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CLERK US DISTRICT COURT
DISTRICT OF NEVADA

BY _____ DEPUTY

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11
12 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

14 FEDERAL TRADE COMMISSION,
15 Plaintiff,
16
17 v.
18 ERIC STETZEL,
19 Defendant.

CV-S-03-0396-KJD-LRL

[Proposed] *REL*

TEMPORARY RESTRAINING
ORDER WITH ASSET FREEZE
AND OTHER EQUITABLE RELIEF,
AND ORDER TO SHOW CAUSE
WHY A PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE

21 Plaintiff Federal Trade Commission ("Commission"), having filed its Complaint for a
22 permanent injunction and other relief in this matter pursuant to Section 13(b) of the Federal
23 Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and having applied *ex parte* for a
24 Temporary Restraining Order pursuant to Rule 65 of the Federal Rules of Civil Procedure, and
25 the Court having considered the Complaint, plaintiff's Application, and the Memorandum of

1 Points and Authorities and other materials filed in support thereof, and now being advised in
2 the premises, finds as follows:

3 1. This Court has jurisdiction of the subject matter of this case and there is good cause
4 to believe it will have jurisdiction of all parties hereto, and that venue in this district is proper.

5 2. There is good cause to believe that defendant Eric Stetzel ("Stetzel") has engaged in
6 and is likely to engage in acts that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and
7 that the Commission is likely to prevail on the merits of this action.

8 3. There is good cause to believe that immediate and irreparable harm will result from
9 defendant's ongoing violations of the FTC Act unless defendant is restrained and enjoined by
10 Order of this Court.

11 4. There is good cause to believe that immediate and irreparable damage to the Court's
12 ability to grant effective final relief for consumers in the form of monetary restitution will occur
13 from the sale, transfer, or other disposition or concealment by defendant of assets or records
14 unless defendant is immediately restrained and enjoined by order of this Court, and that in
15 accordance with Fed. R. Civ. P. 65(b), the interests of justice therefore require that this order be
16 granted without prior notice to defendant. There is thus good cause for relieving the
17 Commission of the duty to provide defendant with prior notice of the Commission's
18 application.

19 5. Weighing the equities and considering plaintiff's likelihood of ultimate success, a
20 Temporary Restraining Order ("Order") with asset freeze and other equitable relief is in the
21 public interest.

22 6. No security is required of any agency of the United States for issuance of a
23 restraining order. Fed. R. Civ. P. 65(c).

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ORDER

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. "Plaintiff" means the Federal Trade Commission.

2. "Defendant" means Eric Stetzel ("Stetzel"), as well as his successors, assigns, officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, all other persons or entities directly or indirectly under his control or under common control with them, and all other persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, including, but not limited to, fictitious business names.

3. "Defendant Eric Stetzel" means only Eric Stetzel.

4. "Material" means likely to affect a person's choice of, or conduct regarding, goods or services.

5. "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, including, without limitation, chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash, wherever located.

6. "Document" is equal in scope and synonymous in meaning 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 any other data compilations from which information can be obtained. A draft or non-identical copy is a separate document within the meaning of the term.

7. "Consumer" means an actual or potential purchaser or customer.

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I.

PROHIBITED REPRESENTATIONS

IT IS ORDERED that, in connection with the sale or offering for sale of any goods or services, regardless of whether the Internet is involved, that defendant is hereby temporarily restrained and enjoined from:

A. Misrepresenting, expressly or by implication, that such good or service will be delivered or provided to any consumer upon receipt of payment from the consumer;

B. Misrepresenting, expressly or by implication, any other fact material to a consumer's decision to buy or accept the good or service from Defendant; and

C. Using any fictitious, false, or assumed title or name, other than his own proper name, or otherwise misrepresenting his true identity in the course of business dealings or in publicly filed documents.

II.

PROHIBITION ON VIOLATING MAIL AND

TELEPHONE ORDER SALES RULE

IT IS FURTHER ORDERED, in connection with any sales in which the buyer has ordered merchandise from defendant by mail or telephone, including by fax or over the Internet, that defendant is hereby temporarily restrained and enjoined from:

A. Violating Section 435.1(a)(1) of the Mail Order Rule by soliciting orders for the sale of merchandise to be ordered by the buyer through the mails or by telephone without a reasonable basis to expect that defendant will be able to ship any ordered merchandise to the buyer within the time stated in the solicitation, or, if no time has been clearly and conspicuously stated, within thirty days of receipt of a properly completed order;

B. Violating Section 435.1(b)(1) of the Mail Order Rule by failing to offer to the buyer, clearly and conspicuously and without prior demand, an option either to consent to a delay in shipping or to cancel the order and receive a prompt refund;

1 C. Violating Section 435.1(c) of the Mail Order Rule by failing to make a "prompt
2 refund," as that term is defined in 16 C.F.R. § 435.2(f), to buyers when such refunds are
3 required by Section 435.1(c) of the Rule; and

4 D. Violating or assisting others in violating any other provision of the Mail Order Rule,
5 16 C.F.R. Part 435.

6 In the event that the Rule is amended by the Commission in a manner which would
7 create a new or different standard applicable to defendant's obligations under this Order,
8 compliance with the Rule as so amended shall not be deemed a violation of this Order.

9 **III.**

10 **ASSET FREEZE**

11 **IT IS FURTHER ORDERED** that defendant Eric Stetzel is hereby restrained and
12 enjoined, until further order of this Court, from:

13 A. Transferring, encumbering, selling, concealing, pledging, hypothecating, assigning,
14 spending, withdrawing, disbursing, conveying, gifting, dissipating, or otherwise disposing of
15 any funds, property, coins, lists of consumer names, shares of stock, or other assets, wherever
16 located, that are (1) owned or controlled by defendant Eric Stetzel, in whole or in part; (2) in the
17 actual or constructive possession of defendant Eric Stetzel; (3) held by an agent of defendant
18 Eric Stetzel as a retainer for the agent's provision of services to him; or (4) owned, controlled
19 by, or in the actual or constructive possession of, or otherwise held for the benefit of, any
20 corporation, partnership, or other entity directly or indirectly owned or controlled by defendant
21 Eric Stetzel;

22 B. Opening or causing to be opened any safe deposit box titled in the name of
23 defendant Eric Stetzel or subject to access by defendant Eric Stetzel;

24 C. Incurring charges or cash advances on any credit or debit card issued in the name,
25 singly or jointly, of defendant Eric Stetzel or any corporation, partnership, or other entity
26 directly or indirectly owned or controlled by defendant Eric Stetzel; and

1 D. Failing to disclose to plaintiff, within forty-eight (48) hours after service of this
2 Order, information that fully identifies each asset of defendant Eric Stetzel, and each entity
3 holding such asset, including, without limitation, the entity's name, address, and telephone
4 number, the number of the account, and the name under which the account is held.

5 **Provided, however,** that the freeze imposed in this Section shall be construed to apply
6 to assets that defendant Eric Stetzel acquires following service of this Order only if such assets
7 are derived from the sales of goods or services, or assistance with the sale of goods or services.

8 **Provided further,** that, pending further order of the Court, defendant Eric Stetzel shall
9 be allowed to spend up to, but no more than, \$_____ per day of previously acquired assets
10 for living expenses out of a personal account to be designated to counsel for plaintiff.

11 **IV.**

12 **FINANCIAL REPORTS**

13 **IT IS FURTHER ORDERED** that within seventy-two (72) hours after service of this
14 Order:

15 A. Defendant Eric Stetzel shall complete and deliver to plaintiff the Financial
16 Statement entitled "Financial Statement of Individual Defendant," which plaintiff shall provide;

17 B. Defendant Eric Stetzel shall, on behalf of each corporation of which he is the
18 majority owner or otherwise controls, complete and deliver to plaintiff a separate copy of the
19 "Financial Statement of Corporate Defendant;" and

20 C. Defendant Eric Stetzel shall provide the Commission access to records and
21 documents pertaining to his assets that are held by financial institutions outside the territory of
22 the United States by signing a document entitled "Consent to Release of Financial Records,"
23 which plaintiff shall provide.

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V.

PRESERVATION OF RECORDS

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3 **IT IS FURTHER ORDERED** that defendant is hereby restrained and enjoined from
4 destroying, erasing, mutilating, concealing, altering, transferring or otherwise disposing of, in
5 any manner, directly or indirectly, any documents that relate to the business practices or
6 finances of defendant or personal finances of defendant Eric Stetzel, including, but not limited
7 to, such documents as any contracts, accounting data, correspondence, advertisements,
8 computer tapes, discs or other computerized records, books, written or printed records,
9 handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and
10 business canceled checks and check registers, bank statements, appointment books, copies of
11 federal, state, or local business or personal income or property tax returns .

12 VI.

RECORD KEEPING

14 **IT IS FURTHER ORDERED** that defendant Eric Stetzel is hereby restrained and
15 enjoined from failing to make and keep, and to provide to plaintiff's counsel promptly upon
16 request, an accurate accounting that, in reasonable detail, accurately, fairly, and completely
17 reflects his incomes, disbursements, transactions, and use of money, beginning immediately
18 upon service or actual notice of this Order.

19 VII.

20 **NOTIFICATION OF BUSINESS ACTIVITIES**

21 **IT IS FURTHER ORDERED** that defendant Eric Stetzel is hereby restrained and
22 enjoined from creating, operating, or exercising any control over any business entity, including
23 any partnership, limited partnership, joint venture, sole proprietorship, or corporation, without
24 first serving on counsel for the Commission a written statement disclosing the following:
25 (1) the name of the business entity; (2) the address and telephone number of the business entity;

1 (3) the names of the business entity's officers, directors, principals, managers, and employees;
2 and (4) a detailed description of the business entity's intended activities.

3 **IT IS FURTHER ORDERED** that defendant Eric Stetzel shall notify the Commission
4 at least seven (7) days prior to any affiliation with any new or previously inactive business or
5 employment. Each notice shall include his new business address and a statement of the nature
6 of the new business or employment and of his duties and responsibilities in connection with
7 that business or employment.

8 **VIII.**

9 **FINANCIAL INSTITUTIONS**

10 **IT IS FURTHER ORDERED** that any financial or brokerage institution, business
11 entity, or person having possession, custody, or control of any records of defendant Eric Stetzel,
12 or of any account, safe deposit box, or other asset titled in the name of defendant Eric Stetzel,
13 either individually or jointly or held for the benefit of defendant Eric Stetzel, or that has
14 maintained any such account, safe deposit box, or other asset at any time since January 1, 2001,
15 shall:

16 A. Hold and retain within its control and prohibit the transfer, encumbrance, pledge,
17 assignment, removal, withdrawal, dissipation, sale, or other disposal of any such account or
18 other asset, except for transfers or withdrawals authorized in writing by counsel for plaintiff or
19 by further order of this Court;

20 B. Deny access to any safe deposit box titled individually or jointly in the name of
21 defendant Eric Stetzel or otherwise subject to access by defendant Eric Stetzel;

22 C. Provide to plaintiff, within three (3) business days of notice of this Order, a sworn
23 statement setting forth:

- 24 1. The identification of each account or asset;
25 2. The balance of each account or a description of the nature and value of each
26 asset as of the close of business on the day notification of this Order is received, and, if the

1 account or asset has been closed or moved, the balance or value removed and the person or
2 entity to whom it was transferred; and

3 3. the identification of any safe deposit box titled in the name of or subject to
4 access by defendant Eric Stetzel; and

5 D. Upon request by counsel for the plaintiff, promptly provide plaintiff with copies of
6 all records or other documentation pertaining to such account or asset, including, but not
7 limited to, originals or copies of account applications, account statements, signature cards,
8 checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit
9 instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

10 **IX.**

11 **REPATRIATION OF ASSETS**

12 **IT IS FURTHER ORDERED** that within five (5) business days following service of
this Order, defendant Eric Stetzel shall:

14 A. Repatriate to the United States all funds, documents, or assets in foreign countries
15 held (1) by him; (2) for his benefit; or (3) under his direct or indirect control;

16 B. On the same business day as any repatriation under Paragraph A above,

17 1. notify plaintiff of the name and location of the financial institution or other
18 entity that is the recipient of such funds, documents, or assets; and

19 2. serve this Order on any such financial institution or other entity;

20 C. Provide plaintiff with a full accounting of all funds, documents, and assets outside of
21 the territory of the United States held: (1) by him; (2) for his benefit; or (3) under his direct or
22 indirect control; and

23 D. Hold and retain all repatriated funds, documents, and assets and prevent any transfer,
24 disposition, or dissipation whatsoever of any such assets or funds.

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X.

IMMEDIATE ACCESS TO DEFENDANT'S RECORDS

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3 **IT IS FURTHER ORDERED** that defendant shall allow plaintiff's representatives
4 immediate access to the business premises, mail drops, storage facilities, and all other business
5 locations owned, controlled, or used by defendant, including, but not limited to, 4616 W.
6 Sahara Blvd, Las Vegas, Nevada. The purpose of the access shall be to effect service and to
7 inspect and copy materials relevant to this action. Plaintiff shall have the right to remove
8 documents from defendant's premises in order that they may be inspected, inventoried, and
9 copied. Plaintiff shall return any such removed documents to defendant within three (3)
10 business days, or such time-period as is agreed upon by plaintiff and defendant. Defendant, to
11 the extent he is in possession of documents relevant to this action, shall provide plaintiff with
12 any necessary means of access to these documents, including without limitation keys and
combinations to locks, computer access codes, and storage area access information;

14 **IT IS FURTHER ORDERED** that defendant Eric Stetzel shall, within forty-eight (48)
15 hours of service of this Order, produce to plaintiff, at a location designated by plaintiff:

16 A. All contracts, accounting data, written or electronic correspondence, advertisements,
17 computer tapes, discs, or other computerized or electronic records, books, written or printed
18 records, handwritten notes, telephone logs, telephone scripts, telephone bills, receipt books,
19 ledgers, membership records and lists, refund records, receipts, ledgers, bank records (including
20 personal and business monthly statements, canceled checks, records of wire transfers, and check
21 registers), appointment books, copies of federal, state, and local business or personal income or
22 property tax returns, 1099 forms, title records, and other documents or records of any kind that
23 relate to defendant's business practices and assets and to defendant Eric Stetzel's personal
24 assets; and

25 B. All computers and data in whatever form, used by defendant, in whole or in part,
26 relating to his business practices and assets and to defendant Eric Stetzel's personal assets.

XI.

DISTRIBUTION OF ORDER

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3 **IT IS FURTHER ORDERED** that defendant Eric Stetzel shall immediately provide a
4 copy of this Order to his affiliates, successors, assigns, managing agents, employees,
5 representatives, and independent contractors and shall, within three (3) business days from the
6 date of service of this Order, serve on plaintiff an affidavit identifying the names, titles,
7 addresses, and telephone numbers of the persons and entities whom he has served pursuant to
8 this provision.

XII.

CREDIT REPORTS

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11 **IT IS FURTHER ORDERED** that plaintiff may obtain credit reports concerning
12 defendant Eric Stetzel pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C.
§ 1681b(a)(1), and that, upon written request, any credit reporting agency from which such
14 reports are requested shall provide them to plaintiff.

XIII.

CORRESPONDENCE

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17 **IT IS FURTHER ORDERED** that, for the purposes of this Order, all correspondence
18 and service of pleadings on plaintiff shall be addressed to:

19 Jerome M. Steiner, Jr.
20 Federal Trade Commission
21 901 Market St., Suite 570
22 San Francisco, CA 94103
23 Fax: (415) 848-5184

XIV.

PRELIMINARY INJUNCTION HEARING

24 **IT IS FURTHER ORDERED** that defendant Eric Stetzel shall appear before this
25 Court on 23 April, 2003, at 11 A.m., to show cause, if any there
be, why this Court should not enter a preliminary injunction, pending final ruling on the

1 Complaint, enjoining him from violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a)
2 and of the Mail Order Rule, imposing such additional relief as may be appropriate. Pursuant to
3 Rule 65(b) of the Federal Rules of Civil Procedure, defendant may, on two (2) days' notice to
4 plaintiff, file an application to modify or dissolve this Order, and the Court shall proceed to
5 determine such motion as expeditiously as the ends of justice require.

6 **IT IS FURTHER ORDERED** that plaintiff may submit supplemental evidence
7 discovered subsequent to the filing of its application for a TRO. Plaintiff shall file and serve
8 any supplemental evidence and any supplemental memorandum by no later than 4:30 p.m. on
9 the sixth court day prior to the preliminary injunction hearing as scheduled above. Such
10 documents may be served on defendant by faxing or delivering the document(s) to the attorney
11 for the defendant, or, if defendant is not represented by counsel, to a fax number previously
12 designated by such defendant in writing to counsel for plaintiff; if such defendant has not so
13 designated a fax number, service may be effected by mailing the documents to an address
14 designated in writing by defendant to counsel for plaintiff; if no address has been so designated,
15 service shall be complete upon filing of the documents with this Court.

16 **IT IS FURTHER ORDERED** that defendant shall file and serve any opposition to the
17 issuance of a preliminary injunction, including any declarations, exhibits, memoranda, or other
18 evidence on which he intends to rely, and objections to any evidence submitted by plaintiff, by
19 no later than 4:30 p.m. of the fourth court day prior to the hearing on the preliminary injunction.
20 Such documents shall be served by fax upon plaintiff's counsel.

21 **IT IS FURTHER ORDERED** that plaintiff shall file and serve any reply to
22 defendant's opposition by no later than the second court day prior to the preliminary injunction
23 hearing.

24 **IT IS FURTHER ORDERED** that there will be no direct examination of witnesses at
25 the preliminary injunction hearing in this matter. Direct testimony shall be presented in the
26 form of declarations or affidavits.

XV.

EXPIRATION

IT IS FURTHER ORDERED that this Order shall expire ten (10) court days after entry unless, within such time, for good cause shown, it is extended for a like period, or unless defendant consents that it may be extended for a longer period and the reasons therefor are entered of record.

XVI.

SERVICE OF THIS ORDER UPON FINANCIAL INSTITUTIONS

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

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XVII.

**SERVICE OF SUMMONS, COMPLAINT,
AND OTHER PAPERS UPON DEFENDANT**

IT IS FURTHER ORDERED that copies of the summons, complaint, other papers and exhibits filed by plaintiff with this Court, and this Order may be served on defendant by employees of the Federal Trade Commission.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

Date:

17 April 2003

Presented by:


Jerome M. Steiner, Jr.
Janice L. Charter
David M. Newman
Blaine T. Welsh

Attorneys for Plaintiff
Federal Trade Commission