

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

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FEDERAL TRADE COMMISSION,  
  
Plaintiff,

v.

JAMES D. THOMPSON and  
SUSAN B. GERMEK,

Defendants.  
\_\_\_\_\_

Case No. **03C 2541**

**JUDGE LINDBERG**

**MAGISTRATE JUDGE DENLOW**

**MEMORANDUM SUPPORTING PLAINTIFF'S *EX PARTE* MOTION FOR  
TEMPORARY RESTRAINING ORDER, OTHER EQUITABLE RELIEF, AND ORDER  
TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

**I. INTRODUCTION**

Plaintiff Federal Trade Commission ("FTC") seeks to halt an Internet auction fraud operation that has bilked hundreds of consumers out of tens of thousands of dollars. Defendants list items for sale on Internet auction Web sites such as eBay and Yahoo! Auctions. Defendants then accept money from "winning" bidders but fail to provide consumers with the purchased goods. Defendants' acts are basically theft.

To facilitate their fraud and hide their true identity, Defendants have used an array of auction accounts and identities, including identities stolen from innocent consumers. Assuming the identities of innocent consumers, Defendants have registered Internet auctions accounts and opened postal mail boxes and bank accounts to assist the fraud. The third parties whose identifying information was stolen by Defendants have been wrongly accused of defrauding

consumers, have had unauthorized charges placed on their credit cards and have had to spend considerable time undoing the actions taken with their misappropriated identities.

The FTC respectfully moves this Court *ex parte* for a temporary restraining order halting Defendants' deceptive and unfair practices, freezing Defendants' assets, granting expedited discovery and ordering Defendants to show cause why a preliminary injunction should not issue. Defendants' actions violate the FTC Act, 15 U.S.C. § 45, which prohibits unfair and deceptive acts or practices in or affecting commerce, and the FTC's Mail and Telephone Order Merchandise Rule, 16 C.F.R. Part 435. The evidence submitted with this motion, including sworn statements from 27 of Defendants' victims, police reports and information from Internet auction companies demonstrates that, unless they are enjoined by this Court, Defendants will likely continue to defraud consumers. Defendants' pattern of fraud indicates that they are likely to destroy or conceal assets and evidence if they receive advance notice of this action.

## **II. DEFENDANTS' DECEPTIVE BUSINESS PRACTICES**

Defendant James D. Thompson ("Thompson") has conducted Internet auction transactions since at least 1999.<sup>1</sup> Defendant Susan B. Germek ("Germek") began assisting Thompson in conducting Internet auction transactions in July 2002. Defendants, who both reside in the Chicago area, have conducted hundreds of Internet auction transactions using over 30

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<sup>1</sup> Internet auctions are conducted on Internet auction houses that facilitate online auctioning of goods and services. The typical online auction involves a seller who has registered electronically with an auction house. The seller must register by providing his or her name, address, phone number, e-mail address and a method of payment (commonly a credit card number). By paying a fee for each auction he or she conducts, the seller is authorized to advertise goods and services and conduct auctions of those goods and services via the auction house Web site. The auction fees are often charged on the credit card provided by the seller to the auction house at registration.

auction accounts. Often using auction accounts opened under the names of innocent consumers, Defendants have advertised items, accepted money from winning bidders and not sent the items. Defendants' actions have caused substantial injury both to consumers who paid Defendants for items and never received them and the third parties whose information was misappropriated for use in this scheme.

**A. Thompson's Auction Transactions from January 1999 through July 2002**

In early 1999, while living in Georgia, Thompson opened up an Internet auction account on eBay using the moniker "derek327723469." (PX 28 ¶¶ 4-6, Att. A pp. 2-3, Att K.) Thompson predominantly sold die cast replica race cars for between \$10 and \$100. (*Id.*, Att. B pp. 1-7.) In or about September 1999, Thompson began accepting money from the winning bidders of items he advertised and failing to deliver the items. (*Id.*, Att. A p. 3.) From November 1999 through October 2001, Thompson opened at least four additional Internet auction accounts on eBay using the monikers "dt72," "dt5741," "dtrm2005," and "sales30241." (*Id.*, Att. A pp. 4-11, Att. B pp. 7-12; PX 5.) Operating under these new identities, Thompson offered die cast cars and computer software for sale for generally between \$100 and \$300. (PX 28 ¶¶ 4-6, Att. B pp. 7-12; PX 5 ¶ 2.) Thompson again accepted money from winning bidders and failed to deliver the items. (PX 28 ¶¶ 4-6, Att. A pp. 5-11; PX 5 ¶¶ 5-8.)

In or about November 2001, Thompson moved to Chicago and continued to defraud consumers through Internet auction transactions. After moving to Chicago, Thompson answered an ad to be Patricia Mahoney's roommate. (PX 1 ¶ 2.) In January 2002, Mahoney kicked Thompson out of the apartment. (*Id.* ¶ 3.) Soon thereafter, without Mahoney's knowledge or authorization, Thompson opened at least three new auction accounts – one on eBay as

“got\_to\_go60640” and two on Yahoo! Auctions as “sellin60640” and “me60660” – using Mahoney’s personal information and credit card information. (PX 28 ¶¶ 4-7, Att. A p. 12, Att. C p. 5, Att. D pp. 1-2; PX 1 ¶¶ 4-5.) Using these accounts, Thompson listed laser printers, software and die cast cars for sale. (PX 28 ¶¶ 4-6, Att. B pp. 12-14.) Winning bidders for auctions sold on these accounts were instructed to send payment to either “Cathleen Costello” or “John Brennan.” (PX 28 ¶¶ 4-6, Att. A pp. 12-16; PX 6 ¶ 3; PX 7 ¶ 3; PX 8 ¶ 3; PX 9 ¶ 3.) Costello was a friend of Thompson’s who apparently cashed checks without realizing the checks were part of a fraudulent scheme. (PX 1 ¶ 5.) Brennan lost his wallet on a visit to Chicago, and his identification was found in Thompson’s possession after a DUI arrest in September 2002. (PX 28 ¶ 10, Att. H, pp. 3, 6-9.) Utilizing the identities of these third parties, Thompson accepted money from winning bidders of auctions and failed to deliver the items. (PX 28 ¶¶ 4-6, 9, Att. A pp. 12-16, Att. F pp. 4-7; PX 6 ¶¶ 3-4; PX 7 ¶¶ 4-6; PX 8 ¶¶ 4-5; PX 9 ¶¶ 4-5.)

After moving out of Mahoney’s apartment, Thompson moved in with Marvin Ferdinand. In or about June 2002, Thompson used Ferdinand’s personal information to open at least two additional auction accounts on eBay using the monikers “toysgone” and “chicagoforsale2002.” (PX 28 ¶¶ 4-6, Att. A pp. 17-23.) Using these accounts during July 2002, Thompson placed laser printers, software and die cast cars for sale. (*Id.* ¶¶ 4-6, Att. B p. 14.) Winning bidders for auction items sold by these accounts were instructed to send payment to Amy Hall in Hinsdale, Illinois. (PX 10 ¶ 3; PX 11 ¶ 3.) After sending payment as requested, the winning bidders, however, again did not receive the items. (PX 28 ¶¶ 4-6, Att. A pp. 17-23; PX 10 ¶¶ 5-6; PX 11 ¶¶ 4-5.) One consumer who learned that the seller had registered as “Marvin Ferdinand” attempted to reach Ferdinand in August 2002 by telephone but was told that he had “moved out.” (PX 11 ¶ 4.) Ferdinand, however, had died on June 6, 2002. (PX 28 ¶ 15, Att. M.)

## **B. Thompson and Germek's Auction Transactions After July 2002**

In July 2002, Defendant Susan B. Germek began assisting Thompson in his auction fraud scheme. Thompson opened up three more auction accounts – one with eBay using the moniker “bestdeals60657” and two with Yahoo! as “computers60657” and “bestdeals60657” – using the name and address of Amy Hall. (PX 28 ¶¶ 4-7, 11, Att. A p. 24, Att. C pp. 4, 6, Att. I pp. 7-8.) Using these accounts, Thompson placed computer software and printers up for auction. (*Id.* ¶¶ 4-6, Att. B pp. 15-16.) Consumers who were winning bidders for auction items sold by these accounts were instructed to send payment in the name of Amy Hall to Germek's home address in Justice, Illinois. (PX 12 ¶ 4; PX 13 ¶ 3; PX 28 ¶ 10, Att. G p. 6.) Again, winning bidders who sent money to Germek did not receive the items they purchased. (PX 28 ¶ 9, Att. F pp. 1-3; PX 12 ¶ 7; PX 13 ¶ 6.)

In August 2002, Germek worked at the Hickory West Inn in Hickory Hills, Illinois. (PX 28 ¶ 11, Att. I p. 13.) While at the Hickory West Inn, Germek acquired personal information from guests, including names, addresses and, in some cases, credit card numbers. (*Id.*) In particular, Germek obtained identifying documents of Angela Sink (“Sink”). (*Id.* ¶¶ 10-11, Att. G pp. 6-7, Att. I p. 13.) Without Sink's authorization or knowledge, Germek used Sink's driver's license and social security card to obtain a driver's license in Sink's name with Germek's picture. (*Id.*) Using this driver's license, Germek opened up at least two bank accounts and at least two postal boxes in Sink's name without Sink's authorization. (*Id.* ¶¶ 10, 16-17, Att. G pp. 5-7, Att. N, Att. O.) At least three Internet auction accounts were also opened using Sink's name and address under the monikers “angie\_134679,” “computer\_dealer1966” and “getitcheaper2002.” (*Id.* ¶¶ 4-7, Att. A pp. 25, 30, Att. C p. 1.) Using these accounts, Defendants sold computer

software, Kate Spade handbags and electronics equipment and laptops ranging from \$50 to \$1,675. (*Id.* ¶¶ 4-6, Att. B pp. 16-17; PX 16 ¶ 2.) Again, winning bidders who sent money did not receive the auction items they purchased. (PX 28 ¶¶ 4-6, 9, Att. A pp. 25-29, Att. F pp. 8-10; PX 16 ¶¶ 4-7.)

During August 2002, Germek provided Thompson with personal information of at least eight additional individuals, and Defendants opened at least 13 new Internet auction accounts in these individuals' names without their authorization using a variety of monikers. (PX 28 ¶¶ 4-5, 11, Att. A pp. 31-66, Att. I p. 13; PX 2; PX 3; PX 4.) From August 2002 through October 2002, Defendants used these auction accounts to advertise and obtain winning bids of between \$50 and \$1,500 for various items, including Kate Spade purses, electronics equipment and computer equipment and software. (PX 28 ¶¶ 4-6, Att. B pp. 17-19, 22-24; PX 14 ¶ 2; PX 15 ¶ 2; PX 16 ¶ 3; PX 17 ¶ 2; PX 18 ¶ 2; PX 19 ¶ 2; PX 20 ¶ 2; PX 21 ¶¶ 2-3; PX 22 ¶ 2.) Winning bidders were often instructed to send payment in the name of Angela Sink at postal mail boxes opened by Germek in Sink's name. (PX 14 ¶¶ 2-4; PX 15 ¶¶ 2-3; PX 16 ¶ 3; PX 17 ¶¶ 2-3; PX 18 ¶¶ 2-3; PX 19 ¶¶ 2-3; PX 20 ¶¶ 2-5; PX 21 ¶¶ 2-4; PX 28 ¶¶ 10-11, Att. G pp. 6-7, Att. I p. 13.) Consumers who were winning bidders and sent money as instructed did not receive the item they won. (PX 14-21; PX 28 ¶¶ 4-6, Att. A pp. 32-52, 54-62.)

In September 2002, the Bridgeview Police Department arrested Germek for forging Sink's name. (PX 28 ¶¶ 10, 12, Att. G p. 10, Att. J.) Notwithstanding that arrest, during October and November 2002, Defendants continued to post items for sale using an auction account – “thingsofvalue” – opened under another consumer's name without her knowledge or authorization. (PX 23-25; PX 28 ¶ 11, Att. I pp. 2, 7-8.) Winning bidders were instructed to

send payment to Germek at her home address. (PX 23 ¶ 3; PX 24 ¶ 3; PX 25 ¶ 3.) However, consumers who were winning bidders and who sent money for items did not receive the item. (PX 23-25; PX 28 ¶¶ 4-6, 11, Att. A pp. 65-66, Att. I pp. 2, 7-8.)

In October 2002, Thompson opened yet another auction account – “cardseller60458” – on eBay, registering under the name Bridget Schwarz. (PX 28 ¶¶ 4-5, Att. A p. 67.) Thompson lives with Schwarz. (*Id.* ¶ 11, Att. I pp. 8-10.) Using this auction account, Thompson sold baseball cards and “Sims Add-on” computer software. (*Id.* ¶¶ 4-6, Att. B pp. 24-37.). In December 2002, over 20 winning bidders complained that they had paid for items as instructed by “Bridget Schwarz” but had not received the item. (*Id.* ¶¶ 4-5, 18-21, Att. A pp. 67-71; PX 26; PX 27.) eBay subsequently suspended the “cardseller60458” account. (PX 28 ¶¶ 4-6, Att. A p. 67.)

On December 31, 2002, an auction account was registered on eBay under the name Cheryl Schwarz using the moniker “windycity2009.” (PX 28 ¶¶ 4-5, Att. A p. 74.) The address provided in the account registration is Bridget Schwarz’s prior address. (*Id.* ¶ 14, Att. L.) This auction account presently is selling “Sims Add-on” computer software identical to the software sold by “cardseller60458.” (*Id.* ¶ 8, Att. E.)

### **C. Defendants Are Causing Enormous Consumer Injury.**

Defendants’ actions have caused enormous injury to consumers. The FTC has attached declarations from 23 consumers who were “winning” bidders for items sold by Defendants and never received the items. (PX 5-27.) Sixty-five consumers have complained to the FTC about auction transactions with Defendants, including six since January 2003. (PX 28 ¶¶ 18-21.) Over 140 consumers have either complained directly to eBay or posted negative feedback about

Defendants' eBay and Yahoo auction transactions. (*Id.* ¶¶ 4-5, 9, Att. A, F.) It is unclear exactly how much money Defendants received from consumers as part of this scheme, but Defendants received over \$91,000 in payments for auctions transacted on eBay alone. (*Id.* ¶¶ 4-6, Att. B p. 37.) Considering the ease with which Defendants have changed their auction selling identities, Defendants may be operating under other names, using alternate Internet auction sites or selling on the Internet by hosting their own Web site.

In addition, consumers whose identities were misappropriated have suffered substantial injury. Some of these third parties have been wrongly accused of defrauding consumers and have received angry telephone calls from defrauded auction participants. (PX 1 ¶ 5; PX 3 ¶ 3; PX 28 ¶¶ 7, 9, 10, Atts. F p. 4, G pp. 4-5.) Victims of identity theft also had seller charges from eBay placed on their credit cards which were used without their authorization. (PX 1 ¶ 4; PX 2 ¶ 2.) Many of these consumers have expressed concern that their identities will continue to be used without their authorization, and they will suffer additional damage. (PX 1 ¶ 7; PX 3 ¶ 4.)

### **III. ARGUMENT**

Defendants have successfully bilked consumers out of tens of thousands of dollars and misappropriated numerous consumers' identities to continue their fraud. We ask that the Court bring this scam to an immediate end. Accordingly, the FTC seeks an order that enjoins further deceptive and unfair practices. The FTC also requests that the Court freeze Defendants' assets to preserve the assets that will be needed if the Court determines that restitution should be made to the consumer victims. As discussed in more detail below, this Court has full authority to enter the relief sought by Plaintiff, and the facts strongly support such relief.



**A. This Court Has the Authority to Grant the Relief Requested.**

The FTC Act provides that “in proper cases the [FTC] may seek, and after proper proof, the court may issue, a permanent injunction.” 15 U.S.C. 53(b). Matters involving false and deceptive advertising are “proper cases” for injunctive relief under the FTC Act. *See FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1028 (7th Cir. 1988). Moreover, “[t]he district court’s authority [under the FTC Act] to grant a permanent injunction also includes the power to grant other ancillary relief sought by the Commission” and “order any ancillary equitable relief necessary to effectuate the exercise of the granted powers.” *FTC v. Febre*, 128 F.3d 530, 534 (7th Cir. 1997).

**B. This Court Should Immediately Issue a Temporary Restraining Order and Other Appropriate Equitable Relief.**

The injunctive relief requested by the FTC is warranted in this case. The FTC Act authorizes injunctive relief “[u]pon a proper showing that, weighing the equities and considering the FTC’s likelihood of ultimate success, such action would be in the public interest.” 15 U.S.C. § 53(b). Unlike litigation between private parties, “it is not necessary for the FTC to demonstrate irreparable injury” under the FTC Act. *World Travel*, 861 F.2d at 1029. Instead, to obtain equitable relief under the FTC Act, the FTC must merely demonstrate: (1) a likelihood of success on the merits, and (2) that the balance of the equities tips in its favor. *Id.* As demonstrated below, the FTC has more than satisfied this standard here.

**1. There Is A Substantial Likelihood That the FTC Will Prevail on the Merits.**

As described below, Defendants are violating the FTC Act and Mail and Telephone Order Rule. There is a substantial likelihood that the FTC will prevail on the merits.

**a. Defendants have violated Section 5 of the FTC Act by misrepresenting they will ship goods ordered and paid for by consumers.**

Defendants are engaging in “deceptive” acts or practices prohibited by the FTC Act. 15 U.S.C. § 45(a). “[M]isrepresentations of material facts made for the purpose of inducing consumers to purchase services [or products] constitute . . . deceptive acts or practices forbidden by [the FTC Act].” *World Travel*, 861 F.2d at 1029. The “misrepresentation or practice need not be made with an intent to deceive;” instead, the FTC need merely establish that “the representations, omissions, or practices likely would mislead consumers, acting reasonably, to their detriment.” *Id.* A claim is considered material if it “involves information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding a product.” *Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992).

Here, Defendants’ repeated assertion -- that they will ship the goods ordered and paid for -- is a blatant misrepresentation. Defendants’ deception is not only “likely” to mislead consumers, it already *has* misled consumers and caused substantial consumer harm, including losses likely in the tens of thousands of dollars. Defendants’ misrepresentations are “material” because they are likely to affect, and indeed have affected, consumers’ decisions to purchase items on Internet auctions. Of course, consumers would not have provided money to Defendants if they knew that Defendants would not provide the products for which they paid.

**b. Defendants have violated Section 5 of the FTC Act by opening Internet auction accounts in the names of consumers without their authorization.**

Defendants’ opening of Internet auction accounts in the names of consumers without their authorization is an “unfair” practice under the FTC Act. An act or practice is “unfair” under the

FTC Act if: (1) it causes, or is likely to cause, injury to consumers that is substantial; (2) the harm is not outweighed by countervailing benefits to consumers or competition; and (3) the harm is not reasonably avoidable. *See* 15 U.S.C. § 45(n). *See also Orkin Exterminating Co., Inc. v. FTC*, 849 F.2d 1354, 1363-64 (11th Cir. 1988). Defendants' practices clearly establish the elements of unfairness.

First, consumer injury here is substantial. As explained above in Section II, Defendants misappropriated at least ten consumers' identities to open Internet auction accounts. Defendants' actions have resulted in innocent consumers receiving unauthorized charges on their credit cards, having bank accounts opened in their names, and being wrongfully accused of defrauding other consumers. *See FTC v. Windward Marketing, Ltd.*, 1997 U.S. Dist. LEXIS 17114, at \*31 (N.D. Ga. Sept. 30, 1997) (a finding of substantial injury may be established by showing that consumers "were injured by a practice for which they did not bargain").

Second, the injury to consumers here is not outweighed by benefits to consumers or competition. There can be no countervailing benefits to consumers or to competition in allowing Defendants effectively to steal other persons' identities in order to avoid the consequences of their own actions. *See id.* at \*32 (the second prong of the test is easily satisfied "when a practice produces clear adverse consequences for consumers that are not accompanied by an increase in services or benefits to consumers or by benefits to competition"); *FTC v. J.K. Publications*, 99 F. Supp. 2d 1176, 1201 (C.D. Cal. 2000).

Finally, consumers cannot reasonably avoid being injured in this case. With regard to this element, the focus is on "whether consumers had a free and informed choice that would have enabled them to avoid the unfair practice." *Windward Marketing*, 1997 U.S. Dist. LEXIS 17114,

at \*32; *see also J.K. Publications*, 99 F. Supp. 2d at 1201. Here, consumers had no way of knowing that their identification information would be used by third parties to open auction accounts, postal mail boxes and bank accounts. Accordingly, Defendants' practice of opening Internet auction accounts in the names of consumers without their authorization is an "unfair" practice under the FTC Act.

**c. Defendants' Conduct Has Violated the Telephone Order Rule**

In addition to violating Section 5 of the FTC Act, Defendants have violated the Mail or Telephone Order Merchandise Rule ("the Telephone Order Rule"), 16 C.F.R. Part 435. The Telephone Order Rule protects consumers from unscrupulous sellers by prohibiting the solicitation of orders for goods that the seller has no reasonable basis for believing he can ship within the time stated in the solicitation, or within thirty days if no time is stated. 16 C.F.R. § 435(a)(1). The Telephone Order Rule further protects consumers by imposing stringent notification and cancellation requirements on shippers where the shipper is unable to ship ordered goods within the required time period. 16 C.F.R. § 435.1(b)-(c).<sup>2</sup>

In this case, Defendants have wholly failed and refused to implement the protections afforded consumers by the Telephone Order Rule. First, Defendants have solicited orders without having a reasonable basis for expecting to ship in violation of 16 C.F.R. § 435.1(a)(1). Second, Defendants have failed to give proper delay or cancellation notices in violation of 16 C.F.R. § 435.1(b)(1). Finally, Defendants have failed to deem the orders canceled and make prompt refunds in violation of 16 C.F.R. § 435.1(c).

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<sup>2</sup> Because consumers place orders with Defendants using e-mail and many consumers access e-mail using telephone lines, the Telephone Order Rule applies to the transactions which form the basis of consumers' complaints.

## **2. Provisional Relief is in the Public Interest.**

In addition to demonstrating a likelihood of success on the merits, the balance of equities tips strongly in the FTC's favor here. In balancing the equities, courts must assign greater weight to the public interest advanced by the FTC than to any of Defendants' private concerns. *World Travel*, 861 F.2d at 1029. In this case, immediate injunctive relief is necessary to protect the public from the future financial harm and theft of identity that will inevitably result from Defendants' deceptive and unfair practices. In contrast, Defendants have no legitimate interest to balance against the need for an injunction. The FTC's proposed temporary restraining order only restrains Defendants from engaging in illegal conduct and preserves assets. Such a restriction does not work an undue hardship on Defendants, for they have no legitimate interest in persisting with conduct that violates federal law. *See, e.g., FTC v. World Wide Factors*, 882 F.2d 344, 347 (7th Cir. 1989) (upholding finding of "no oppressive hardship to defendants in requiring them to comply with the FTC Act, refrain from fraudulent representation or preserve their assets from dissipation or concealment"); *FTC v. Sabal*, 32 F. Supp. 2d 1004, 1009 (N.D. Ill. 1998) (same).

## **3. The TRO Should Be Entered *Ex Parte* and Should Include An Asset Freeze.**

*Ex parte* relief is necessary here. An *ex parte* temporary restraining order is warranted where the facts show that irreparable injury, loss, or damage will result before the defendants can be heard in opposition. *See* Fed. R. Civ. P. 65(b). Consumer fraud cases such as this fit squarely into the category of cases where *ex parte* relief is appropriate and necessary to make possible full and effective final relief. This Court's power to order an asset freeze and other attendant relief derives from its equitable power to order consumer redress, *Febre*, 128 F.3d at 534, and courts in

this district have repeatedly exercised this authority, *see, e.g., FTC v. CSCT, Inc.*, 03 C 880 (N.D. Ill. Feb. 11, 2003) (Coar, J.); *FTC v. Bay Area Bus. Council, Inc.*, 02 C 5762 (N.D. Ill. Aug. 15, 2002) (Darrah, J.); *FTC v. Stuffingforcash.com*, No. 02 C 5022 (N.D. Ill. July 16, 2002) (Norgle, J.); *FTC v. TLD Network Ltd.*, No. 02 C 1475 (N.D. Ill. Feb. 28, 2002) (Holderman, J.); *FTC v. 1<sup>st</sup> Financial Solutions, Inc.*, No. 01-CV-8790 (N.D. Ill. Nov. 19, 2001) (Kocoras, J.); *FTC v. Growth Plus Int'l Marketing, Inc.*, No. 00-CV-7886 (N.D. Ill. Dec. 18, 2000) (Aspen, J.).

As in the other cases in this district where courts have granted *ex parte* relief, irreparable injury, loss, or damage will likely result if Defendants receive notice of this action. As discussed *supra*, Defendants' business operations are permeated by, and reliant upon, deceptive and unfair practices. The FTC's past experiences have shown that defendants engaged in similar schemes may withdraw funds from bank accounts and move or shred inculpatory documents if given notice of the FTC's action.<sup>3</sup> Indeed, both Thompson and Germek have continued to defraud consumers after being aware of law enforcement investigation into their activities and, indeed, Germek's arrest. (PX 28 ¶¶ 4-5, 11, Att. A pp. 67-71, Att. I pp. 7-8, 10.) Defendants' assets should be frozen to ensure that funds do not disappear during the course of this litigation.<sup>4</sup>

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<sup>3</sup> See Declaration of Certification of Plaintiff's Counsel Pursuant to Fed. R. Civ. P. 65(b) and Local Rule 5.5(D) In Support of Plaintiff's *Ex Parte* Motion For Temporary Restraining Order.

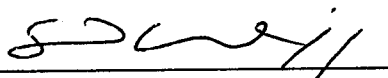
<sup>4</sup> In addition to seeking that assets in Defendants' names be frozen, the FTC additionally seeks that accounts opened by Germek in the name of Angela Sink without Sink's authorization or knowledge be frozen. (See Proposed TRO § III.C.) The FTC additionally seeks leave to conduct limited expedited discovery so that it may locate assets wrongfully obtained from consumers, preserve documentary evidence and advance this litigation with a minimum of hardship to all parties. (*Id.* § VIII.) The Commission's expedited discovery requests are necessary and appropriate to enable the Commission to establish the nature and extent of the Defendants' assets and the existence and location of relevant documents.

#### **IV. CONCLUSION**

Defendants have caused and are likely to continue to cause consumer injury because of their FTC Act violations. This Court should issue the requested injunctive relief to prevent ongoing consumer harm and to help assure the possibility of effective final relief, including monetary redress.

Respectfully submitted,

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Dated: April 15, 2003