

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

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

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.)	

**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**

I, Steven M. Wernikoff, declare as follows:

1. I am an attorney employed by Plaintiff Federal Trade Commission ("FTC" or "Commission") in the Midwest Region, Chicago, Illinois.
2. The FTC has not attempted to notify Defendants of the FTC's *Ex Parte* Motion for a Temporary Restraining Order, Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue ("TRO Motion"), filed contemporaneously herewith, nor should such notice be given, for the reasons set forth below.
3. The evidence set forth in the Memorandum Supporting the FTC's *Ex Parte* Motion for a Temporary Restraining Order, Other Equitable Relief, and Order to Show Cause

Why a Preliminary Injunction Should Not Issue (“TRO Memo”), and in the accompanying exhibits, which I have personally reviewed, show that Defendants have engaged, and are likely to continue to engage, in a scheme designed to deprive consumers of substantial amounts of money through fraud and deception.

4. The evidence shows that Defendants market dietary supplement products, including pills that allegedly contain *Hoodia gordonii* and cause significant weight loss and a “natural” product that purportedly elevate one’s human growth hormone level and thereby dramatically reverse the aging process. Defendants misrepresent the efficacy of the products and make bogus and unsubstantiated claims, the only purpose of which is to induce consumers to part with their money. Moreover, the evidence shows that Defendants routinely violate central provisions of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (“CAN-SPAM Act”), 15 U.S.C. § 7701, *et seq.*, causing serious detrimental harm.

5. The systematic fraud perpetrated by Defendants provides motivation and opportunity for the dissipation of assets and destruction of records, especially given that much of the evidence is in electronic form and that the Defendants appear to use an offshore company and bank accounts. The evidence also demonstrates that Defendants have gone to great lengths to disguise their actual identities and avoid detection. (*See* TRO Memo at pp. 14-15.) They use false addresses and routing information in their e-mail messages. They provide false registration information for Internet domain names that they purchase for their Web sites. They identify themselves to consumers as a company in the Caribbean. In addition, Defendants regularly transfer funds overseas and to digital currencies. Thus, it is likely that Defendants can and would move assets and records outside of this Court’s reach.

6. There is good cause to believe that immediate and irreparable damage to the Court's ability to achieve effective final relief in the form of monetary redress will occur from the sale, transfer, concealment, or other disposition by Defendants of assets that were collected from their illegal scheme, and from the destruction, transfer, concealment, or other disposition of records, if Defendants are notified of the FTC's TRO Motion prior to a hearing thereon.

7. Moreover, as illustrated by the following examples (provided upon information and belief), it has been the FTC's experience that defendants who receive notice of the FTC's intent to file an action alleging fraud may attempt to undermine the FTC's attempts to preserve the status quo by immediately dissipating or concealing assets, as well as by destroying documents:

A. In *FTC v. Dennis Connolly, et al.*, SACV06-701 DOC (C.D. Cal. 2006), the FTC requested a non-noticed *ex parte* TRO and asset freeze against all defendants. The Court declined to issue an asset freeze against two of the three individual defendants and issued an order to show cause why an asset freeze should not issue as to them. The defendant with the asset freeze and one of the defendants with the order to show cause then withdrew amounts totaling close to \$750,000 from a joint account within 24 hours. The judge subsequently extended the asset freeze over all defendants. Approximately \$420,000 was recovered.

B. In *FTC v. Physicians Healthcare Development, Inc.*, CV02-2936 RMT (JWJx) (C.D. Cal. 2002), the Commission provided notice of the filing of an *ex parte* action to the individual defendants, who were represented by counsel at the TRO hearing. The day after the TRO was issued by the Court and served on defendants, Commission staff found that the defendants' computer and other business records had been removed from their business premises

and documents had been shredded. Witnesses advised that defendants' employees removed computers and other items on the day of the hearing.

C. In *FTC v. Hanson Publications, Inc.*, No. 1:02 CV 2205 (N.D. Ohio 2002), Canadian defendants transferred \$105,000 from a U.S. account to a Canadian account within two days of receiving service of the TRO, but because this violated the TRO, the Court later secured return of this money, making its return a precondition to release of attorney fees.

D. In *FTC v. The Tungsten Group*, No. 2: 01 CV 773 (E.D. Va. 2001), the Commission obtained an *ex parte* TRO in a case involving fraudulent advance-fee loans. The asset freeze frustrated one defendant's later attempt to withdraw funds from a frozen account. Another defendant was persuaded by counsel to return money he had wrongfully wired out of an account covered by the TRO before his bank could freeze the account.

E. In *FTC v. SkyBiz.com, Inc.*, No. 01-CV-396(K) (N.D. Okla. 2001), within days of the service of the TRO with an asset freeze provision, one of the primary defendants convinced an overseas trustee to withdraw \$1,000,000 from the offshore account of a foreign affiliate. Because a domestic correspondent bank had been served with the TRO, it refused to transfer the funds. The money in the offshore account was preserved, and ultimately used to provide \$20 million for consumer redress.

F. In *FTC v. Productive Marketing*, Civ. No. 00-06502 (C.D. Cal. 2000) the defendants' attempt to withdraw money from their bank was stopped by the TRO.

G. In *FTC v. Intelinet.com, Inc.*, CV-98-2140 CAS (C.D. Cal. 1998), the FTC obtained an *ex parte* TRO. The FTC served the TRO on banks where the defendants were known or suspected to have accounts. While the person who was serving the TRO for the FTC

was at one of the banks and speaking to a branch manager about the TRO, one of the defendants came into the bank, after having been served with the TRO, and attempted to withdraw money from his account there. He was unsuccessful.

H. In *FTC v. Intellicom*, CV-97-4572 TJH (C.D. Cal. 1997), the FTC obtained an *ex parte* TRO and served banks where the defendants were known to have accounts. One defendant, whose bank was served earlier in the day, called the bank and asked the branch manager to wire out approximately \$100,000 held in an account that was specifically frozen by the TRO. The branch manager encountered a red flag in the system, discovered the account had been frozen, and refused to release the funds.


I. In *FTC v. Equifin International, Inc.*, CV-97-4526 DT (C.D. Cal. 1997), after an *ex parte* TRO was issued against the corporate defendants and their owner, and the TRO was served on corporate defendants, but not yet served on the individual defendant, the individual defendant directed an affiliate to withdraw bank funds from an account containing defendants' credit card revenues. Upon demand of the receiver, the defendant returned the monies.

J. In *FTC v. Empress Corporation, d/b/a American Publishers Exchange*, CV-S-95-01174-LDG (D. Nev. 1995), defendants disposed of or concealed numerous business records on the night of December 6, 1996. Earlier that day, the U.S. Department of Justice had announced that Attorney General Janet Reno was coming to Las Vegas the next day to make a major announcement regarding enforcement efforts against telemarketing fraud. On December 7, 1996, the Commission executed an *ex parte* TRO with asset freeze against defendants.

8. Accordingly, Plaintiff respectfully submits that it is in the interest of justice and the public interest that the FTC's *Ex Parte* TRO Motion be heard without notice to Defendants.

I state under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on August 13, 2007


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