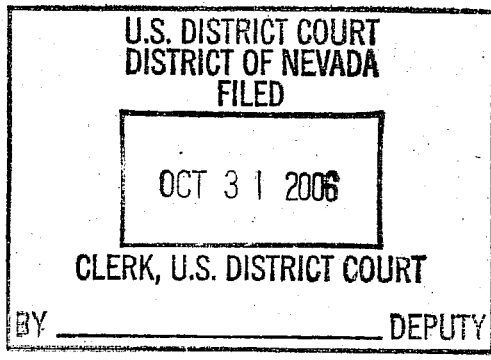


1 WILLIAM BLUMENTHAL
General Counsel

2 Colleen B. Robbins, NY# 2882710
3 Ethan Arenson, DC # 45147
4 Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580
5 Ph. (202) 326-2548 (Robbins)
6 Ph. (202) 326-2204 (Arenson)
Fax (202) 326-3395

7 Greg Addington, Nev. # 6875
Assistant United States Attorney
8 100 W. Liberty Street, Suite 600
Reno, NV 89501
9 Ph. (775) 784-5438; Fax (775) 784-5181

10 Attorneys for Plaintiff



11 UNITED STATES DISTRICT COURT
12 DISTRICT OF NEVADA

13 Federal Trade Commission,

14 Plaintiff,

15 v.

16 ERG Ventures, LLC and d/b/a ERG Ventures,
17 LLC2, Media Motor, Joysticksavers.com, and
PrivateinPublic.com; Elliott S. Cameron,
18 individually and d/b/a ERG Ventures, LLC2,
Media Motor, Joysticksavers.com, and
19 PrivateinPublic.com; Robert A. Davidson, II,
individually and d/b/a ERG Ventures, LLC2,
20 Media Motor, Joysticksavers.com, and
PrivateinPublic.com; Garry E. Hill,
21 individually and d/b/a ERG Ventures, LLC2,
Media Motor, Joysticksavers.com, and
22 PrivateinPublic.com; and Timothy P. Taylor,
individually and d/b/a Team Taylor Made,

23 Defendants.

CIVIL NO. 3:06-CV-00578-LRH-VPC

24
25 EX PARTE TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

26 Plaintiff, the Federal Trade Commission ("FTC" or the "Commission"), pursuant to
27 Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), has filed a

1 Complaint for Injunctive and Other Equitable Relief, and has moved *ex parte* for a Temporary
2 Restraining Order and for an Order to Show Cause why a preliminary injunction should not be
3 granted pursuant to Rule 65(b) of the Federal Rules of Civil Procedure.

4 **FINDINGS**

5 The Court has considered the pleadings, declarations, exhibits, and memoranda filed in
6 support of the Commission's motion and finds that:

- 7 1. This Court has jurisdiction over the subject matter of this case, and there is good cause to
8 believe that it will have jurisdiction over all parties hereto;
- 9 2. There is good cause to believe that defendants ERG Ventures LLC, a Nevada Limited
10 Liability Company d/b/a ERG Ventures LLC2, Media Motor, Joysticksavers.com, and
11 PrivateInPublic.com; Elliott S. Cameron, individually and as an officer of ERG Ventures
12 LLC; Robert A. Davidson, II, individually and as an officer of ERG Ventures LLC;
13 Garry E. Hill, individually and as an officer of ERG Ventures LLC, (collectively the
14 "ERG Defendants") and Timothy P. Taylor, individually and doing business as Team
15 Taylor Made ("Defendant Taylor"), have engaged and are likely to engage in acts or
16 practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and that the
17 Commission is therefore likely to prevail on the merits of this action;
- 18 3. There is good cause to believe: (1) the ERG Defendants and Defendant Taylor have
19 deceived consumers into downloading exploitive software by hiding exploitive code
20 within the free software they offer the public; (2) the exploitive code created by the ERG
21 Defendants and silently bundled by both the ERG Defendants and Defendant Taylor
22 causes significant harm to consumers by downloading programs that: a) change
23 consumer's default home page; b) add difficult-to-remove toolbars to the consumer's
24 Internet browser that display advertising; c) track the consumer's Internet activity;
25 d) generate repeated and occasionally sexually-explicit pop up advertising; e) add
26 advertising icons to the consumer's Windows desktop; f) alter the consumer's Internet
27

1 browser settings; g) degrade computer performance; and h) attack and disable the
2 consumer's anti-spyware software; (3) that the harm caused by the ERG Defendants and
3 Defendant Taylor is not reasonably avoidable by consumers because the exploitive
4 software installed by the ERG Defendants and Defendant Taylor is extremely difficult to
5 uninstall or otherwise remove and because the ERG Defendants and Defendant Taylor
6 fail to disclose to consumers the presence of the exploitive code; and (4) that the harm
7 caused by the ERG Defendants and Defendant Taylor is not outweighed by any benefit to
8 consumers or competition;

9 4. There is good cause to believe that the defendants will continue to engage in such
10 unlawful actions if they are not immediately restrained from doing so by Order of this
11 Court;

12 5. There is good cause to believe that immediate and irreparable damage to the Court's
13 ability to grant effective final relief in the form of monetary restitution will occur from
14 the sale, transfer, or other disposition or concealment by the defendants of their assets or
15 business records, unless the defendants are immediately restrained and enjoined by Order
16 of this Court. Based on the evidence set forth in the Plaintiff's *Ex Parte* Motion for
17 Temporary Restraining Order, Preliminary Injunction, and Other Equitable Relief, and in
18 the accompanying declarations and exhibits (the "TRO Motion"), the Commission is
19 likely to be able to prove that the defendants have engaged in a concerted course of
20 unlawful activity in connection with the distribution of exploitive software in violation of
21 Section 5 of the FTC Act, 15 U.S.C. § 45. Furthermore, based on the evidence in the
22 TRO Motion, the Commission is likely to be able to prove that: (1) the ERG Defendants
23 utilize post office boxes, a mail forwarding service, and anonymous email addresses to
24 hide from law enforcement and defrauded consumers; (2) the ERG Defendants utilize an
25 anonymous domain registration service to shield their identity from law enforcement and
26 defrauded consumers; and (3) all of the defendants have ignored calls from the anti-

1 spyware community to cease their unlawful and injurious activity. Thus, there is good
2 cause to believe that the defendants will continue to engage in attempts to conceal the
3 scope of their unlawful actions to avoid returning their ill-gotten gains to consumers
4 injured by their unlawful practices if not restrained from doing so by Order of this Court;

5 6. The Commission has not provided notice to the defendants due to the likelihood that
6 advance notice of this action will cause the defendants to abscond with or destroy
7 discoverable evidence and conceal or dissipate assets. The Commission's request for
8 this emergency *ex parte* relief is not the result of any lack of diligence on the
9 Commission's part, but instead is based upon the nature of the defendants' unlawful
10 conduct and the circumstances of this case. Thus, there is good cause for relieving the
11 Commission of the duty to provide the defendants with prior notice of the Commission's
12 application;

13 7. There is good cause for the Court to order an asset freeze against the ERG Defendants.
14 Emails authored by the ERG Defendants and produced by the Commission demonstrate
15 that the ERG Defendants reported more than one million dollars in profits between April
16 2004 and April 2005. There is good cause to believe that these funds were derived from
17 activity that violates Section 5 of the FTC Act, including tricking customers into
18 downloading exploitive software to their computers. An asset freeze as to the ERG
19 Defendants is reasonably necessary in order to preserve the possibility of complete and
20 meaningful relief in the form of disgorgement and/or consumer redress at the conclusion
21 of this litigation;

22 8. Weighing the equities and considering the Commission's likelihood of ultimate
23 success, a Temporary Restraining Order: (1) freezing the assets of the ERG Defendants;
24 (2) requiring the defendants to prepare an accounting of their assets; (3) ordering the
25 defendants to preserve their business records; and (4) providing other equitable relief is
26 in the public interest;

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

3 DEFINITIONS

4 For the purpose of this order, the following definitions shall apply:

- 5 1. **“Defendants”** means, individually, collectively or in any combination: ERG Ventures
6 LLC d/b/a ERG Ventures LLC2, Media Motor, Joysticksavers.com, and
7 PrivateInPublic.com; Elliott S. Cameron d/b/a ERG Ventures LLC2, Media Motor,
8 Joysticksavers.com, and PrivateInPublic.com, individually and as an officer of ERG
9 Ventures LLC; Robert A. Davidson, II d/b/a ERG Ventures LLC2, Media Motor,
10 Joysticksavers.com, and PrivateInPublic.com, individually and as an officer of ERG
11 Ventures LLC; Garry E. Hill d/b/a ERG Ventures LLC2, Media Motor,
12 Joysticksavers.com, and PrivateInPublic.com, individually and as an officer of ERG
13 Ventures LLC; and Timothy P. Taylor, individually and doing business as Team Taylor
14 Made; and all persons or entities in active concert or participation with any of the
15 foregoing who receive notice of this Order by personal service or otherwise. (Fed. R.
16 Civ. P. 65(d)).
- 17 2. **“ERG Defendants”** means ERG Ventures LLC d/b/a ERG Ventures LLC2, Media
18 Motor, Joysticksavers.com, and PrivateInPublic.com; Elliot S. Cameron d/b/a ERG
19 Ventures LLC2, Media Motor, Joysticksavers.com, and PrivateInPublic.com; Robert A.
20 Davidson d/b/a ERG Ventures LLC2, Media Motor, Joysticksavers.com, and
21 PrivateInPublic.com; and Garry E. Hill d/b/a ERG Ventures LLC2, Media Motor,
22 Joysticksavers.com, and PrivateInPublic.com, as well as their successors, assigns,
23 affiliates, or subsidiaries.
- 24 3. **“Defendant Taylor”** means Timothy P. Taylor, individually and d/b/a Team Taylor
25 Made.

- 1 4. **“Individual Defendants”** means Elliott S. Cameron d/b/a ERG Ventures LLC2, Media
2 Motor, Joysticksavers.com, and PrivateInPublic.com; Robert A. Davidson, II d/b/a ERG
3 Ventures LLC2, Media Motor, Joysticksavers.com, and PrivateInPublic.com; Garry E.
4 Hill d/b/a ERG Ventures LLC2, Media Motor, Joysticksavers.com, and
5 PrivateInPublic.com and Timothy P. Taylor.
- 6 5. **“Corporate Defendants”** means ERG Ventures LLC d/b/a ERG Ventures LLC2,
7 Media Motor, Joysticksavers.com, and PrivateInPublic.com and Team Taylor Made.
- 8 6. **“Assets”** means any legal or equitable interest in, right to, or claim to, any real,
9 personal, or intellectual property of any of the Corporate Defendants or Individual
10 Defendants, or held for the benefit of any Corporate Defendants or Individual
11 Defendants, wherever located, including, but not limited to, chattel, goods, instruments,
12 equipment, fixtures, general intangibles, effects, leaseholds, contracts, mail or other
13 deliveries, shares of stock, inventory, checks, notes, accounts, credits, receivables (as
14 those terms are defined in the Uniform Commercial Code), cash, and trusts, including
15 but not limited to any other trust held for the benefit of any Corporate Defendant or
16 Individual Defendant, or any of the Individual Defendants’ minor children, or spouse.
- 17 7. **“Document”** is synonymous in meaning and equal in scope to the usage of the term in
18 the Federal Rules of Civil Procedure 34(a), and includes writing, drawings, graphs,
19 charts, Internet sites, Web pages, Web sites, electronic correspondence, including e-mail
20 and instant messages, photographs, audio and video recordings, contracts, accounting
21 data, advertisements (including, but not limited to, advertisements placed on the World
22 Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup postings, World
23 Wide Web pages, books, written or printed records, handwritten notes, telephone logs,
24 telephone scripts, receipt books, ledgers, personal and business canceled checks and
25 check registers, bank statements, appointment books, computer records, and other data
26 compilations from which information can be obtained and translated. A draft or non-

1 identical copy is a separate document within the meaning of the term.

2 8. A **“Host” or “Hosting Company”** is the party that provides the infrastructure for a
3 computer service. With respect to web pages and web sites, a Host or Hosting
4 Company maintains **“Internet servers”** – the computers on which web sites, web pages,
5 Internet files, or resources reside. The Host or Hosting Company also maintains the
6 communication lines required to link the server to the Internet. Often, the content on the
7 servers (*i.e.*, content of the web pages) is controlled by someone other than the Host or
8 Hosting Company.

9 9. **“Affiliate marketer” or “sub-affiliate marketer”** means any person who provides or
10 has provided the ERG Defendants or Defendant Taylor with assistance in marketing,
11 advertising, distributing, downloading, or installing software code or other goods or
12 services.

13 10. **“Affiliate program(s)”** is an arrangement under which any or all of the ERG
14 Defendants pay or offer to pay another (**“the affiliate”**) to market, advertise, distribute,
15 download or install software or other goods or services on behalf of the ERG
16 Defendants, with the affiliate being paid based on performance measures, including but
17 not limited to the number of software installations or downloads.

18 11. **“Software”** means any file, program, application, content, code or set of instructions
19 that controls, directs, or assists in the operation of a computer.

20 I

21 **INJUNCTION AGAINST MISREPRESENTATION OF SOFTWARE**
22 **AS TO THE ERG DEFENDANTS**

23 **IT IS THEREFORE ORDERED** that in connection with marketing, distributing, and
24 installing of Software via the Internet, and assisting others in marketing, distributing, and
25 installing of Software via the Internet, the ERG Defendants, and those persons in active concert
26 or participation with them who receive actual notice of this Order by personal service or
27 otherwise, are temporarily restrained and enjoined from, prior to the installation of any
28

1 Software directly or indirectly installed on consumers' computers by the ERG Defendants: 1)
2 failing to clearly and conspicuously disclose the name and function of all such Software (the
3 "Required Disclosure"); and 2) failing to provide, immediately after the Required Disclosure is
4 made, a clearly and conspicuously disclosed option to prevent the installation of all such
5 Software, which when exercised by the consumer, prevents the installation of all such Software.

6 II

7 INJUNCTION AGAINST UNFAIR INSTALLATION OF 8 EXPLOITIVE SOFTWARE AS TO THE ERG DEFENDANTS

9 **IT IS FURTHER ORDERED** that, in connection with marketing and distributing of
10 Software via the Internet, the ERG Defendants, and those persons in active concert or
11 participation with them who receive actual notice of this Order by personal service or
12 otherwise, are temporarily restrained and enjoined from publishing, disseminating, distributing,
13 installing or downloading Software that:

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

24 III

25 INJUNCTION AGAINST MISREPRESENTATION OF SOFTWARE 26 AS TO DEFENDANT TAYLOR

27 **IT IS FURTHER ORDERED** that in connection with marketing, distributing, and
28 installing of Software via the Internet, and assisting others in marketing, distributing, and

1 installing of Software via the Internet, Defendant Taylor, and those persons in active concert or
2 participation with them who receive actual notice of this Order by personal service or
3 otherwise, are temporarily restrained and enjoined from, prior to the installation of any
4 Software that is installed on consumers' computers as a result of downloading and/or installing
5 Software from Defendant Taylor: 1) failing to clearly and conspicuously disclose the name and
6 function of all such Software (the "Required Disclosure"); and 2) failing to provide,
7 immediately after the Required Disclosure is made, a clearly and conspicuously disclosed
8 option to prevent the installation of all such Software, which when exercised by the consumer,
9 prevents the installation of all such Software.

10 IV

11 ASSET FREEZE AS TO THE ERG DEFENDANTS

12 **IT IS FURTHER ORDERED** that the ERG Defendants, any person insofar as he or
13 she is acting in the capacity of an officer, agent, representative, servant, employee or attorney of
14 the ERG Defendants, and all persons or entities in active concert or participation with any of
15 the foregoing who receive notice of this Order by personal service or otherwise are hereby
16 temporarily restrained and enjoined from:

17 A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling,
18 concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or
19 security interest or other interest in, or otherwise disposing of any funds, real or personal
20 property, accounts, contracts, consumer lists, shares of stock, or other assets, or any interest
21 therein, wherever located, that are: (1) owned or controlled by any of the ERG Defendants, in
22 whole or in part, for the benefit of any of the ERG Defendants; (2) in the actual or constructive
23 possession of any of the ERG Defendants; or (3) owned, controlled by, or in the actual or
24 constructive possession of any corporation, partnership, or other entity directly or indirectly
25 owned, managed, or controlled by any of the ERG Defendants, including, but not limited to,
26 any assets held by or for, or subject to access by, any of the ERG Defendants, at any bank or
27 savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity

1 trading company, precious metals dealer, or other financial institution or depository of any kind;

2 B. Opening or causing to be opened any safe deposit boxes titled in the name of any
3 of the ERG Defendants, or subject to access by any of them;

4 C. Incurring charges or cash advances on any credit card issued in the name, singly
5 or jointly, of any of the ERG Defendants;

6 D. Obtaining a personal or secured loan titled in the name of any of the ERG
7 Defendants, or subject to access by any of them; and

8 E. Incurring liens or other encumbrances on real property, personal property, or
9 other assets in the name, singly or jointly, of any of the ERG Defendants.

10 V

11 **FINANCIAL REPORTS AND ACCOUNTING**

12 **IT IS FURTHER ORDERED** that each Individual Defendant and each Corporate
13 Defendant, within five (5) days of service of this Order, shall:

14 A. Provide the Commission with completed financial statements, verified under
15 oath and accurate as of the date of entry of this Order, on the forms attached to this Order as
16 Attachment A for each Individual Defendant and Attachment B for each Corporate Defendant;

17 B. Provide the Commission with a full accounting, verified under oath and accurate
18 as of the date of entry of this Order, of all funds, documents, and assets outside of the United
19 States that are: (1) in the name of each Individual Defendant and each Corporate Defendant; or
20 (2) held by any person or entity for the benefit of each Individual Defendant and each Corporate
21 Defendant; or (3) under the direct or indirect control, whether jointly or singly, of each
22 Individual Defendant and each Corporate Defendant;

23 C. Prepare and provide to counsel for the Commission a detailed and accurate
24 statement, verified under oath and accurate as of the date of entry of this Order, that sets forth:

- 25 1. all payments, transfers, or assignments of assets made to each Individual
26 Defendant and each Corporate Defendant in the amount of \$500 or more since
27 January 1, 2004. Such statement shall include: (a) the amount transferred or

1 assigned; (b) the name, address, and telephone number of each transferor or
2 assignor; (c) the name, address, and telephone number of each transferor or
3 assignor; (d) the date of the assignment or transfer; and (e) the type and amount
4 of consideration for any payment;

5 2. all payments, transfers, or assignments of assets made by each Individual
6 Defendant and each Corporate Defendant in the amount of \$500 or more since
7 January 1, 2004. Such statement shall include: (a) the amount transferred or
8 assigned; (b) the name, address, and telephone number of each transferor or
9 assignor; (c) the name, address, and telephone number of each transferee or
10 assignee; (d) the date of the assignment or transfer; and (e) the type and amount
11 of consideration for any payment;

12 3. all gross revenues collected and obtained through the Individual Defendants'
13 Internet marketing and distribution activities and the Corporate Defendants'
14 business activities, including, but not limited to, gross revenues collected through
15 participation in Affiliate programs, and the source of all such revenues;

16 4. all net profits obtained from the Individual Defendants' Internet marketing and
17 distribution activities and the Corporate Defendants' business activities;

18 5. all revenues and profits obtained through Affiliate programs as an Affiliate
19 program operator, an affiliate marketer or a sub-affiliate marketer, broken down
20 by Affiliate program; and

21 6. since January 1, 2004, the full name and contact information for each company,
22 entity, or person who has paid the Individual Defendants in connection with any
23 Internet marketing and distribution activities, and the Corporate Defendants in
24 connection with any business activities;

25 D. Provide the Commission with a statement, verified under oath and accurate as of
26 the date of entry of this Order, detailing the name, address, and telephone number for each
27 accountant, financial planner, investment advisor, stock broker, or other person who provided
28

1 each Corporate Defendant and each Individual Defendant with financial, business, or tax advice
2 or services since January 1, 2004; and

3 E. Provide the Commission access to all records of accounts or assets of each
4 Corporate Defendant and Individual Defendant held by any financial institution outside the
5 United States by signing the Consent to Release of Financial Records attached to this Order as
6 Attachment C.

7 *Provided further*, the Commission is immediately authorized to issue subpoenas to
8 demand the production of documents from any person or entity relating to the nature, status,
9 extent, location, or other relevant information relating to the Corporate Defendants' and
10 Individual Defendants' assets, income, and financial records.

11 VI

12 RETENTION OF ASSETS AND RECORDS BY FINANCIAL INSTITUTIONS

13 **IT IS FURTHER ORDERED** that, pending determination of the Commission's
14 request for a preliminary injunction, any financial or brokerage institution, business entity, or
15 person served with a copy of this Order that holds, controls, or maintains custody of any
16 account or asset of any of the ERG Defendants, or has held, controlled or maintained custody of
17 any such account or asset at any time since the date of entry of this Order, shall:

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

21 B. Deny any of the Defendants access to any safe deposit box that is:

22 1. titled in the name of any of the ERG Defendants, individually or jointly;

23 or

24 2. otherwise subject to access by any of the ERG Defendants;

25 C. Provide the Commission's counsel, within five (5) business days of receiving a
26 copy of this Order, a sworn statement setting forth:

27 1. the identification number of each such account or asset titled in the

1 name, individually or jointly, of any of the ERG Defendants, or held on
2 behalf of, or for the benefit of any of the ERG Defendants;

3 2. the balance of each such account, and/or a description of the nature and
4 value of each such asset as of the close of business on the day on which
5 this Order is served, and, if the account or other asset has been closed or
6 removed, the date closed or removed, the total funds removed in order
7 to close the account, and the name of the person or entity to whom such
8 account or other asset was remitted; and

9 3. the identification of any safe deposit box that is titled in the name,
10 individually or jointly, of any of the ERG Defendants, or is otherwise
11 subject to access by any of the ERG Defendants.

12 D. Upon request by the Commission, promptly provide the Commission with copies
13 of all records or other documentation pertaining to each such account or asset, including but not
14 limited to originals or copies of account applications, account statements, signature cards,
15 checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit
16 instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. Any
17 such financial institution, account custodian, or other aforementioned entity may arrange for the
18 Commission to obtain copies of any such records which the Commission seeks.

19 VII

20 ACCESS TO BUSINESS RECORDS

21 **IT IS FURTHER ORDERED** that Corporate Defendants and Individual Defendants
22 shall allow the Commission's representatives, agents, and assistants access to all of the
23 Corporate Defendants' and Individual Defendants' business records to inspect and copy
24 documents so that the Commission may prepare for the preliminary injunction hearing and
25 identify and locate assets. Accordingly, the Corporate Defendants and Individual Defendants
26 shall, within twenty-four (24) hours of service of this Order, produce to the Commission and
27 the Commission's representatives, agents and assistants for inspection, inventory, and/or

1 copying, at the location indicated in Attachment D, all materials related or referring, directly or
2 indirectly, to the Corporate Defendants and Individual Defendants' business practices or assets
3 including, but not limited to, computers, computer access codes and/or other computer
4 passwords, computerized files, storage media (including, but not limited to, floppy disks, hard
5 drives, CD-ROMS, zip disks, punch cards, magnetic tape, backup tapes and computer chips) on
6 which information has been saved, any and all equipment needed to read any such material,
7 contracts, accounting data, correspondence (including, but not limited to, electronic
8 correspondence), advertisements (including, but not limited to, advertisements placed on the
9 World Wide Web), USENET Newsgroup postings, World Wide Web pages, books, written or
10 printed records, handwritten notes, receipt books, ledgers, personal and business canceled
11 checks and check registers, bank statements, appointment books, copies of federal, state or local
12 business or personal income or property tax returns, 1099 forms, and other documents or
13 records of any kind that relate to Corporate Defendants' and Individual Defendants' business
14 practices.

15 The Commission shall return produced materials pursuant to this Paragraph within five
16 (5) business days of completing said inventory and copying.

17 VIII

18 PRESERVATION OF RECORDS

19 **IT IS FURTHER ORDERED** that the Corporate Defendants and Individual
20 Defendants are hereby temporarily restrained and enjoined from altering, destroying, mutilating,
21 falsifying, erasing, concealing, writing over, transferring, or otherwise disposing of, in any
22 manner, directly or indirectly, any documents or records of any kind that relate to the business
23 practices or business or personal finances of the Defendants, including but not limited to: any
24 and all computer data and storage media (including but not limited to floppy disks, hard drives,
25 CD-ROMS, zip disks, punch cards, magnetic tape, backup tapes, and computer chips and any
26 and all equipment needed to read any such material), contracts, accounting data,
27 correspondence, advertisements (including, but not limited to, advertisements placed on the
28

1 World Wide Web or the Internet), FTP logs, Service Access Logs, USENET Newsgroups
2 postings, World Wide Web pages, books, written or printed records, handwritten notes,
3 telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks
4 and check registers, bank statements, appointment books, copies of federal, state or local
5 business or personal income or property tax returns, and other documents or records of any kind
6 that relate to the business practices or business or personal finances of the Corporate
7 Defendants or Individual Defendants.

8 In order to preserve all active and inactive computer data the Corporate Defendants and
9 Individual Defendants shall immediately upon service of this order power down and only then
10 unplug any and all computers in their control that are being used or have been used in
11 connection with their Internet marketing and distribution activities and shall cease using such
12 computers until they either:

- 13 1. Within 24 hours of service of this order create and produce to the
14 Commission forensically sound mirrored images of all such
15 computers using industry standard computer forensic software; or
- 16 2. Within 12 hours of service of this order inform the Commission of
17 a time within 24 hours when the Commission can access the
18 computers on site to make forensically sound mirrored images of
19 all such computers using industry standard computer forensic
20 software; or
- 21 3. Within 24 hours of service of this order and with notice to the
22 Commission produce such computers at the location specified in
23 Attachment D, or at another location agreed to by the Commission so
24 that the Commission can make forensically sound mirrored images of all
25 such computers using industry standard computer forensic software.

IX

IDENTIFICATION OF SOFTWARE PROVIDERS

1
2
3 **IT IS FURTHER ORDERED** that the Corporate Defendants and Individual
4 Defendants shall, within five (5) days of service of this Order, prepare and deliver to the
5 Commission a completed statement, verified under oath and accurate as of the date of entry of
6 this Order, identifying with as much detail as possible (including, but not limited to, name,
7 address, phone number, email address, instant messaging identification or “handle,” website,
8 and affiliate identification code) of all persons and/or entities that have provided Software that
9 the Corporate Defendants and/or Individual Defendants have installed, either directly or
10 through their affiliates, on consumers’ computers. For the ERG Defendants, this list should
11 include, but not be limited to, the persons and/or entities that provided the programs commonly
12 known as: Look2Me, 7FaSSt, AdRotator, AdMedia, SearchingAll, the Mirar Toolbar,
13 ClickSpring; UCmore; CasClient; Z-Quest; CmdServices; Purity Scan; Backdoor.DSNX,
14 Webhancer, Ezula, CoolWebSearch, ABetterInternet, DyFuCA, e2give, Prutech, Safesurfing,
15 Qoologic, BookedSpace, begin2search, DollarRevenue, Popuppers, WebNexus, Yazzle and
16 Winsync. For Defendant Taylor this list should include, but not be limited to, Addictive
17 Technologies and Media Motor.

X

**IDENTIFICATION OF AFFILIATES AND CUSTOMERS
AS TO THE ERG DEFENDANTS**

18
19
20 **IT IS FURTHER ORDERED** that the ERG Defendants shall, within five (5) days of
21 service of this Order, prepare and deliver to the Commission a completed statement, verified
22 under oath and accurate as of the date of entry of this Order, identifying with as much detail as
23 possible (including, but not limited to, name, address, phone number, email address, instant
24 messaging identification or “handle,” website, and affiliate identification code) of all affiliate
25 marketers, sub-affiliate marketers, agents, vendors, hosting companies, employees, and
26 contractors that have worked with or been retained by the ERG Defendants in connection with
27

1 the distribution of Software and/or are members of an Affiliate program operated by the ERG
2 Defendants.

3 **XI**

4 **RECORD KEEPING/BUSINESS OPERATIONS**

5 **IT IS FURTHER ORDERED** that the Corporate Defendants and Individual
6 Defendants are hereby temporarily restrained and enjoined from:

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

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

15 **XII**

16 **DISTRIBUTION OF ORDER BY DEFENDANTS**

17 **IT IS FURTHER ORDERED** that the Corporate Defendants and Individual
18 Defendants shall immediately provide a copy of this Order to each affiliate marketer, sub-
19 affiliate marketer, affiliate, subsidiary, hosting company, email server, division, sales entity,
20 successor, assign, officer, director, employee, independent contractor, client company, agent,
21 attorney, and spouse of each defendant, and shall, within ten (10) days from the date of entry of
22 this Order, provide the Commission with a sworn statement that this provision of the Order has
23 been satisfied, which statement shall include the names, physical addresses, and e-mail
24 addresses of each such person or entity who received a copy of the Order.

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XIII

SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission and electronic mail, upon any financial institution or other entity or person that may have possession, custody, or control of any documents of any Corporate Defendant or Individual Defendant, or that may otherwise be subject to any provision of this Order. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution.

XIV

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 each Corporate Defendant and Individual Defendant to the Commission.

XV

SERVICE OF PLEADINGS

IT IS FURTHER ORDERED that the Commission shall serve on each Corporate Defendant and Individual Defendant copies of this Order, complaint, and supporting memoranda, affidavits and other evidence. Each Corporate Defendant and Individual Defendant shall serve on the Commission 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. (Eastern time) on the third day prior to the hearing date.

XVI

DURATION OF TEMPORARY RESTRAINING ORDER

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire on Nov. 14, 2006 at 5:00pm 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.

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XVII

ORDER TO SHOW CAUSE REGARDING
PRELIMINARY INJUNCTION

IT IS FURTHER ORDERED, pursuant to Federal Rule of Civil Procedure 65(b), that each Corporate Defendant and Individual Defendant shall appear before this Court on the 14th day of November, 2006, at 3:30 p.m., to show cause, if any, why this Court should not enter a Preliminary Injunction, pending final ruling on the Complaint against the Corporate Defendants and Individual Defendants, enjoining them from further violations of Section 5(a) of the Federal Trade Commission Act, continuing the freeze of their assets, and imposing such additional relief as may be appropriate.

XVIII

SERVICE UPON PLAINTIFF

IT IS FURTHER ORDERED that, with regard to any correspondence or pleadings related to this Order, service on the Commission shall be performed by overnight mail delivery to the attention of Colleen Robbins and Ethan Arenson at the Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room H-288, Washington, DC 20580.

XIX

RETENTION OF JURISDICTION

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

SO ORDERED, this 31 day of October, 2006, at .m.


UNITED STATES DISTRICT JUDGE