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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**JOHN ZUCCARINI, individually and
d/b/a Cupcake Party, Cupcake-Party,
Cupcake Parties, Cupcake-Parties,
Cupcake City, Cupcake Patrol,
Cupcake-Patrol, Cupcake First-Patrol,
Cupcake Show, Cupcake-Show,
Cupcake Shows, Cupcake-Shows,
Cupcake Parade, Cupcake-Parade,
Cupcakes, Cupcake Confidential,
Cupcake-Movies, Cupcake
Real Video, The Cupcake Incident,
The Cupcake Secret, Cupcake Message,
Cupcake Messenger, The Country Walk,
JZ Design and RaveClub Berlin,**

Defendant.

Civil Action No. 01-CV-4854

X010063

JUDGMENT AND PERMANENT INJUNCTION

Plaintiff, the Federal Trade Commission ("Commission"), commenced this action on September 25, 2001, by filing its Complaint against Defendant John Zuccarini, doing business as Cupcake Party, Cupcake-Party, Cupcake Parties, Cupcake-Parties, Cupcake City, Cupcake Patrol, Cupcake-Patrol, Cupcake First-Patrol, Cupcake Show, Cupcake-Show, Cupcake Shows, Cupcake-Shows, Cupcake Parade, Cupcake-Parade, Cupcakes, Cupcake Confidential, Cupcake-Movies, Cupcake Real Video, The Cupcake Incident, The Cupcake Secret, Cupcake Message, Cupcake Messenger, The Country Walk, JZ Design, and RaveClub Berlin ("Defendant"). The Complaint alleges that Defendant engaged in unfair and deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45, and seeks a permanent injunction and monetary relief pursuant to Section 13(b) of the FTC Act. On September 25, 2001, the Commission moved for, and the Court entered, a temporary restraining order against Defendant. On October 19, 2001, after a hearing and finding that Defendant had been duly served with process, the Court entered a preliminary injunction order.

Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, the Clerk of Court entered default against Defendant on January 14, 2002. The Commission now has moved this Court for entry of a judgment by default and permanent injunction, pursuant to Rules 54(b) and 55(b)(2) of the Federal Rules of Civil Procedure. Having considered the memorandum, declarations and exhibits filed in support of said motion, and all other pleadings and files in this action, the Court finds:

1. This is an action by the Commission instituted under Sections 5 and 13(b) of the Federal Trade Commission Act, 15 U.S.C. §§ 45 and 53(b). The Complaint seeks both permanent injunctive relief and monetary relief for alleged unfair and deceptive acts or practices

by the Defendant in connection with Defendant's concerted course of activity involving the redirecting of consumers from their intended destinations on the World Wide Web to his own Web pages, where he then obstructs consumers from those pages through a series of Web pages that display advertisements for goods and services, for his financial gain.

2. Defendant's practice of redirecting consumers to his Web sites in combination with his practice of obstructing consumers from exiting his Web sites is likely to cause substantial injury that cannot be reasonably avoided, and is not outweighed by countervailing benefits to consumers or competition and is therefore unfair and in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

3. Defendant's practice of obstructing consumers from exiting his Web sites is likely to cause substantial injury that cannot be reasonably avoided, is not outweighed by countervailing benefits to consumers or competition and is therefore unfair and in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

4. Defendant's practice of launching multiple browser windows displaying not only Defendant's Web pages, but also the Web site Defendant's domain name mimics, constitutes false and misleading representations and practices and therefore constitutes deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

5. The Commission has the authority under Section 13(b) of the FTC Act to seek the relief it has requested.

6. This Court has jurisdiction over the subject matter of this case and has jurisdiction over Defendant. Venue in the Eastern District of Pennsylvania is proper, and the Complaint states a claim upon which relief may be granted against Defendant under Sections 5 and 13(b) of the FTC Act.

7. The activities of Defendant are in or affecting commerce, as defined in 15 U.S.C. § 44.

8. The Defendant has been served with the Summons and Complaint pursuant to the Federal Rules of Civil Procedure, the Pennsylvania Rules of Civil Procedure, and this Court's Order Authorizing Alternative Means of Service of Process.

9. The Defendant has been notified of the Preliminary Injunction Order and Entry of Default.

10. Defendant has failed to answer or otherwise defend as to the Complaint. Accordingly, Defendant is in default for failure to plead or otherwise defend in this action.

11. To the best of this Court's information and knowledge, Defendant is not an infant, he has not been declared incompetent, and he is not currently in the military or otherwise exempted from default judgment under the Soldiers' and Sailors' Civil Relief Act of 1940.

12. It is proper in this case to issue a permanent injunction prohibiting Defendant from redirecting or obstructing consumers on the Internet, from participating in online affiliate marketing programs, and to provide for monitoring by the Commission of Defendant's compliance with such a permanent injunction.

13. It is proper in this case to enter a monetary judgment against Defendant to disgorge the unjust enrichment which resulted from Defendant's violations of the FTC Act.

14. Defendant's unjust enrichment from his unfair and deceptive practices totals at least one million eight hundred ninety-seven thousand one hundred sixty-six dollars (\$1,897,166) and therefore this amount is a reasonable approximation of Defendant's ill-gotten gains.

15. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies.

16. Entry of this Order is in the public interest.

Definitions

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

A. "Defendant" means John Zuccarini, individually and d/b/a Cupcake Party, Cupcake-Party, Cupcake Parties, Cupcake-Parties, Cupcake City, Cupcake Patrol, Cupcake-Patrol, Cupcake First-Patrol, Cupcake Show, Cupcake-Show, Cupcake Shows, Cupcake-Shows, Cupcake Parade, Cupcake-Parade, Cupcakes, Cupcake Confidential, Cupcake-Movies, Cupcake Real Video, The Cupcake Incident, The Cupcake Secret, Cupcake Message, Cupcake Messenger, The Country Walk, JZ Design, RaveClub Berlin and any other unincorporated entity through which he does business.

B. "Internet" is an umbrella term used to describe the decentralized system that links computers around the world using a standardized set of communication protocols. The Internet includes, among other systems, the World Wide Web, electronic mail, newsgroups, telnet, file transfer protocol ("FTP"), Internet Relay Chat, and instant messaging.

C. A "browser" is a software application used to view, download, upload, surf or otherwise access documents ("pages" or "sites") on the World Wide Web. Browsers read coded documents that reside on servers, and interpret the coding into what users see rendered as a Web page or Web site. A user may retrieve and view a Web page or site by entering the URL or domain name of the Web page in the address bar of the browser.

D. The "World Wide Web" or the "Web" is a system used on the Internet for cross-referencing and retrieving information. Documents ("pages" or "sites") on the World Wide Web are most frequently formatted in a language called HTML, or HyperText Markup Language, that

supports links to other documents on the World Wide Web.

E. A “Web site” is a set of electronic files or documents, usually a home page and subordinate pages, readily viewable on a computer by anyone with access to the Web and standard Internet browser software.

F. A “Web page” is a single electronic document on the World Wide Web, readily viewable on a computer by anyone with access to the Internet and standard Internet browser software. Every Web page on the World Wide Web is identified by a globally unique address.

G. Uniform Resource Locator, or “URL,” is the globally unique address of a resource, file, or page on the World Wide Web. Each Web page has a distinct URL, such as *www.mp3123.com* or *www.cupcakeparty.com/celebrities-gone-wild.htm*, that serves as a unique Internet address for that Web page.

H. A “domain name” is a unique alpha-numeric name used to locate a particular organization or other entity on the Internet. Domain names allow users connected to the Internet to find Web sites with familiar names without having to memorize the complex numerical addresses that computers read. In the URL *www.cupcakeparty.com/celebrities-gone-wild.htm*, “cupcakeparty.com” is the domain name. Simply registering a domain name does not link the domain name with a Web site, particular location, or computer on the Internet. The registrant must find a host (or “Web server”) for the Web site and have the domain name indexed to the server so that a user can locate the Web site.

I. A “Host” or “Hosting Company” is the party that provides the infrastructure for a computer service. With respect to Web pages and Web sites, a Host or Hosting Company maintains “Web servers” -- the computers on which Web sites and pages reside. The Host or Hosting Company also maintains the communication lines required to link the server to the

Internet. Often, the content on the servers (i.e. the content of the Web pages) is controlled by someone other than the Host or Hosting Company.

J. A “window” is an enclosed area on a computer’s display screen, usually rectangular in shape. Most computers allow a user to divide a screen into several windows. Within each window, a user can run a different program or different copies of the same program. A user can minimize a window by replacing the entire window with an icon, a small picture that represents the program running in the window. Separate functions within a given program can also use windows, e.g. multiple documents within WordPerfect.

K. A “Domain Name Registrar” is a business that interacts with customers (“registrants”), processes registration orders, and places registration information into the domain name registry.

L. “Redirecting” is the practice of diverting consumers to Web sites or Web pages that consumers did not intend to visit or access, using tactics including but not limited to:

- (1) operating, publishing, or disseminating Web sites or pages with domain names that are misspellings of other domain names;
- (2) operating, publishing, or disseminating Web sites or pages with domain names that transpose or invert words, terms, or phrases in other domain names; or
- (3) operating, publishing, or disseminating Web sites or pages with domain names that are confusingly similar to famous trademarks, service marks, or names.

M. “Obstructing” is the practice of impeding or preventing consumers from exiting Web sites or Web pages by means of disseminating to the public on the Internet or World Wide

Web, Web sites, or Web pages that include code, programs, commands or directions of any kind, executed on or through consumers' computers or the Web server's computer, that impede or block consumers' ability to exit those pages or sites, including but not limited to:

- (1) directing, instructing, or causing multiple browser windows, pop-up windows, Web pages, Web sites, or multiple copies of consumers' browser software to launch or open when a consumer types a domain name or URL in the address bar of a browser, or functional equivalent thereof;
- (2) directing, instructing, or causing windows, Web pages, or Web sites to open, pop up, launch or otherwise appear on consumers' screen as a result of consumers' selection of the "Close," "Exit," "X," or "Back" button(s), or any functional equivalent thereof;
- (3) directing, instructing, or causing windows, Web sites or Web pages to open that cannot be viewed by consumers using standard browser software functions, including, but not limited to, the "right click" function of maximizing a window; or
- (4) directing, instructing or causing consumers' browser software to open or launch new windows, Web pages or Web sites or additional copies of consumers' browser software without any action on the part of consumers.

N. "Affiliate Marketing Program" is a revenue sharing arrangement between online merchants and "affiliates," – online content providers who market and/or advertise goods or services for merchants through, inter alia, the use of banners, ads and text links posted on Web sites or Web pages. Compensation is paid to the affiliate by the merchant on performance

measures, typically in the form of sales, clicks, registrations or a hybrid model. The affiliate is paid a commission by the merchant when a visitor takes a specific action, such as filling out a form or making a purchase.

I.

PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that, in connection with the advertising, promotion, offering for sale, sale, or provision of any goods or services on the Internet, the World Wide Web, and/or any Web page or Web site, the Defendant, and his assigns, agents, servants, employees, and all persons or entities directly or indirectly under his control, and all other persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, and each such person, whether acting directly or through any corporation, limited liability company, subsidiary, division, or other device, are hereby permanently restrained and enjoined from:

- (A) Redirecting consumers on the Internet or World Wide Web;
- (B) Obstructing consumers on the Internet or World Wide Web;
- (C) Representing that any Web page(s), Web site(s), domain name(s), good(s) or service(s), are endorsed by, or affiliated or associated with, any third party or any entity, including but not limited to any Web site, Web page, product, trademark or service mark, or celebrity, when in fact they are not. Such representation shall not be made expressly or by implication, including but not limited to launching the Web site or Web page belonging to an unrelated party in combination or association with any of Defendant's Web sites, Web pages or domain names without the express verifiable authorization of the third party or entity; and

(D) Participating in any Affiliate Marketing Program.

II.

EQUITABLE MONETARY RELIEF

IT IS FURTHER ORDERED that judgment is hereby entered against Defendant in the amount of one million eight hundred ninety-seven thousand one hundred sixty-six dollars (\$1,897,166) for equitable monetary relief. All amounts that the Commission collects toward this sum shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Defendant's practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited into the United States Treasury as disgorgement. Defendant shall have no right to challenge the Commission's choice of remedies under this Section.

III.

RECORD KEEPING AND DOCUMENT RETENTION

IT IS FURTHER ORDERED that Defendant, for a period of eight (8) years from the date of service of this Order on Defendant, when acting in an individual capacity, or in connection with any entity in which Defendant has an ownership interest or is a director, officer (or comparable position with a non-corporate entity), or is a person who formulates policies or procedures, is hereby restrained and enjoined from failing to create, maintain and make available

to representatives of the Commission, upon reasonable notice:

(A) Books, records and accounts that, in reasonable detail, accurately and fairly reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

(B) Records accurately reflecting: the name, address, and telephone number of each person that Defendant employs in any capacity, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable. The Defendant shall retain such records for any terminated employee for a period of two years following the date of termination; and

(C) Records accurately listing all domain names registered by or on behalf of Defendant, or used by or on behalf of Defendant; the name and address of the Domain Name Registrar; and the name and address of the Host for each domain name; and

(D) Records relating to all ventures undertaken by Defendant that involve the sale of goods or services over the Internet or World Wide Web, including, but not limited to, group or individual meetings, telemarketing, Web sites, Web pages, commercial electronic mail, infomercials or other television or radio advertising, or direct mail, including but not limited to copies of all contracts or agreements between Defendant and any sales company, mailhouse, printer, Internet service provider, information provider, telephone company, television or radio station, or other person through whom Defendant advertises or promotes goods or services, as well as copies of all advertisements, Web pages, Web sites, commercial electronic mail, or promotional materials utilized in such ventures.

IV.

ORDER DISTRIBUTION

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of service of this Order, Defendant shall:

(A) Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from each officer, director, each individual serving in a management capacity, employee, independent contractor, consultant, Host or Hosting company, Domain Name Registrar, employed or retained by Defendant;

(B) Should Defendant become affiliated in any way with a commercial entity engaged in online commerce or business, Defendant shall provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, an owner, principal, officer, or director of the commercial entity within fifteen (15) business days of the affiliation; and

(C) Maintain for a period of five (5) years after creation, and upon reasonable notice make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Order, as required in this Section.

V.

NOTIFICATION OF RESIDENCE, EMPLOYMENT AND DOMAIN NAME REGISTRATIONS

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

(A) Defendant shall notify the Commission in writing, within ten (10) days of the date of entry of this Order, of his current residence address, mailing address, business and home telephone numbers, and employment status, including the names, telephone numbers, and

business addresses of any current employers;

(B) For a period of five (5) years from the date of service of this Order, Defendant shall notify the Commission in writing within thirty (30) days of any changes in his residence and/or mailing addresses;

(C) For a period of five (5) years from the date of service of this Order, Defendant shall notify the Commission in writing within thirty (30) days of any changes in employment status, including the name and business address of any new employer(s);

(D) For a period of five (5) years from the date of service of this Order, Defendant shall notify the Commission in writing within thirty (30) days of registering or re-registering a domain name with any Domain Name Registrar. Such notification shall include:

1. the true identity of the domain name registrant;
2. his or her true and accurate mailing address, email address, and telephone number;
3. all registration information, including name(s), address(es), and email address(es)

of the purported registrant, administrative contact, and billing contact listed on each registration; and

4. the name and address of the Domain Name Registrar.

(E) For the purposes of this Section, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom Defendant performs services as an employee, consultant, or independent contractor.

(F) For the purposes of this Order, all written notifications to the Commission shall be mailed to:

Associate Director for Marketing Practices
Room H-238
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
Re: FTC v. John Zuccarini

VI.

ACCESS AND MONITORING

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, Defendant shall permit representatives of the Commission, within seven (7) business days of receipt of written notice from the Commission:

(A) Access during normal business hours to his offices, or facility storing documents, and to any offices of any business entity or person under Defendant's control, to inspect and copy all documents reasonably relating to compliance with the terms of this Order; and

(B) To interview or depose the officers, directors, and employees, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, concerning matters reasonably relating to compliance with the terms of this Order. The person interviewed or deposed may have counsel present. *Provided* that the Commission may otherwise monitor Defendant's compliance with this Order by all lawful means available, including:

1. the use of investigators or other representatives of the Commission posing as consumers, Hosts or Hosting companies, without the necessity of prior

- identification or notice;
2. without further leave of Court, to obtain discovery as provided by Rules 26-37 of the Federal Rules of Civil Procedure, including the use of compulsory process pursuant to Federal Rule of Civil Procedure 45; and
 3. the use of compulsory process pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to investigate whether Defendant has violated any provision of this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

VII.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Order *for six months from this date.*

VIII.


ENTRY OF THIS JUDGMENT

IT IS FURTHER ORDERED that there is no just reason for delay of entry of this judgment, and, pursuant to Fed. R. Civ. P. 55, the Clerk shall enter this Order immediately.

IX
CASE IS CLOSED for Statistical Purposes.

SO ORDERED,

this 9 day of April, 2002



Hon. Berle M. Schiller
United States District Judge
Eastern District of Pennsylvania

*Copies faxed on 4/8/02 to:
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Defendant.

Civil Action No. 01-CV-4854

FILED OCT 18 2001

X010063

PRELIMINARY INJUNCTION

Plaintiff, the Federal Trade Commission (“Commission”) having filed its complaint for a permanent injunction and other equitable relief in this matter pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and the Court having issued a Temporary Restraining Order and Order to show cause why a preliminary injunction should not be granted pursuant to Rule 65(b) of the Federal Rules of Civil Procedure; and the Court, having considered the Complaint, declarations, exhibits, and memoranda of law filed in support thereof, and any response thereto finds that:

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

2. The Defendant has been served with the Summons, Complaint, Temporary Restraining Order, Order extending the TRO, continuing the date of the preliminary injunction hearing to October 18, 2001, and allowing for alternative means of service of process, and related documents and pleadings, pursuant to the Federal Rules of Civil Procedure, the Pennsylvania Rules of Civil Procedure, and this Court’s Order Authorizing Alternative Means of Service of Process;

3. There is good cause to believe that the Defendant, John Zuccarini, has engaged and is likely to engage in acts and practices that violate Section 5 of the FTC Act, 15 U.S.C. § 45, and that the Commission is, therefore, likely to prevail on the merits of this action;

4. There is good cause to believe that immediate and irreparable damage to the Court’s ability to grant effective final relief will occur from the destruction, or other disposition or concealment by Defendant of his business records unless the Defendant is preliminarily restrained and enjoined by Order of this Court. The evidence set forth in the Commission’s

Memorandum of Points and Authorities in Support of its Ex Parte Motion for a TRO (“Memorandum”), and accompanying declarations and exhibits, and in the Commission’s Supplemental Memorandum in Support of Proposed Preliminary Injunction, and accompanying declarations, affidavits, and exhibits, demonstrates that the Commission is likely to show that Defendant has engaged in a concerted course of unlawful activity involving the redirecting of consumers from their intended destinations on the World Wide Web to his own Web pages, where he traps consumers in multiple series of Web pages displaying advertisements for goods and services for his financial gain, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45. The evidence in the Memoranda further shows that the Defendant has in the past, and is currently engaged in efforts to conceal both the scope of his illegal actions and his own whereabouts.

Since the issuance of the Temporary Restraining Order, Defendant has attempted to evade service of process, transferred or concealed evidence, including computer hard drives, and disregarded this Court’s Order. Thus, there is good cause to believe that the Defendant will attempt to conceal the scope of his deliberate illegal actions and to avoid returning his ill-gotten gains if not restrained from doing so by Order of this Court;

5. The Defendant is on notice of the Temporary Restraining Order, and of the date and time of the Preliminary Injunction Hearing, held on October 18, 2001 at 4:30 p.m., and had ample opportunity to appear in this case;

6. Weighing the equities and considering the Commission’s likelihood of ultimate success, a preliminary injunction with other equitable relief is in the public interest; and

7. Fed. R. Civ. P. 65(c) does not require security of the United States or an officer or agency thereof.

Definitions

For the purpose of this preliminary injunction, the following definitions shall apply:

- A. "Defendant" means John Zuccarini, individually and d/b/a Cupcake Party, Cupcake-Party, Cupcake Parties, Cupcake-Parties, Cupcake City, Cupcake Patrol, Cupcake-Patrol, Cupcake First-Patrol, Cupcake Show, Cupcake-Show, Cupcake Shows, Cupcake-Shows, Cupcake Parade, Cupcake-Parade, Cupcakes, Cupcake Confidential, Cupcake-Movies, Cupcake Real Video, The Cupcake Incident, The Cupcake Secret, Cupcake Message, Cupcake Messenger, The Country Walk, JZ Design, and RaveClub Berlin, whether acting directly or through any entity, corporation, subsidiary, division, or other device, unless specified otherwise, as well as his assigns, agents, servants, employees, attorneys or affiliates; and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.
- B. "Asset" or "Assets" means any legal or equitable interest in, right to, or claim to any real or personal property of the Defendant, or held for the benefit of the Defendant, including, but not limited to "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes" (as these terms are defined in the Uniform Commercial Code), and all chattels, leaseholds, contracts, mails or other deliveries, shares of stock, lists of consumers, accounts, credits, receivables and cash, wherever located.
- C. "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, Internet sites, Web pages, Web sites, electronic correspondence, 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 reasonable usable form. A draft or non-identical copy is a separate document within the meaning of the term.

- D. “Internet” is an umbrella term used to describe the decentralized system that links computers around the world using a standardized set of communication protocols. The Internet includes, among other systems, the World Wide Web, electronic mail, newsgroups, telnet, file transfer protocol (“FTP”), Internet Relay Chat, and instant messaging.
- E. A “browser” is a software application used to view, download, upload, surf or otherwise access documents (“pages” or “sites”) on the World Wide Web. Browsers read coded documents that reside on servers, and interpret the coding into what users see rendered as a Web page or Web site. A user may retrieve and view a Web page or site by entering the URL or domain name of the Web page in the address bar of the browser.
- F. The “World Wide Web” or the “Web” is a system used on the Internet for cross-referencing and retrieving information. Documents (“pages” or “sites”) on the World Wide Web are most frequently formatted in a language called HTML, or HyperText Markup Language, that supports links to other documents on the World Wide Web.
- G. A “Web site” is a set of electronic files or documents, usually a home page and subordinate pages, readily viewable on a computer by anyone with access to the Web and standard Internet browser software.
- H. A “Web page” is a single electronic document on the World Wide Web, readily viewable on a computer by anyone with access to the Internet and standard Internet browser

software. Every Web page on the World Wide Web is identified by a globally unique address.

- I. Uniform Resource Locator or “URL” is the globally unique address of a resource, file or page on the World Wide Web. Each Web page has a distinct URL, such as *www.mp3123.com* or *www.cupcakeparty.com/celebrities-gone-wild.htm*, that serves as a unique Internet address for that Web page.
- J. A “domain name” is a unique alpha-numeric name used to locate a particular organization or other entity on the Internet. Domain names allow users connected to the Internet to find Web sites with familiar names without having to memorize the complex numerical addresses that computers read. In the URL *www.cupcakeparty.com/celebrities-gone-wild.htm*, “cupcakeparty.com” is the domain name. Simply registering a domain name does not link the domain name with a Web site, particular location or computer on the Internet. The registrant must find a host (or “Web server”) for the Web site and have the domain name indexed to the server so that a user can locate the Web site.
- K. A “Host” or “Hosting Company” is the party that provides the infrastructure for a computer service. With respect to Web pages and Web sites, a Host or Hosting Company maintains “Web servers” -- the computers on which Web sites and pages reside. The Host or Hosting Company also maintains the communication lines required to link the server to the Internet. Often, the content on the servers (i.e. the content of the Web pages) is controlled by someone other than the Host or Hosting Company.
- L. A “domain name registrar” is a business that interacts with customers (“registrants”), processes registration orders, and places registration information into the domain name

registry.

- M. A “window” is an enclosed area on a computer’s display screen, usually rectangular in shape. Most computers allow a user to divide a screen into several windows. Within each window, a user can run a different program or different copies of the same program. A user can minimize a window by replacing the entire window with an icon, a small picture that represents the program running in the window. Separate functions within a given program can also use windows, e.g. multiple documents within WordPerfect.
- N. “Redirecting” is the practice of diverting consumers to Web sites or Web pages that consumers did not intend to visit or access, using tactics including, but not limited to:
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 - (2) operating, publishing, or disseminating Web sites or pages with domain names that transpose or invert words, terms, or phrases in other domain names; or
 - (3) operating, publishing, or disseminating Web sites or pages with domain names that are confusingly similar to famous trademarks, service marks, or names.
- O. “Obstructing” is the practice of impeding or preventing consumers from exiting Web sites or Web pages by means of disseminating to the public on the Internet or World Wide Web, Web sites, or Web pages that include code, programs, commands or directions of any kind, executed on or through consumers’ computers or the Web server’s computer, that impede or block consumers’ ability to exit those pages or sites, including but not

limited to:

- (1) directing, instructing, or causing multiple browser windows, pop-up windows, Web pages, Web sites, or multiple copies of consumers' browser software to launch or open when a consumer types a domain name or URL in the address bar of a browser, or functional equivalent thereof;
- (2) directing, instructing, or causing windows, Web pages, or Web sites to open, pop up, launch or otherwise appear on consumers' screen as a result of consumers' selection of the "Close," "Exit," "X," or "Back" button(s), or any functional equivalent thereof;
- (3) directing, instructing, or causing windows, Web sites or Web pages to open that cannot be viewed by consumers using standard browser software functions, including, but not limited to, the "right click" function of maximizing a window; or
- (4) directing, instructing or causing consumers' browser software to open or launch new windows, Web pages or Web sites or additional copies of consumers' browser software without any action on the part of consumers.

PROHIBITED BUSINESS ACTIVITIES

I.

IT IS THEREFORE ORDERED that, in connection with the advertising, promotion, offering for sale, sale, or provision of any goods or services on the Internet, the World Wide

Web, and/or any Web page or Web site, the Defendant is hereby preliminarily restrained and enjoined from both: (1) the combined practice of redirecting and obstructing consumers on the Internet or World Wide Web and (2) obstructing consumers on the Internet or World Wide Web.

II.

IT IS FURTHER ORDERED that, in connection with the advertising, promotion, offering for sale, sale, or provision of any goods or services on the Internet, the World Wide Web, and/or any Web page or Web site, the Defendant is hereby preliminarily restrained and enjoined from representing that any of his Web pages, Web sites, domain names, goods or services, are endorsed by, or affiliated or associated with, any third party or any entity, including but not limited to any Web site, Web page, product, trademark or service mark, or celebrity, when in fact they are not. Such representation shall not be made expressly or by implication, including but not limited to launching the Web site or Web page belonging to an unrelated party in combination or association with any of Defendant's Web sites, Web pages or domain names without the express authorization of the third party or entity.

III.

IT IS FURTHER ORDERED that, in connection with the advertising, promotion, offering for sale, sale, or provision of any goods or services on the Internet, the World Wide Web, and/or any Web page or Web site, the Defendant is hereby preliminarily restrained and enjoined from registering any new domain names, either directly or through any third party, without notifying counsel for the Commission within 24 hours. Such notice shall be sent in accordance with Part XIII of this Order, and shall include:

- (5) the true identity of the domain name registrant;

- (6) his or her true and accurate mailing address, email address, and telephone number;
- (7) all registration information, including name(s), address(es), and email address(es) of the purported registrant, administrative contact, and billing contact listed on each registration; and
- (8) the name and address of the Domain Name Registrar.

IV.

IT IS FURTHER ORDERED that the Defendant, and/or any agent, employee or associate of Defendant, or any Host or Hosting Company for Defendant shall:

- A. Immediately take whatever steps may be necessary to ensure that the following Web pages or Web sites operated, in whole or in part, by the Defendant cannot be accessed by the public:

(1) *<http://cupcakeparty.com/html/celebrities-gone-wild.html>;*

(2) *<http://musiclyrics.net/mp3-music.html>;*

(3) *<http://www.sexyblondes.net/html/pussy-spankers.html>;*

(4) *<http://www.amatuervideos.com>*

- B. Prevent the destruction or erasure of any Web page or Web site registered to and/or operated, in whole or in part, by the Defendant, pursuant to Part IX of this Order.

V.

IT IS FURTHER ORDERED that any Domain Name Registrar that currently maintains domain names registered to or controlled by Defendant shall immediately suspend every such domain name registration pending further order of this Court, and shall provide the Commission with complete lists of all such domain names.

VI.

ASSET FREEZE

IT IS FURTHER ORDERED that Defendant is hereby restrained and enjoined from, directly or indirectly:

- A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, consumer lists, shares of stock, or other assets, or any interest therein, wherever located, that are: (1) owned or controlled by Defendant John Zuccarini, or held, in whole or in part, for the benefit of Defendant Zuccarini; (2) in the actual or constructive possession of Defendant Zuccarini; or (3) owned or controlled by, or in the actual constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by Defendant Zuccarini, including, but not limited to, any assets held by or for Defendant Zuccarini 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;
- B. Opening or causing to be opened any safe deposit boxes titled in the name John Zuccarini or subject to access by Defendant Zuccarini;
- C. Incurring charges or cash advances on any credit card issued in the name, singly or jointly, of Defendant Zuccarini; and

- D. Transferring any funds or other assets subject to this Order for attorneys' fees or living expenses, except from accounts or other assets identified by prior written notice to the Commission and prior approval by the Court. Provided further, that no attorneys' fees or living expenses, other than those set forth in Subparagraph E and only in accordance with the procedures set forth in Subparagraph E, shall be paid from funds or other assets subject to this Order unless and until Defendant Zuccarini has completed a sworn financial statement as required by Paragraph XIII of this Order, and has submitted such statement to the Court and served such statement upon counsel for the Commission, if he has not already done so.
- E. Notwithstanding the above, Defendant John Zuccarini may pay from his personal funds reasonable, usual, ordinary, and necessary living expenses, not to exceed \$500, prior to the submission of the sworn financial statement as required by Paragraph XIII of this Order. No such living expenses, however, shall be paid from funds subject to this Order except from cash on the person of John Zuccarini or from an account designated by prior written notice to counsel for the Commission.

The assets affected by this paragraph shall include: (1) all of the assets of Defendant Zuccarini existing as of the date this Order was entered; and (2) for assets obtained after the date this Order was entered, only those assets that are derived from or otherwise related to the activities alleged in the Commission's complaint.

VII.

REPATRIATION OF FOREIGN ASSETS

IT IS FURTHER ORDERED that Defendant shall:

- A. Immediately upon service of this Order, or as soon as relevant banking hours permit, transfer to the territory of the United States all funds, documents, and assets in foreign countries held either: (1) by Defendant Zuccarini; (2) for his benefit; or (3) under Defendant Zuccarini's direct or indirect control, jointly or singly. This includes, but is not limited to, all funds retransferred by a foreign bank to any other bank or asset holder.
- B. Hold and retain all repatriated funds, documents, and assets, and prevent any transfer, disposition, or dissipation of these funds, documents, and assets.
- C. If Defendant has not already done so, provide the Commission with access to Defendant Zuccarini'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 Preliminary Injunction;
- D. Provide the Commission with a full accounting of all funds, documents and assets outside of the territory of the United States which are held either: (1) by Defendant; (2) for his benefit; or (3) under his direct or indirect control, jointly or singly; and
- E. Provide notice to Commission, consisting of institution name, address, and telephone number, and specific account number to which any such funds shall be or are transferred pursuant to this Part.

VIII.

DUTIES OF ASSET HOLDERS

IT IS FURTHER ORDERED that, any bank, savings and loan institution, credit union, financial institution, brokerage house, escrow agent, IRA custodian, money market or mutual fund, title company, commodity trading company, storage company, trustee, commercial mail receiving agency, mail holding or forwarding company, or any other business entity or person served with a copy of this Order or that otherwise has actual knowledge of this Order, and has custody or control of any account, asset or documents of Defendant Zuccarini or any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled, or under common control with Defendant Zuccarini, or that at any time since January 1, 1998, has maintained or had custody of such account, asset, or documents, shall:

A. Hold and retain within such entity's or person's control, and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation, or other disposal of any funds, documents, property, or other assets held by or under such entity's or person's control:

- (1) on behalf of, or for the benefit of, Defendant Zuccarini or
- (2) in any account maintained in the name of, or subject to withdrawal by, Defendant Zuccarini;
- (3) that are subject to access or use by Defendant Zuccarini; and

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

- (1) titled in the name of Defendant John Zucarini, either individually or jointly; or
- (2) otherwise subject to access by Defendant Zuccarini; and

C. Provide counsel for the Commission, within four (4) business days after the service date of this Order, a statement setting forth:

(1) The identification of each account or asset titled in the name, individually or jointly, or held on behalf of, or for the benefit of, whether in whole or in part, Defendant Zuccarini, including all trust accounts managed on behalf of Defendant or subject to the control of 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;

(3) The identification of any safe deposit box that is either titled in the name of, individually or jointly, or is otherwise subject to access or control by, Defendant Zuccarini; and

(4) If the account, safe deposit box, or other asset has been closed or removed at any time after January 1, 1998, 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

D. Within five (5) business days of any request by plaintiff, promptly provide counsel for the Commission with copies of or the right to inspect and copy all records or other documentation pertaining to such accounts or assets, 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.

The accounts subject to this provision include existing assets and assets deposited after the

effective date of this Order. Provided further, that this Paragraph shall not prohibit transfers in accordance with any provision of this Order, or any further order of the Court.

RECORDKEEPING PROVISIONS

IX.

PRESERVATION OF BUSINESS RECORDS

IT IS FURTHER ORDERED that the Defendant is hereby preliminarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, documents or records of any kind that relate to the business practices or business or personal finances of the Defendant, including but not limited to computers, computerized files, storage media (including but not limited to floppy disks, hard drives, cd-roms, zip disks, punch cards, magnetic tape, backup tapes and computer chips) on which information has been saved, any and all equipment needed to read any such material, contracts, accounting data, correspondence (including, but not limited to, electronic correspondence), advertisements (including, but not limited to, advertisements placed on the World Wide Web), FTP logs, Server Access Logs, USENET Newsgroup postings, World Wide Web pages, books, written or printed records, handwritten notes, telephone logs, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and 1099 forms, and documents or records of any kind that relate to Defendant's business practices.

X.

MAINTENANCE OF CURRENT BUSINESS RECORDS

IT IS FURTHER ORDERED that, in connection with the advertising, promotion, offering for sale, sale, or provision of any goods or services on the Internet, the World Wide Web, and/or any Web page or Web site, the Defendant is hereby restrained and enjoined from:

- A. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect the Defendant's incomes, disbursements, transactions, and use of money; and
- B. Creating, operating, or exercising any control over any business entity, including but not limited to any partnership, limited partnership, joint venture, sole proprietorship, international business corporation, or any other 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.

XI.

PLAINTIFF'S ACCESS TO BUSINESS RECORDS

IT IS FURTHER ORDERED that, if he has not already done so, the Defendant shall, within three (3) days of service of this Order:

- A. Produce to the Commission for inspection, inventory and/or copying, at a location

designated by the Commission, all materials related or referring, directly or indirectly, to the Defendant's Web pages and Web sites, any materials, information, products or data related thereto, including, but not limited to, computers, computerized files, storage media (including but not limited to floppy disks, hard drives, cd-roms, zip disks, punch cards, magnetic tape, backup tapes, and computer chips) on which information has been saved, any and all equipment needed to read any such material, contracts, accounting data, correspondence (including, but not limited to, electronic correspondence), advertisements (including, but not limited to, advertisements placed on the World Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup postings, World Wide Web pages, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, 1099 forms, and other documents or records of any kind that relate to Defendant's business practices; and

- B. Produce to the Commission for inspection, inventory and/or copying, at a location designated by the Commission, all computers and data in whatever form, used by the Defendant, in whole or in part, relating to the Defendant's business practices.

The Commission shall return materials so removed, or produced by the Defendant, within three (3) business days of completing said inventory and copying.

XII.

EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that, prior to the entry of a scheduling order in this case, any party may depose or subpoena any third party, pursuant to Rules 30 and 45, upon twenty-four (24) hours notice for the purpose of discovering information about Defendant's whereabouts or Defendant's compliance with the provisions of this Preliminary Injunction. Any deposition taken pursuant to this provisions is in addition to, and not subject to, the presumptive limits on depositions set forth in Federal Rules 30 and/or 31. Nothing in this provision shall affect the Court's ability to further modify the discovery rules as they apply in this matter.

ACCOUNTING PROVISIONS

XIII.

IT IS FURTHER ORDERED that, in connection with the advertising, promotion, offering for sale, sale, or provision of any goods or services on the Internet, the World Wide Web, and/or any Web page or Web site, the Defendant shall, if he has not already done so, within three (3) business days after service of this Order, prepare and deliver to counsel for the Commission:

- A. A completed financial statement accurate as of the date of service of this Order, on the form attached to this Injunction as Attachment B; and
- B. A complete statement, verified under oath, of all payments, transfers, or assignments of funds, assets, or property worth \$1,000 or more since January 1, 2000.

For the duration of this Preliminary Injunction, Defendant shall regularly provide the Commission with complete and accurate updates of any changes to the information provided pursuant to

Sections A and B of this Part.

NOTIFICATION PROVISIONS

XIV.

DISTRIBUTION OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that the Defendant shall immediately provide a copy of this Order to each of his affiliates, clients, subsidiaries, divisions, sales entities, successors, assigns, officers, directors, employees, independent contractors, agents, attorneys, and representatives; and shall, within ten (10) days from the date of entry of this Order, provide the Commission with a sworn statement that he 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.

XV.

SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including electronic mail and facsimile transmission, upon any entity or person that may have possession, custody, or control of any documents of the Defendant, or that may be subject to any provision of this Order. Pursuant to Fed. R. Civ. P. 4(c)(2), this Order and the initial papers filed in this matter may be served on the Defendant by any law enforcement officer, by any agent of the Commission, or by any agent of any process service retained by the Commission.

XVI.

CORRESPONDENCE WITH AND NOTICE TO THE PLAINTIFF

IT IS FURTHER ORDERED that, for purposes of this Preliminary Injunction, all correspondence and pleadings to the Commission shall be addressed to:

Marc M. Groman, Esquire
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room 238
Washington, DC 20580
(202) 326-2042 (voice)
(202) 326-3395 (facsimile)

XVII.

RETENTION OF JURISDICTION

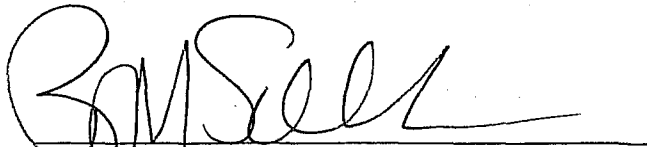
IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

SO ORDERED, this 18th day of Oct, 2001, at 5:15 P.m.

ENTERED

OCT 19 2001

CLERK OF COURT



Hon. Berle M. Schiller
United States District Judge
Eastern District of Pennsylvania