selling, renting, leasing, transferring or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to any Defendant for any product known as "Instant Internet Empires" at any time prior to entry of this Order, in connection with the advertising, promotion, offering for sale, or sale of any business opportunity or business development aid (including but not limited to Instant Internet Empires).

### **IX.**

#### **ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**

**IT IS FURTHER ORDERED** that within five (5) business days of receipt of this Order as entered by the Court, each Defendant shall submit to the Commission a truthful sworn statement, in the form shown on Appendix A, that shall acknowledge receipt of this Order.

### **X.**

#### **DISTRIBUTION OF ORDER BY DEFENDANT**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Order, Defendants shall:

A. Provide a copy of the summary of this Order attached hereto as Appendix B to, and obtain a signed and dated acknowledgment of receipt of same from, each officer and director, each individual serving in a management capacity, all employees and third-party contractors involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, within ten (10)

business days after receipt of this Order, and thereafter within three (3) business days of employing any such person, for any business that any Defendant directly or indirectly manages, controls, or has a majority ownership interest in, that is engaged in the sale or distribution of any business opportunity or business development aid, or assisting others engaged in these activities;

B. Maintain for a period of three (3) years after creation, and upon reasonable notice make available to representatives of the Commission, the original signed and dated acknowledgments of receipt of copies of the summary of this Order, as required in Subsection A of this Paragraph; and

C. Provide a copy of this Order to any person or entity to whom Defendants have sold or provided the "Instant Internet Empires" product or any product contained therein.

## XI.

### COMPLIANCE REPORTING BY DEFENDANTS

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

A. For a period of five (5) years after the date of entry of this Order, the Defendants shall notify the Commission in writing of the following:

1. Any changes in the residence, mailing addresses, and telephone numbers of any Defendant, within ten (10) days of the date of such change;

2. Any changes in the employment status (including self-employment) of any Defendant within ten (10) days of such change. Such notice shall include the name and address of each business that the Defendant is affiliated with or employed by, a statement of the nature of the business, and a statement of the Defendant's duties and responsibilities in connection with the business or employment; and

3. Any proposed change in the structure of any business entity that any Defendant directly or indirectly manages, controls, or has a majority ownership interest in, such as creation, incorporation, dissolution, assignment, sale, creation or dissolution of subsidiaries, or any other change that may affect compliance obligations arising out of this Order, thirty (30) days prior to the effective date of any such change, or if the Defendants learn of any such change less than thirty (30) days prior to the effective date of any such change, as soon as is practicable, but in no event later than forty-eight (48) hours prior to the effective date of any such change;

B. One hundred eighty (180) days after the date of entry of this Order, Defendants shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which the Defendants have complied and are complying with this Order. This report shall include, but not be limited to:

1. Defendants' then current residence addresses, mailing addresses, and telephone numbers;

2. Defendants' then current employment and business addresses and telephone numbers, a description of the business activities of each such employer or business, and each Defendant's title and responsibilities for each such employer or business;

3. A copy of each acknowledgment of receipts of this Order obtained by the Defendants pursuant to Paragraph X; and

4. A statement describing the manner in which the Defendants have complied and are complying with Paragraphs I, II, III, and IV of this Order;

C. Upon written request by a representative of the Commission, Defendants shall submit additional written reports (under oath, if requested) and produce documents on twenty

