

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

FEDERAL TRADE COMMISSION,

Plaintiff,

versus

ESTEBAN BARRIOS VEGA,

Defendant.

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CIVIL ACTION H-04-1478

Preliminary Injunction

The Federal Trade Commission commenced this civil action on April 14, 2004. On ex parte motion by the FTC, this court entered a temporary restraining order with asset freeze and other equitable relief against Esteban Barrios Vega on April 15, 2004. Among other things, the TRO ordered Vega to show cause why a preliminary injunction should not issue against him. A hearing was held on April 23, 2004, on the order to show cause.

1. The court has authority over this federal question. Personal jurisdiction appears, and venue lies in this district.
2. Esteban Barrios Vega is an individual who does business as EBV Promotions, Paymentech Promotion, and Promotions of Service. The FTC has shown a likelihood of proving that, in the course of offering for sale and selling work-at-home business opportunities, Vega falsely represents that consumers who pay Vega a fee (1) will obtain assembling project work for pay from Vega and (2) are likely to earn a substantial level of earnings, such as \$500 to \$1000 per week, assembling products at home for Vega. He is likely to continue engaging in acts 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. The FTC is, therefore, likely to prevail on the merits.
3. Immediate and irreparable harm will result from Vega's violations unless he is restrained.
4. The damages will be irreparable because the court's ability to grant effective consumer redress and disgorgement will be impaired from Vega's spending or hiding his assets or records unless he is immediately restrained.

- 5. Because the applicant has data that strongly supports the violation, cause exists for ordering Vega to account for his business activities, to disclose his records and assets, and to allow the FTC safely to inspect his documents and operations.
- 6. Weighing the equities and considering the FTC's likelihood of success, a preliminary injunction freezing assets and expedited discovery are in the public interest.
- 7. No security is required. Fed. R. Civ. P. 65(c).
- 8. No unrepresented third parties appear to be adversely affected by this order.
- 9. Definitions:
  - A. "Defendant" and "Vega" means Esteban Barrios Vega, doing business under the names EBV Promotions, Paymentech Promotions, and Promotions of Service, and his successors, assigns, agents, servants, or employees, and those persons in active concert with him who receive actual notice of this order, whether acting directly or indirectly.
  - B. "Document" and "record" mean:
    - (1) The original copy of written, typed, printed, electronically stored, transcribed, taped, recorded, filmed, punched, graphic matter, or other data compilations of every kind, including letters, e-mail or other correspondence, messages, memoranda, interoffice communications, notes, reports, summaries, manuals, magnetic tapes or discs, tabulations, books, records, checks, invoices, work papers, journals, ledgers, statements, returns, reports, schedules, or files; and
    - (2) Information stored on personal computers and workstations, laptops, notebooks, and other portable computers, whether assigned to individuals or in pools of computers available for shared use; home computers used for work-related purposes; backup disks and tapes, archive disks and tapes, and other forms of off-line storage, whether stored onsite with the computer used to generate them, stored offsite in another company facility, or stored offsite by a third party; and computers and related off-line storage used by participating associates, including persons who are not employees of the company or who do not work on company premises.

- C. "Assets" means legal or equitable interests in, rights to, or claims to, real and personal property, including goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail, or other deliveries, inventory, checks, notes, accounts, credits, receivables, funds, monies, and all cash, including both existing assets and assets acquired after the date of entry of this order.
- D. "Financial institution" means banks, savings-and-loan institutions, credit unions, or financial depositories, including brokerage houses, trustees, broker-dealers, escrow agents, title companies, commodity trading companies, metal dealers, check cashing facilities, or a person that holds, controls, or maintains custody of an account or asset of Vega.
- E. "Telemarketing" means a business activity that includes initiating or receiving telephone calls, managing or contracting with others who initiate or receive telephone calls, operating an enterprise that initiates or receives telephone calls, owning an enterprise that initiates or receives telephone calls, or otherwise participating as an officer, director, employee or independent contractor in an enterprise that initiates or receives telephone calls. It involves attempts to induce consumers to purchase any item, good, or service, or to enter a contest for a prize, by means of telephone sales presentations, either exclusively or in conjunction with other forms of marketing.
- F. "Assisting others" means furnishing one or more of the following goods or services to a person or entity: (a) performing customer service functions, including receiving or responding to consumer complaints; (b) drafting or supplying, or arranging for the drafting or supplying of, a telephone sales script or other written marketing material; (c) furnishing names of potential customers or helping collect their names ; (d) performing marketing services; or (e) acting as an officer or director of a business entity.
- G. "Work-at-home business opportunity" means a plan, program, product or service represented to enable participants or purchasers to earn money while working from home.
10. *Conduct Covered.* Vega is restrained from (A) advertising, marketing, promoting, offering for sale, distributing, or selling any work-at-home business opportunity; (B) assisting others engaged in the advertising, marketing, promoting, offering for sale, distributing, or selling of any work-at-home business opportunity; (C) engaging in telemarketing; and (D) assisting others engaged in telemarketing. Nothing in this order will be read as an exception to this paragraph.

11. *Asset Freeze.* Vega is restrained from directly or indirectly:
- A. Selling, liquidating, assigning, transferring, converting, loaning, encumbering, pledging, concealing, dissipating, spending, withdrawing, or otherwise disposing of funds, real or personal property, or other assets or interest in them, wherever located, including outside the United States,
    - (1) In the actual or constructive possession of Vega;
    - (2) Owned or controlled by, or held, in whole or in part for the benefit of, or subject to access by, claimed, or belonging to Vega; or
    - (3) In the actual or constructive possession of, or owned or controlled by, or subject to access by, or belonging to, a corporation, partnership, trust or other entity directly or indirectly under the control of Vega.
  - B. Opening safe-deposit boxes in the name of Vega or subject to his access.
  - C. Incurring charges on credit cards issued in the name, singly or jointly, of Vega or guaranteed by him.
  - D. Using funds or other assets for attorneys' fees or living expenses, except as approved by the court.
  - E. The funds and assets seized include both existing assets and assets acquired after the effective date of this order, including those acquired by loan or gift.
12. *Retention of Assets and Documents by Third Parties.* Financial institutions or persons served with a copy of this order must:
- A. Hold and retain within his or its control funds, documents, property, or other assets held by him or it and prohibit their withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation, or other disposal.
  - B. Deny access to safe-deposit boxes that are either:
    - (1) In the name, individually or jointly, of Vega, or
    - (2) Accessible by Vega.

- C. Deliver to counsel for the FTC, within three days, a statement:
- (1) Identifying each account or asset titled in the name, or held on behalf of Vega;
  - (2) Specifying the balance of each account or a description of the nature and value of the asset;
  - (3) Identifying safe-deposit boxes subject to access or control by Vega;
  - (4) Specifying accounts, safe-deposit boxes, or other assets that have been closed or removed, the date that happened, and the balance then.

A financial institution does not have to furnish the information required in this sub-paragraph if (1) the financial institution has complied with the similar provision in the TRO and (2) the information that it has furnished has not changed.

- D. The accounts include existing assets and assets deposited after the effective date of this order.
- E. The FTC is granted leave to subpoena documents immediately from financial institutions, account custodians, or other entities about the nature, location, status, and extent of Vega's assets, and compliance with this order. Those institutions, custodians, or entities must respond to the subpoenas within five business days after service. Fed. R. Civ. P. 45. For purposes of this subsection, the FTC may serve those subpoenas by overnight courier.

13. *Financial Statements and Accounting.* It is further ordered that, within five business days of service of this order, Vega must furnish counsel for the FTC:

- A. A financial statement accurate for the date of service of this order.
- B. A completed statement under oath of all payments, transfers, or assignment of funds, assets, or property worth \$1,000 or more since January 1, 2001. The statement must include (a) the amount; (b) the name of each transferee; (c) the date of the assignment; (d) the type and amount of consideration paid to Vega. Each statement must specify the name and address of each financial institution and brokerage firm where Vega has accounts or safe-deposit boxes. Statements must include assets held in foreign as well as domestic accounts.

C. For all work-at-home business opportunities advertised, marketed, offered for sale, distributed, or sold by Vega, a detailed accounting under oath, of:

- (1) Gross revenues from the sale of each product or service (by month) from inception of sales through the date of this order;
- (2) Net profits from the sale of each product or service (by month) from inception of sales through the date of this order;
- (3) Total of each product or service sold; and
- (4) Full names, addresses, and telephone numbers of all purchasers of each product or service.

Vega does not have to furnish a financial statement or accounting required by this paragraph if (1) he has complied with the similar provision set forth in the TRO and (2) the information that he has furnished has not changed.

14. *Repatriation of Foreign Assets.* It is further ordered that, within five business days following the service of this order, Vega must:

- A. Account to the FTC all assets, accounts, or documents outside of the territory of the United States held either: (1) by him; (2) for his benefit; or (3) under his direct or indirect control, individually or jointly;
- B. Transfer to the territory of the United States all assets, accounts, or documents in foreign countries held either: (1) by him; (2) for his benefit; or (3) under his direct or indirect control;
- C. Hold and retain all repatriated assets, accounts or document and prevent the transfer, disposition, or dissipation of assets or documents; and
- D. Allow the FTC access to Vega's records and documents held by financial institutions outside the territorial United States by signing the consent to release of financial records, furnished by the FTC.

15. *Noninterference with Repatriation.* Vega is temporarily restrained from taking actions, directly or indirectly, that may result in the encumbrance or dissipation of foreign assets or in the hindrance of the repatriation including:

has served with a copy of this order.

- 19. *Consumer Reports.* Under Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), consumer reporting agencies may furnish a consumer report about Vega to the FTC.
- 20. *Correspondence with the Government.* For the purposes of this order, service on and correspondence to the FTC must be addressed to: Gregory A. Ashe, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room NJ-2122, Washington, DC 20580. Telephone: (202) 326-3719; Facsimile: (202) 326-2558.
- 21. *Service.* This order may be served by facsimile, e-mail, personal, or overnight delivery, or U.S. Mail, by agents and employees of the FTC or state or federal law enforcement officers on (1) Vega, (2) financial institutions, entities, or persons that hold, control, or maintain custody of accounts or assets of Vega, or have held, controlled, or maintained custody of accounts or assets of Vega, or (3) other persons or entities that may be subject to this order.

Signed April 23, 2004, at Houston, Texas, at 5:40, C.D.T.



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 Lynn N. Hughes  
 United States District Judge