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U.S. DISTRICT COURT
MID. DIST. TENN.

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

LASER EXPRESS OF TENNESSEE, LTD., INC.

a Tennessee corporation,

d/b/a Laser Express Limited,

Data Supply International,

Cartridge Express Limited,

International Cartridge Supply,

International Data Supply Company

International Supply Company; and

JEFF RICHFIELD,

individually and as an officer of Laser Express of
Tennessee, Ltd., Inc.,

Defendants.

Civil No. 8 99 1135

JUDGE NIXON

X 000015

TEMPORARY RESTRAINING ORDER WITH ASSET FREEZE,
APPOINTMENT OF RECEIVER, AND
ORDER TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION SHOULD NOT ISSUE

Plaintiff Federal Trade Commission ("Commission"), having filed its complaint for a permanent injunction and other relief in this matter pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57, and Section 4(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6103(a), and having moved *ex parte* for a Temporary Restraining Order ("TRO") pursuant to Rule 65 of the Federal

This document was entered on
the docket in compliance with
Rule 58 and/or Rule 79(a).

FRCP on 12/8/99 By: *ak*

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Rules of Civil Procedure, and the Court having considered the complaint, memorandum of law, declarations and other exhibits filed in support thereof, and now being advised in the premises, finds as follows:

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

2. Good cause exists to believe that the Commission ultimately will succeed in establishing that the above named defendants have engaged in and are likely to engage in acts and practices that violate Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), and the Telemarketing Sales Rule, 16 C.F.R. Part 310, and that the Commission is likely to prevail on the merits.

3. Good cause exists to believe that immediate and irreparable damage will occur to this Court's ability to grant effective final relief for consumers in the form of monetary redress from the sale, destruction, transfer, concealment or other disposition of their assets or corporate records unless the defendants are immediately restrained and enjoined by order of this Court. Good cause thus exists to relieve the Commission of the duty to provide defendants with prior notice of the Commission's motion.

4. Good cause exists for the appointment of a temporary receiver for defendant Laser Express of Tennessee, Ltd., Inc.

5. Weighing the equities and considering the Commission's likelihood of ultimate success, a TRO with asset freeze, appointment of a temporary receiver, and other equitable relief is in the public interest.

6. No security is required of any agency of the United States for issuance of a

restraining order. Fed. R. Civ. P. 65(c).

DEFINITIONS

For purposes of this temporary restraining order, the following definitions shall apply:

1. ***"Defendants"*** means corporate defendant Laser Express of Tennessee, Ltd., Inc., a Tennessee corporation, doing business as Laser Express Limited, Data Supply International, Cartridge Express Limited, International Cartridge Supply, International Data Supply Company, and International Supply Company; and the individual defendant Jeff Richfield, individually and as an officer of Laser Express of Tennessee, Ltd., Inc., and each of them, and their officers, agents, directors, employees, salespersons, independent contractors, attorneys, subsidiaries, affiliates, successors, assigns and all other 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.
2. ***"Receivership defendant"*** means defendant Laser Express of Tennessee, Ltd., Inc.
3. ***"Person"*** means a natural person, an 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.
4. ***"Consumer"*** and ***"customer"*** means any individual, business, group, unincorporated association, limited or general partnership, corporation or other entity such as governmental agencies and non-profit organizations.
5. The terms ***"and"*** and ***"or"*** shall be construed conjunctively or disjunctively as necessary, and to make the applicable phrase or sentence inclusive rather than exclusive.

PROVISIONS

I. PROHIBITED MISREPRESENTATIONS

IT IS THEREFORE ORDERED, in connection with the advertising, offering for sale or sale of toner cartridges or any other nondurable office supplies, that defendants are hereby temporarily restrained and enjoined from making any express or implied representation of material fact that is false or misleading, including, but not limited to:

- A. Any misrepresentation that an order has been placed when one in fact has not;
- B. Any misrepresentation regarding the consumer's obligation to order products or to accept an order of products;
- C. Any misrepresentation regarding the consumer's obligation to make payment;
- D. Any misrepresentation about the amount of a product ordered by or shipped to the consumer;
- E. Any misrepresentation regarding the identity of the defendants, including but not limited to misrepresentations that:
 - 1. they are, or are associated with, the consumer's business or organization;
 - or
 - 2. they are, or are associated with, the consumer's regular supplier;
- F. any misrepresentation about the price of the product; and
- G. any misrepresentation about how long a product will last.

II. PROHIBITED VIOLATIONS OF THE TELEMARKETING SALES RULE

IT IS FURTHER ORDERED, in connection with the advertising, offering for sale or sale of toner cartridges or any other nondurable office supplies, that defendants are temporarily restrained and enjoined from violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, including, but not limited to, the following violations:

- A. Making a false or misleading statement to induce any person to pay for products;
- B. Failing to disclose in a clear and conspicuous manner that the purpose of the call is to sell products; and
- A. Failing to disclose in a clear and conspicuous manner the identity of the seller.

III. ASSET FREEZE

IT IS FURTHER ORDERED that the defendants are hereby restrained and enjoined, until further order of this Court, from:

- A. Transferring, converting, encumbering, concealing, dissipating, disbursing, assigning, spending, withdrawing, selling, or otherwise disposing of any funds, property, accounts, contracts, shares of stock, or assets of any kind, wherever located, that are:
 - 1. owned or controlled in whole or in part by any defendant;
 - 2. in the actual or constructive possession of any defendant;
 - 3. held by an agent of any defendant as a retainer for the agent's provision of services to any defendant; or
 - 4. owned by, controlled by or in the actual or constructive possession of, or

otherwise held for the benefit of, any entity directly or indirectly owned, managed or controlled by any defendant; these assets shall also include but are not limited to any assets held by, for or under the name of any defendant at any bank or other financial institution of any kind, or any business management firm;

- B. Incurring charges or cash advances on any credit card,
- C. Opening or causing to be opened any safe deposit box or any other storage facility titled in the name of any defendant, or subject to access by any defendant; and
- D. Transferring any funds or other assets subject to this Order for attorney's fees, living expenses, business expenses or any other purpose, except by Court order upon a showing of good cause or by agreement of the parties.

IV. APPOINTMENT OF RECEIVER

IT IS FURTHER ORDERED that John McElmore is appointed as temporary receiver (hereinafter referred to as "receiver"), with the full power of an equity receiver, for the receivership defendant and for all the funds, properties, premises, accounts and other assets directly or indirectly owned, beneficially or otherwise, by the receivership defendant. The receiver is directed, and has the authority, to:

- A. Assume full control of the receivership defendant by removing defendant Jeff Richfield, and any other officer, independent contractor, employee or agent from control or management of the affairs of the receivership defendant or from taking any action on or behalf of the receivership defendant while the receivership is in

effect;

- B. Take custody, control and possession of all the funds, property, premises, mail and other assets of the receivership defendant or that are in the possession or under the control of the receivership defendant wherever situated;
- C. Sue for, collect, receive and take into possession all goods, chattels, rights, credits, monies, effects, lands, leases, books and records, work papers and records of accounts, including computer-maintained information and other papers and documents of the receivership defendant;
- D. Take all steps, as the receiver deems necessary or advisable, to secure the business premises of the receivership defendant, including, but not limited to: (1) serving this Order; (2) completing a written inventory of all receivership assets; (3) obtaining pertinent information from all employees and other agents of the receivership defendant, including, but not limited to, the name, home address, Social Security number, job description, method of compensation, and all accrued and unpaid commissions and compensation of each such employee; (4) videotaping all portions of the location; (5) securing the location by changing the locks and disconnecting any computer modems or other means of access to the computer or other records maintained at that location; and (6) requiring any persons present on the premises at the time the Order is served to leave the premises, to provide the receiver with proof of identification, or to demonstrate to the satisfaction of the receiver that such persons are not removing from the premises documents or assets of the receivership defendant;

- E. Preserve, hold and manage the receivership defendant's assets, and perform all acts necessary to preserve the value of those assets;
- F. Prevent withdrawal or misapplication of funds entrusted to the receivership defendant and obtain an accounting thereof;
- G. Manage and administer the receivership defendant's businesses, at the receiver's discretion and until further order of this Court, by performing all acts necessary or incidental thereto; this includes the hiring of personnel—including, but not limited to, attorneys and accountants—and dismissing personnel or suspending operations;
- H. Disburse funds that the receiver deems necessary and advisable to preserve the property of the receivership defendant or carry out the receiver's mandate under this Order;
- I. Collect any monies owed the receivership defendant;
- J. Institute, defend, compromise, adjust, intervene in, become a party to or otherwise dispose of any or all actions or proceedings in local, state, federal or foreign courts that the receiver deems necessary and advisable to preserve the property of the receivership defendant or carry out the receiver's mandate under this Order;
- K. Take all steps that the receiver deems necessary and advisable to ensure that the receivership defendant and all of its agents, employees, officers, servants, and attorneys are in full compliance with the terms of this and all subsequent orders of this Court; and
- L. Prepare and submit a report to this Court and to the plaintiff, not less than three

(3) days prior to any scheduled Preliminary Injunction Hearing, describing the receivership defendant's business activities, including, but not limited to, the role of Jeff Richfield and any other officers or directors of the receivership defendant and the scope of the receivership defendant's activities.

V. RECEIVER'S COMPENSATION

IT IS FURTHER ORDERED that the receiver shall be compensated for services rendered to the receivership estate during the pendency of the case from the receivership estate. Prior to paying any compensation, the receiver shall file and serve upon all parties a request with the Court, outlining the services rendered and the related fees and expenses. The defendants shall have no right to object to such request. The Commission shall file any papers responsive to the request within ten (10) days. The receiver shall not pay any compensation except upon order of the Court.

VI. COOPERATION WITH THE RECEIVER

IT IS FURTHER ORDERED that all defendants shall fully cooperate with and assist the receiver, and are hereby restrained and enjoined from directly or indirectly hindering or obstructing the receiver in any manner.

VII. TRANSFER OF CONTROL TO RECEIVER

IT IS FURTHER ORDERED that, immediately upon service of this Order upon it, the receivership defendant shall transfer to the receiver their control of the following:

- A. All of the receivership defendant's funds, assets, property owned beneficially or otherwise, and all other assets, wherever situated;
- B. All of the receivership defendant's books and records of accounts, financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers and check registers), consumer lists, title documents and other papers; and
- C. All funds and other assets belonging to members of the public that are now held by the receivership defendant.
- D. All keys, computer passwords, entry codes, combinations to locks required to open or gain access to any of the property or effects, and all monies in any bank deposited to the credit of the receivership defendant, wherever situated;
- E. Information identifying the accounts, employees, properties, or other assets or obligations of the receivership defendant;
- F. A statement providing the identity, including the address and telephone number, of any businesses, whether or not incorporated, and wherever situated, other than customers to whom defendants sold office supplies to, with whom the receivership defendant transacted business since January 1, 1998; and
- G. Information identifying, including name of contact, address and telephone number, any consumers, wherever situated, with whom receivership defendant transacted business since January 1, 1996.

VIII. RECEIVER'S BOND

IT IS FURTHER ORDERED that the receiver shall file with the Clerk of this Court a bond in the sum of \$ 50,000 with sureties to be approved by the Court, and conditioned that the receiver will well and truly perform the duties of the office and abide by and perform all acts the Court directs.

IX. FINANCIAL REPORTING

IT IS FURTHER ORDERED that, within five (5) days of receiving service of this Order, each defendant shall prepare and deliver to the Court, counsel for the Commission, and the receiver a completed financial statement on the forms attached to this Order, verified under oath and accurate as of the date of service of this Order upon them, for the individual defendant and for the corporate defendant.

X. FINANCIAL INSTITUTIONS

IT IS FURTHER ORDERED that any financial or brokerage institution, business entity or person having possession, custody or control of any records of any defendant, or of any account, safe deposit box or other asset titled in the name of any defendant, either individually or jointly or held for the benefit of any defendant, or that has maintained any such account, safe deposit box or other asset at any time since January 1, 1996, shall:

- A. Hold and retain within its control and prohibit the transfer, encumbrance, pledge, assignment, removal, withdrawal, dissipation, sale or other disposal of any such account or other asset, except for transfers or withdrawals directed by the receiver

or by further Court order.

- B. Deny access to any safe deposit box titled individually or jointly in the name of any defendant or otherwise subject to access by any defendant.
- C. Provide to counsel for the Commission and the receiver, within three (3) business days of notice of this Order, a sworn statement setting forth:
 - 1. the identification of each account or asset;
 - 2. the balance of each account or a description of the nature and value of each asset as of the close of business on the day this Order is served and, if the account or asset has been closed or moved, the date closed or removed, the balance or value removed, and the name of the person or entity to whom the account or asset was remitted; and
 - 3. the identification of any safe deposit box subject to access by any defendant.
- D. Allow Commission representatives immediate access to inspect and copy all records of any defendant and all documents relating to any account, safe deposit box or other asset of any defendant. Alternatively, any financial institution, other entity or person may arrange to deliver to the Commission copies of any records it seeks for a charge not to exceed fifteen cents (\$.15) per page copied.
- E. Cooperate with all reasonable requests by the receiver relating to implementation of this Order, including transferring funds at the receiver's direction and producing records related to the receivership defendant's accounts.

XI. FOREIGN ASSETS

IT IS FURTHER ORDERED that within three (3) business days following service of this Order, the defendants are hereby temporarily restrained and enjoined from:

- A. Failing to take such steps as are necessary to repatriate to the territory of the United States of America all assets held by or for the benefit of any defendant, or under their direct or indirect control, jointly or singly, which were transferred outside of the territory of the United States.
- B. Failing to thereafter hold and retain any such assets within their control, account for such assets, and otherwise prevent any transfer, disposition, or dissipation whatsoever of any such assets or funds.

XII. IMMEDIATE ACCESS TO DEFENDANTS' RECORDS

IT IS FURTHER ORDERED that the defendants and the receiver, shall allow the Commission's representatives immediate access to the business premises, mail drops, storage facilities and all other business locations used by the defendants to conduct business, including but not limited to 212 Gifford Place, Joelton, Tennessee, and 104 Kelly Mill Road, Cumming, Georgia, during reasonable hours as the receiver shall deem appropriate. The purpose of the access shall be to inspect and copy materials relevant to this action. The Commission and receiver may be accompanied by other law enforcement agents for the purpose of securing the premises and keeping the peace. The Commission may exclude defendants and their officers, directors, employees, and agents from the premises during this time. The Commission may, through photographs and drivers' licenses, identify and obtain information from individuals at

the premises. The Commission may remove materials from the business premises so they may be inspected, inventoried and copied. The Commission shall return materials so removed within five (5) business days of completing said copying. In no event shall the Commission retain the materials longer than ten (10) business days.

XIII. RECORD KEEPING

IT IS FURTHER ORDERED that defendants are hereby temporarily restrained and enjoined from:

- A. Failing to create and maintain books, records, accounts and data which in reasonable detail, accurately, fairly and completely reflect their incomes, disbursements, transactions and use of monies.
- B. Destroying, erasing, mutilating, concealing, altering, transferring or otherwise disposing of in any manner, directly or indirectly, any contracts, accounting data, correspondence, advertisements, computer tapes, discs or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns and other documents or records of any kind which relate to defendants' business practices or business or personal finances from January 1, 1996 to the present time.

XIV. NOTICE TO OTHERS

IT IS FURTHER ORDERED that defendants shall immediately provide a copy of this Order to each of the corporate defendant's affiliates, franchises, subsidiaries, divisions, successors, assigns, directors, officers, managing agents, employees, representatives and independent contractors and shall, within three (3) business days from the date of service of this Order, serve on plaintiff affidavits identifying the names, titles, addresses and telephone numbers of the persons and entities whom they have served pursuant to this provision. The receiver has no obligation under this provision.

XV. BANKRUPTCY

IT IS FURTHER ORDERED, in light of the appointment of the receiver, that the receivership defendant is hereby prohibited from filing a petition for relief under the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, without prior permission from this Court.

XVI. OTHER ACTIONS STAYED

IT IS FURTHER ORDERED that, except by leave of this Court, during the pendency of the receivership ordered herein, defendants and all customers, principals, investors, creditors, stockholders, lessors and other persons seeking to establish or enforce any claim, right or interest against or on behalf of the receivership defendant or any of its subsidiaries or affiliates (excluding plaintiff), and all others acting for or on behalf of such persons, including attorneys, trustees, agents, sheriffs, constables, marshals and other officers and their deputies, and their respective attorneys, servants, agents and employees, are hereby stayed from:

- A. Commencing, prosecuting, continuing or enforcing any suit or proceeding against the receivership defendant, except that such actions may be filed to toll any applicable statute of limitations;
- B. Commencing, prosecuting, continuing or entering any suit or proceeding in the name or on behalf of the receivership defendant, its subsidiaries or affiliates;
- C. Accelerating the due date of any claimed obligation, enforcing any lien upon, taking or attempting to take or retain possession of any property of the receivership defendant or any property claimed by the receivership defendant, or attempting to foreclose, forfeit, alter or terminate any of the receivership defendant's interests in property, whether such acts are part of a judicial proceeding or otherwise;
- D. Using self-help or executing or issuing, or causing the execution or issuance of, any court attachment, subpoena, *replevin*, execution or other process for the purpose of impounding or taking possession of, or interfering with, or creating or enforcing a lien upon any property, wheresoever located, owned by or in the possession of the receivership defendant, or the receiver or any agent appointed by the receiver; and
- E. Taking any action or doing anything whatsoever to interfere with the receiver taking control, possession or management of the property subject to this receivership, or to harass or interfere with the receiver in any way, or to interfere in any manner with the exclusive jurisdiction of this Court over the property and assets of the receivership defendant.

XVII. CREDIT REPORTS

IT IS FURTHER ORDERED, pursuant to Section 604 of the Fair Credit Reporting Act, 15 U.S.C. § 1681b, that any credit reporting agency may furnish the Commission with a credit report concerning any defendant.

XVIII. MONITORING

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

XIX. EXPIRATION

IT IS FURTHER ORDERED that this Order shall expire ten (10) days after entry unless, within such time, for good cause shown, it is extended for a like period, or unless defendants consent that it may be extended for a longer period and the reasons therefor entered of record.

XX. CORRESPONDENCE

For the purposes of this Order, all correspondence and service of pleadings on plaintiff shall be addressed to:

Harold E. Kirtz, Esq.
Federal Trade Commission
Southeast Regional Office
60 Forsyth Street, S.W., Suite 5M35
Atlanta, Georgia 30303
Telephone (404) 656-1357
Fax (404) 656-1379

XXI. SERVICE OF THIS ORDER

IT IS FURTHER ORDERED that agents of the plaintiff may serve copies of this Order at any time upon any financial institution or any person or entity that may be in possession of any assets, documents, property or property rights of any defendant.

XXII. PRELIMINARY INJUNCTION HEARING

IT IS FURTHER ORDERED that defendants shall appear before this Court at _____, on the 17th day of December, 1999, at 1:00 o'clock PM. a.m./p.m., to show cause, if any there be, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint, against said defendants enjoining them from further violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Telemarketing Sales Rule, 16 C.F.R. Part 310, and imposing such additional relief as may be appropriate.

XXIII. DELIVERY OF OPPOSITION

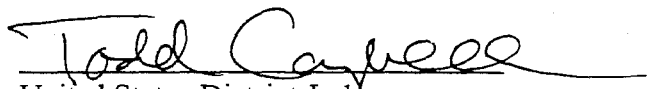
IT IS FURTHER ORDERED that defendants shall prepare and deliver to the Court and to the Commission, not later than 4:30 p.m. of the third (3rd) business day prior to the preliminary injunction, any opposition to issuance of a preliminary injunction, including any

declarations, exhibits, memoranda or other evidence on which they intend to rely.

XXIV. WITNESSES

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

SO ORDERED, this 7th day of December, 1999, at 4:45 o'clock a.m./p.m.


United States District Judge