

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

FILED
AUG 13 2007
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

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FEDERAL TRADE COMMISSION,))	
))	
Plaintiff,))	Case No. 07 C 4541
))	
v.))	Judge David H. Coar
))	
SILI NEUTRACEUTICALS, LLC, and))	Magistrate Judge Morton Denlow
))	
BRIAN MCDAID, individually and doing))	
business as KAYCON LTD,))	
))	
Defendants.))	
_____))	

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

Plaintiff Federal Trade Commission ("FTC"), by its undersigned attorneys, having filed its Complaint in this matter seeking preliminary and permanent injunctive and other equitable relief, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and Section 7(a) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM Act"), 15 U.S.C. § 7706(a), moves this Court on an *ex parte* basis, without notice to Defendants, for a Temporary Restraining Order with Asset Freeze, Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue ("TRO").¹ In support thereof, the Plaintiff states:

1. The FTC seeks an Order:

¹ Plaintiff's Proposed Temporary Restraining Order, Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue has been filed concurrently with this motion.

A. Temporarily restraining Defendants from further violations of Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45 and 52, and from further violations of the CAN-SPAM Act, 15 U.S.C. § 7701, *et seq.*, as alleged in the Complaint;

B. Temporarily freezing Defendants' assets and requiring repatriation of Defendants' assets and documents;

C. Temporarily restraining and enjoining Defendants from destroying or concealing documents, and from transferring, concealing, or otherwise disposing of assets;

D. Granting leave for expedited discovery; and

E. Requiring Defendants to show cause why this Court should not issue a preliminary injunction extending such temporary relief pending an adjudication on the merits.

2. *Ex parte* relief is necessary here. An *ex parte* TRO is warranted where the facts show that irreparable injury, loss, or damage will result before the defendant can be heard in opposition. *See* Fed. R. Civ. P. 65(b). Cases involving unfair and deceptive practices such as this fit squarely within the category of cases where *ex parte* relief is appropriate and necessary. As in the other cases in this district where courts have granted the FTC an *ex parte* TRO with asset preservation,² irreparable injury, loss, or damage will likely result if Defendants receive

² *See, e.g., FTC v. Select Personnel Management, Inc., et al.*, No. 07 C 0529 (N.D. Ill. Feb. 7, 2007) (Norgle, J.); *FTC v. 1522838 Ontario, Inc.*, No. 06 C 5378 (N.D. Ill. Oct. 4, 2006) (Gettleman, J.); *FTC v. Datacom Marketing*, No. 06 C 2574 (N.D. Ill. May 9, 2006) (Holderman, J.); *FTC v. Cleverlink Trading Ltd., et al.*, No. 05 C 2889 (N.D. Ill. May 31, 2005) (St. Eve, J.); *FTC v. 3R Bancorp, et al.*, No. 04 C 7177 (N.D. Ill. Nov. 17, 2004) (Lefkow, J.); *FTC v. 120194 Canada Ltd., et al.*, No. 04 C 7204 (N.D. Ill. Nov. 8, 2004) (Gottschall, J.); *FTC v. AVS Marketing, Inc., et al.*, No. 04 C 6915 (N.D. Ill. Oct.

(continued...)

notice of this action. In short, if Defendants' assets are not preserved, those assets may disappear and be unable to be used to redress consumer injury.

3. As explained in more detail in the FTC's memorandum (the "TRO Memo") and exhibits supporting this Motion filed herewith, Defendants' business operations are permeated by, and reliant upon, deceptive acts or practices in violation of Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45 and 52, and violations of the CAN-SPAM Act, 15 U.S.C. § 7701, *et seq.* The FTC's 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.³ Indeed, such behavior seems especially possible in this case in light of Defendants' attempts to mask their true identities and their use of an offshore company and bank account. (See TRO Memo at pp.14-15.) Without an *ex parte* asset freeze, funds may not be available to satisfy a final order granting restitution to defrauded consumers.

4. As in 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.

²(...continued)

28, 2004) (Moran, J.); *FTC v. Harry*, 04 C 4790 (N.D. Ill. July 27, 2004) (Manning, J.); *FTC v. Phoenix Avatar, LLC, et al.*, 04 C 2897 (N.D. Ill. April 23, 2004) (Holderman, J.); *FTC v. 9094-5114 Quebec Inc., et al.*, 03 C 7486 (N.D. Ill. Oct. 23, 2003) (Leinenweber, J.); *FTC v. QT Inc., et al.*, 03 C 3578 (N.D. Ill. May 29, 2003) (St. Eve, J.); *FTC v. STF Group, Inc., et al.*, 03 C 977 (N.D. Ill. Feb. 12, 2003) (Zagel, J.); *FTC v. CSCT, Inc.*, 03 C 880 (N.D. Ill. Feb. 11, 2003) (Coar, J.); *FTC v. 1492828 Ontario Inc., et al.*, 02 C 7456 (N.D. Ill. Oct. 17, 2002) (Guzman, J.); *FTC v. Bay Area Bus. Council, Inc.*, 02 C 5762 (N.D. Ill. Aug. 15, 2002) (Darrah, J.); *FTC v. Stuffingforcash.com, Inc.*, 02 C 5022 (N.D. Ill. July 16, 2002) (Norgle, J.); *FTC v. TLD Network Ltd.*, 02 C 1475 (N.D. Ill. Feb. 28, 2002) (Holderman, J.); *FTC v. 1st Financial Solutions, Inc.*, 01 C 8790 (N.D. Ill. Nov. 19, 2001) (Kocoras, J.); *FTC v. Growth Plus Int'l Marketing, Inc.*, 2001 WL 128139 (N.D. Ill. Jan. 9, 2001) (Aspen, J.).

³ See Declaration and 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 and Motion to Temporarily Seal File, attached to this motion as Attachment A.

Therefore, the FTC requests that the Court grant Plaintiff's Motion *ex parte* and waive notice of this Motion to Defendants. The FTC respectfully refers the Court to Plaintiff's TRO Memo and supporting exhibits. The FTC has not previously applied for relief sought in this *ex parte* motion or any similar relief against Defendants.

WHEREFORE, Plaintiff Federal Trade Commission respectfully requests that this Court grant Plaintiff's *Ex Parte* Motion for a Temporary Restraining Order with Asset Freeze, Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue.

Respectfully Submitted,

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ATTACHMENT A