



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

FEDERAL TRADE COMMISSION,

Case No. 00-6462-CIV-FERGUSON

Plaintiff,

v.

FEDERAL DATA SERVICE, INC.,
STEPHEN G. TATE, and
SPENCER GOLDEN,

Defendants.

**EX PARTE TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE
WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

Plaintiff Federal Trade Commission ("Commission") has filed a Complaint seeking a permanent injunction and other relief, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and an ex parte motion for a temporary restraining order with equitable relief, pursuant to Rule 65 of the Federal Rules of Civil Procedure and S.D. Fla. Local Rule 7.1.E. This Court has considered the Complaint and the memoranda, declarations and exhibits filed in support of the Commission's motion, and now being advised in the premises, finds that:

1. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe that it will have jurisdiction over all of the parties;
2. There is good cause to believe that defendants Federal Data Service, Inc., Stephen Tate, and Spencer Golden, have engaged and are likely to continue to engage in acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and that the Commission is therefore likely to prevail on the merits of this action;

3. There is good cause to believe that immediate and irreparable harm will result from Defendants' ongoing violations of Section 5(a) of the FTC Act unless Defendants are restrained and enjoined by Order of this Court;

4. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief in the form of consumer redress will occur from the sale, transfer, assignment, 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, and that in accordance with Fed. R. Civ. P. 65(b), the interest of justice therefore requires that the Commission's motion be heard ex parte without prior notice to Defendants. There is thus good cause for relieving the Commission of the duty to provide Defendants with prior notice of the Commission's motion;

5. Good cause exists to appoint a temporary receiver over corporate defendant, Federal Data Service, Inc.;

6. Weighing the equities and considering the Commission's likelihood of ultimate success, this Temporary Restraining Order and other equitable relief is in the public interest; and

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

DEFINITIONS

For purposes of this Temporary Restraining Order, the following definitions shall apply:

1. "Assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, 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 chattel, leaseholds, contracts, mail or other deliveries, lists of consumer names, shares of stock, accounts, credits, receivables, and cash, wherever located.

2. "Defendants" means Federal Data Service, Inc., Stephen G. Tate, and Spencer Golden, whether acting directly or through any corporation, subsidiary, division, or other device.

3. "Employment goods and services" means any item, product, good or service represented to assist consumers in obtaining employment, including preparation or other training for any employment examination.

ORDER

PROHIBITED BUSINESS ACTIVITIES

I. IT IS THEREFORE ORDERED that Defendants and any entity through which they do business, and their successors, assigns, officers, agents, servants, employees, and those other persons 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 making or assisting others in making, directly or by implication, any false or misleading oral or written representation in connection with the advertising, promotion, offering for sale, or sale of employment goods or services, including but not limited to:

A. Misrepresenting that postal or government wildlife positions for which little or no experience is required are currently available in the geographic areas where Defendants place their classified advertisements;

B. Misrepresenting that consumers who purchase Defendants' materials are likely to obtain permanent postal or government wildlife positions for which little or no experience is required;

C. Misrepresenting the salaries for postal or government wildlife jobs;

D. Misrepresenting that Defendants pay refunds to each consumer who purchases their materials and does not obtain a job after applying in good faith;

E. Misrepresenting that consumers have purchased or agreed to purchase goods or services from Defendants, and therefore owe money to Defendants;

F. Charging or debiting consumers' credit card, debit card or checking accounts without consumers' authorization;

G. Misrepresenting that consumers can apply for postal or government wildlife jobs by purchasing Defendants' materials;

H. Misrepresenting the qualifications for postal or government wildlife jobs;

I. Misrepresenting the procedures or testing requirements to apply for postal or government wildlife jobs; and

J. Misrepresenting any other material fact regarding Defendants' employment goods or services, or employment with the U.S. Postal Service or Federal or any state government.

ASSET FREEZE

II. IT IS FURTHER ORDERED that:

A. Defendants and any entity through which they do business, and their successors, assigns, officers, agents, servants, employees, and those other persons 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:

1. Transferring, encumbering, selling, concealing, pledging, hypothecating, assigning, spending, withdrawing, disbursing, conveying, gifting, dissipating, or otherwise disposing of any assets that are (1) owned, controlled by, held for the benefit of, or in trust by or for, any Defendant, in whole or in part; (2) in the actual or constructive possession of any Defendant; or (3) owned, controlled by, in the actual or constructive possession of, in trust by or for, or otherwise held for the benefit of, any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant;
2. Opening or causing to be opened any safe deposit boxes titled in the name of any Defendant, individually or jointly, or subject to access by any Defendant; and
3. Incurring charges or cash advances on any credit or debit card issued in the name, individually or jointly, of any Defendant;

B. The assets affected by this Paragraph shall include both existing assets and assets acquired after issuance of this Order, including but not limited to those acquired by loan or gift. Each Defendant shall hold and account for such assets received by them after service of this Order. Each Defendant shall provide copies of all monthly bank statements or other statements as the Commission may request to monitor Defendants' compliance with this provision.

C. Defendants Stephen Tate and Spencer Golden may file a motion with the Court for the release of funds from their individual personal assets for the payment of reasonable and necessary living expenses, and attorneys' fees. *Provided, however*, that no funds shall be released to any individual defendant until that defendant has complied fully with the reporting requirements set forth in Paragraph IV below. *Provided further*, that, notwithstanding the

foregoing, defendants Stephen Tate and Spencer Golden may pay from their cash on hand reasonable, usual, ordinary, and necessary living expenses, not to exceed \$1,000 each, prior to the submission of the sworn financial statement required by Paragraph IV below.

RETENTION OF ASSETS AND DOCUMENTS BY THIRD PARTIES

III. IT IS FURTHER ORDERED that any financial or brokerage institution, escrow agent, trustee, title company, commodity trading company, business entity, or person that holds, controls or maintains accounts or assets of any Defendant, or has held, controlled or maintained any account or asset of any Defendant at any time since June 1, 1997 shall:

A. Hold, retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, gift, or other disposal of any assets held by or on behalf of any Defendant, in whole or in part, except as directed in writing by the Commission or the Temporary Receiver or by further order of this Court;

B. Deny access to anyone other than the Commission and the Temporary Receiver to any safe deposit box titled in the name of any Defendant, individually or jointly, or subject to access by any Defendant;

C. Provide the Commission, within five business days of service 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 such account or a description of the nature and value of such asset as of the close of business on the day on which this Order is served;
3. the identification of any safe deposit box that is (a) either titled in the name, individually or jointly, of any Defendant, or (b) is subject to access by any Defendant; and
4. if an account, asset or safe deposit box has been closed or removed, (a) the date closed or removed, (b) the balance on such date, and (c) the name of the person or entity to whom such asset or account was remitted; and

D. The Commission is granted leave, pursuant to Fed. R. Civ. P. 45, to subpoena documents immediately from any such financial institution, account custodian, or other entity concerning the nature, location, status, and extent of Defendants' assets, and compliance with this Order, and such financial institution, account custodian or other entity shall respond to such subpoena within five business days after service.

The assets and funds affected by this Paragraph shall include both existing assets and assets acquired after issuance of this Order.

FINANCIAL REPORTS

IV. IT IS FURTHER ORDERED that, within three business days after service of this Order, each Defendant shall prepare and serve on the Commission a complete and accurate individual or corporate financial statement, as the case may be, signed under penalty of perjury, on the forms attached to this Order as Attachments A and B, respectively.

REPATRIATION OF FOREIGN ASSETS

V. IT IS FURTHER ORDERED that, within five business days following the service of this Order, Defendants shall:

A. Provide the Commission with a full accounting of all assets, accounts or documents outside of the territory of the United States which are held either: (1) by them; (2) for their benefit; (3) in trust by or for them, individually or jointly; or (4) under their direct or indirect control, individually or jointly;

B. transfer to the territory of the United States all assets, accounts or documents in foreign countries held either: (1) by them; (2) for their benefit; (3) in trust by or for them, individually or jointly; or (4) under their direct or indirect control, individually or jointly;

C. hold and retain all repatriated assets, accounts or document and prevent any transfer, disposition, or dissipation whatsoever of any such assets or documents except as required by Paragraph II of this Order; and

D. provide the Commission access to Defendants' records and documents held by financial institutions outside the territorial United States, by signing the Consent to Release of Financial Records attached to this Order as Attachment C.

APPOINTMENT OF TEMPORARY RECEIVER

VI. IT IS FURTHER ORDERED that Gerald B. Wald, Esq. is hereby appointed temporary receiver, with the full power of an equity receiver, for defendant Federal Data Service, Inc., and its subsidiaries and affiliates (each a "receivership defendant," and collectively the "receivership defendants"), with directions and authority to:

A. Assume full control of the receivership defendants and all power of the receivership defendants' directors, officers and managers, and remove defendants Stephen Tate and Spencer Golden, and any other officer, independent contractor, employee, attorney or agent of the receivership defendants, from control or management of the receivership defendants;

B. Take immediate custody, control and possession of all properties, premises, assets and documents of, in the possession, or under the control of, any receivership defendant, wherever situated, including but not limited to 5200 and 5210 Coconut Creek Parkway, Margate, Florida. The receiver shall have full power to divert mail and to sue for, collect, receive and take possession of (1) all assets and documents of the receivership defendants and members of the public whose interests are now held by or are under the direction, possession, custody, or control of any receivership defendant, and (2) all sums of money now or hereafter due and owing to any receivership defendant;

C. Perform all acts necessary to conserve, hold, manage and preserve the value of all such assets;

D. Hold, preserve and administer the business of the receivership defendants until further order of this Court, with full authority to perform all acts necessary or incidental thereto;

E. Take such actions and enter into such agreements in connection with the administration of the receivership defendants as the temporary receiver deems necessary, including but not limited to employment of personnel of the temporary receiver's choice to assist, advise and represent the temporary receiver;

F. Make payments and disbursements from the receivership estate that the temporary receiver deems necessary to secure or preserve the receivership defendants' assets or to carry out the temporary receiver's mandate under this Order;

G. Institute, prosecute and defend, compromise, intervene in or become party to such actions or proceedings in state, federal or foreign court that the temporary receiver deems necessary to collect, recover, protect, maintain, or preserve the value of the assets of the receivership defendants or to carry out the temporary receiver's mandate under this order.

H. Defend, compromise or otherwise dispose of any actions or proceedings instituted against the temporary receiver or the receivership defendants, whether now pending or hereinafter filed, that the temporary receiver deems necessary to preserve the assets of the receivership defendants or to carry out the temporary receiver's mandate under this order;

I. Take all steps the temporary receiver deems necessary to secure the business premises of the receivership defendants, including but not limited to: (1) completing a written inventory of all receivership assets; (2) obtaining pertinent information from all employees and other agents of the receivership defendants, such as the name, home address, social security number, job description, method of compensation, accrued and unpaid commission and compensation of each employee or agent; (3) changing the locks and disconnecting any computer modems or other means of access to the computer or other documents maintained at that location; or (4) requiring any persons present on the premises at the time this Order is served to leave the premises, to provide the temporary receiver with proof of identification, and to demonstrate to the temporary receiver's satisfaction that such persons are not removing from the premises any of the receivership defendants' documents or assets;

J. Obtain, by presentation of this Order, tangible and intangible assets as well as information in the custody or control of any person, firm, or entity sufficient to identify the accounts, employees, properties, or other assets or obligations of the receivership defendants;

K. Issue subpoenas to obtain documents pertaining to the receivership, conduct discovery in this action on behalf of the receivership estate, attend any deposition noticed by any party to this action, and ask any question of any deponent which, in the receiver's opinion, is pertinent to the receivership estate;

L. Allow representatives of the Commission and Defendants reasonable access to inspect the receivership defendants' books, records, accounts, premises and other property, wherever located; and

M. Make periodic reports, observations, and recommendations to this Court, as the temporary receiver deems appropriate.

COMPENSATION FOR RECEIVER

VII. IT IS FURTHER ORDERED that the temporary receiver and all personnel hired by the temporary receiver shall be entitled to reasonable compensation for the services they render to the receivership estate, from the assets now held by, in the possession or control of, or which may be received by the receivership defendants. The temporary receiver shall file with the Court and serve on the parties a request for payment, outlining the services rendered and the related fees and expenses. The temporary receiver shall not increase his fee rate billed to the receivership estate without prior approval of the Court.

RECEIVER'S BOND

VIII. IT IS FURTHER ORDERED that the temporary receiver shall file with the clerk of this Court a bond in the sum of \$ 10,000.00, conditioned that the temporary receiver will well and truly perform the duties of the office and duly account for all money and property that he or she marshals. The temporary receiver serves as an officer of this Court solely in a representative capacity and is not personally liable for any actions taken in conformity with the duties and responsibilities set forth herein or pursuant to any statute, regulation or other legal authority.

DELIVERY OF RECEIVERSHIP PROPERTY

IX. IT IS FURTHER ORDERED that Defendants and any other person or entity served with a copy of this Order, shall immediately deliver or transfer possession, custody and control of the following to the temporary receiver:

- A. All assets of the receivership defendants;
- B. All documents and records relating to the assets of the receivership defendants, including but not limited to financial and accounting records, balance sheets, income statements, bank records and title documents;
- C. All keys, lock combinations, passwords or codes required to open, gain access to, or secure any of the receivership defendants' assets or documents, including but not limited to access to their business premises, computer systems or files, and bank accounts; and

D. Information identifying the assets, employees or obligations of the receivership defendants.

STAY OF ACTIONS

X. IT IS FURTHER ORDERED that, except by leave of this Court and except for any federal or state law enforcement or regulatory authority action against the receivership defendants, during the pendency of the receivership, Defendants and all other persons seeking to establish or enforce any claim, right or interest against or on behalf of any receivership defendant, be and hereby are stayed from:

A. Commencing, prosecuting, continuing or enforcing any suit against any receivership defendant, except that such actions may be filed to toll any applicable statute of limitations;

B. Commencing, prosecuting, continuing or enforcing any suit or proceeding in the name of or on behalf of any receivership defendant;

C. Accelerating the due date of any receivership defendants' obligation or claimed obligation; enforcing any lien upon, or taking, attempting to take or retaining possession of the receivership defendants' assets; attempting to foreclose, forfeit, alter, or terminate any interests of any receivership defendant, whether such acts are part of a judicial proceeding or otherwise;

D. Using self-help or executing or issuing any process to impound, take possession of, interfere with, create or enforce a lien upon any asset owned by or in the possession of any receivership defendant, the temporary receiver, or any agent appointed by the temporary receiver;

E. Committing any act to interfere with the temporary receiver's taking control, possession, or management of the receivership defendants and their assets and documents, or to interfere with the exclusive jurisdiction of this Court over the property and assets of the receivership defendants, including the filing by Defendants of a petition for relief for any receivership defendant under the United States Bankruptcy Code without leave of this Court.

COOPERATION WITH THE RECEIVER

XI. IT IS FURTHER ORDERED that Defendants, and any other person or entity served with a copy of this Order, shall not interfere with the temporary receiver's functions and shall fully cooperate with and assist the temporary receiver in accomplishing the purposes of the

receivership including the gathering and preserving of documents and assets. Defendants, acting personally or through others, shall not excuse debts owed to the receivership defendants, take, use or divert assets of the receivership defendants, or otherwise impair or dispose of the assets of the receivership defendants.

EXPEDITED DISCOVERY

XII. IT IS FURTHER ORDERED that the Commission is granted leave to conduct certain expedited discovery, and that in lieu of the time periods, notice provisions, and other requirements of Rules 26, 30, 34, and 45 of the Federal Rules of Civil Procedure, and the S.D. Fla. L.R. 26.1, expedited discovery as to parties and non-parties shall proceed as follows:

A. Pursuant to Fed. R. Civ. P. 30, the Commission may, upon two business days notice, take depositions concerning the nature, location, status, and extent of Defendants' assets and business records, and compliance with this Order. Such depositions may be taken Monday through Friday. Deposition transcripts that have not been signed by the witness may be used at the preliminary injunction hearing in this matter. *Provided that*, notwithstanding Fed. R. Civ. P. 30(a)(2), this Subparagraph shall not preclude any future depositions by the Commission. *Provided further*, that any deposition taken pursuant to this sub-paragraph shall be in addition to, and not subject to, the presumptive limits on depositions set forth in Fed. R. Civ. P. 30(a)(2)(A) and S.D. Fla. L.R. 26.1.

B. Pursuant to Fed. R. Civ. P. 34(b), Defendants shall produce all documents concerning the nature, location, status, and extant of Defendants' assets, business transactions and compliance with this Order requested by the Commission within two business days of receipt of such request.

RIGHT OF IMMEDIATE ACCESS

XIII. IT IS FURTHER ORDERED that Defendants, the temporary receiver and any other person served with a copy of this Order, shall permit the Commission's employees, agents, and assistants immediate access to Defendants' business premises and storage facilities, whether owned, controlled or used by any Defendant in whole or in part, including but not limited to the offices located at 5200 and 5210 Coconut Creek Parkway, Margate, Florida. The purpose of this access shall be to inspect, copy and inventory documents referring or relating to:

- A. advertising, marketing, or offering of employment or career services;
- B. any business relationship between Defendants and any other business entity;
- C. Defendants' financial status, including but not limited to, the nature or location of any bank account, safe deposit box, or other asset of any Defendant;
- D. any transaction, correspondence or other communication by or between any consumer and any Defendant or any Defendant's representatives, employees, agents, officers, servants, or assistants; and
- E. any action, correspondence or other communication by or between any law enforcement agency, consumer group, or Better Business Bureau and any Defendant or any Defendant's representatives, employees, agents, officers, servants, or assistants.

The Commission's representatives may remove original documents from Defendants' business premises to make photocopies, provided that the originals are returned within a reasonable period of time. Defendants shall provide Commission employees, agents and assistants with any necessary means of access to these documents, including but not limited to keys and lock combinations, computer access codes, and storage access information. Defendants are hereby enjoined and restrained from interfering with the Commission's right of access described herein.

RECORD KEEPING PROVISIONS

XIV. IT IS FURTHER ORDERED Defendants and any entity through which they do business, and their successors, assigns, officers, agents, servants, employees, and those other persons 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. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, any: books; records; audio or video tape recordings; computer tapes or discs or other computerized records; correspondence; forms; advertisements; brochures; manuals; customer lists; customer files; invoices; telephone records; scripts; postal receipts; appointment books; accounting data; ledgers; payroll records; banking records; personal and business canceled checks (fronts and backs); state or federal income or property tax returns; or

other documents of any kind in their possession, custody, or control that relate to the business practices or business or personal finances of any Defendant.

B. Failing to create and maintain books, records, bank statements, documents indicating title to real or personal property, and any other data which, in reasonable detail, accurately and fairly reflect their income and transactions and dispositions of their assets.

NOTICE TO EMPLOYEES

XV. IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each of their corporations, subsidiaries, affiliates, directors, officers, employees, agents, and independent contractors. Within ten business days after the date of service of this Order, Defendants shall serve on the Commission an affidavit identifying the names, titles, addresses, and telephone numbers of the persons and entities Defendants have served with a copy of this Order in compliance with this provision.

CREDIT REPORTS

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

ORDER TO SHOW CAUSE

XVII. IT IS FURTHER ORDERED that Defendants shall appear on **Monday, April 24, 2000, at 9:00 a.m.** at the United States Courthouse, **299 East Broward Blvd., Courtroom 207A, Ft. Lauderdale, Florida 33301** to show cause, if any there be, why this Court should not enter a preliminary injunction, pending final ruling on the complaint, against Defendants enjoining them from further violations of the Federal Trade Commission Act, continuing the freeze of their assets, and imposing such additional relief as may be appropriate.

SERVICE OF MEMORANDUM, EVIDENCE AND WITNESS LISTS

XVIII. IT IS FURTHER ORDERED that

A. Defendants shall file any answering affidavits, pleadings, or legal memoranda with the Court and serve the same on counsel for the Commission no later than three business days prior to the preliminary injunction hearing in this matter. The Commission may file

responsive or supplemental pleadings, materials, affidavits, or memoranda with the Court and serve the same on counsel for Defendants no later than one business day prior to the preliminary injunction hearing in this matter. *Provided* that service shall be performed by personal or overnight delivery or by facsimile, and documents shall be delivered so that they shall be received by the other parties no later than 4 p.m. (EDT) on the appropriate dates listed in this sub-paragraph.

B. Any party who desires to present live testimony at the preliminary injunction hearing in this matter shall file with this Court and serve on all opposing parties, no later than three business days prior to the preliminary injunction hearing in this matter, a witness list that shall include the name, address, and telephone number of any such witness, and either a summary of, or the witness' declaration revealing the substance of, such witness' expected testimony. *Provided* that service shall be performed by personal or overnight delivery or by facsimile, and documents shall be delivered so that they shall be received by the other parties no later than 4 p.m. (EDT) on the date listed in the previous sentence.

CORRESPONDENCE WITH PLAINTIFF

XIX. For the purposes of this Order, all service on and correspondence to the Commission shall be addressed to: Gregory A. Ashe, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room S-4302, Washington, DC 20580. Telephone: (202) 326-3719; Facsimile: (202) 326-2558.

SERVICE OF THIS ORDER

XX. IT IS FURTHER ORDERED that copies of this Order may be served by facsimile transmission, personal or overnight delivery, or U.S. Mail, by agents and employees of the Commission, temporary receiver or any state or federal law enforcement agency, on (1) Defendants, (2) any financial or brokerage institution, 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 June 1, 1997, or (3) any other person or entity that may be subject to any provision of this Order.

RETENTION OF JURISDICTION

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

SO ORDERED this 11th day of April, 2000 at 1350 #RS.



WILKIE D. FERGUSON, JR.
UNITED STATES DISTRICT JUDGE