

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

| | | |
|-------------------------------------|---|----------|
| FEDERAL TRADE COMMISSION, |) | |
| |) | |
| Plaintiff, |) | Civ. No. |
| |) | |
| v. |) | |
| |) | |
| THE TRACKER CORPORATION OF AMERICA |) | |
| d/b/a Consumer Protection Services, |) | |
| |) | |
| Defendant. |) | |

TEMPORARY RESTRAINING ORDER

Plaintiff Federal Trade Commission ("Commission"), pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101 et seq., filed a complaint to obtain preliminary and permanent injunctive relief, rescission or reformation of contracts, restitution, disgorgement, and other equitable relief, and applied ex parte for both a temporary restraining order with asset freeze 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. The Court has considered the pleadings, declarations, exhibits, and memoranda filed in support of the Commission's application and makes the following findings of fact:

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

2. There is good cause to believe that defendant has engaged in and is likely to engage in practices that violate Section 5 of the FTC Act, 15 U.S.C. § 45(a), and the Telemarketing Sales Rule, 16 C.F.R. Part 310, and that the Commission is likely to prevail on the merits of this action.

3. There is good cause to believe that immediate and irreparable harm will result from defendant's ongoing violations of the FTC Act, and the Telemarketing Sales Rule ("TSR"), and that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition or concealment by defendant of its assets or records unless defendant is immediately restrained and enjoined by Order of this Court. There is, thus, good cause for issuing this Order without prior notice to the defendant of the Commission's application, pursuant to Federal Rule of Civil Procedure 65(b).

4. Weighing the equities and considering the Commission's likelihood of success in its causes of action, this Temporary Restraining Order is in the public interest.

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

ORDER

Definitions

1. "Defendant" means The Tracker Corporation of America, doing business as Consumer Protection Services, and its successors, assigns, agents, employees, officers, servants, 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.

2. "Assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, receivables, and all cash, wherever located.

3. "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, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

I. PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that defendant is hereby temporarily restrained and enjoined from selling or offering for sale credit card registration or credit card protection services to consumers in the United States.

II. ASSET FREEZE

IT IS FURTHER ORDERED that defendant is hereby temporarily restrained and enjoined from:

A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, or otherwise disposing of any 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 defendant, in whole or in part; (2) in the actual or constructive possession of 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, or under common control with

defendant, including but not limited to, any assets held by, for, or under the name of 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; and

B. Except as otherwise provided herein, opening or causing to be opened any safe deposit boxes titled in the name of defendant, or subject to access by defendant.

III. FINANCIAL REPORTS

IT IS FURTHER ORDERED that, within forty-eight (48) hours after entry of this Order defendant shall prepare and deliver to counsel for the Commission a profit and loss statement, and a balance sheet for both year-to-date and for the last month preceding entry of this Order, verified under oath, signed by a corporate officer, and subject to the penalty for perjury pursuant to 28 U.S.C. § 1746.

IV. BANK ACCOUNTS

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

A. Provide plaintiff with a full accounting of all funds and assets inside or outside of the territory of the United

States which are held either: (1) by it; (2) for its benefit; or (3) under its direct or indirect control, jointly or singly;

B. Transfer to the territory of the United States any such funds and assets in foreign countries;

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

D. Provide plaintiff access to defendant's records and documents held by financial institutions outside the territorial United States, by signing the Consent to Release of Financial Records attached to this Order as Attachment 1.

V. PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that defendant is hereby temporarily restrained and enjoined from 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, provincial, or local business or personal income or property tax returns, and other documents or records of any kind

that relate to the business practices or business or personal finances of the defendant.

VI. RECORD KEEPING/BUSINESS OPERATIONS

IT IS FURTHER ORDERED that defendant is hereby temporarily restrained and enjoined from:

A. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of money; and

B. Creating, operating, or exercising any control over any new business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing the Commission with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers and employees; and (4) a detailed description of the business entity's intended activities.

VII. SERVICE OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that defendant The Tracker Corporation of America, doing business as Consumer Protection Services, shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer,

director, employee, independent contractor, agent, attorney, and representative, and shall, within ten (10) days from the date of entry of this Order, provide the Commission with a sworn statement that defendant has complied with this provision of the Order, which statement shall include the names and addresses of each such person or entity who received a copy of the Order.

VIII. SERVICE OF ORDER

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 defendant, or that may be subject to any provision of this Order.

IX. RETENTION OF ASSETS AND RECORDS

IT IS FURTHER ORDERED that, pending determination of the Commission's request for a preliminary injunction, any financial or brokerage institution, business entity, or person served with a copy of this order that holds, controls or maintains custody of any account or asset of defendant, or its affiliates or subsidiaries, or has held, controlled or maintained custody of any such account or asset at any time since January 1, 1996 shall:

A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any such asset except by further order of the Court;

B. Deny defendant access to any safe deposit box that is:

1. titled in the name of defendant, either individually or jointly; or

2. otherwise subject to access by defendant;

C. Provide counsel for the FTC, within five (5) business days of receiving a copy of this Order, a sworn statement setting forth:

1. the identification number of each such account or asset titled in the name, individually or jointly, of the defendant, or held on behalf of, or for the benefit of, the defendant;

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 other asset was remitted; and

3. the identification of any safe deposit box that is either titled in the name, individually or jointly, of defendant, or is otherwise subject to access by defendant; and

D. Upon the request by the FTC, promptly provide the FTC 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. Any such financial institution, account custodian, or other aforementioned entity may arrange for the FTC to obtain copies of any such records which the FTC seeks, provided that such institution or custodian may charge a reasonable fee not to exceed fifteen cents per page copied.

X. ACCESS TO PREMISES

IT IS FURTHER ORDERED that defendant shall allow the Commission's representatives, agents, or designees immediate access to the defendant's business premises, wheresoever located, and irrespective of any location specified in the complaint.

The purpose of this access shall be to inspect and copy any materials relevant to this action including any materials relating to defendant's assets. The Commission's representatives may remove materials from defendant's business premises so they may be inspected or copied. The Commission's representatives

shall not retain any such materials longer than ten (10) business days.

XI. SERVICE OF PLEADINGS

IT IS FURTHER ORDERED that the parties shall serve all memoranda, affidavits, and other evidence on which they intend to rely at the preliminary injunction hearing set in this matter not later than 4:00 p.m. (EST) of the third business day prior to the hearing date. Service on the Commission shall be performed by delivery to the attention of counsel at the Federal Trade Commission, 6th & PA Ave., NW, Washington, DC 20580, or by facsimile transmission to 202-326-3395.

XII. WITNESS IDENTIFICATION

IT IS FURTHER ORDERED that, if any party to this action intends to present the testimony of any witness at the hearing on a preliminary injunction in this matter, that party shall, at least forty-eight (48) hours prior to the scheduled date and time of hearing, file with this Court and serve on all other parties a statement disclosing the name, address, and telephone number of any such witness, and either a summary of the witness's expected testimony, or the witness's affidavit revealing the substance of such witness's expected testimony. Service on the Commission shall be performed by personal delivery to the attention of

counsel at the Federal Trade Commission, 6th & PA Ave., NW, Washington, DC 20580, or by facsimile transmission to 202-326-3395.

XIII. EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that in anticipation of the preliminary injunction hearing in this matter, the parties are granted leave to conduct expedited discovery. The parties may depose witnesses at any time after the date of this Order upon two (2) business days notice. The parties shall respond to any interrogatories, requests for admissions, or requests for production of documents within three (3) business days after service of the discovery request.

XIV. NOTICE TO COUNSEL

IT IS FURTHER ORDERED that notice to counsel, and delivery of any documents, reports, or other materials or information

required by this Order shall be made by overnight courier to:

Stephen L. Cohen
Federal Trade Commission
6th & PA Ave., N.W. #H-234
Washington, DC 20580.

XV. DURATION OF TEMPORARY RESTRAINING ORDER

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire on _____, 1997, unless within such time, the Order, for good cause shown, is extended for an additional period not to exceed ten (10) days, or unless it is further extended pursuant to Federal Rule of Civil Procedure 65.

XVI. ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION

IT IS FURTHER ORDERED, pursuant to Federal Rule of Civil Procedure 65(b), that defendant shall appear before this Court on the ____ day of _____, 1997, at _____ o'clock ____m., to show cause, if there is any, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint against defendant, enjoining it from further violations of Section 5 of the FTC Act, 15 U.S.C. § 45(a), and the Telemarketing Sales Rule, 16 C.F.R. Part 310, continuing the freeze of its assets, and imposing such additional relief as may be appropriate.

XVII. RETENTION OF JURISDICTION

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

SO ORDERED, this ___ day of _____, 1997, at
____.m.

United States District Judge

ATTACHMENT 1
Consent to Release of Financial Records

I, _____, an officer of The Tracker Corporation of America ("Tracker"), do hereby direct any bank, trust company, or financial institution at which Tracker has an account, and its officers, employees, and agents to disclose all information and deliver copies of all documents of every nature in their possession or control that relate to any such accounts to any attorney of the Federal Trade Commission, and to give evidence relevant thereto, in the matter of the Federal Trade Commission v. The Tracker Corporation of America, Case No. 97- _____, now pending in the United States District Court for the Northern District of Georgia, and this shall be irrevocable authority for so doing.

This direction is intended to apply to the laws of countries other than the United States that restrict or prohibit the disclosure of financial information without the consent of the holder of the account, or its officers, and shall be construed as consent with respect thereto.

Dated: _____, 1997

Name and Title