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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

_____)	CV-
FEDERAL TRADE COMMISSION,)	
Plaintiff,)	TEMPORARY RESTRAINING ORDER
v.)	WITH ORDER ALLOWING IMMEDIATE
WAZZU CORPORATION,)	ACCESS AND ORDER TO SHOW CAUSE
a corporation,)	WHY A PRELIMINARY INJUNCTION
JAYME AMIRIE,)	SHOULD NOT ISSUE
an individual,)	
KENNETH GHARIB,)	
an individual, and)	
KIRK WALDFOGEL,)	
an individual,)	
Defendants.)	
_____)	

Plaintiff Federal Trade Commission ("Commission"), pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), filed a complaint for permanent injunction and other relief, including consumer redress, and applied *ex parte* for a temporary restraining order, including an order allowing immediate access to the Defendants' business premises and records

1 and an order to show cause why a preliminary injunction should not
2 issue pursuant to Rule 65 of the Federal Rules of Civil Procedure.
3 The Court has considered the pleadings, declarations, exhibits,
4 and memoranda filed in support of the Commission's application and
5 makes the following findings of fact:

6 1. This Court has jurisdiction of the subject matter of
7 this case, and there is good cause to believe it will have
8 jurisdiction over all parties.

9 2. There is good cause to believe that Defendants Wazzu
10 Corporation, Jayme Amirie, Kenneth Gharib, and Kirk Waldfogel have
11 engaged in and are likely to engage in acts and practices that
12 violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and that
13 the Commission is likely to prevail on the merits of this action.

14 3. There is good cause to believe that immediate and
15 irreparable harm will result from the Defendants' ongoing
16 violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),
17 unless the Defendants are restrained and enjoined by Order of this
18 Court, and that in accordance with Local Rule 7.18.2 the interest
19 of justice therefore requires that the Commission's Application be
20 heard without prior notice to the Defendants.

21 4. There is good cause to believe that immediate and
22 irreparable damage to the Court's ability to grant effective final
23 relief for consumers in the form of monetary redress or
24 restitution will occur from the disposition, destruction,
25 alteration or concealment by the Defendants of their records
26 unless the Defendants are immediately restrained and enjoined by
27 Order of this Court, and unless immediate access to Defendants'
28 business premises is allowed for the purpose of inspecting and

1 copying Defendants' documents and records. There is thus good
2 cause for issuing this Order without prior notice to the
3 Defendants of the Commission's application, pursuant to Federal
4 Rule of Civil Procedure 65(b) and Local Rule 7.18.2.

5 5. Weighing the equities and considering the Commission's
6 likelihood of success in its causes of action, this Temporary
7 Restraining Order is in the public interest.

8 6. No security is required of any agency of the United
9 States for issuance of a restraining order. Fed. R. Civ. P.
10 65(c).

11 ORDER

12 Definitions

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

21 B. "Internet services" means any services related to
22 providing access to the Internet, including the provision of e-
23 mail or e-mail to fax service, or creating, designing or hosting
24 any advertisements or pages on the World Wide Web.

25 C. "Defendants" means Defendants Wazzu Corporation
26 ("Wazzu"), Amirie, Gharib, and Waldfogel, and their agents,
27 servants, employees, attorneys, and all persons or entities
28 directly or indirectly under the control of any of them, and all

1 other persons or entities in active concert or participation with
2 any of them who receive actual notice of this Order by personal
3 service or otherwise, and each such person.

4
5 **I.**

6 **PROHIBITED BUSINESS ACTIVITIES**

7 **IT IS THEREFORE ORDERED** that Defendants Wazzu Corporation,
8 Amirie, Gharib, and Waldfogel, and their agents, servants,
9 employees, attorneys, and all persons or entities directly or
10 indirectly under the control of any of them, and all other persons
11 or entities in active concert or participation with any of them
12 who receive actual notice of this Order by personal service or
13 otherwise, and each such person, in connection with the sale,
14 advertising, offering for sale, or marketing of Internet services,
15 are hereby temporarily restrained and enjoined from:

16 A. Falsely representing, expressly or by implication, that
17 consumers will not be charged for Internet services before the end
18 of a purportedly free trial period;

19 B. Falsely representing, expressly or by implication, that
20 consumers who cancel within a free trial period will not be
21 charged;

22 C. Falsely representing, expressly or by implication, that
23 consumers will not be assessed any charges for Internet services
24 until thirty days after Defendants have provided consumers with
25 information that will enable consumers to access and review the
26 website designed and hosted by Defendants;

1 D. Causing any consumer to be charged or billed for
2 Internet services before the expiration of any free trial period
3 Defendants have purported to offer;

4 E. Causing any consumer to be charged or billed for
5 Internet services without having obtained the consumer's explicit
6 authorization;

7 F. Failing to return, credit or otherwise refund any
8 payment for Internet services that is received after the date this
9 Order is served on Defendant Wazzu from any consumer who agreed,
10 prior to service of this Order on Wazzu the issuance of this
11 Order, to accept Defendant Wazzu's Internet services, and who has
12 notified Wazzu of an intent or desire to cancel such services
13 before the consumer received access to, or notice of the contents
14 of, any website designed by Wazzu for the consumer, or before the
15 expiration of thirty days following the date on which the consumer
16 received access to, or notice of the contents of, any website
17 designed by Wazzu for the consumer;

18 G. Falsely representing, expressly or by implication, that
19 any consumer is legally obligated to pay any charge for Internet
20 services;

21 H. Falsely representing any other fact that is likely to
22 affect a consumer's choice of whether to accept or purchase
23 Internet services.

24
25 **II.**

26 **PRESERVATION OF RECORDS**

27 **IT IS FURTHER ORDERED** that Defendants Wazzu, Amirie, Gharib
28 and Waldfogel, and their agents, servants, employees, attorneys,

1 and all persons or entities directly or indirectly under the
2 control of any of them, and all other persons or entities in
3 active concert or participation with any of them who receive
4 actual notice of this Order by personal service or otherwise, and
5 each such person, are hereby temporarily restrained and enjoined
6 from destroying, erasing, mutilating, concealing, altering,
7 transferring or otherwise disposing of, in any manner, directly or
8 indirectly, any documents that relate to the business practices or
9 business or personal finances of Defendant Wazzu, Defendant
10 Amirie, Defendant Gharib, or Defendant Waldfogel.

11
12 **III.**

13 **RECORD KEEPING/BUSINESS OPERATIONS**

14 **IT IS FURTHER ORDERED** that Defendants Wazzu, Amirie, Gharib
15 and Waldfogel are each hereby temporarily restrained and enjoined
16 from:

17 A. Failing to make and keep an accurate accounting of all
18 assets, liabilities and equity, which accounting shall include the
19 creation and retention of documents that, in reasonable detail,
20 accurately, fairly, and completely reflect their incomes,
21 disbursements, transactions, and use of money, beginning
22 immediately upon service or actual notice of this Order; and

23 B. Creating, operating, or exercising any control over any
24 business entity, including any partnership, limited partnership,
25 joint venture, sole proprietorship or corporation, without first
26 serving on counsel for the Commission a written statement
27 disclosing: (1) the name of the business entity; (2) the address
28 and telephone number of the business entity; (3) the names of the

1 business entity's officers, directors, principals, managers and
2 employees; and (4) a detailed description of the business entity's
3 intended activities.

4
5 **IV.**

6 **ACCESS TO Defendants' BUSINESS PREMISES AND RECORDS**

7 **IT IS FURTHER ORDERED** that Defendants Wazzu, Amirie, Gharib,
8 and Waldfogel, and their agents, servants, employees, attorneys,
9 and all persons or entities directly or indirectly under the
10 control of any of them, and all other persons or entities in
11 active concert or participation with any of them who receive
12 actual notice of this Order by personal service or otherwise, and
13 each such person, shall immediately identify and allow the
14 Commission's representatives immediate access to all premises
15 where Wazzu conducts business or where documents related to such
16 business are stored or maintained, including without limitation
17 premises located at 10175 Slater Avenue, Fountain Valley
18 California. The purpose of this access shall be to inspect and
19 copy any and all material that may be relevant to this action,
20 including without limitation documents, books, records, accounts,
21 computer data, tapes, and any materials relating to any
22 Defendant's assets. In providing such access, the Defendants and
23 their employees shall provide any and all passwords and other
24 assistance necessary to obtain access to any computer records, and
25 other data compilations from which information can be obtained and
26 translated, if necessary, through detection devices into
27 reasonably usable form. Defendants and their employees shall
28 also, upon request, provide assistance and support to the

1 Commission's representatives as necessary to allow them to
2 efficiently copy to disk, tape or other medium, in a non-
3 proprietary format, any and all audio recordings and digital audio
4 files, which are in the Defendants' custody, control or
5 possession, that are in any way related to telephone conversations
6 to which prospective customers of Internet services are a party,
7 including the type of recordings that are played for consumers who
8 call to dispute charges from Defendant Wazzu. The Commission's
9 representatives may remove documents from such premises so they
10 may be inspected or copied, but shall not, without good cause
11 shown, retain any such documents beyond the close of the third
12 business day after removing them. The Commission's
13 representatives may also photograph and videotape the inside and
14 outside of all premises to which they are permitted access by this
15 Order, and all documents and other items found on such premises.
16 Law enforcement personnel, including the United States Marshal
17 Service, may accompany the Commission's representatives in
18 implementing the provisions of this Paragraph in Order to keep the
19 peace and maintain the security of the Commission's
20 representatives. No one shall interfere with the Commission's
21 inspection of the Defendants' documents. The Commission's access
22 to Defendants' documents pursuant to this provision shall not
23 provide grounds for any Defendant to object to any subsequent
24 request for documents served by the Commission pursuant to Rule 34
25 of the Federal Rules of Civil Procedure. Provided, however, that
26 the Commission shall not subsequently request that any Defendant
27 produce any document that the Commission copied pursuant to this
28 provision.

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V.

SERVICE OF ORDER BY Defendants

IT IS FURTHER ORDERED that Defendants Wazzu, Amirie, Gharib and Waldfogel shall immediately provide a copy of this Order to each affiliate, partner, division, sales entity, successor, assign, employee, agent, attorney, and representative, including each independent telemarketing sales room and each billing agent or billing aggregator used by the Defendants in the sale of or billing for their services, and shall, within ten (10) days from the date of entry of this Order, serve upon the Commission a sworn statement that they have complied with this provision of the Order, which statement shall include the names and street addresses of each such person or entity who received a copy of the Order.

VI.

CONSUMER CREDIT REPORTS

IT IS FURTHER ORDERED that pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), any consumer reporting agency served with this Order shall promptly furnish consumer reports as requested concerning Defendant Wazzu, Defendant Amirie, Defendant Gharib, or Defendant Waldfogel to the Commission.

VII.

DURATION OF TEMPORARY RESTRAINING ORDER

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire on _____, 1999, unless

1 within such time, the Order, for good cause shown, is extended for
2 an additional period not to exceed ten days, or unless it is
3 further extended with the consent of the parties.
4

5 **VIII.**

6 **ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION**

7 **IT IS FURTHER ORDERED**, pursuant to Federal Rule of Civil
8 Procedure 65(b) and Local Rule 7.17, that Defendants Wazzu,
9 Amirie, Gharib and Waldfogel shall appear before this Court on the
10 ____ day of _____, 1999, at _____ o'clock ____m.,
11 to show cause, if there is any, why this Court should not enter a
12 preliminary injunction, pending final ruling on the Complaint
13 against Defendants Wazzu, Amirie, Gharib, and Waldfogel, enjoining
14 them from further violations of Section 5(a) of the Federal Trade
15 Commission Act, 15 U.S.C. § 45(a) and imposing such additional
16 relief as may be appropriate.
17

18 **IX.**

19 **EXAMINATION OF WITNESS**

20 **IT IS FURTHER ORDERED** that there will be no direct
21 examination of witnesses at the preliminary injunction hearing in
22 this matter.
23

24 **X.**

25 **SERVICE OF PLEADINGS**

26 **IT IS FURTHER ORDERED** that Defendants, in responding to this
27 Court's Order to Show Cause, shall serve all memoranda,
28 declarations and other evidence on which they intend to rely not

1 later than 4:00 p.m. (PT) of the fourth business day prior to the
2 preliminary injunction hearing set in this matter. Service on the
3 Commission shall be performed by personal delivery to counsel for
4 the Federal Trade Commission or their designated agent at 10877
5 Wilshire Blvd., Suite 700, Los Angeles, California 90024. The
6 Commission may serve and file a supplemental memorandum of points
7 and authorities based on evidence discovered subsequent to the
8 filing of its Complaint by no later than 4:00 p.m. (PT) of the
9 fourth business day prior to the preliminary injunction hearing,
10 and may serve and file a reply to the Defendant's opposition by no
11 later than 4:00 p.m. on the day prior to the preliminary
12 injunction hearing; service may be made by delivering a copy to
13 the Defendants' business address at 10175 Slater Avenue in
14 Fountain Valley, California.

15
16 **XI.**

17 **RETENTION OF JURISDICTION**

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

20 / / /

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

3
4 SO ORDERED, this _____ day of _____, 1999,
5 at _____ a.m./p.m.

6
7 _____
8 United States District Judge

9 Presented by:

10 _____
11 JOHN D. JACOBS
12 TANYA NATHAN
13 Federal Trade Commission
14 10877 Wilshire Boulevard, Suite 700
15 Los Angeles, California 90024
16 (310) 824-4360 or 824-4317 (ph.)
17 (310) 824-4380 (fax)

18 Attorneys for Plaintiff
19 FEDERAL TRADE COMMISSION
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