



ORIGINAL MAR 20 2001

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

LUTHER D. THOMAS, Clerk  
By: *[Signature]* Deputy Clerk

FILED IN CLERK'S OFFICE  
3/21/01  
Luther D. Thomas, Clerk  
By: *[Signature]*  
Deputy Clerk

FEDERAL TRADE COMMISSION,  
  
Plaintiff,  
  
v.  
  
1268957 ONTARIO INC., et al.,  
  
Defendants.

Civil Action No. 01-CV-0423 - JEC

CONSENT ORDER FOR  
PRELIMINARY  
INJUNCTION

X010025

WHEREAS this matter comes before the Court on plaintiff Federal Trade Commission's ("FTC" or "Commission") complaint for an injunction and other equitable relief, and its Motion for a Preliminary Injunction, and a Temporary Restraining Order with Asset Freeze ("TRO") has been granted ex parte and the Complaint and summons has been served on Defendants;

WHEREAS plaintiff has alleged that:

1. This Court has jurisdiction of the subject matter of this case and over all named parties;
2. There is a substantial likelihood that the Commission will ultimately succeed in establishing that Defendants have engaged in and are likely to continue to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and, therefore, the Commission is likely to prevail on the merits of this action;
3. Irreparable harm will occur if a preliminary injunction is not issued; and
4. Weighing the equities and considering the Commission's likelihood of ultimate success in its causes of action, this Preliminary Injunction is in the public interest;

WHEREAS the Defendants, by agreeing to this Order, make no admission as to the truth of plaintiff's allegations recited above, in the TRO, or in the Complaint, or as to the relief that should be granted in this action; and

WHEREAS the parties, by their undersigned attorneys, agree to the entry of this Order for preliminary injunction, which shall remain in effect until this Court's determination of the merits of this action or until otherwise modified,

IT IS AGREED TO by the undersigned parties and their attorneys of record as follows:

## ORDER

### Definitions

A. "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, 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 reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

B. "Defendants" means 1268957 Ontario Inc. and 1371772 Ontario Inc., both doing business as National Domain Name Registry ("NDNR"), as Electronic Domain Name Monitoring ("EDNM"), and as Corporate Domain Name Monitoring ("CDNM"), Darren J. Morgenstern ("Morgenstern"), or each of them.

C. "Material" means likely to affect a person's choice of, or conduct regarding, goods or services.

D. "Assets" mean any legal or equitable interest in, right to, or claim to, any real and personal property, including without limitation, chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash, wherever located.

**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, including domain name registration services, Defendants, their successors, assigns, officers, agents, servants, and employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are hereby restrained and enjoined from making or assisting in the making of, expressly or by implication, orally or in writing, any false or misleading statement or representation of material fact, including but not limited to representations that:

A. Someone has applied for a domain name that is identical or similar to a domain name owned by the targeted consumer; and

B. Defendants are monitoring or have the ability to monitor applications for domain names by third parties.

**II.**

**IT IS FURTHER ORDERED** that in connection with the advertising, promotion, offering for sale, sale or provision of any goods or services in the United States, including domain name registration services, Defendants, their successors, assigns, officers, agents, servants, and employees, and those persons in active concert or participation with them who

receive actual notice of this Order by personal service or otherwise are hereby restrained and enjoined from sending or causing to be sent any unsolicited advertisements to a telephone facsimile machine, in violation of 47 U.S.C. § 227 *et seq.*

### III.

**IT IS FURTHER ORDERED** that Defendants or their agents are restrained and enjoined from failing to:

A. Immediately take whatever steps may be necessary to ensure that Web pages or websites operated, in whole or in part, under the names www.ndnr.org, www.ndnr.net, www.ednm.net, www.ednm.org, and www.cdnmonitoring.com cannot be accessed by the public;

B. Preventing the destruction or erasure of Web pages or websites operated, in whole or in part, under the names www.ndnregistry.com, www.ndnregistry.net, www.ndnregistry.org, www.ndnr.org, www.ndnr.net, www.ednm.net, www.ednm.org, and www.cdnmonitoring.com by preserving such documents in the format in which they are currently maintained; and

C. Maintaining the suspension of the registration of www.ndnr.org, www.ndnr.net, www.ednm.net, www.ednm.org, and www.cdnmonitoring.com.

*Provided, however,* that Defendants may operate and modify www.ndnregistry.com, www.ndnregistry.net, and www.ndnregistry.org.

### ASSET FREEZE

### IV.

**IT IS FURTHER ORDERED** that, as to assets held by Defendants on or before March 20, 2001, and except as provided for below, Defendants are hereby restrained and enjoined from transferring, encumbering, selling, concealing, pledging, hypothecating, assigning,

spending, withdrawing, disbursing, conveying, gifting, dissipating, or otherwise disposing of any funds, property, coins, lists of consumer names, shares of stock, or other assets, wherever located, that are (1) owned or controlled by Defendants, in whole or in part; (2) in the actual or constructive possession of Defendants; (3) held by an agent of Defendants as a retainer for the agent's provision of services to Defendants; or (4) owned, controlled by, or in the actual or constructive possession of, or otherwise held for the benefit of, any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by Defendants.

Notwithstanding the asset freeze provision above:

A. Defendants may use or transfer such frozen corporate assets to:

1. Pay fees to renew for a one-year period, as such registrations become due, the registration of domain names purchased by Defendants on behalf of their customers prior to March 20, 2001; and
2. Pay the following expenses (in Canadian dollars unless otherwise noted) incurred prior to March 20, 2001, which shall be repaid in \$10,000 monthly installments, beginning June 1, 2001:

a.	Quartet Services	\$99,991.98
b.	Call Response	\$ 3,688.29
c.	Protus IP Solutions	\$ 5,103.13
d.	Zap Courier	\$ 5.35
e.	EBC Office Centers	\$ 100.00 (US)
f.	Union Computer	\$ 1,656.00
g.	Incredible Printing	\$ 92.00

- h. Cedar Springs \$ 19.49
- i. Yonge & Eglinton \$ 4,883.00
- j. Standard Parking \$ 700.00

B. Defendants may sublease the office space they lease at 2300 Yonge Street, Suite 2103, Toronto, Ontario, Canada, office furniture, and telecommunications equipment and computers;

C. Defendant Morgenstern may:

1. Use such frozen personal assets or personalty to pay living expenses and attorneys' fees pursuant to the February 23, 2001 and March 1, 2001 agreements between the FTC and Defendants and referenced in the Stipulation and Order to Extend Temporary Restraining Order entered by this Court on March 7, 2001; and
2. To transfer or otherwise dispose of personalty, not to exceed a total aggregate value of \$1,000;

D. Defendants are not restricted or enjoined from using any borrowed funds or any funds or property derived from business activities conducted after March 20, 2001, other than funds or property derived from assets held on or before March 20, 2001; and

E. Defendants may pay other reasonable and customary expenses after written approval by the Commission or the Court.

V.

**TRAINING AND MONITORING OF EMPLOYEES**

**IT IS FURTHER ORDERED** that Defendants, their successors, assigns, officers, agents, servants, and employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are restrained and enjoined from failing to train and monitor employees to ensure compliance with this Order, including requiring:

- A. Each employee to sign an acknowledgment that he or she has received a copy of this Order and will comply with Parts I and II of this Order;
- B. Supervisors to randomly monitor sales calls made by Defendants' employees or agents; and
- C. Supervisors to make a written record of any violations of this Order, including any action taken to address such violations.

VI.

**TAPE RECORDING OF SALES CALLS**

**IT IS FURTHER ORDERED** that Defendants, their successors, assigns, officers, agents, servants, and employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are restrained and enjoined from offering, accepting, or processing the purchase of any domain name or any related product or service unless Defendants, or their agents, tape record the sales presentation with the consumer, and the tape recording meets the following criteria:

A. After introductions and a statement of the purpose of the call and after obtaining permission from the consumer to tape record the conversation, the tape recording shall reflect the entirety of the sales presentation;

B. The tape recording must clearly reflect the consumer's agreement to tape record the call; and

C. The tape recording must include clear, complete, and understandable disclosures of all material terms of the purchase and the consumer's express agreement to such terms. The material terms disclosed in the tape-recorded conversation shall be consistent with any information disclosed to the consumer after March 20, 2001. Material terms include, but are not limited to:

1. A description of the service or product, including the reason(s) why a consumer may wish to purchase the product or service;
2. The cost of the service or product;
3. The amount of any recurring charges;
4. Limitations on any right to obtain a refund;
5. The business name, address, and telephone number to which the consumer may address any questions or complaints; and
6. The date of the tape recording;

*Provided, however,* the date of the tape recording may be captured electronically if possible.



**VII.**

**AUTHORIZATION TO MONITOR DEFENDANTS' SALES CALLS**

**IT IS FURTHER ORDERED** that plaintiff is authorized to monitor and to tape record Defendants' compliance with this Order by all lawful means, including, but not limited to, using representatives posing as consumers or suppliers to Defendants, to Defendants' employees, or to any other entity managed or controlled in whole or in part by any defendant, without the necessity of identification or prior notice.

**VIII.**

**RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, with respect to the sale of any domain name or any related product or service:

A. Defendants, their successors; assigns, officers, agents, servants, and employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are hereby restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, any: books; records; "verification" or other audio or video tape recordings; computer tapes, discs or other computerized records; accounting data; personal and business checks (fronts and backs); correspondence; forms; advertisements; brochures; manuals; banking records; customer lists; customer files; invoices; telephone records; ledgers; payroll records; scripts; postal receipts; appointment books; income tax returns; or other documents of any kind in their possession, custody, or control;

B. Defendants, and their agents responsible for such record keeping, are hereby restrained and enjoined from failing to make and keep books, records, bank statements, documents indicating title to real or personal property, and any other data which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Defendants;

C. Defendants, and their agents responsible for such record keeping, are hereby restrained and enjoined from failing to make and keep records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by Defendants, 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;

D. Defendants, and their agents responsible for such record keeping, are hereby restrained and enjoined from failing to make and keep records containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased for all consumers to whom Defendants have sold or attempted to sell any goods or services;

E. Defendants, and their agents responsible for such record keeping, are hereby restrained and enjoined from failing to make and keep records that reflect, to the extent that such information is made available to Defendants, for every consumer complaint or refund request, whether received directly or indirectly or through any third party:

1. The consumer's name, address, telephone number and the dollar amount paid by the consumer, as provided by the consumer or requested by Defendants or their agents;

2. The written complaint or refund request, if any, and the date of the complaint or refund request;
3. The basis of the complaint, including the name of any salesperson complained against, and the nature and result of any investigation conducted concerning any complaint;
4. Each response and the date of the response;
5. Any final resolution and the date of the resolution; and
6. In the event of a denial of a refund request, the reason for the denial; and

F. Defendants, and their agents responsible for such record keeping, are hereby restrained and enjoined from failing to keep copies of all sales scripts, training materials, advertisements, or other marketing materials utilized.

## IX.

### REPORTING REQUIREMENTS

**IT IS FURTHER ORDERED** that Defendants, their successors, assigns, officers, agents, servants, and employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise shall provide to the FTC:

- A. A report on a monthly basis of any income or expense associated with the renewal of domain name registrations pursuant to Part IV.A.1 of this Order;
- B. A report on a bi-weekly basis of the estimated number of inbound and outbound sales calls by date;
- C. Copies of tape recordings made by Defendants as provided for in Part VI of this Order, as reasonably requested by plaintiff; and

D. Copies of any business records related to domain names sales or related businesses that are maintained by Defendants pursuant to Part VIII of this Order, as reasonably requested by plaintiff.

X.

**DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that Defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, successor, assign, officer, director, employee, independent contractor, Web master, agent, attorney, and representative of any Defendant, and shall, within ten (10) days from the date of entry of this Order, provide the Commission with a sworn statement that Defendants have complied with this provision of the Order, which statement shall include the names and addresses of each such person or entity who received a copy of the Order.

XI.

**SERVICE OF ORDER**

**IT IS FURTHER ORDERED** that copies of this Order may be served by any means, including facsimile transmission or electronic mail, upon any entity or person that may have possession, custody, or control of any documents of the Defendants, or that may be subject to any provision of this Order.

XII.

**CREDIT REPORTS**

**IT IS FURTHER ORDERED** that plaintiff Commission may obtain credit reports concerning Defendants pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C.

§ 1681b(1), and that upon written request, any credit reporting agency from which such reports are requested shall provide them to plaintiff Commission.

**XIII.**

**CORRESPONDENCE WITH AND NOTICE TO PLAINTIFF**

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

Stephen L. Cohen, Esq.  
Catherine Harrington-McBride, Esq.  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC 20580  
(202) 326-3395 (facsimile).

Notice may be provided by e-mail to [scohen@ftc.gov](mailto:scohen@ftc.gov) and [cmcbride@ftc.gov](mailto:cmcbride@ftc.gov).

**XIV.**

**CONFIDENTIAL INFORMATION PROVIDED PURSUANT TO TRO**

**IT IS FURTHER ORDERED** that the Stipulation and Order for the Production of Confidential Information, entered by the Court on February 28, 2001, shall remain in effect for the duration of this Order.

**XV.**

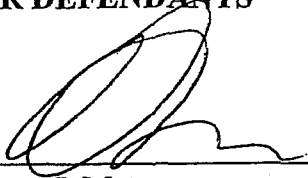
**EXPIRATION OF THIS ORDER**

**IT IS FURTHER ORDERED** that this Order shall remain in effect until further order of the Court or until agreement between the parties on a final resolution of any matters between them.

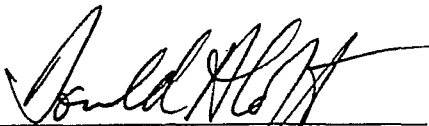
The parties, by their signature or by the signature of their counsel, hereby agree to the

entry of this Order:

**FOR DEFENDANTS**



Darren J. Morgenstern,  
Individually and as president of  
1268957 Ontario Inc. and 1371772 Ontario Inc.



Donald A. Loft - Bar # 455706  
Morris, Manning & Martin LLP  
1600 Atlanta Financial Center  
3343 Peachtree Rd., N.E.  
Atlanta, GA 30326-1044  
404-504-7755 (phone)  
404-365-9522 (fax)


William B. Schultz  
Mary I. Peters  
Zuckerman Spaeder LLP  
1201 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
202-778-1800 (phone)  
202-822-8106 (fax)

**FOR THE FEDERAL TRADE COMMISSION**



Stephen L. Cohen  
Catherine Harrington-McBride  
Attorneys for Plaintiff  
Federal Trade Commission  
600 Pennsylvania Ave., N.W.  
Washington, D.C. 20580  
202-326-3222; 326-2452 (phone)  
202-326-3295 (fax)

SO ORDERED, this 21 day of March, 2001, at    .m.



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Julie E. Carnes  
United States District Judge  
Northern District of Georgia  
Atlanta Division