

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Case No. 8:08-cv-2062-T-27MAP

**RCA CREDIT SERVICES, LLC
a Florida Corporation,
RICK LEE CROSBY, JR., individually,
and BRADY WELLINGTON, individually,**

Defendants.

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ORDER

THIS MATTER IS BEFORE THE COURT following an August 25, 2011 hearing at which Defendant Rick Lee Crosby, Jr. (“Crosby”) was directed to appear and show cause why he should not be held in contempt for failure to comply with the requirements of the July 28, 2010 Final Judgment and Permanent Injunction (Dkt. 131), the October 14, 2010 Amended Final Judgment and Permanent Injunction (Dkt. 139), and Paragraph III of the October 30, 2008 Preliminary Injunction (Dkt. 29). *See* Order to Show Cause (Dkt. 166). Following the hearing, Plaintiff Federal Trade Commission (“FTC”) filed a Final Argument Brief (Dkt. 189) and Crosby filed various motions (Dkts. 190, 191, 192) portions of which the Court construes as responses to the Final Argument Brief. Also before the Court, is the Plaintiff’s Motion in Limine Requesting Adverse Inferences be Drawn Against Defendant (Dkt. 173).

Standard

District courts have inherent power to enforce compliance with their orders through civil contempt. *See, e.g., Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764-65 (1980); *Shillitani v. U.S.*, 384 U.S. 364, 370 (1966). In the Eleventh Circuit, the party moving for contempt bears the burden of establishing by “clear and convincing” evidence that the underlying order was violated. *Howard Johnson Co., Inc. v. Khimani*, 892 F.2d 1512, 1516 (11th Cir. 1990). This clear and convincing proof must demonstrate that: (1) the allegedly violated order was valid and lawful; (2) the order was clear, definite, and unambiguous; and (3) the party to be held in contempt had the ability to comply with the order. *McGregor v. Chierco*, 206 F.3d 1378, 1383 (11th Cir. 2000).

If the moving party makes a *prima facie* showing that a party subject to a court order has violated that order, the burden shifts to that party to produce evidence explaining its noncompliance. *Citronelle-Mobile Gathering, Inc. v. Watkins*, 943 F.2d 1297, 1301 (11th Cir. 1991).

Discussion

The Final Judgment and Permanent Injunction, Amended Final Judgment and Permanent Injunction, and Preliminary Injunction are all valid and lawful orders properly entered by the Court. The fact that Crosby has appealed one or more of the underlying orders does not prevent the Court from enforcing the orders pending the outcome of his appeal. It is “established doctrine that persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order.” *GTE Sylvania Inc. v. Consumers Union of the United States, Inc.*, 455 U.S. 375, 386 (1980); *see Walker v. City of Birmingham*, 388 U.S. 307, 314-21 (1967); *Howat v. State of Kansas*, 258 U.S. 181, 190 (1922). The record also indicates that Crosby had actual notice of the Final Judgment and Permanent

Injunction as of August 20, 2010 (Dkt. 136; PX 145), the Amended Final Judgment and Permanent Injunction as of October 19, 2010 (Dkts. 140, 145), and the Preliminary Injunction as of December 4, 2008 (*see* dkts. 36, 39)

The relevant portions of the Final Judgment and Permanent Injunction, the Amended Final Judgment and Permanent Injunction, and the Preliminary Injunction are also clear, definite, and unambiguous. The Final Judgment and Permanent Injunction and the Amended Final Judgment and Permanent Injunction permanently restrained and enjoined Crosby from:

BAN ON CREDIT REPAIR SERVICES

- A. Advertising, marketing, promoting, offering for sale, or selling any credit repair product or service, including publications, e-books and any form of written and oral communication; and
- B. Assisting others engaged in advertising, marketing, promoting, offering for sale, or selling any credit repair service.

PROHIBITED CREDIT REPAIR CLAIMS

- C. Claiming, stating, implying or representing, in connection with the advertising, marketing, promotion, offering for sale or sale of any credit repair product or service, in any manner, expressly or by implication that:
 - 1. A consumer can increase their credit score “into the 700s” within 30 days or other short period of time;

- 3. A consumer can or should make any statement, the intended effect of which is to alter the consumer’s identification, to prevent the display of the consumer’s credit record, history, or rating for the purpose of concealing adverse information that is accurate and not obsolete, including but not limited to,

obtaining an Employer Identification Number or Taxpayer Identification Number.

PROHIBITED REPRESENTATIONS

- D. Misrepresenting, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale or sale of any product or service, any material fact, including but not limited to:
1. Any aspect of any credit repair product or service not already prohibited herein;

Final Judgment and Permanent Injunction (Dkt. 131), pp. 3-4; Amended Final Judgment and Permanent Injunction (Dkt. 139), pp. 3-4.¹

During the hearing, the FTC established by clear and convincing evidence that Crosby violated the Final Judgment and Permanent Injunction and the Amended Final Judgment and Permanent Injunction as follows:

- Between 9/15/10 and 6/7/11, Crosby remained directly or indirectly affiliated with www.creditambassador.com and www.LegalCredit.com.
- Crosby personally appeared in a video on www.creditambassador.com using the alias “Chris Smith.” *See, e.g.*,

¹ Paragraph III of the Preliminary Injunction enjoined Crosby from:

- A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, perfecting a security interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, shares of stock, lists of consumer names, or other assets, wherever located, including outside the United States

- C. Obtaining a personal or secured loan encumbering the assets of any Defendant, or subject to access by any Defendant;

Preliminary Injunction (Dkt. 29), pp. 9-11.

Plaintiff's Exhibit ("PX") 166; PX 166TR; PX 169; Lewis Testimony;² *see also* PX 133, pp. 1, 3.

- As of 10/8/10, www.LegalCredit.com referred to Crosby as its "Founder" and included testimonial letters written by Crosby. *See, e.g.*, PX 116, pp. 3-4, PX 131, pp. 2-3.
- Crosby was identified as the "founder" and "e-publisher" of Legal Credit Secrets Exposed in an email to an undercover FTC investigator. PX 126; Lewis Testimony.³
- Crosby's personal email address was listed in the contact information for Credit Ambassador in an email from Avangate BV ("Avangate") forwarding a link to download a copy of Legal Credit Secrets Exposed. PX 120.
- On numerous occasions from 9/15/10 through 6/7/11, Crosby advertised, marketed, promoted, and offered for sale credit repair products and services on www.creditambassador.com and/or www.LegalCredit.com. *See, e.g.*, PX 116; PX 124; PX 131-34; Lewis Testimony; Liggins Testimony.
- Crosby advertised, marketed, promoted, and offered for sale the "Credit Ambassador Blackbook and Training System" via www.creditambassador.com and "Legal Credit Secrets Exposed" via www.LegalCredit.com which were purchased by undercover FTC investigators on 9/15/10 and 10/8/10, respectively. *See* PX 106-08; PX 157, PX 118-20, PX 156-58; Lewis Testimony; *see also, e.g.*, PX 116; PX 124; PX 131-34.⁴
- Crosby, through his alias, "Chris Smith" offered one on one credit training calls and one-on-one credit repair counseling. *See, e.g.*, PX 112-13, PX 158; Lewis Testimony.

² The FTC offered the testimony of two undercover investigators at the show cause hearing, Ronald Lewis and Michael Liggins. The testimony of both individuals was consistent with their declarations previously filed with the Court. *See* PX 104 (Declaration of Ronald D. Lewis); PX 130 (Declaration of Michael S. Liggins).

³ The email was sent from "legalcredit@aweber.com on behalf of Rick Crosby." Similarly, emails purportedly sent on behalf of "Chris Smith" used the email address chris_smith@aweber.com. *See, e.g.*, PX 127.

⁴ Copies of the "Credit Ambassador Blackbook and Training System" and "Legal Credit Secrets Exposed" were admitted into evidence as PX 157 and PX 158, respectively.

- Crosby exchanged emails with an FTC investigator offering a “free 30 min session” relating to Legal Credit Secrets Exposed. PX 122. Crosby signed the Avangate E-Commerce Agreement on behalf of Credit Ambassador. PX 164.
- Crosby sold credit repair products and services on www.creditambassador.com and www.LegalCredit.com through an arrangement with Avangate where Avangate acted as a “reseller” for Crosby. PX 164, p.1; Liggins Testimony; *see also* PX 106-08; PX 118-20.
- Between the date Crosby was served with the Final Judgment and Permanent Injunction (8/20/10) and the date the Amended Final Judgment and Permanent Injunction was entered (10/14/10), Crosby billed Avangate \$1,090.03 for sales of credit repair products and services offered through the websites. PX 160, pp. 3-9; *see also* PX 159, p. 1.
- After Crosby was served with the Amended Final Judgment and Permanent Injunction, he sold Avangate credit repair products and services totaling \$6,268.77. PX 159; PX 160, pp. 12-42; *see also* PX 164, p.1.
- Crosby assisted Avangate by providing credit repair services in the form of credit training sessions for Avangate to offer for sale to consumers. *See, e.g.*, PX 160, pp. 6, 18, 20, 23, 25, 35, 39-42; *see also* PX 159. In addition, Crosby assisted Todd White by referring customers seeking credit repair counseling. PX 122, p.1; Lewis Testimony.
- Crosby made representations on www.creditambassador.com suggesting that a consumer can increase their credit score into the 700s within 30 days or a similarly short time frame. *See, e.g.*, PX 124, pp. 1, 3, 4, 9, 10; PX 133, pp. 1, 3, 4, 9, 10; PX 169; PX 166; PX 166TR, pp. 1 & 3 (“you can increase your credit score in as little as 30 days”); Lewis Testimony; *see also* PX 113, p. 1 (“the most hidden secret credit building strategy that increase your FICO score 200+ points in as little as 30 days”); PX 133, p. 4 (“just a few weeks later, some of them have already increased their FICO score 100+ points from using some of my FAST credit building techniques”).
- On numerous occasions from 10/8/10 through 6/7/11, Crosby made representations on www.creditambassador.com and www.LegalCredit.com suggesting that a consumers could conceal adverse credit information by obtaining an Employer Identification Number or Taxpayer Identification Number. *See, e.g.*, PX 116, p. 1 (“legally establishing a new identity credit

profile with a new 9-Digit Number”); PX 116, p. 3 (“Letter from the Founder: Mr. Crosby” providing that “[y]our NEW 9-digit number can be offered in place of Social Security number (SSN#)” and “[y]our new 9-digit number will be assigned to you for credit establishing purposes only”); PX 116, p. 4 (“Insider Secrets to Legally Registering Your New 9-Digit Number in Your Name”); PX 124; PX 131-34; Lewis Testimony; *see also* PX 157, pp. 50-53, 57-59, 63, 65-68; PX 158.

The FTC also filed a Motion in Limine (Dkt. 173) requesting that the Court draw adverse inferences against Crosby based on his assertion of the Fifth Amendment in response to the Court’s order requiring him to provide an accounting to the FTC relating to the sale of products via www.creditambassador.com and www.LegalCredit.com after July 29, 2010. *See* Response to Order Requesting Production of Documents by the Plaintiffs (Dkt. 170) (“I assert my rights under the Fifth Amendment of the United States Constitution and respectfully decline to answer the question.”). The motion in limine is due to be granted. *See Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F.3d 1298, 1304-05 (11th Cir. 2009); *Federal Trade Comm’n v. Global Marketing Group*, 594 F.Supp.2d 1281, 1287 (M.D. Fla. 2008). The Court makes the following findings:

- Crosby sold, directly or indirectly, credit repair products and services through two websites, www.creditambassador.com and www.LegalCredit.com after July 29, 2010.
- Crosby received funds from the sale of credit repair products and services that were made by him, or on his behalf, after July 29, 2010, through www.creditambassador.com and www.LegalCredit.com.

In light of the evidence presented by the FTC, together with the adverse inferences drawn from Crosby’s assertion of the Fifth Amendment, the Court reaffirms its prior finding that the FTC established a *prima facie* case of civil contempt. As a result, the burden was on Crosby to produce evidence “explaining his noncompliance at [the] ‘show cause’ hearing.” *FTC v. Leshin*,

618 F.3d 1221, 1232 (11th Cir. 2010) (quoting *Chairs v. Burgress*, 143 F.3d 1432, 1436 (11th Cir. 1998)).

Crosby argues that the evidence offered by the FTC at the show cause hearing was hearsay. In addition, Crosby argues that because Liggins' testimony did not establish the current owner of www.creditambassador.com and www.LegalCredit.com there is no basis for a finding of contempt. Crosby also argues that the "Credit Ambassador Blackbook and Training System" and "Legal Credit Secrets Exposed" were not "credit repair services" and Lewis was not a credit repair expert. These arguments are without merit. First, the evidence presented by the FTC was not hearsay (or otherwise fell within an exception to the hearsay rule). *See, e.g.*, Fed. R. Civ. P. 801(c) and (d)(2); Fed. R. Civ. P. 803(6). Second, the FTC introduced evidence that Crosby sold and directly promoted credit repair services regardless of whether he was the legal "owner" of www.creditambassador.com and www.LegalCredit.com.⁵ Third, Crosby's unilateral belief that the products and services he sold and promoted were not "credit repair services," does not change the fact that as an objective matter he violated the Final Judgment and Permanent Injunction and the Amended Final Judgment and Permanent Injunction. *See Jim Walter Resources, Inc. v. Int'l Union, United Mine Workers of Am.*, 609 F.2d 165, 168 (5th Cir. 1980) (noting that the focus of a court's inquiry in a civil contempt proceeding is not on the subjective beliefs or intent of the alleged contemnor in complying with an order, but whether in fact his conduct complied with the order at issue).⁶

⁵ In fact, Crosby personally appeared in a video on www.creditambassador.com promoting the "Credit Ambassador Blackbook and Training System." PX 166.

⁶ Crosby's contention that he was entitled to a jury trial on the issue of contempt is also misplaced. "Neither a jury trial nor proof beyond a reasonable doubt is required" in a civil contempt proceeding. *United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827 (1994). Similarly, Crosby's claim that he was not properly served in the contempt proceeding is without merit. *See City Cab Co. of Orlando, Inc. v. All City Yellow Cab, Inc.*, 581 F.Supp.2d 1197, 1200 (M.D. Fla. 2008).

The facts and record before the Court demonstrate by clear and convincing evidence that Crosby violated the Final Judgment and Permanent Injunction and the Amended Final Judgment and Permanent Injunction. Thus, the burden was on Crosby to show an inability to comply. Crosby elected not to present any evidence at the show cause hearing, let alone evidence explaining his noncompliance with Court's orders, including the Order to Show Cause which required Crosby to provide an accounting to the FTC. As a result, Crosby has not satisfied his burden and a finding of civil contempt against Crosby is warranted.

Sanctions

In fashioning a remedy or sanction for civil contempt, a court has broad discretion, "measured solely by the 'requirements of full remedial relief.'" *U.S. v. City of Miami*, 195 F.3d 1292, 1298 (11th Cir. 1999) (quoting *Citronelle-Mobile*, 943 F.2d at 1304). For example, a court may impose a coercive daily fine, a compensatory fine, attorney's fees and expenses, and coercive incarceration. See *U.S. v. United Mine Workers of Am.*, 330 U.S. 258, 303-04 (1947); see *Smalbein v. City of Daytona Beach*, 353 F.3d 901, 907 (11th Cir. 2003). "In establishing the amount to impose, the court must consider several factors, including the character and magnitude of the harm threatened by continued contumacy, the probable effectiveness of any suggested sanction in bringing about compliance, and the amount of the contemnor's financial resources and consequent seriousness of the burden to him." *Matter of Trinity Indus., Inc.*, 876 F.2d 1485, 1493-94 (11th Cir. 1989).

The FTC requests that the Court impose (1) a daily fine of \$500 to coerce Crosby's compliance with the Court's orders and (2) a one-time fine of \$7,935.39 equal to the sales revenue generated by Avangate in reselling products and services that Crosby sold to Avangate. The Court concludes that based on the evidence presented, including the combined retail value of the two credit

repair products sold by Crosby,⁷ a coercive fine of \$264 for each day that Crosby continues to violate the Amended Final Judgment and Permanent Injunction is fair and reasonable in light of Crosby's habitual violation of this Court's orders. *See In Re: Grand Jury Subpoena Duces Tecum, 91-02922*, 955 F.2d 670, 673 (11th Cir. 1992). Crosby may purge himself of contempt and avoid a continuing fine by either (i) demonstrating compliance with the Amended Final Judgment and Permanent Injunction or (ii) providing the FTC the accounting required by the Order to Show Cause. In addition, a one-time fine of \$7,935.39⁸ representing Crosby's gross receipts for sales made in violation of the Final Judgment and Permanent Injunction and the Amended Final Judgment and Permanent Injunction is appropriate as a compensatory sanction for civil contempt given Crosby's persistent and pervasive contemptuous conduct. *See McGregor*, 206 F.3d at 1388-89; *Federal Trade Comm'n v. Figgie Int'l*, 994 F.2d 595, 606 (9th Cir. 1993); *see also Leshin*, 618 F.3d at 1237; *Federal Trade Comm'n v. Kuykendall*, 371 F.3d 745, 764 (10th Cir. 2004).

The FTC also requests that the Court require Crosby to turn over money to the FTC equal to the value of the assets he sold and/or expended in violation of the Preliminary Injunction "in partial satisfaction of the judgment in favor of the Commission." The FTC calculates this figure as

⁷ Crosby invoiced Avangate \$197 for the Credit Ambassador Blackbook and Training System and \$67 for Legal Credit Secrets Exposed. *See, e.g.*, PX 160.

⁸ This calculation is based on the total resales reported to Crosby by Avangate during the period of 8/23/10 through 10/7/10 (\$1,125) and sales after 10/22/10 (\$6,810.39). *See* PX 161, PX 162, pp. 18-51, 66-237.

\$30,415.⁹ At this time, the Court declines to enter an order directing Crosby to turn over \$30,415 to the FTC as a sanction for contempt. Crosby remains jointly and severally liable on the full monetary judgment entered by the Court and directing him to pay \$30,415 as a contempt sanction would likely be, at best, a futile exercise of this Court's discretion. If, however, Crosby continues to violate this Court's orders, the Court will reconsider the FTC's request.

Accordingly, it is **ORDERED ADJUDGED** that:

(1) Plaintiff's Motion in Limine Requesting Adverse Inferences be Drawn Against Defendant (Dkt. 173) is **GRANTED**.

(2) Defendant Rick Lee Crosby, Jr. is found to be in civil contempt for violating the Final Judgment and Permanent Injunction (Dkt. 131) and the Amended Final Judgment and Permanent Injunction (Dkt. 139).

(3) As a compensatory contempt sanction, Defendant Rick Lee Crosby, Jr. is directed to pay \$7,935.39 into the registry of the Court in accordance with 28 U.S.C. § 2041 within **ten (10) days** from the date of this Order. The Court reserves jurisdiction to set forth procedures by which the FTC may access these fund and reimburse consumers who have established their right to compensation and to enter an order returning to Crosby any funds not returned to consumers.

⁹ The FTC argues that the evidence introduced at trial established that Crosby violated the Preliminary Injunction as follows:

- Crosby sold two motor vehicles he owned after entry of the Preliminary Injunction, including a 2000 Cadillac Sedan DTS (with an estimated value of \$3,105) and a 2006 Yamaha motorcycle (with an estimated value of \$2,500). Trial Transcript Vol. II, pp. 153, 155-56; PX 2, pp. 9, 17.
- Crosby obtained a purchase money loan of \$41,000 to buy a Chevrolet Avalanche, trading in his Cadillac as part of the transaction. Trial Transcript Vol. II, pp. 155-57; PX 16, pp. 9-10.
- Crosby paid average monthly expenses of \$4,315 during the six months prior to 11/4/09. Trial Transcript Vol. II, pp. 160-61; PX 16, p. 15.

(4) In order to induce compliance with the Amended Final Judgment and Permanent Injunction (Dkt. 139), Defendant Rick Lee Crosby, Jr. shall be, and is hereby, fined \$264 for each day, or fraction thereof, during which he fails to comply in full with Amended Final Judgment and Permanent Injunction. The \$264 fine shall commence the day following entry of this Order, and shall continue to accrue until Crosby either (a) demonstrates to the Court that he has brought himself into compliance with the Amended Final and Permanent Injunction *or* (b) provides the FTC with the accounting required by the Order to Show Cause.

DONE AND ORDERED in Tampa, Florida, on this 4th day of October, 2011.

/s/ James D. Whittemore
JAMES D. WHITTEMORE
United States District Judge

Copies:
Counsel of record
Defendants
Rick Lee Crosby, *pro se*