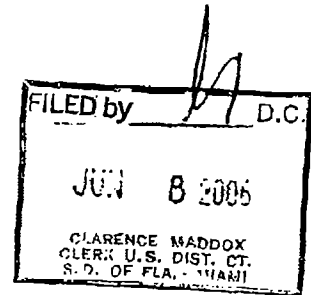


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

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

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.	)



**STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION  
AS TO DEFENDANT KOSTADIN OSVALDO MARTE TAVAREZ**

Plaintiff Federal Trade Commission ("Commission" or "FTC") filed its Complaint for Injunctive and Other Equitable Relief on February 10, 2005, pursuant to Sections 5(a), 13(b) and

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19 of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a), 53(b) and 57b, and the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, 15 U.S.C. § 7701 *et seq.*

The Commission and Defendant Kostadin Osvaldo Marte Tavaréz (“Defendant” or “Marte”), having been represented by counsel and acting by and through such counsel, have consented to the entry of this Stipulated Final Judgment and Order for Permanent Injunction (“Order” or “Stipulated Order”) without trial or adjudication of any issue of law or fact herein.

NOW, THEREFORE, the Commission and Defendant, having requested the Court to enter this Stipulated Order, and the Court having considered the Stipulated Order reached between the parties and for other cause appearing, it is **ORDERED, ADJUDGED, AND DECREED** as follows:

#### FINDINGS

1. This Court has jurisdiction over the subject matter of this case and jurisdiction over all parties, and venue in this district is proper.
2. The Complaint states a claim upon which relief may be granted against the Defendant under Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (“CAN-SPAM Act”), 15 U.S.C. § 7701 *et seq.*
3. The activities of Defendant, as alleged in the Complaint, are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. Defendant has entered into this Order freely and without coercion. Defendant further acknowledges that he has read the provisions of this Order and is able to abide by them.

5. Defendant does not admit any of the allegations set forth in the Complaint other than jurisdictional facts, and the Commission and Defendant have agreed that the entry of this Order resolves all matters of dispute between them arising from the Complaint in this action, up to the date of entry of this Order.

6. Defendant waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendant further waives and releases any claims he may have against the Commission, its employees, representatives, or agents.

7. Defendant agrees that this Order does not entitle him to seek or to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847,863-64 (1996), and Defendant further waives any right to attorneys' fees that may arise under said provision of law.

8. Entry of this Order is in the public interest.

9. Entry of this Order supersedes the Stipulated Preliminary Injunction with Asset Freeze As to Defendant Kostadin Osvaldo Marte Tavaréz entered by this Court on March 2, 2005, unless otherwise expressly provided herein.

#### **DEFINITIONS**

1. "Assets" means any legal or equitable interest in, right to, or claim to any real or personal property of Defendant, or held for the benefit of 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. "Assisting others" means: (1) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints and queries; receiving financial and identification information from consumers, and providing fulfillment services; (2) providing names of, or arranging for the provision of potential customers; (3) performing advertising or marketing services of any kind; or (4) serving as an owner, partner, officer, director, or manager of a business entity.

3. "Business venture" means any written or oral business arrangement, however denominated, whether or not covered by the Commission's Franchise Rule, 16 C.F.R. Part 436, which consists of the payment of any consideration for:

- a. The right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and
- b. The promise or provision of assistance to any person in connection with: (1) the establishment, maintenance, or operation of a new business; or (2) the entry by an existing business into a new line or type of business.

4. "Commercial electronic mail message" means any electronic mail ("e-mail"), 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).

5. "Defendant" means Kostadin Osvaldo Marte Tavaréz, a/k/a Kostadin Marte, and by whatever names he might be known.

6. "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.

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

8. "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.

9. "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.

10. "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 ORDERED** that Defendant and his officers, agents, servants, employees, attorneys, successors, assigns, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, in

connection with the advertising, promotion, offering for sale or sale of any business ventures, are hereby permanently restrained and enjoined from making, or assisting others in making, directly or by implication, orally or in writing, any false or misleading representation or omission of material fact, including, but not limited to:

- A. That consumers are likely to earn a substantial amount of money from a business venture;
- B. That consumers will be paid for each envelope they stuff and mail;
- C. That consumers will be reimbursed the cost of postage to mail each envelope; and
- D. Any material term, restriction, condition, or limitation to purchase, receive, or use any offered good or service.

**II. PROHIBITION AGAINST PROVIDING OTHERS WITH THE MEANS AND INSTRUMENTALITIES TO VIOLATE SECTION 5 OF THE FTC ACT**

**IT IS FURTHER ORDERED** that Defendant and his officers, agents, servants, employees, attorneys, successors, assigns, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, in connection with the advertising, promotion, offering for sale or sale of any business ventures, are hereby permanently restrained and enjoined from providing to others the means and instrumentalities with which to make directly or by implication, orally or in writing, any false or misleading representation or omission of material fact, including, but not limited to any false or misleading representations prohibited under Paragraph I, above.

**III. PROHIBITION AGAINST VIOLATING THE CAN-SPAM ACT**

**IT IS FURTHER ORDERED** that Defendant and his officers, agents, servants,

employees, attorneys, successors, assigns, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from violating, or assisting others in violating, any provision of the CAN-SPAM Act, 15 U.S.C. §§ 7701 *et seq.*, as currently promulgated or as it may hereafter be amended, or any rule, regulation, or requirement adopted pursuant thereto, including, but not limited to, initiating the transmission, to a protected computer, of a commercial electronic mail message that contains or includes a subject heading that 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).

**IV. PROHIBITION ON DISCLOSING CUSTOMER INFORMATION**

**IT IS FURTHER ORDERED** that Defendant and his officers, agents, servants, employees, attorneys, successors, assigns, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, in connection with the offering for sale or sale of any business venture, are hereby permanently restrained and enjoined from selling, renting, leasing, transferring or otherwise disclosing the individual or corporate name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who submitted such information to Defendant at any time prior to the entry of this Order; *provided, however,* that Defendant may disclose such information to a law enforcement agency,

to the Commission, or as required by any law, regulation or court order.

**V. MONETARY JUDGMENT**

**IT IS FURTHER ORDERED** that:

A. Judgment in the amount of \$2,058,027.41 (less any amounts paid by other Defendants in this matter) is entered against Defendant Marte in favor of the Commission.

B. Judgment shall be partially satisfied by Defendant forever waiving, releasing, discharging, and disclaiming all right, title and interest in the money contained in the following accounts, and the money in the following accounts shall be assigned and transferred the Commission:

1. The bank account held under the name of Kostadin Marte at Bank Atlantic, FSB, Account no. XXXXXX8937;
2. The bank account held under the name of Zorba's Marketing, Inc., at Bank Atlantic, FSB, Account no. XXXXXX9405;
3. The bank account held under the name of Kostadin Marte and Ellelin M. Leonardo at Washington Mutual Bank, FA, Account no. XXXXXXXXXX3154; and
4. The bank account held under the name of Kostadin Marte and Ellelin M. Leonardo at Washington Mutual Bank, FA, Account no. XXXXXXXXXXXXX1010.

With respect to the foregoing accounts, Defendant shall provide full cooperation to the Commission to ensure that the money in the above accounts is remitted to the Commission. Defendant's full cooperation with the Commission shall include, but not be limited to, promptly executing any documents necessary to effectuate any transfer of funds to the Commission or its agents or representatives. All payments required to be made to the Commission under this



Paragraph shall be made by certified check or other guaranteed funds payable to and delivered to the Commission, or by wire transfer in accord with the directions provided by the Commission.

C. Upon payment provided in this Paragraph, the remainder of the judgment shall be suspended subject to the conditions set forth in Subparagraph D of this Paragraph.

D. The Commission's agreement to this Order is expressly premised upon the truthfulness, accuracy and completeness of the sworn deposition testimony of February 8, 2006, and supporting documents provided to the Commission by Defendant, which testimony and documents comprised the sole basis upon which the Commission has relied in negotiating and agreeing to this Order. If, upon motion by the Commission, this Court finds that Defendant has failed to disclose any material asset or materially misstated the value of any asset in the sworn deposition testimony and supporting documents provided to the Commission, then this Order shall be reopened and suspension of the judgment shall be lifted for the purpose of requiring payment of monetary relief in the amount of the judgment set for in Subparagraph A of this Paragraph (less any amounts paid by other Defendants in this matter), less the sum of any amounts paid to the Commission pursuant to Subparagraph B of this Paragraph. *Provided, however,* that in all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court.

E. In accordance with 31 U.S.C. § 7701, Defendant is hereby required, unless he has done so already, to furnish to the Commission his social security number, which may be used for purposes of collecting and reporting on any delinquent amount arising out of Defendant's relationship with the government.

F. Defendant is further required to provide the Commission with clear, legible, and

full-size photocopies of his valid driver's licenses, which will be used for collection, reporting, and compliance purposes, within ten (10) days of the Court's entry of this Order.

G. For the purposes of any subsequent proceeding to collect payments required by this Paragraph, including but not limited to, a non-dischargeability complaint filed in a bankruptcy case, Defendant agrees that the facts as alleged in the Complaint filed in this action and the findings of this Court shall be taken as true and correct without further proof.

H. Proceedings instituted under this Paragraph are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

#### **VI. COMMISSION'S USE OF MONETARY JUDGMENT**

**IT IS FURTHER ORDERED** that all funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress, and any attendant expenses for the administration of such relief. In the event that direct redress to consumers is wholly or partially impracticable or that funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information and education remedies) as it determines to be reasonably related to Defendant's practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendant shall have no right to challenge the Commission's choice of remedies under this Paragraph. Defendant shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payments under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.

## VII. COMPLIANCE MONITORING

**IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating compliance with any provision of this Order,

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendant shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
2. Posing as consumers and suppliers to Defendant's employees, or any other entity managed or controlled in whole or in part by Defendant, without the necessity of identification or prior notice; and

C. Defendant shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

*Provided, however,* that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or

deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

### **VIII. COMPLIANCE REPORTING BY DEFENDANT**

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Order:
  1. Defendant shall notify the Commission in writing of any of the following:
    - a. Any change in residence, mailing addresses and telephone numbers of Defendant within ten (10) days of the date of such change;
    - b. Any change in employment status (including self-employment) of Defendant and any change in the ownership interest of Defendant in any business entity, with ten (10) days of such change. Such notice shall include the name and address of each business that Defendant is affiliated with, employed by, or performs services for, a statement of the nature of the business, and a statement of Defendant's duties and responsibilities in connection with the business or employment; and
    - c. Any changes in Defendant's name or use of any aliases or fictitious names; and
  2. Defendant shall notify the Commission of any changes in any business entity that Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order,

including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in corporate name or address, at least thirty (30) days prior to such change, *provided that*, with respect to any proposed change in the business entity about which the Defendant learns less than thirty (30) days prior to the date such action is to take place, the Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge;

B. One hundred eighty (180) days after the date of entry of this Order, Defendant shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which Defendant has complied and is complying with this Order. This report shall include, but not be limited to:

1. The then-current residence address, mailing addresses and telephone numbers of Defendant;
2. The then-current employment and business addresses and telephone numbers of Defendant, a description of the business activities of each such employer or business, and the title and responsibilities of Defendant, for each such employer or business;
3. A copy of each acknowledgment of receipt of this Order obtained by Defendant pursuant to Paragraph X of this Order; and

4. Any other changes required to be reported under Subsection A of this Paragraph.

C. For the purposes of this Order, Defendant shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director  
Division of Enforcement  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580  
Re: FTC v. Sun Ray Trading, Inc., et al., Case No. 05-20402-Civ-Seitz/McAliley

D. For purposes of the compliance reporting required by this Order, the Commission is authorized to communicate directly with Defendant.

#### **IX. RECORD-KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry of this Order, Defendant and his officers, agents, servants, employees, attorneys, successors, assigns, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, in connection with the advertising, promotion, offering for sale or sale of business ventures, are hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the cost of good or services sold, revenues generated and the disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

D. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests;

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and

F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order required by Paragraph X, and all reports submitted to the FTC pursuant to this Order.

#### **X. DISTRIBUTION OF ORDER BY DEFENDANT**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Order:

A. For any business that Defendant controls, directly or indirectly, or in which Defendant has a majority ownership interest, Defendant must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Defendant must also deliver copies of this Order to all employees, agents, and representatives who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

B. For any business where Defendant is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, Defendant must deliver

a copy of this Order to all principals and managers of such business before engaging in such conduct.

C. Defendant must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Paragraph.

**XI. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**

**IT IS FURTHER ORDERED** that Defendant, within five (5) business days of receipt of this Order as entered by the Court, shall submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

**XII. COOPERATION WITH FTC COUNSEL**

**IT IS FURTHER ORDERED** that Defendant shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the FTC's Complaint, cooperate in good faith with the FTC and appear at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Defendant shall appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena.

**XIII. FEES AND COSTS**

**IT IS FURTHER ORDERED** that each party to this Order hereby agrees to bear its own

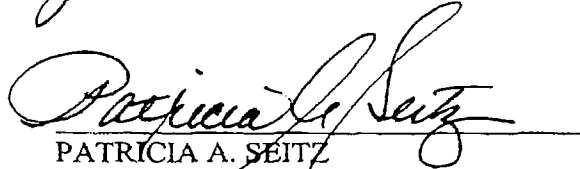


costs and attorneys' fees incurred in connection with this action.

**XIV. RETENTION OF JURISDICTION**

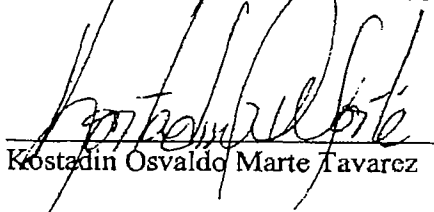
**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Order.

**SO ORDERED**, this 8<sup>th</sup> day of June, 2006.

  
PATRICIA A. SEITZ  
United States District Judge

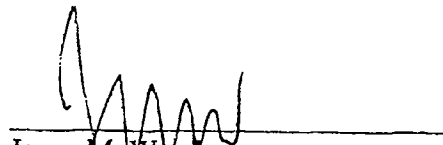
**STIPULATED AND AGREED TO BY:**

**For Defendant Kostadin Osvaldo Marte Tavaréz:**

  
Kostadin Osvaldo Marte Tavaréz

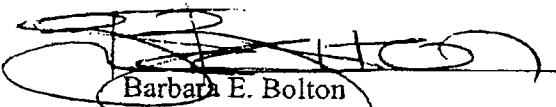
Date: 2/8/06

**Counsel for Defendant Kostadin Osvaldo Marte Tavaréz:**

  
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Date: 2/8/06

**For Plaintiff Federal Trade Commission**



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Date: 6/5/06