

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA

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U.S. DISTRICT COURT
MIDDLE GEORGIA

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Case No. _____ -CIV

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.

5:03-CV-0140-3

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b), to obtain preliminary and permanent injunctive relief,

restitution, disgorgement, and other equitable relief for Defendants' deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(a) and 53(b) and 28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue in this district is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).

DEFENDANTS

4. Defendant K4 Global Publishing, Inc. ("K4") is a North Carolina corporation with its office and principal place of business located in Macon, Georgia. K4 transacts or has transacted business in the Middle District of Georgia and throughout the United States under its own name and using fictitious names, including but not limited to Instant Internet Empires.

5. Kern Family Enterprises, LLC ("KFE") is a Georgia corporation with its office and principal place of business located in Macon, Georgia. KFE transacts or has transacted business in the Middle District of Georgia and throughout the United States under its own name and using fictitious names, including but not limited to Instant Internet Empires.

6. Defendant Irwin F. Kern, IV is the president of K4. He resides in Macon, Georgia. At all times material to this complaint, acting alone or in conjunction with others, he has formulated, directed, controlled, or participated in the acts and practices alleged in this complaint. He transacts or has transacted business in the Middle District of Georgia and throughout the United States.

7. K4, KFE, and Kern operate as a common enterprise to induce consumers to purchase

the right to reproduce and resell their marketing websites.

COMMERCE

8. At all times material to this complaint, Defendants' course of business, including the acts and practices alleged herein, has been and is in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' COURSE OF CONDUCT

9. Defendants sell consumers a pre-packaged Internet business. The business consists of the right to reproduce Defendants' own marketing website, known as "Instant Internet Empires," and resell its content to other consumers.

10. Defendants promote "Instant Internet Empires" through a variety of advertising, including spam solicitations, web pages on the Internet, and Internet search engines.

11. In their advertising, Defendants represent, expressly or by implication, that purchasers of the "Instant Internet Empires" product are likely to earn substantial income using the product. For instance, the Defendants' marketing website states, in part:

My unprofessional little home made web site brought in \$115,467.21 last year and you're about to discover how you can do the same . . .

* * * * *

Rock Solid Proof. Here it is . . . a copy of my bank statement showing my daily deposits totalling **over \$4,559.13 for the last week in February. Now I want you to know this was NOT a normal week. It's usually around \$1,400.00 to \$2,100.00. February just happened to end with a BANG! And the last few months have been just as good!**

* * * * *

The Cash Flow System That Brought In Over \$115,467.00 In The First Year. My Internet Business brought in over \$115,467.21 last year and I'm going to show

you exactly how you can do the same thing.

* * * * *

Bask in the respect and admiration (and dare I say envy) of family and friends as they see you **making big money** “while you sleep” as an Internet entrepreneur!

(emphasis in the original).

12. In reality, the majority of purchasers of the “Instant Internet Empires” product cannot, and do not, earn a substantial income using the product; in fact, most purchasers will not make money.

13. Consumers who wish to buy the “Instant Internet Empires” product are linked by the payment button on Defendants’ website to Defendants’ online payment processor. Consumers who make the required payment to the processor are then directed back to one of Defendants’ websites where they can download the materials that comprise the “Instant Internet Empires” product.

14. The materials comprising the “Instant Internet Empires” product include copies of the Defendants’ own marketing website and all information contained therein as well as video files that instruct a consumer how to reproduce the website and post it as the consumer’s own website. The video instructions advise a purchasing consumer to contract with a web-hosting company to host the consumer’s site and with an online payment processor to accept payment for the product from other consumers. Defendants’ video instructions direct a consumer to create his or her own marketing website with text identical to that in Defendants’ marketing website, including the use of Defendant Kern’s name and signature, as well as a reproduction of his bank statement.

15. Defendants’ scheme is a chain marketing scheme that necessarily enriches only a few

initial participants at the expense of the majority of other participants. The success of any participant in achieving earning claims in a chain marketing scheme is dependent upon the participant's ability to convince a large number of new participants to buy into the scheme.

16. The structure of a chain marketing scheme places severe limitations upon the success of its participants. Participants can only make money if they recruit new participants into the scheme, ensuring that at each step in the evolution of the scheme the majority of participants will not make money.

17. The result of the structure and operation of Defendants' program is that financial gains to participants are primarily dependent upon the successive recruitment of other participants.

18. Defendants have provided participants in the Instant Internet Empires program with marketing websites that include the representations in Paragraph 11 for use in recruiting new participants and inducing them to participate in the Instant Internet Empires program.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

19. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce.

Count One

20. In the course of advertising their products, Defendants represent, expressly or by implication, that consumers who purchase Defendants' products are likely to earn substantial income from those products.

21. In truth and in fact many consumers who purchase Defendants' products are not likely to earn substantial income from those products.

22. Defendants' representations, as set forth in Paragraph 20, therefore, are false and deceptive in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count Two

23. In the course of advertising their products, Defendants represent, expressly or by implication, that all consumers who purchase the products can earn a substantial income from those products.

24. Defendants fail to disclose that the nature of Defendants' products and the nature of their marketing structure ensure that many purchasers will not earn a substantial income from those products.

25. This additional information, described in Paragraph 24, would be material to consumers in deciding whether to purchase Defendants' products.

26. Defendants' failure to disclose the material information described in Paragraph 24, in light of the representations described in Paragraph 23, constitutes a deceptive act and practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count Three

27. As alleged above, Defendants solicit payments from consumers by promising them financial gains based on payments from future participants in the scheme.

28. A consumer's ability to achieve those financial gains is primarily dependent upon his or her successive recruitment of other participants into the scheme.

29. The structure of Defendants' scheme ensures that a majority of participants in the scheme will be unable to achieve those financial gains.

30. This type of scheme, known as a chain marketing scheme, is a deceptive act or

practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count Four

31. Defendants provide participants in the program with copies of their website advertisement to be used in recruiting new participants. As described in Counts One and Two, the website contains false and misleading representations.

32. By providing participants with the website advertisement, Defendants have provided others with the means and instrumentalities for the commission of deceptive acts and practices.

33. Therefore, Defendants' practices, as described in Paragraph 31, constitute deceptive acts and practices in violation of 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

34. Consumers throughout the United States have suffered monetary losses and other injury as a result of Defendants' unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

35. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction against Defendants violating the FTC Act, as well as such ancillary relief as rescission of contracts, restitution, disgorgement of ill-gotten gains, and the refund of monies paid to redress the injury to consumers or others resulting from Defendants' violations of Section 5 of the FTC Act.

36. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by Defendants' law violations.

PRAAYER FOR RELIEF

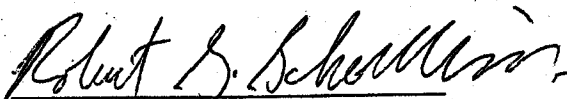
WHEREFORE, Plaintiff, the Federal Trade Commission, requests that this Court, as authorized by Sections 13(b) of the FTC Act, 15 U.S.C. §§ 53(b), and pursuant to its own equitable powers:

- (1) Award Plaintiff such preliminary injunctive and other ancillary relief as may be necessary to avert the likelihood of further consumer injury during the pendency of this action and to preserve the possibility of effective final relief;
- (2) Permanently enjoin Defendants from violating Section 5 of the FTC Act;
- (3) Enter judgment against Defendants and in favor of Plaintiff for each violation alleged in this complaint;
- (4) Award Plaintiff such relief as the Court finds necessary to redress injury to consumers or others resulting from Defendants' violations of Section 5 of the FTC Act, including, but not limited to, rescission of contracts, restitution, disgorgement of ill-gotten gains, and the refund of monies paid; and
- (5) Award Plaintiff such additional relief as the Court may deem just and proper.

Respectfully submitted,

DATED: *May 6, 2003*

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