

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 05-20402-CIV-SEITZ/BANDSTRA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SUN RAY TRADING, INC.,
a Florida Corporation;

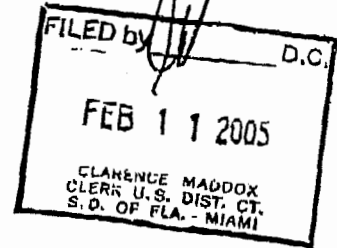
SR & ASSOCIATES, INC.,
a Florida Corporation;

ROLANDO GALVEZ-GARCIA,
also known as ROLANDO GALVEZ,
individually, and as an officer of
one or more of the above corporations;

ANNEELISES FLORES ADINO,
also known as ANNIELISES FLORES,
ANNIELISES H. FLORES, ANNIE FLORES,
and ANNY FLOREZ,
individually, and as an officer of
one or more of the above corporations; and

KOSTADIN OSVALDO MARTE TAVAREZ,
also known as KOSTADIN MARTE,

Defendants.



**TEMPORARY RESTRAINING ORDER
AND
ORDER TO SHOW CAUSE AS TO WHY
A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), having filed a Complaint for Injunctive and Other Equitable Relief, including redress to consumers, pursuant to Sections 5(a),

13(b), and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 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), and having moved for an *ex parte* temporary restraining order ("TRO") pursuant to Rule 65 of the Federal Rules of Civil Procedure, and the Court having considered the Complaint, declarations, exhibits, and memorandum of law filed in support of the Plaintiff's motion, 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. Venue properly lies with this Court;

3. There is good cause to believe that the Defendants have engaged and are likely to continue to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and Section 5(a) of the CAN-SPAM Act, 15 U.S.C. § 7704(a), and that the Commission is therefore likely to prevail on the merits of this action;

4. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief in the form of monetary restitution or disgorgement will occur from the sale, transfer, or other disposition or concealment by the Defendants of their assets or records unless the Defendants are immediately restrained and enjoined by Order of this Court. The evidence set forth in the Commission's *Ex Parte* Motion For Temporary Restraining Order and Other Equitable/Injunctive Relief, and in the accompanying declarations and exhibits, shows that the Commission is likely to prove that Defendants have engaged in a concerted course of illegal activity in connection with the sale of envelope stuffing employment opportunities to consumers nationwide, in violation of Section 5 of the FTC Act and the CAN-SPAM Act. Thus, there is good cause to believe that Defendants will attempt to conceal the scope of their illegal actions to avoid returning

their ill-gotten gains to consumers injured by their unlawful practices if not restrained from doing so by this Court;

5. There is good cause for the Court to order an asset freeze of Defendants' assets. Defendants have engaged in a widespread effort to take money from consumers based on false and deceptive acts and practices. Defendants have obtained ill-gotten gains from these and other practices. Accordingly, an asset freeze is reasonably necessary in order to preserve the possibility of meaningful relief at the conclusion of this litigation;

6. There is good cause for issuing this Order pursuant to Federal Rule of Civil Procedure 65(b) and for relieving the Plaintiff of the duty to provide Defendants with prior notice of the Plaintiff's motion. The Commission has not provided notice to the Defendants due to the likelihood that advance notice of this action will lead to the same irreparable harm, including the dissipation of assets and destruction of evidence, that the Commission seeks to prevent through its application for an *ex parte* TRO. The Commission's request for this emergency *ex parte* relief is not the result of any lack of diligence on the part of the Commission, but is instead based on the nature of the Defendants' unlawful conduct. Thus, there is good cause for relieving the Commission of the duty to provide Defendants with prior notice of the Commission's application;

7. Weighing the equities and considering the Commission's likelihood of ultimate success, a Temporary Restraining Order with asset freeze and other equitable relief is in the public interest; and

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

DEFINITIONS

For the purpose of this Temporary Restraining Order, the following definitions shall apply:

1. "Assets" means any legal or equitable interest in, right to, or claim to any real or personal property of any Defendant, or held for the benefit of any Defendant, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes" (as these terms are defined in the Uniform Commercial Code), and all chattels, leaseholds, contracts, mails or other deliveries, shares of stock, lists of consumers, accounts, credits, receivables, and cash, wherever located;

2. "Business Opportunity" means any program, plan, product, or service that enables or purports to enable a participant or purchaser to earn money;

3. "Commercial electronic mail message" means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including the content on an Internet website operated for commercial purposes).

4. "Defendants" means Sun Ray Trading, Inc., SR & Associates, Inc., Rolando Galvez-Garcia, Anneelises Flores Adino, and Kostadin Osvaldo Marte Tavarez whether acting directly or through any corporation, subsidiary, division, agent, employee, consultant, independent contractor or other device or any person acting in active concert or participation with any of the foregoing who receives actual notice of this Order by personal service or otherwise. *See* Fed. R. Civ. P. 65(d).

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

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

or services.

7. "Initiate," when used with respect to a commercial e-mail message, means to originate or transmit such message or to procure the origination or transmission of such message;

8. "Procure," when used with respect to the initiation of a commercial e-mail message, means intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one's behalf; and

9. "Protected computer," when used with respect to the initiation of a commercial e-mail message, means a computer which is used in interstate or foreign commerce or communication, including a computer located outside the United States that is used in a manner that affects interstate or foreign commerce or communication of the United States.

ORDER

I.

PROHIBITION AGAINST VIOLATING SECTION 5 OF THE FTC ACT

IT IS THEREFORE ORDERED that Defendants, in connection with the advertising, promotion, offering for sale or sale of any goods and services, including but not limited to any business opportunity, are hereby temporarily restrained and enjoined from:

- A. Misrepresenting, directly or by implication, that consumers who purchase Defendants' business opportunity are likely to earn a substantial amount of money;
- B. Misrepresenting expressly or by implication, that Defendants will pay consumers for each envelope they stuff and mail;
- C. Misrepresenting expressly or by implication, that Defendants will pay the cost of postage spent by consumers to mail advertising circulars or letters;
- D. Furnishing others with the means and instrumentalities to commit deception,

including, but not limited to, furnishing advertising circulars or letters that contain false and misleading representations;

- E. Misrepresenting, directly or by implication, any material term, condition, or limitation of the transaction or about the use of any offered good or service; and
- F. Assisting others who violate any provision of Subsections A through E of this Section.

II.

PROHIBITION AGAINST VIOLATING THE CAN-SPAM ACT

IT IS THEREFORE ORDERED that Defendants, in connection with the advertising, promotion, offering for sale or sale of envelope stuffing employment opportunities, are hereby temporarily restrained and enjoined from violating, or assisting others in violating, any provision of the CAN-SPAM Act, 15 U.S.C. §§ 7701 *et seq.*, including, but not limited to, by initiating the transmission, to a protected computer, of a commercial electronic mail message that contains or includes a subject heading this is likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message in violation of Section 5(a)(2) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(2).

III.

ASSET FREEZE

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

- A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, perfecting a security interest in, or otherwise disposing of any assets, including, but not limited to, funds, property, accounts, contracts, shares of stock, lists of consumer names, or other assets, wherever located, including outside the United States, that are: (1)

owned or controlled, directly or indirectly, by any Corporate Defendant or any Individual Defendant in whole or in part; (2) in the actual or constructive possession of any Corporate Defendant or any Individual Defendant; 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 any Corporate Defendant or any Individual Defendant including, but not limited to, any assets held by, or for, any Corporate Defendant or any Individual Defendant 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 box titled in the name of or subject to access by any Corporate Defendant or any Individual Defendant or subject to access by any Corporate Defendant or any Individual Defendant;

C. Incurring charges or cash advances on any credit card, debit card, or checking card issued in the name, singly or jointly, of any Corporate Defendant or any Individual Defendant; and

D. Securing a loan with or incurring a lien on the real property, the personal property, or other asset in the name, singly or jointly, of any Corporate Defendant or any Individual Defendant.

Provided, however, that the assets affected by this Paragraph shall include all of the assets of the Defendants, both existing assets and assets acquired after issuance of this Order, including, but not limited to, those acquired by loan or gift, and assets in the form of retainers paid to any of Defendants' agents as compensation for the provision of services to any Defendant. Defendants, or any third party holding assets for the benefit of Defendants, shall hold all assets, including, without limitation, payments, loans, and gifts received after service of this Order.

Provided further, that for assets acquired after the date this Order was entered, only those assets that are derived from or otherwise related to the activities alleged in Plaintiff's complaint are

affected by this Paragraph.

**IV.
DUTIES OF ASSET HOLDERS**

IT IS FURTHER ORDERED, pending the determination of Plaintiff's request for a preliminary injunction, that any of the entities named in Section III. A above, maintaining or having custody or control of any account or other asset of any Defendant, or any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by, or under common control with any Defendant, or that at any time since January 2003, has maintained or had custody of any such account or other asset, and which is served with a copy of this Order, or otherwise has actual or constructive knowledge of this Order, shall:

A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any of the assets, funds, or other property held by, or under its control, on behalf of any Defendant in any account maintained in the name of or for the benefit of any Defendant, in whole or in part, except in accordance with any further order of the Court;

B. Deny Defendants access to any safe deposit boxes or storage facilities that are either titled in the name, individually or jointly, of any Defendant, or otherwise subject to access by any Defendant;

C. Within five (5) business days of receiving a copy of this order, provide to counsel for Plaintiff a sworn statement setting forth:

1. The identification number of each such account or asset titled in the name, individually or jointly, of any Defendant, or held on behalf of, or for the benefit of, any Defendant, including all trust accounts managed on behalf of any Defendant or subject to any Defendant's

control;

2. The balance of each such account, or a description and appraisal of the value of such asset, as of the time this Order is served, and, if the account or other asset has been closed or removed since January 2003, 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 and location of any safe deposit box or storage facility that is either titled in the name individually or jointly, of any Defendant, or is otherwise subject to access or control by any Defendant; and

D. Upon request by counsel for the Plaintiff, 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.

The assets and funds affected by this Section shall include both existing assets and assets acquired after the issuance date of this Order.

V. FINANCIAL STATEMENT

IT IS FURTHER ORDERED that, within three (3) business days after service of this Order, each Defendant shall prepare and serve to counsel for the Commission a complete and accurate individual or corporate financial statement, as the case may be, signed under penalty of perjury, on the forms appended to this Order as Attachments A and B, respectively. Such financial statements shall include a full accounting of all assets and documents that are located inside or

outside of the territory of the United States of America and are held by or for any Defendant or are under any Defendant's direct or indirect control, jointly, severally, or individually. Defendants shall attach to these completed financial statements copies of all state and federal income and property tax returns, with attachments and schedules, as called for by the financial statements. Within ten (10) days of any material change in the information contained in any financial statement required above, or any other material change to the financial condition of any Defendant, such Defendant shall make a sworn amendment to the financial statement to reflect such change.

VI. 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 Defendant to the Commission.

VII. FOREIGN ASSET REPATRIATION

IT IS FURTHER ORDERED that within five (5) business days following the service of this Order, each Defendant shall:

A. Provide the Commission with a full accounting of all funds, documents, and assets located outside of the United States which are (1) titled in the name, alias, or fictitious "doing business as" name, individually or jointly, of any Defendant; or (2) held by any person or entity for the benefit of any Defendant; or (3) under the direct or indirect control, whether jointly or singly, of any Defendant;

B. Transfer to the territory of the United States all funds, documents, and assets located outside the United States which are (1) titled in the name, alias, or fictitious "doing business as" name, individually or jointly of any Defendant; or (2) held by any person or entity for the benefit of

any Defendant; or (3) under any Defendant's direct or indirect control, whether jointly or singly;

C. Hold and retain all repatriated funds, documents, and assets, and prevent any transfer, disposition, or dissipation whatsoever of any funds or assets, except as required by this Order; and

D. Provide the Commission access to all records of funds, documents, or assets of any Defendant held by financial institutions or other entities or individuals located outside the United States by signing the "Consent to Release of Financial Records" appended to this Order as Attachment C.

VIII. INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that the Defendants are hereby temporarily restrained and enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of funds, documents, or assets held outside of the United States, or in the hindrance of the repatriation required by the preceding Section 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 the preceding Section of this Order; and

B. Notifying any trustee, protector or other agent of any foreign trust or other related entities of either 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 the preceding Section of this Order.

**IX.
RECORD KEEPING PROVISIONS**

IT IS FURTHER ORDERED Defendants and any entity through which they do business, and their successors, assigns, officers, agents, servants, employees, and those other persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are hereby restrained and enjoined from:

A. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, any: books; records; audio or video tape recordings; computer tapes or discs or other computerized records; correspondence; forms; advertisements; brochures; manuals; customer lists; customer files; invoices; telephone records; scripts; postal receipts; appointment books; accounting data; ledgers; payroll records; banking records; personal and business canceled checks (fronts and backs); state or federal income or property tax returns; or other documents of any kind in their possession, custody, or control that relate to the business practices or business or personal finances of any Defendant; and

B. Failing to create and maintain books, records, bank statements, documents indicating title to real or personal property, and any other data which, in reasonable detail, accurately and fairly reflect their income and transactions and dispositions of their assets.

**X.
SERVICE OF ORDER BY FAX**

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 any Corporate Defendant or Individual Defendant, or that may be subject to any provision of this Order.

**XI.
NOTICE OF THE ORDER**

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each of their corporations, subsidiaries, affiliates, directors, officers, employees, agents, and independent contractors and to each person and entity through which Defendants advertise. Within ten days after the date of service of this Order, Defendants shall serve on the Commission an affidavit identifying the names, titles, addresses, and telephone numbers of the persons and entities Defendants have served with a copy of this Order in compliance with this provision.

**XII.
SCHEDULE FOR SERVICE AND FILING OF MEMORANDUM, EVIDENCE AND
WITNESS LISTS**

IT IS FURTHER ORDERED that:

- A. The Commission shall serve a copy of this Order on Defendants, by hand delivery, by no later than **5:00 p.m. on Friday, February 11, 2005;**
- B. Defendants shall file any answering affidavits, pleadings, or legal memoranda with the Court and serve the same on counsel for the Commission by no later than **12:00 p.m. on Wednesday, February 16, 2005.** Courtesy copies of any such submissions must be hand-delivered to the Chambers of the undersigned by 12:00 p.m. on February 16, 2005;
- C. The Commission may file responsive or supplemental pleadings, materials, affidavits, or memoranda with the Court and serve the same on counsel for Defendants by no later than **4:00 p.m. on Thursday, February 17, 2005.** Courtesy copies of any such submissions must be hand-delivered to the Chambers of the undersigned by 4:00 p.m. on February 17, 2005;
- D. Service, under this section, shall be performed by personal or overnight delivery or by facsimile. Service on the Commission shall be made to the attention of Barbara E. Bolton,

Counsel for the Commission, at the Federal Trade Commission, 225 Peachtree Street, N. E., Suite 1500, Atlanta, Georgia 30303, facsimile number (404) 656-1379;

E. Any party who desires to present live testimony at the preliminary injunction hearing in this matter shall file with this Court and serve on all opposing parties, by no later than 12:00 p.m. on Wednesday, February 16, 2005, a witness list that shall include the name, address, and telephone number of any such witness, and either a summary of, or the witness' declaration revealing the substance of, such witness' expected testimony.

**XIII.
PRELIMINARY INJUNCTION HEARING**

IT IS FURTHER ORDERED that each Defendant shall appear before the undersigned on Friday, February 18, 2005, at 1:00 p.m. at the United States Courthouse, 301 North Miami Avenue, 5th Floor Courtroom, Miami, Florida, to show cause, if there be any, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint, against said Defendants enjoining them from further violations of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), and Section 5(a) of the CAN-SPAM Act, 15 U.S.C. § 7704(a), continuing the freeze of their assets, and imposing such additional relief as may be appropriate.


**XIV.
EXPIRATION DATE OF TEMPORARY RESTRAINING ORDER**

IT IS FURTHER ORDERED that this Order shall expire on Monday, February 21, 2005, unless, within such time, for good cause shown, it is extended for a like period, or unless as to any Defendant, the Defendant consents that it should be extended for a longer period and the reasons therefore are entered of record.

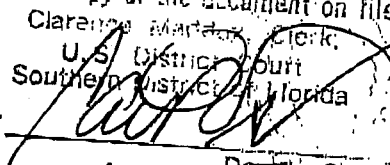
XV.
COURT'S RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for all purposes.

SO ORDERED, this 11th day of February, 2005, at this hour of 8:47 A.M.


PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

cc:
Barbara E. Bolton, Esq. (fax: 404-656-1379)

Obtain a true and correct copy of the document on file
Clarence M. Mack, Clerk,
U.S. District Court
Southern District of Florida
By  Deputy Clerk
Date 2-11-05