

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Case No. 8:10-cv-335-T-30TGW

**DARLING ANGEL PIN CREATIONS,
INC., SHELLY R. OLSON, and JUDITH
MENDEZ,**

Defendants.

ORDER

On February 2, 2010, Plaintiff, Federal Trade Commission (FTC or the Commission), pursuant to Sections 5(a), 13(b) of the FTC Act (FTC Act), 15 U.S.C. §§ 45(a), 53(b), filed its Complaint for Injunctive and Other Equitable Relief (Complaint). Simultaneously, the FTC moved for a Temporary Restraining Order with Asset Freeze and Expedited Discovery pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65(b). After considering the evidence and argument presented, the Court granted the FTC's motion and issued a Temporary Restraining Order on February 2, 2010. This matter is now before the Court pursuant to the Order to Show Cause Provision of the TRO and the hearing held on February 10, 2010. The Court has considered the Complaint and the declarations, exhibits, and memorandum filed in support of the Commission's motion, all other items filed in this matter, the arguments of counsel, the testimony of Shelly Olson, and now being fully advised, finds as follows:

1. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe it will have jurisdiction of all parties hereto. The Complaint states a claim upon which relief may be granted under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b).
2. There is good cause to believe venue properly lies with this Court.
3. There is good cause to believe that Defendants have engaged in and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and that Plaintiff is likely to prevail on the merits of this action.
4. There is good cause to believe that immediate and irreparable damage to this Court's ability to grant effective final relief for consumers in the form of monetary restitution, rescission of contracts or disgorgement will occur from the transfer, destruction, concealment, or other dissipation of Defendants' Assets, Documents, records or other evidence unless Defendants are immediately restrained and enjoined by order of this Court.
5. Weighing the equities and considering Plaintiff's likelihood of ultimate success on the merits, a Preliminary Injunction with asset freeze, and other equitable relief is in the public interest.

DEFINITIONS

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

1. **"Individual Defendant"** means Shelly R. Olson.

2. **“Corporate Defendant”** means Darling Angel Pin Creations, Inc., also d/b/a Angel Pin Creations, by whatever names it may be known, as well as its successors, assigns, officers, directors, agents, servants, employees, salespersons, attorneys and those persons or entities in active concert or participation with it who receive actual notice of this Order by personal service, facsimile, e-mail, publication, or otherwise, whether acting directly or through any corporation, subsidiary, division or other device.
3. **“Defendants”** means the Individual Defendant and Corporate Defendant, individually, collectively, or in any combination.
4. **“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, premises, contracts, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.
5. **“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 electronically stored information, writings, drawings, graphs, charts, sound recordings, images 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.
6. **“Person”** means a natural person, organization or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, government or

governmental subdivision or agency, or any other group or combination acting as an entity.

7. “**Plaintiff**” means the Federal Trade Commission.
8. The terms “**and**” and “**or**” shall be construed conjunctively or disjunctively as necessary to make the applicable phrase or sentence inclusive rather than exclusive.

LEGAL ANALYSIS

The Court must consider two factors in determining whether to grant a preliminary injunction under the Federal Trade Commission Act §13(b), 15 U.S.C. §15(b): (1) the likelihood that the FTC will succeed on the merits; and (2) the balance of equities. FTC v. Univ. Health, Inc., 938 F.2d 1206, 1217 (11th Cir. 1991).

Defendants Darling Angel Pin Creations, Inc. and Shelly Olson (“Defendants”) are engaged in the business of selling a work-at-home program. Defendants continue to conduct an advertising campaign purportedly seeking customers to assemble angel pins out of ribbon, wire, and beads, referred to as contractors. Defendants represent that contractors will be able to earn an income of up to \$500 per week.

Thousands of consumers pay up-front fees to embark on the program. Consumers must pay \$22.97 (shipping and handling included) for a starter kit. The starter kit includes information about the program and supplies to make one angel. Consumers can assemble the angel and mail it back to Defendants for inspection. Consumers may become contractors if their angels are approved. Many of these consumers also purchase supplies that can cost more than \$500. Very few consumers ever earn any money working for Defendants.

Instead, many consumers find that Defendants never approve them to become contractors, or Defendants do not pay them for the angels they assemble.

Defendants' business is actually selling the work-at-home opportunity, not the finished angel pin because there is little or no retail market for the finished pins. Defendant Olson stated at the preliminary injunction hearing that most of the company's revenue, which is used to pay new contractors, comes from the sale of starter kits, not the finished angels.

The FTC alleges that Defendants' scheme violates Section 5(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §45(a), by misrepresenting that purchasers of their work-at-home scheme are likely to earn substantial income. Section 5(a) of the FTC Act prohibits deceptive acts or practices in or affecting commerce. Under the FTC Act, consumers are entitled to believe that when a business advertises earnings claims, those claims represent typical earnings.

In FTC v. Rainbow Enzymes, Inc., 1988 U.S. Dist. LEXIS 16173 (D. Ariz. Nov. 7, 1988), the defendants recruited consumers to purchase ingredients to make a cleaning solution. The consumers created the solution and then sent the finished solution to another company, controlled by the defendants, for approval and payment. In Rainbow Enzymes, there was no market for the finished solution. The majority of defendants revenue came from new consumers purchasing the ingredients. The court reaffirmed its earlier summary judgment ruling and injunction finding that "almost all of the money the [participants] received was generated from investments made by other [participants] – not from the sales of the product. Id. at *4. The same is true in this case. The majority of Defendants' revenue

comes from investments (including starter kits, registration fees, and costs for supplies) from other participants.

Defendant Olson argues that this case is distinguished from Rainbow Enzyme because part of Rainbow Enzyme's business was recruiting independent sales contractors to recruit producers. In Defendants' work-at-home program, all participants are recruited directly by Defendants, not through other participants. However, the court's holding in Rainbow Enzyme is still relevant. As in the case at issue here, the majority of money paid to producers/contractors comes from the investments from new participants, not from the sale of the finished product. This type of business scheme is not a legitimate business and violates the FTC Act.

I. PROHIBITED CONDUCT

IT IS THEREFORE ORDERED that, in connection with the advertising, marketing, offering for sale, or sale of any work-at-home opportunity, Defendants and their successors, assigns, officers, agents, servants, employees, attorneys and those persons or entities 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 preliminarily restrained and enjoined from making, expressly or by implication, any representation that is false or misleading, including but not limited to misrepresenting in any manner that purchasers of Defendants' work-at-home program are likely to earn substantial income.

II. ASSET FREEZE

IT IS FURTHER ORDERED that Defendants, and each of their successors, assigns, members, 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 entity, corporation, subsidiary, division, affiliate or other device, are hereby preliminarily restrained and enjoined from:

- A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, perfecting a security interest in, or otherwise disposing of any Asset, wherever located, including outside the United States, that are:
1. owned or controlled by, or in the actual or constructive possession of, any Defendant, in whole or in part;
 2. held, directly or indirectly, for the benefit of any Defendant, in whole or in part;
 3. held by an agent of any Defendant as a retainer for the agent's provision of services to Defendants; or
 4. owned or controlled by, in the actual or constructive possession of, collected on behalf of, or otherwise held for the benefit of, any corporation, partnership, or other entity that is owned, managed, or controlled, directly or indirectly, by any Defendant, including, but not limited to, any Asset held or collected by, for, or subject to access by, any Defendant at any bank or savings and loan institution, or collected

for any Defendant by any credit card processing agent, automated clearing house processor or other payment processor, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution or depository of any kind;

- B. Opening or causing to be opened any safe deposit box in the name of any Defendant, or subject to access by any Defendant;
- C. Incurring liens or other encumbrances on any Asset in the name, singly or jointly, of any corporation, partnership, or other entity owned, managed, or controlled, directly or indirectly, by any Defendant;
- D. Incurring charges or cash advances on any credit card or prepaid debit, credit or other bank card, issued in the name, singly or jointly, of any Defendant or any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant;

IT IS FURTHER ORDERED that the Assets affected by this Paragraph are: (1) all Assets of Defendants existing as of February 2, 2010, except for the \$1,500 total that the Individual Defendant has been authorized to pay from her personal funds for reasonable, usual, ordinary, and necessary living expenses as ordered by the Temporary Restraining Order entered in this case on February 2, 2010, and (2) assets obtained after the time of issuance of this Order if the assets are derived from any activity prohibited by this Order.

IT IS FURTHER ORDERED that, with the written consent of the FTC, Individual Defendant Olson may sell any furniture owned by her as of February 2, 2010, and place the proceeds of the sale into one of Individual Defendant Olson's frozen accounts. Any proceeds from the sale of Individual Defendant Olson's furniture are Assets affected by this **Section II**.

III. DUTIES OF ASSET HOLDERS

IT IS FURTHER ORDERED that any financial or brokerage institution, business entity, or other Person who receives notice of this Order that holds, controls, or maintains custody of any account or other Asset of any Defendant that is subject to the provisions of **Section II**, above, or has held, controlled, or maintained custody of any account or other Asset that is subject to the provisions of **Section II**, above, at any time since February 1, 2003, 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 this Court;
- B. Deny Defendants access to any safe deposit box that is titled in the name of any Defendant, either individually or jointly; or otherwise subject to access by any Defendant;
- C. Provide Plaintiff's counsel, within seven days of receiving a copy of this Order, a sworn statement setting forth:

1. the number of each account or identification of each Asset held on behalf of, or for the benefit of, or collected for any of the Defendants;
 2. the balance of each such account, or a description of the nature and value of each other Asset as of the close of business on the day on which this Order is received, 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, individually or jointly, in the name of any Defendant, or is otherwise subject to access by any Defendant; and
- D. Allow Commission representatives immediate access to inspect and copy all Documents and records pertaining to the account, other Asset, or safe deposit box, including, but not limited to, 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. Alternatively, the institution, entity, or other Person may deliver to the Commission copies of the Documents and records requested by Plaintiff.
- E. In addition to the other requirements of this **Section III**, any ACH Network or other payment processor having possession, custody or control of any

Asset or any records of any Defendant, or of any account or other Asset titled in the name of, or subject to withdrawal or access by, or collected for, any Defendant or any Defendant's d/b/a, either individually or jointly, of record or beneficially, directly or indirectly, including accounts or other Assets that any of the Defendants may control by virtue of being signatories on said accounts, and including accounts or other Assets held in the name of any person that provides or provided services to any Defendant, or that has maintained any such record, account, or other Asset, that is subject to the provisions of **Section II**, at any time since February 1, 2003, including, but not limited to, PayPal, and Sage Payment Solutions, shall:

1. Within 24 hours of receipt of a copy of this Order provide the FTC with the identification of each account, other Asset or record covered by this subsection, as well as any account (other than a consumer account) into which the processor has directly or indirectly caused deposits or transfers on behalf of, or at the direct or indirect instructions of, any Defendant, including the identity or identities and address(es) of the owner(s) of each such account; and
2. Within three (3) days of receipt of a copy of this Order provide the FTC with the balance of each account or a description of the nature and value of each other Asset, identified in subparagraph E.1, as of the close of business on the day this Order is served, and, if the

account or other Asset has been closed or moved, 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.

PROVIDED, HOWEVER, that nothing in this Order shall prohibit any ACH Network reversals of bank charges that occur in the ordinary course of business as required by any applicable banking laws or regulations.

IV. REPATRIATION OF FOREIGN ASSETS AND DOCUMENTS

IT IS FURTHER ORDERED that, within seven (7) days following service of this Order, Defendants shall:

- A. Repatriate to the United States all Documents, records, and Assets in foreign countries held either: (1) by any Defendant; (2) for the benefit of any Defendant; or (3) under the direct or indirect control, jointly or individually, of any Defendant;
- B. The same business day as any repatriation: (1) notify Plaintiff of the name and location of the financial institution or other entity that is the recipient of such Documents, records, or Asset; and (2) serve this Order on the receiving financial institution or other entity;
- C. Provide Plaintiff with a full accounting of all Documents, records, and Assets outside of the territory of the United States held either: (1) by the Defendant; (2) for the Defendant's benefit; or (3) under the Defendant's

direct or indirect control, jointly or singly; and

V. INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that Defendants are hereby preliminarily restrained and enjoined from taking any action, directly or indirectly, that may result in the encumbrance or dissipation of foreign Assets or in the hindrance of the repatriation required by the preceding Section of this Order, including but not limited to:

- A. Sending or causing to be sent any statement, letter, fax, e-mail, or wire transmission, or telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a “duress” event has occurred under the terms of a foreign trust agreement, until such time as all Assets have been fully repatriated pursuant to the preceding Section of this Order; and
- B. Notifying any trustee, protector or other agent of any foreign trust or other related entities of either the existence of this Order or of the fact that repatriation is required pursuant to a court order, until such time as all Assets have been fully repatriated pursuant to the preceding Section of this Order.

VI. PROHIBITIONS AGAINST DISTRIBUTION OF CONSUMER LISTS

IT IS FURTHER ORDERED that Defendants are hereby preliminarily restrained and enjoined from selling, renting, leasing, transferring or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who is or may be a consumer of the Corporate

Defendant;

PROVIDED, HOWEVER, that Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation or court order, and may disclose such identifying information to the Plaintiff.

VII. PRESERVATION AND MAINTENANCE OF BUSINESS RECORDS

IT IS FURTHER ORDERED that Defendants, and each of their successors, assigns, members, 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 entity, corporation, subsidiary, division, affiliate or other device, are hereby preliminarily restrained and enjoined from:

- A. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any Documents or records of any kind that relate to the business practices or business or personal finances of any Defendant, individually or jointly; or
- B. Failing to create and maintain Documents or records that, in reasonable detail, accurately, fairly, and completely reflect Defendants' incomes, disbursements, transactions, and disposition of their Assets.

VIII. PROHIBITION ON TRANSFERRING BUSINESS INFORMATION

IT IS FURTHER ORDERED that Defendants are hereby preliminarily restrained and enjoined from transferring or in any other way providing to any Person (other than

Plaintiff, a law enforcement agency, or as required by any law, regulation, or court order), directly or indirectly, any trade secrets or knowledge, whether recorded or otherwise, or any books, records, tapes, disks, accounting data, manuals, electronically stored data, banking records, invoices, telephone records, ledgers, payroll records, or other Documents of any kind, including information stored in computer-maintained form, in the possession, custody, or control of a Defendant that are in any way related to the Corporate Defendant.

IX. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each affiliate, agent, partner, division, sales entity, successor, assignee, officer, director, employee, independent contractor, spouse, Internet web host or master, agent, attorney, and/or representative of Defendants, and shall, within ten (10) days from the date of entry of this Order, provide Plaintiff with a sworn statement that Defendants have 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 this Order.

X. SERVICE OF THIS ORDER

IT IS FURTHER ORDERED that this Order and other initial pleadings and papers filed in this matter may be distributed and served by U.S. first class mail, overnight delivery, facsimile, electronic mail, or personally, by agents or employees of the FTC, by any law enforcement agency, and by agents of any process servers retained by the FTC, upon any Defendant, upon the business premises of any Defendant, and upon

any financial institution or any Person or entity that may be in possession or control of any Assets, records, Documents, property or property rights of any Defendant, or that may be subject to any provision of this Order. Service upon any branch or office of any financial institution shall effect service upon the entire institution or entity.

XI. MONITORING

IT IS FURTHER ORDERED that agents or representatives of the FTC may contact Defendants or their agents or representatives directly and anonymously for the purpose of monitoring compliance with **Section I** of this Order, and may tape record any oral communications that occur in the course of such contacts.

XII. NOTIFICATION OF BUSINESS ACTIVITIES

IT IS FURTHER ORDERED that:

- A. The Individual Defendant is preliminarily restrained and enjoined, directly or indirectly, from creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first serving on counsel for Plaintiff a written statement disclosing the following: (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 or actual activities. If the Individual Defendant is at the time of entry of this Order operating or exercising any control over any

business entity that is not a named Defendant in this action, including any partnership, limited partnership, joint venture, sole proprietorship or corporation the Individual Defendant shall provide a written statement as described above within three (3) days of entry of this Order.

- B. The Individual Defendant shall notify Plaintiff at least seven (7) days before affiliating with, becoming employed by, or performing any work for any business that is not a named Defendant in this action. Each notice shall include the Individual Defendant's new business address and a statement of the nature of the business or employment and the nature of his or her duties and responsibilities in connection with that business or employment. If the Individual Defendant is already affiliated with, employed by, or working for any business that is not a named Defendant in this action at the time that this Order is entered, the Individual Defendant shall notify the Plaintiff within three (3) days of the entry of this Order. The notification shall include the Individual Defendant's business address, the date the Individual Defendant began working for the business, and a statement of the nature of the business or employment and the nature of his or her duties and responsibilities in connection with that business or employment.

XIII. CORRESPONDENCE

IT IS FURTHER ORDERED that, for purposes of this Order, all correspondence and service of pleadings on Plaintiff shall be addressed to:

Julie A. Lady, Esq.
Federal Trade Commission
1111 Superior Avenue, Suite 200
Cleveland, Ohio 44114-2507
Phone (216) 263-3409 / Fax (216) 263-3426

XIV. OUTSTANDING OBLIGATIONS UNDER THIS COURT'S TEMPORARY RESTRAINING ORDER OF FEBRUARY 2, 2010

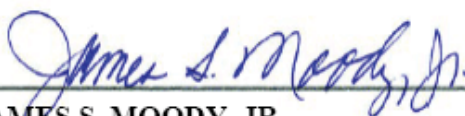
IT IS FURTHER ORDERED that Defendants are not relieved of, and, to the extent that they have not already done so, shall immediately meet, the following requirements of this Court's Temporary Restraining Order entered on February 2, 2010: Section IV thereof ("Repatriation of Foreign Assets and Documents," including references to Attachment A of the Temporary Restraining Order entered on February 2, 2010); Section VI thereof ("Financial Reports," including references to the Temporary Restraining Order entered on February 2, 2010); Section X thereof ("Expedited Discovery"); and Section XI thereof ("Distribution of Order by Defendants).

IT IS FURTHER ORDERED that the provisions of Section X of this Court's February 2, 2010 Temporary Restraining Order related to Plaintiff's authority to conduct limited expedited discovery of third parties remain in effect.

XV. RETENTION OF JURISDICTION

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

DONE and ORDERED in Tampa, Florida on February 22, 2010.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record

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