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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Federal Trade Commission,

Plaintiff,

v.

ERG Ventures, LLC, et al.,
Defendants.

3:06-CV-00578-HDM-VPC

**FINAL ORDER FOR PERMANENT INJUNCTION AND
MONETARY JUDGMENT AS TO DEFENDANT TIMOTHY P. TAYLOR**

Plaintiff, the Federal Trade Commission (“FTC” or the “Commission”), filed its complaint against defendants ERG Ventures, LLC and d/b/a ERG Ventures, LLC2, Media Motor, Joysticksavers.com, and PrivateinPublic.com; Elliott S. Cameron, individually and d/b/a ERG Ventures, LLC2, Media Motor, Joysticksavers.com, and PrivateinPublic.com; Robert A. Davidson, II, individually and d/b/a ERG Ventures, LLC2, Media Motor, Joysticksavers.com, and PrivateinPublic.com; Garry E. Hill, individually and d/b/a ERG Ventures, LLC2, Media Motor, Joysticksavers.com, and PrivateinPublic.com; and Timothy P. Taylor, individually and d/b/a Team Taylor Made for injunctive and other equitable relief in this matter pursuant to

1 Sections 5 and 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a),
2 53(b), on October 31, 2006. The Court ordered an *ex parte* Temporary Restraining Order on
3 November 1, 2006, and a Preliminary Injunction was entered on November 29, 2006. On May
4 26, 2007, the Commission filed an Amended Complaint. Defendant Taylor failed to answer or
5 otherwise respond to the Commission’s Amended Complaint, and as a result on June 29, 2007
6 the Clerk entered a default against Defendant Taylor. Thereafter, the Commission moved for a
7 default judgment against Defendant Taylor. Having reviewed the Commission’s motion for
8 default judgment, its memorandum of points and authorities in support thereof, as well as the
9 declarations attached to the Commission’s motion which establish the total revenue Defendant
10 Taylor received from his unlawful acts **IT IS ORDERED** as follows:

- 11 1. This Court has jurisdiction over the subject matter of this case, and it has
12 jurisdiction of all parties hereto pursuant to 15 U.S.C. §§ 45(a), 53(b), and 28
13 U.S.C. §§ 1331, 1337(a), and 1345;
- 14 2. Venue is proper as to all parties in the District of Nevada pursuant to 15 U.S.C.
15 § 53(b) and 28 U.S.C. §§ 1391(b) and (c);
- 16 3. The activities alleged in the Complaint are in or affecting “commerce” as that
17 term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;
- 18 4. The facts that the FTC has stated in its complaint, if true, would state a claim
19 upon which relief may be granted under Sections 5(a) and 13(b) of the FTC Act,
20 15 U.S.C. §§ 45(a) and 53(b);
- 21 5. This Order, however, shall have no preclusive effect as to any action brought by
22 any other state or federal law enforcement agency;
- 23 6. This Order is remedial in nature and no portion of any payments paid herein shall
24 be deemed or construed as payment of a fine, damages, penalty, or punitive
25 assessment; and
- 26 7. Entry of this Order is in the public interest.

1 ORDER

2 **DEFINITIONS**

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

- 4 1. **“Defendant Taylor”** means Timothy P. Taylor, individually and d/b/a Team Taylor
5 Made.
- 6 2. **“Assets”** means any legal or equitable interest in, right to, or claim to, any real, personal,
7 or intellectual property of Defendant Taylor, or held for the benefit of Defendant Taylor,
8 wherever located, including, but not limited to, chattel, goods, instruments, equipment,
9 fixtures, general intangibles, effects, leaseholds, contracts, mail or other deliveries, shares
10 of stock, inventory, checks, notes, accounts, credits, receivables (as those terms are
11 defined in the Uniform Commercial Code), cash, and trusts, including but not limited to
12 any other trust held for the benefit of Defendant Taylor, Defendant Taylor’s minor
13 children, or spouses.
- 14 3. **“Document”** is synonymous in meaning and equal in scope to the usage of the term in
15 the Federal Rules of Civil Procedure 34(a), and includes writing, drawings, graphs,
16 charts, Internet sites, Web pages, Web sites, electronically-stored information, including
17 e-mail and instant messages, photographs, audio and video recordings, contracts,
18 accounting data, advertisements (including, but not limited to, advertisements placed on
19 the World Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup postings,
20 Web pages, books, written or printed records, handwritten notes, telephone logs,
21 telephone scripts, receipt books, ledgers, personal and business canceled checks and
22 check registers, bank statements, appointment books, computer records, and other data
23 stored in any medium from which information can be obtained and translated. A draft or
24 non-identical copy is a separate document within the meaning of the term.
- 25 4. **“Software”** means any file, program, application, content, code or set of instructions that
26 controls, directs, or assists in the operation of a computer and/or instructs a computer as
27 to what tasks to perform.
- 28

1 **CONDUCT PROHIBITIONS**

2 **I.**

3 **IT IS THEREFORE ORDERED** that Defendant Taylor, as well as his agents, servants,
4 employees and those persons in active concert or participation with him who receive actual
5 notice of this Order by personal service or otherwise, are permanently restrained and enjoined
6 from, prior to installing any Software directly or indirectly on consumers' computers: 1) failing
7 to clearly and conspicuously disclose the name and function of all such Software (the "Required
8 Disclosure"); and 2) failing to provide, immediately after the Required Disclosure is made, a
9 clearly and conspicuously disclosed option to prevent the installation of all such Software, which,
10 when exercised by the consumer, prevents the installation of all such Software.

11 **II.**

12 **IT IS FURTHER ORDERED** that Defendant Taylor, as well as his agents, servants,
13 employees and those persons in active concert or participation with him who receive actual
14 notice of this Order by personal service or otherwise, are permanently restrained and enjoined
15 from, directly or indirectly, publishing, disseminating, distributing, installing, or downloading
16 any Software that interferes with a consumer's computer use, including but not limited to
17 Software that:

- 18 A. tracks consumers' Internet activity or collects other personal
- 19 information;
- 20 B. changes consumers' preferred Internet homepage settings;
- 21 C. inserts a new advertising toolbar onto consumers' Internet browsers;
- 22 D. generates numerous "pop up" advertisements on consumers' computer screens
- 23 even when consumers' Internet browsers are closed;
- 24 E. adds advertising icons to the computer's desktop;
- 25 F. tampers with, disables, or otherwise alters the performance of other programs,
- 26 including anti-spyware and anti-virus programs;
- 27 G. alters Internet browser security settings, including the list of safe or trusted
- 28 websites; or

1 H. installs other advertising Software on consumers' computers.

2 **III.**

3 **IT IS FURTHER ORDERED** that, in connection with distributing or advertising,
4 promoting, marketing, offering for sale or license, or selling or licensing, any product or service,
5 Defendant Taylor, as well as his agents, servants, employees and those persons in active concert
6 or participation with him who receive actual notice of this Order by personal service or
7 otherwise, are permanently restrained and enjoined from making, or assisting others in making,
8 directly or indirectly, expressly or by implication, any material false or misleading representation.

9 **MONETARY JUDGMENT**

10 **IV.**

11 **IT IS FURTHER ORDERED** that:

12 A. Judgment in the amount of \$4,595.36 (four-thousand, five hundred ninety-five
13 dollars and thirty-six cents) is hereby entered against Defendant Taylor.

14 B. All funds paid to the FTC pursuant to the Order shall be deposited into an
15 account administered by the Commission or its agent to be used for equitable
16 relief, including but not limited to consumer redress, and any attendant
17 expenses for the administration of such equitable relief. In the event that direct
18 redress to consumers is wholly or partially impracticable or funds remain after
19 redress is completed, the Commission may apply any remaining funds for such
20 other equitable relief (including consumer information remedies) as it determines
21 to be reasonably related to Defendant Taylor's practices alleged in the complaint.
22 Any funds not used for such equitable relief shall be deposited to the United
23 States Treasury as disgorgement. Defendant Taylor shall have no right to
24 challenge the Commission's choice of remedies under this Paragraph. Defendant
25 Taylor shall have no right to contest the manner of distribution chosen by the
26 Commission.

27 C. Defendant Taylor relinquishes all dominion, control and title to the funds paid
28 into the account established pursuant to this Order. Defendant Taylor shall make

1 no claim to or demand for the return of funds, directly or indirectly, through
2 counsel or otherwise; and in the event of bankruptcy of Defendant Taylor, he
3 acknowledges that the funds are not part of the debtor's estate, nor
4 does the estate have any claim or interest therein.

5 D. The facts as alleged in the Amended Complaint filed in this action shall be taken
6 as true for the purpose of a nondischargeability complaint in any bankruptcy
7 proceeding.

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

11 **COMPLIANCE MONITORING**

12 **V.**

13 **IT IS FURTHER ORDERED** that, for purposes of monitoring and investigating
14 compliance with any provision of this Order,

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

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

- 23 1. obtaining discovery from any person, without further leave of court, using
24 the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
25 2. posing as consumers and suppliers to Defendant Taylor, Defendant
26 Taylors' employees, or any other entity managed or controlled in whole or
27 in part by Defendant Taylor, without the necessity of identification or prior
28 notice; and

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

5 *Provided, however,* that nothing in this Order shall limit the Commission's lawful use of
6 compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to
7 obtain any documentary material, tangible things, testimony, or information relevant to unfair or
8 deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. §
9 45(a)(1)).

10 **COMPLIANCE REPORTING BY DEFENDANT TAYLOR**

11 **VI.**

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

14 A. For a period of five (5) years from the date of entry of this Order,

15 1. Defendant Taylor shall notify the Commission of the following:

16 i. Any changes in residence, mailing addresses, and telephone
17 numbers within ten (10) days of the date of such change;

18 ii. Any changes in employment status (including self-employment)
19 and any change in the ownership of Defendant Taylor in any
20 business entity, within ten (10) days of the date of such change.

21 Such notice shall include the name and address of each business
22 that Defendant Taylor is affiliated with, employed by, creates or
23 forms, or performs services for; a statement of the nature of the
24 business; and a statement of Defendant Taylor's duties and
25 responsibilities in connection with the business or employment;
26 and

27 iii. Any changes in Defendant Taylor's name or use of any aliases or
28 fictitious names; and

1 B. Defendant Taylor shall notify the Commission of any changes in
2 corporate structure of Team Taylor Made, or any business entity that Defendant
3 Taylor directly or indirectly controls, or has an ownership interest in, that may
4 affect compliance obligations arising under this Order, including but not limited to
5 a dissolution, assignment, sale, merger, or other action that would result in the
6 emergence of a successor entity; the creation or dissolution of a subsidiary, parent,
7 or affiliate that engages in any acts or practices subject to this Order; the filing of
8 a bankruptcy petition; or a change in the corporate name or address, at least thirty
9 (30) days prior to such change, *provided* that, with respect to any proposed change
10 in the corporation about which Defendant Taylor learns less than thirty (30) days
11 prior to the date such action is to take place, Defendant Taylor shall notify the
12 Commission as soon as is practicable after obtaining such knowledge.

13 C. One hundred eighty (180) days after the date of entry of this Order, Defendant
14 Taylor shall provide a written report to the FTC, sworn to under penalty of
15 perjury, setting forth in detail the manner and form in which they have complied
16 and are complying with this Order. This report shall include, but not be limited
17 to:

- 18 1. The then-current residence address, mailing addresses, and
19 telephone numbers of Defendant Taylor;
- 20 2. The then-current employment and business addresses and
21 telephone numbers of Defendant Taylor, a description of the
22 business activities of each such employer or business, and the title
23 and responsibilities of Defendant Taylor for each such employer or
24 business; and
- 25 3. Any other changes required to be reported under subparagraph A of
26 this Paragraph.
- 27 4. A copy of each acknowledgment of receipt of this Order obtained
28 pursuant to Paragraphs VII, VIII, and XI of this Order.

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

4 Associate Director, Division of Enforcement
5 Federal Trade Commission
6 600 Pennsylvania Avenue, NW
7 Washington, DC 20580
8 Re: FTC v. ERG Ventures, LLC, et al. Civil Action No. 3:06-00578

9 E. For purposes of the compliance reporting and monitoring required by this Order,
10 the Commission is authorized to communicate directly with the Defendants.

11 RECORD KEEPING PROVISIONS

12 VII.

13 **IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry
14 of this Order, Defendant Taylor, for any business that he directly or indirectly controls, or in
15 which he has a majority ownership interest, which is directly or indirectly engaged in the
16 business of advertising, promoting, marketing, offering for sale or license, or selling or licensing
17 any product or service via the Internet, and their agents, employees, officers, corporations,
18 successors, and assigns, and those persons in active concert or participation with them who
19 receive actual notice of this Order by personal service or otherwise, are hereby restrained and
20 enjoined from failing to create and retain the following records:

- 21 A. Accounting records that reflect the cost of goods or services sold, revenues
22 generated, and the disbursement of such revenues;
- 23 B. Personnel records accurately reflecting: the name, address, and telephone number
24 of each person employed in any capacity by such business, including as an
25 independent contractor; that person's job title or position; the date upon which the
26 person commenced work; and the date and reason for the person's termination, if
27 applicable;
- 28 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

1 business;

2 D. Records reflecting contact information and a detailed payment history for all
3 persons and entities engaged in the marketing, distributing, or installing of
4 Software at the direction of, or for the benefit of, the Defendants.

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

7 F. Copies of all advertisements or other marketing materials, including but not
8 limited to web sites, instant messages, e-mail messages, Internet "pop up"
9 advertisements, and Internet banner advertisements; and

10 G. All records and documents necessary to demonstrate full compliance with each
11 provision of this Order, including but not limited to, copies of acknowledgments
12 of receipt of this Order, required by Paragraphs VIII and IX, and all reports
13 submitted to the FTC pursuant to Paragraphs V and VI of this Order.

14 **DISTRIBUTION OF ORDER BY DEFENDANT**

15 **VIII.**

16 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry
17 of this Order, Defendant Taylor shall deliver copies of the Order as directed below:

18 A. Defendant Taylor as Control Person: For any business that Defendant Taylor
19 directly or indirectly controls, or in which Defendant Taylor has a majority
20 ownership interest, Defendant Taylor must deliver a copy of this Order to all
21 principals, officers, directors, and managers of that business. Defendant Taylor
22 must also deliver copies of this Order to all employees, agents, affiliates, sub-
23 affiliates, and representatives of that business who engage in conduct related to
24 the subject matter of this Order. For current personnel, delivery shall be made
25 within five (5) days of service of this Order upon such defendants. For new
26 personnel, delivery shall occur prior to the new personnel assuming their
27 responsibilities.

28 B. Defendant Taylor as Employee or Non-Control Person: For any business which

1 Defendant Taylor is not a controlling person of the business but otherwise engages
2 in conduct that is related to the subject matter of this Order, Defendant Taylor
3 must deliver a copy of this Order to all principals and managers of such business
4 before engaging in such conduct.

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

8 **ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**

9 **IX.**

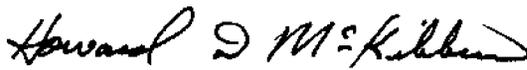
10 **IT IS FURTHER ORDERED** that Defendant Taylor, within five (5) business days of
11 receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn
12 statement acknowledging receipt of this Order.

13 **RETENTION OF JURISDICTION**

14 **X.**

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

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18 **SO ORDERED**, this 3rd day of January, 2008, at Reno, Nevada.

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22 The Honorable Howard D. McKibben
23 United States District Judge
24 District of Nevada, Reno
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