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ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
MAY 28 2003
CLERK, U.S. DISTRICT COURT
By _____
Deputy

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

END70 CORPORATION and

DAMIEN ZAMORA,

Defendants.

Civil Action No. 3 03CV-0950N

TIME: 3:30

DATE: 5/28/03

~~PROPOSED~~ TEMPORARY RESTRAINING ORDER
WITH ASSET FREEZE

Plaintiff, the Federal Trade Commission ("Commission"), having filed its complaint for a permanent injunction and other equitable relief in this matter pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC ACT"), 15 U.S.C. § 53(b), and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. § 6101 *et seq.*, and having moved *ex parte* for a temporary restraining order and for an order to show cause why a preliminary injunction should not be granted pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65, and the Court having considered the complaint, declarations, exhibits, and memorandum of law filed in support thereof, finds that:

1. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe it will have jurisdiction of all parties hereto;
2. There is good cause to believe that defendant *end70* Corporation and its president

EXHIBIT A

and owner defendant Damien Zamora have engaged in and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Telemarketing Sales Rule, 16 C.F.R. Part 310, as amended, and that the plaintiff is therefore likely to prevail on the merits of this action;

3. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of monetary restitution will occur from the sale, transfer, or other disposition or concealment by defendants of their assets or corporate records, or those assets and corporate records under their control, unless defendants are immediately restrained and enjoined by Order of this Court. There is thus good cause for issuing this Order pursuant to Federal Rule of Civil Procedure 65(b);

4. Weighing the equities and considering plaintiff's likelihood of ultimate success, a temporary restraining order with asset freeze and other equitable relief is in the public interest;

5. Defendants deny liability for any violations alleged in the Complaint and this Temporary Restraining Order shall not be construed to constitute an admission or a finding that Defendants have violated any law, including but not limited to, Section 5(a) of the FTC Act or the Telemarketing Sales Rule; and

6. Fed. R. Civ. P. 65(c) does not require security of the United States or an officer or agency thereof.

DEFINITIONS

For the purpose of this preliminary injunction, the following definitions shall apply:

A. **“Defendants”** means *end70* Corporation and its president and owner Damien Zamora, and each of their officers, agents, servants, employees, and attorneys, 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. **“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,” “notes” (as these terms are defined in the Uniform Commercial Code), and all chattel, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and cash, wherever located.

C. **“Business Opportunity”** means any written or oral business arrangement, however denominated, whether or not covered by the Commission’s Franchise Rule, 16 C.F.R. Part 436, which consists of the payment of any consideration for: (a) the right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and (b) more than nominal assistance to any person or entity in connection with or incident to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business.

D. **“Assisting others”** means knowingly providing any of the following goods or services to another entity: (1) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material;

(3) providing names of, or assisting in the generation of, potential customers; or (4) performing marketing services of any kind.

E. "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 the information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

CONDUCT PROHIBITIONS

I. INJUNCTIVE PROVISIONS

A. **IT IS THEREFORE ORDERED** that in connection with the advertising, promotion, offering for sale, or sale of any Business Opportunity or any products or services to customers who purchase through the Internet Treasure Chest infomercial or website (the "ITC Products"), Defendants and their agents are hereby temporarily restrained and enjoined from misrepresenting, expressly or by implication, any material fact, including, but not limited to, misrepresenting:

1. The total cost of purchasing a Business Opportunity or the ITC Products; and
2. That purchasers of a Business Opportunity or the ITC Products are likely to earn substantial income.

B. **IT IS FURTHER ORDERED** that, within fourteen (14) days of the date of this order, Defendants shall disclose the following facts in clear and conspicuous text on the screen

during the current infomercial:

1. Wherever there is any representation that a purchaser does not need to own a computer, "Access to a computer with internet access is required to use products offered;"
2. Wherever a customer testimonial is used and dollar amounts of sales are represented, "Dollars reflect gross sales. Experiences are unique. Results are not typical;"
3. Wherever there are testimonials or references to testimonials, "People appearing in this show have purchased optional upgrades;"
4. Wherever there is a reference to a merchant account or credit card processing, "Credit cards must be processed through third parties. To process directly, additional monthly fees and conditions apply;"
5. Wherever there is a reference to a guarantee, "Return your package within 30 days of receipt for full refund, excluding shipping and handling;" and
6. Wherever there is a reference to free web hosting, "Free hosting for 30 days! \$9.95/mo. thereafter."

C. IT IS FURTHER ORDERED that the version of the ITC infomercial currently airing shall no longer be broadcast after fourteen (14) days from the date of this order.

D. IT IS FURTHER ORDERED that, if Defendants produce or cause to be produced a new ITC infomercial for airing, Defendants shall provide to the FTC, no later than seven (7) days prior to filming, the script for the proposed infomercial. The FTC shall have five (5) days from receipt of the new infomercial script to provide review and comment to Defendants regarding the revised infomercial script. If the parties cannot agree on the content of the new infomercial

script, no filming of the new infomercial shall take place until further order of this Court, and the proposed infomercial script shall be presented to the Court, along with the parties' briefs on the issues, for consideration.

E. IT IS FURTHER ORDERED that, within seven (7) days of the date of this Order, Defendants shall cause any person receiving inbound telephone calls from any consumer via the 800 numbers advertised on any ITC infomercial or website to disclose clearly the following information prior to accepting any order or payment:

1. "The Internet Treasure Chest supplies you with the opportunity to accept credit card payments by several means. Some options are free and some have fees of up to \$35.00 per month. All charge transaction fees. Your package will give you all the information you need to decide which option is right for you;"
2. "If you're not completely satisfied, you can return your package within 30 days of receipt for a full refund excluding shipping and handling. The address will be included on your packing slip;"
3. "Hosting of your website is free for 30 days. Thereafter you will be charged \$9.95 per month;" and
4. "Access to a computer with internet access is required to use the products offered."

F. IT IS FURTHER ORDERED that Defendants shall not charge any fees for integration of any third party online payment processing or for setup, software licensing, or other similar services in connection with the creation of a merchant account arranged by Defendants or their agents.

G. IT IS FURTHER ORDERED that with respect to any products or services that are

sold by or on behalf of Defendants, following the customer's initial purchase, the following refund/rescission policy shall apply:

1. With respect to the purchase of products for which a substantial component of such product is not personal services of website builders and/or technical support staff, customer shall have ten (10) days from the date to delivery to rescind the transaction and receive a full refund of the purchase price; and
2. With respect to the purchase of products for which a substantial component is personal services of website builders and/or technical support staff, customer shall have three (3) days to rescind the transaction from the date the customer accepts the terms of and provides payment for such transaction to receive a full refund and if not rescinded by that date, the customer shall have an additional twenty-seven (27) days to rescind the transaction for fifty percent (50%) refund of the purchase price.

H. IT IS FURTHER ORDERED that in connection with the advertising, promotion, offering for sale, or sale of any Business Opportunity or ITC Products, Defendants are hereby temporarily restrained and enjoined from failing to disclose, clearly and conspicuously, before any consumer purchases a Business Opportunity or ITC products, all information material to the consumer's decision to purchase the Business Opportunity or ITC products, including but not limited to, failing to disclose any substantial additional charges that purchasers must pay.

I. IT IS FURTHER ORDERED that Defendants are hereby temporarily restrained and enjoined from violating or assisting others in violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, including, but not limited to misrepresenting, directly or by implication, the total costs to purchase, receive, or use, goods or services that are the subject of

the sales offer.

J. IT IS FURTHER ORDERED that, within seven (7) days of the date of this order, Defendants shall provide to the FTC all proposed inbound and outbound telemarketing scripts relating to the ITC Products. The FTC shall have five (5) days from receipt of the telemarketing scripts to provide review and comment, to the Defendants and to this Court, with respect to the scripts' compliance with the requirements of this Order, Section 5 of the FTC Act, and the Telemarketing Sales Rule.

K. IT IS FURTHER ORDERED that Defendants shall file with this Court under penalty of perjury, and serve on Plaintiff, monthly certifications of Defendants' and their agents' compliance with the provisions of this Paragraph I (Injunctive Provisions) to the best of the Defendants' knowledge and belief after a commercially reasonable inspection and effort to comply.

ASSET & RECORD RETENTION

II. ASSET FREEZE

IT IS FURTHER ORDERED that, except in the reasonable exercise of the ordinary course of *end70* Corporation's business, and subject to the monthly accounting requirements and expenditure limitations set forth in Paragraph VI below, Defendants and their agents are hereby temporarily restrained and enjoined, absent further order of this Court upon notice and opportunity for hearing or except as permitted by this Order, from:

- A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, perfecting a security interest in, or otherwise disposing of any funds, property, accounts, contracts, shares of stock, lists of

consumer names, or other assets, wherever located, including outside the United States, that are (1) majority owned or controlled, directly or indirectly, by either of the Defendants, in whole or in part; (2) in the actual or constructive possession of either of the Defendants; or (3) owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by, or under common control with either of the Defendants, including but not limited to, any assets held by, for, or under the name of either of the Defendants at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution or depository of any kind;

- B. Opening or causing to be opened any safe deposit boxes, titled in the name of either of the Defendant, or subject to access by either of the Defendants; and
- C. Except to the extent permitted by Paragraph VI.B. of this Order, incurring charges or cash advances on any credit card issued in the name, singly or jointly, of either of the Defendants.

IT IS FURTHER ORDERED that the assets affected by this Paragraph shall include both existing assets and assets acquired after the effective date of this Order.

III. TURNOVER OF ASSETS AND FUNDS IN THE ORDINARY COURSE OF BUSINESS

IT IS FURTHER ORDERED that the asset freeze imposed in Paragraph II of this Order shall not be construed to prevent any third party who holds money, credits, products, property or information for or on behalf of *end70* Corporation pursuant to any contract or course of dealing

governing the ordinary course of *end70* Corporation's business relating to the ITC Products from releasing such money, credits, products, property or information to *end70* Corporation upon *end70*'s request, or to prevent the Defendants or their agents from using such money, credits, products, property or information in compliance with the provisions of this Order.

IV. REPATRIATION OF ASSETS AND DOCUMENTS LOCATED IN FOREIGN COUNTRIES

IT IS FURTHER ORDERED that Defendants and their agents shall:

- A. Within three (3) business days following the date of this Order, take such steps as are necessary to transfer to the territory of the United States of America all documents and assets, that are located outside of such territory and are held by or for Defendants or are under Defendants' direct or indirect control, jointly, severally, or individually;
- B. Within ten (10) business days following the date of this Order, provide the Plaintiff with a full accounting of all documents and assets, that are located outside of the territory of the United States of America and are held by or for Defendants or are under Defendants' direct or indirect control, jointly, severally, or individually;
- C. Hold and retain all transferred documents and assets, and prevent any transfer, disposition, or dissipation whatsoever of any such assets or funds; and
- D. Provide Plaintiff 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 hereto as Attachment A.

V. INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that Defendants and their agents are hereby temporarily

restrained and enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of foreign assets, or in the hindrance of the repatriation required by Paragraph VII of this Order, including but not limited to:

- A. Sending any statement, letter, fax, e-mail or wire transmission, telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a "duress" event has occurred under the terms of a foreign trust agreement until such time that all assets have been fully repatriated pursuant to Paragraph VII of this Order; or
- B. Notifying any trustee, protector or other agent of *end70* Corporation or Damien Zamora, or other related entities of the existence of this Order, or of the fact that repatriation is required pursuant to a Court Order, until such time that all assets have been fully repatriated pursuant to Paragraph VII of this Order.

VI. EXPENDITURES AND PERIODIC ACCOUNTING

A. IT IS FURTHER ORDERED that, except upon further order of this Court, *end70* Corporation is allowed to draw upon its fund to satisfy its reasonable, ordinary and necessary business expenses, incurred from and after the date of this Order and for thirty days thereafter, in an amount not to exceed \$400,000, subject to the monthly accounting provisions set forth in Paragraph VI.D. of this Order.

B. IT IS FURTHER ORDERED that Damien Zamora is allowed to draw upon upon his funds to satisfy his reasonable, ordinary and necessary living expenses, subject to the monthly accounting provisions set forth in Paragraph VI. D of this Order. Except to the extent otherwise provided by this Order or other order of this Court, the asset freeze imposed by Paragraph II. of

this Order, as it relates to Damien Zamora, shall be lifted as to Bank of America Account No. [REDACTED], except that Damien Zamora shall be restrained and enjoined from using funds from such account beyond the maximum amount of \$12,000.00 per calendar month, including necessary payments to credit card issuers for credit card charges incurred by Damien Zamora and/or his spouse; provided, however, that the dollar amount of charges incurred on credit cards shall be included in, and not in addition to, the \$12,000.00 per month expenditure limitation imposed herein.

C. IT IS FURTHER ORDERED that, except upon further order of this Court and subject to the monthly accounting provisions set forth in Paragraph VI. D. of this Order, the Defendants may pay reasonable and necessary attorneys' fees and expenses incurred in the litigation and defense of this action and in connection with ongoing compliance requirements and any other matters requiring legal counsel, in an amount not to exceed \$100,000 for fees and expenses incurred from and after the date of this Order and for thirty days thereafter.

D. IT IS FURTHER ORDERED that Defendants shall cause to be filed with the Court under seal and under penalty of perjury, and served upon Plaintiff, monthly financial statements detailing all expenditures paid on or after May 8, 2003. Defendants shall file these statements on or before the 10th day following the end of each calendar month, commencing with the period of May 8, 2003 through May 31, 2003, and continuing each month thereafter so long as this Order remains in effect.

VII. FINANCIAL STATEMENTS

IT IS FURTHER ORDERED that not later than ten (10) days after entry of this Order, each defendant shall provide the Commission and Permanent Receiver with a completed

financial statement, on the forms attached to this Order as Attachments B and C, for each defendant individually and for each corporation of which such defendant is an officer, as of the date of service of this Order upon such defendant.

VIII. CONSUMER CREDIT REPORTS

IT IS FURTHER ORDERED that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer report concerning any of the defendants to the Commission.

IX. PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that Defendants and their agents are hereby temporarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any contracts, accounting data, correspondence, advertisements, computer tapes, discs, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind that relate to the business practices or business or personal finances of the Defendants, individually and jointly.

X. MAINTENANCE OF CURRENT BUSINESS RECORDS

IT IS FURTHER ORDERED that Defendants and their agents are hereby temporarily restrained and enjoined from:

- A. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of money;

and

- B. Creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing the Commission with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals and managers; and (4) a detailed description of the business entity's intended activities.

XI. RETENTION OF ASSETS AND RECORDS

IT IS FURTHER ORDERED that, any financial or brokerage institution, business entity, or person served with a copy of this Order that holds, controls or maintains custody of any account or asset of the Defendants, controlled or maintained custody of any such account or asset at any time since the date of entry of this Order shall:

- A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any such asset except by further order of this Court;
- B. Provide the Commission's counsel, within five (5) business days of receiving a copy of this Order, a sworn statement setting forth:
1. the identification number of each such account or asset titled in the name, individually or jointly, of either of the Defendants, or held on behalf of, or for the benefit of, any of either of the Defendants;
 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,

and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and

3. the identification of any safe deposit box, that is either titled in the name, individually or jointly, of either of the Defendants, or is otherwise subject to access by either of the Defendants;

D. Upon the request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to such account or asset, including but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. Any such financial institution, account custodian, or other aforementioned entity may arrange for the Commission to obtain copies of any such records which the Commission seeks; and

Copies of any documents provided to the Commission under this Paragraph XI. shall be provided to the Defendants in care of their counsel at the address provided in Paragraph XV.

NOTIFICATION PROVISIONS

XII. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, agent, attorney, and representative of any defendant, and shall, within ten (10) days

from the date of entry of this Order, provide the Commission with a sworn statement that Defendants have complied with this provision of the Order, which statement shall include the names and addresses of each such person or entity who received a copy of the Order.

XIII. SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission and overnight delivery service, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of the defendants, or that may be subject to any provision of this Order.

XIV. MONITORING

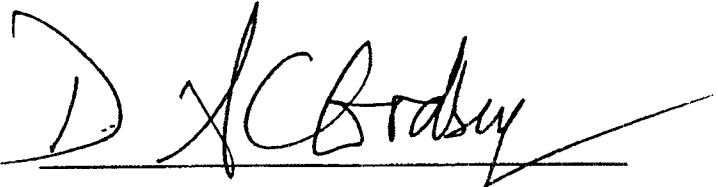
IT IS FURTHER ORDERED that agents or representatives of the Commission may contact the Defendants or their agents or representatives directly and anonymously for the purpose of monitoring compliance with Paragraph I of this Order, and may tape-record any oral communications that occur in the course of such contacts. Anonymous and tape-recorded contacts shall not be permitted as to Defendants' counsel.

XV. CORRESPONDENCE

For the purposes of this Order, all correspondence and service of pleadings on Plaintiff shall be addressed to James R. Golder, Federal Trade Commission, Southwest Region, 1999 Bryan Street, Suite 2150, Dallas, Texas 75201, or by facsimile transmission to (214) 953-3079, and on Defendants shall be addressed to James C. Bastian, Jr., Marshack Shulman Hodges & Bastian LLP, 26632 Towne Centre Drive, Suite 300, Foothill Ranch, California 92610 or by facsimile transmission to (949)340-3000.

XVI. RETENTION OF JURISDICTION

Signed
~~ENTERED~~, this 28 day of May, 2003.



DAVID C. GODBEY
UNITED STATES DISTRICT JUDGE