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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

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STEPHEN D. HARRIS, CLERK
U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF INDIANA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

TRI-STATE ADVERTISING
UNLIMITED, INC.,

a corporation, and
JEROME ANTHONY WILKINS,
individually and as an officer
of said corporation, and
DARYL ALLEN BENDER,
individually,

Defendants.

CIVIL NO. 1:98CV0302

JUDGE WILLIAM C. LEE

U.S. MAGISTRATE JUDGE
ROGER B. COSBEY

**STIPULATED PRELIMINARY INJUNCTION,
APPOINTMENT OF PERMANENT RECEIVER,
AND ASSET FREEZE**

Plaintiff Federal Trade Commission ("Commission"), having filed its complaint for a permanent injunction and other relief, including consumer redress, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §53(b), and having moved *ex parte* for a temporary restraining order and an order to show cause why a preliminary injunction should not be granted pursuant to Rule 65 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65, and for the appointment of a temporary receiver ("TRO"), and the parties having met and discussed and negotiated the terms and conditions of this Stipulated Preliminary Injunction, Appointment of Permanent Receiver, and Asset Freeze, the parties hereby agree and stipulate to the following terms and conditions:

1. This Court has jurisdiction of the subject matter of this case and there is good cause to believe it will have jurisdiction of all the parties hereto;

2. The Plaintiff, by and through counsel, and defendants Tri-State Advertising Unlimited, Inc., and Jerome Anthony Wilkins, by and through counsel, and defendant Daryl Allen Bender, *pro se*, have agreed to this Stipulated Preliminary Injunction, Appointment of a Permanent Receiver and Asset Freeze;

3. That by stipulating and consenting to the entry of this Stipulated Preliminary Injunction, Appointment of a Permanent Receiver and Asset Freeze ("Order"), defendants do not admit any of the allegations in the Complaint. Likewise, by executing this Order, Plaintiff does not admit that any defense to the Complaint is valid.

Definitions

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

1. "Defendants" means Tri-State Advertising Unlimited, Inc., Jerome Anthony Wilkins and Daryl Allen Bender and each of them.

2. "Assets" means all real and personal property owned or controlled by 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 cash, wherever located.

I.

IT IS THEREFORE ORDERED that defendants and defendants' agents, employees, officers, independent contractors, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby enjoined from making or assisting others in making, directly or by implication, any false or misleading oral or written statement or representation in connection with the distribution, marketing, sale, or collecting of advertisements, listings, or sponsorships in, or contributions to, any publication, program or organization, including—but not limited to—any misrepresentation concerning:

A. the distribution of any publication or program;

- B. the printing or publishing of any publication;
- C. agreement to approve, authorize or pay for advertising in, or to support or contribute to, any publication, program, or organization;
- D. prior approval of advertising or sponsorship of a publication or program by any person;
- E. the printing of any advertisement or listing in reliance on prior authorization to do so;
- F. any person's obligation to pay for any advertisement in or contribution to, any publication, program, or organization;
- G. the costs incurred in printing, publishing or distributing any advertisement, publication or program;
- H. any payment constituting a donation or contribution;
- I. the use of contributions or donations.

II.

IT IS FURTHER ORDERED that defendants and their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device are hereby temporarily restrained and enjoined from directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing or otherwise disposing of any asset wherever held, except for transfers to the permanent receiver appointed herein or as ordered by the Court upon a showing of good cause.

III.

IT IS FURTHER ORDERED that, unless they have already done so, defendants shall, within ten (10) days from the entry of this Order:

- A. Provide this Court and counsel for the Commission with a completed financial statement, on the forms attached to the TRO entered by this Court against defendants on October 5, 1998, for such defendants individually and for each corporation of which such defendant is an officer; and

B. Respond to the Commissions' expedited interrogatories and requests for production of documents served October 5, 1998 pursuant to Part XI of the TRO entered by this Court against defendants on October 5, 1998.

IV.

IT IS FURTHER ORDERED that defendants and their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device shall, if not having done so already, within three (3) business days following service of this Order:

A. Take such steps as are necessary to deliver to the territory of the United States of America all assets which are held by, or for the benefit of, any of the defendants, or are under their direct or indirect control, jointly or singly, which were transferred outside of the territory of the United States of America subsequent to January 1, 1990;

B. Within three (3) business days following service of this Order, provide the plaintiff with a full accounting of all funds, documents and assets that were transferred outside of the territory of the United States of America subsequent to January 1, 1990, and are held by them or are under their direct or indirect control, jointly or singly;

C. Surrender to the permanent receiver all repatriated funds, documents and assets within three (3) business days of receipt thereof and prevent any transfer, disposition, or dissipation whatsoever of any such assets or funds until surrendered to the receiver; and

D. Within three (3) business days following service of this Order, provide plaintiff with access to the records and documents held by financial institutions outside the territorial United States of America, by signing a Consent to Release of Financial Records.

V.

IT IS FURTHER ORDERED that any financial or brokerage institution, business entity or person having possession, custody or control of any records of any defendant or of any account, safe deposit box or other asset titled in the name of any defendant, either individually or jointly, or held for the benefit of any defendant or that has held, controlled or maintained custody of any such account, safe deposit box or other asset at any time since January 1, 1990, shall:

A. Hold and retain within its control and prohibit the transfer, encumbrance, pledge, assignment, removal, withdrawal, dissipation, sale or other disposal of any such account or other asset, except for transfers or withdrawals directed by the permanent receiver appointed herein or by further order of the Court;

B. Deny access to any safe deposit box that is either (1) titled individually or jointly in the name of any defendant, or (2) otherwise subject to access by any defendant;

C. If not having done so already, provide to counsel for the Commission and the permanent receiver appointed herein, within three (3) business days of notice of this Order, a sworn statement setting forth: (1) the identification number, date opened, and all authorized signatories for each such account or asset; (2) the balance of each such account or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, 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 asset was remitted; and (3) the identification of any safe deposit box subject to access by any defendant;

D. Allow representatives of the Commission immediate access to inspect and copy all records of any defendant and all documents relating to any account, safe deposit box or other asset of any defendant. Alternatively any financial institution, other entity or person may arrange to deliver to the Commission copies of any records it seeks for a charge not to exceed fifteen cents per page copied; and

E. Cooperate with all reasonable requests of the permanent receiver relating to implementation of this Order, including transferring funds at the receiver's direction and producing records related to the defendants' accounts.

VI.

IT IS FURTHER ORDERED that defendants and their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device are hereby enjoined from:

A. Failing to create and maintain books, records, accounts, and data which, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of monies; and

B. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any contracts, accounting data, correspondence, advertisements, computer tapes, discs, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind which relate to defendants' business practices or defendants' business or personal finances from January 1, 1990 to the present time.

VII.

IT IS FURTHER ORDERED that each defendant shall immediately provide a copy of this Order to each of its divisions, subsidiaries, corporations, affiliates, successors, assigns, directors, officers, managing agents, employees, representatives, and independent contractors, and shall, within three (3) business days from the date of service of this Order, provide the Commission with a sworn statement that defendants have complied with this provision of the Order. The permanent receiver has no obligations under the provisions of this paragraph.

VIII.

IT IS FURTHER ORDERED that defendants Jerome Anthony Wilkins and Daryl Allen Bender shall provide a written notice to counsel for the Commission at least seven (7) days prior to any discontinuance of their present business or employment and of their affiliation with any new or previously inactive business or employment, each such notice to include the name, address and telephone number of such new business or employment, a statement of the nature of the business or employment in which the defendant is newly engaged or affiliated, and a description of defendant's duties and responsibilities in connection with that business or employment.

IX.

IT IS FURTHER ORDERED that copies of this Order may be served by employees or agents of the Commission upon any financial institution or person or entity that may be in possession of any assets, records, property or property rights of defendants or that may be subject to any provision of this Order.

X.

IT IS FURTHER ORDERED that, pursuant to Section 604 of the Fair Credit Reporting Act, 15 U.S.C. § 1681b, any consumer reporting agency may furnish the Commission with a consumer report concerning any defendant.

XI.

IT IS FURTHER ORDERED that Jack E. Roebel, Esq. is appointed as permanent receiver, with the full power of an equity receiver, for defendant Tri-State Advertising Unlimited, Inc., and their subsidiaries and affiliates (hereinafter referred to as "the receivership defendants"), and of all the funds, properties, premises, accounts and other assets directly or indirectly owned, beneficially or otherwise, by the receivership defendants. The permanent receiver is instructed to follow Local Rule 66.1, and is directed and has authority to:

A. Assume full control of the receivership defendants by removing defendants Jerome Anthony Wilkins and Daryl Allen Bender and any other officer, independent contractor, employee, or agent of the receivership defendants, from control and management of the affairs of the receivership defendants;

B. Take custody, control and possession of all the funds, property, premises, mail and other assets of, or in the possession or under the control of, the receivership defendants, wherever situated. The permanent receiver has full power to sue for, collect, receive and take in possession all goods, chattels, rights, credits, monies, effects, lands, leases, books and records, work papers, and records of accounts, including computer-maintained information, and other papers and documents of the receivership defendants; *provided, however*, that all of defendants' business records stored pursuant to this Part shall, upon reasonable notice to the receiver, be made available to the plaintiff and defendants for review and copying under the supervision of the permanent receiver.

C. Preserve, hold, and manage all receivership assets, and perform all acts necessary to preserve the value of those assets;

D. Prevent the withdrawal or misapplication of funds entrusted to the receivership defendants and obtain an accounting thereof;

E. Manage and administer the business of the receivership defendants at his or her discretion until further order of this Court, by performing all acts necessary or incidental thereto. This includes hiring or dismissing all personnel or suspending operations as the receiver deems appropriate;

F. Disburse funds that the receiver deems necessary and advisable to preserve the properties of the receivership defendants or that the receiver deems necessary and advisable to carry out the receiver's mandate under this Order;

G. Collect any monies owed the receivership defendants;

H. Institute, compromise, adjust, intervene in or become party to such actions or proceedings in state, federal or foreign courts that the receiver deems necessary and advisable to preserve the properties of the receivership defendants or that the receiver deems necessary and advisable to carry out the receiver's mandate under this Order; and

I. Defend, compromise or adjust or otherwise dispose of any or all actions or proceedings instituted against the receivership defendants that the receiver deems necessary and advisable to preserve the properties of the receivership defendants or that the receiver deems necessary and advisable to carry out the receiver's mandate under this Order.

XII.

IT IS FURTHER ORDERED that, in light of the appointment of the permanent receiver herein, Tri-State Advertising Unlimited, Inc. is hereby prohibited from filing a petition for relief under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., without prior permission from this Court.

XIII.

IT IS FURTHER ORDERED that the permanent receiver shall be compensated for the services he renders to the receivership estate during the pendency of the case. Prior to paying any compensation, the receiver shall file a request with the Court, outlining the services rendered and the

related fees and expenses. The receiver shall not pay any compensation except upon order of the Court.

XIV.

IT IS FURTHER ORDERED that, except by leave of this Court, during the pendency of the receivership ordered herein the defendants and all customers, principals, investors, creditors, stockholders, lessors, and other persons seeking to establish or enforce any claim, right or interest against or on behalf any of the receivership defendants or any of their subsidiaries or affiliates (excluding the Plaintiff in this action), and all others acting for or on behalf of such persons, including attorneys, trustees, agents, sheriffs, constables, marshals, and other officers and their deputies, and their respective attorneys, servants, agents and employees be and are hereby stayed from:

A. Commencing, prosecuting, continuing or enforcing any suit or proceeding against the receivership defendants, or any of their subsidiaries or affiliates, except that such actions may be filed to toll any applicable statute of limitations;

B. Commencing, prosecuting, continuing or entering any suit or proceeding in the name or on behalf of the receivership defendants, or any of their subsidiaries or affiliates;

C. Accelerating the due date of any obligation or claimed obligation, enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, any property of the receivership defendants, or any of their subsidiaries or affiliates or any property claimed by any of them, or attempting to foreclose, forfeit, alter or terminate any of the receivership defendants' interest in property, whether such acts are part of a judicial proceeding or otherwise;

D. Using self-help or executing or issuing, or causing the execution or issuance of, any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of, or interfering with, or creating or enforcing a lien upon any property, wheresoever located, owned by or in the possession of the receivership defendants or any of their subsidiaries or affiliates, or the receiver appointed pursuant to this order or any agent appointed by said receiver; and

E. Doing any act or thing whatsoever to interfere with the receiver taking control, possession or management of the property subject to this receivership, or to in any way interfere with the receiver, or to harass or interfere with the duties of the receiver, or to interfere in any manner with

the exclusive jurisdiction of this Court over the property and assets of the receivership defendants, or their subsidiaries or affiliates.

XV.

IT IS FURTHER ORDERED that, immediately upon service of this Order upon them, defendants shall transfer control of the following to the permanent receiver: (1) all funds, assets, property owned beneficially or otherwise, and all other assets, wherever situated, of the receivership defendants; (2) all books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), customer lists, title documents and other papers of the receivership defendants; and (3) all funds and other assets belonging to members of the public now held by the receivership defendants.

XVI.

IT IS FURTHER ORDERED that all service and delivery to the Commission shall include service or delivery to Gerald C. Zeman or Michael Milgrom, counsel for the Commission, at Eaton Center, 1111 Superior Avenue—Suite 200, Cleveland, Ohio 44114-2507, unless either of the above consents to service at another location. Service shall be complete upon receipt.

XVII.

IT IS FURTHER ORDERED that the defendants shall fully cooperate with and assist the receiver appointed in this action. The defendants are hereby enjoined from, directly or indirectly, hindering or obstructing the receiver in any manner.

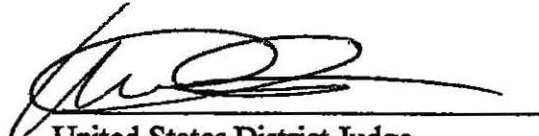
XVIII.

IT IS FURTHER ORDERED that defendants and their successors, assigns, officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby enjoined from using any aliases, pen names, pseudonyms or other fictitious names, or otherwise misrepresenting their true identities in the course of any business dealing of any nature or in any publicly filed document.

XIX.

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

SO ORDERED, this 16TH day of OCTOBER, 1998, at 8:15 AM


United States District Judge

STIPULATED TO:

**FOR THE FEDERAL TRADE
COMMISSION:**

By:

Gerald C. Zeman
GERALD C. ZEMAN
Federal Trade Commission
Cleveland Regional Office
Eaton Center — Suite 200
1111 E. Superior Avenue
Cleveland, Ohio 44114
(216) 263-3402

Date

October 14, 1998

FOR THE DEFENDANTS:

**Tri-State Advertising Unlimited, Inc.
Jerome Anthony Wilkins**

By:

Donald C. Swanson, Esq.
DONALD C. SWANSON, ESQ.
Swanson & Campbell
One Commerce Building
127 West Berry Street
Fort Wayne, Indiana 46802-2366

Date

October 14, 1998

Jerome Anthony Wilkins:

By:

Jerome Anthony Wilkins
JEROME ANTHONY WILKINS
Individually, and as an officer of
Tri-State Advertising Unlimited, Inc.

Date

October 14, 1998

Daryl Allen Bender:

By:

Daryl Allen Bender
DARYL ALLEN BENDER, *pro se*
Individually

Date

October 14, 1998