

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ONE OR MORE UNKNOWN PARTIES
MISREPRESENTING THEIR
AFFILIATION WITH THE MAKING
HOME AFFORDABLE PROGRAM,

Defendants.

Civil Action No. 09-894 (CKK)

TEMPORARY RESTRAINING ORDER
(May 15, 2009)

Plaintiff, Federal Trade Commission (“FTC” or “Commission”), has filed a complaint seeking a permanent injunction and other equitable relief, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and a motion for a temporary restraining order (“TRO”) pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Local Civil Rule 65.1. This Court has considered the complaint, the TRO motion, and the exhibits, memoranda, declarations, and other submissions filed in support thereof, and now being advised in the premises, finds that:

1. The court has jurisdiction over the subject matter of this case, and there is good cause to believe it will have jurisdiction over all the parties hereto;
2. There is good cause to believe that venue lies properly with the court;
3. There is good cause to believe that Defendants have engaged, and are likely to continue to engage, in acts or practices that violate Section 5 of the FTC Act, 15 U.S.C. § 45,

and that the FTC is, therefore, likely to prevail on the merits of this action;

4. There is good cause to believe that consumers will suffer immediate and continuing harm unless Defendants are immediately restrained by an order of this court. The FTC's memorandum in support of its TRO motion and the accompanying declarations and exhibits demonstrate that it is likely that Defendants have engaged in a concerted course of illegal activity by placing advertisements on Internet search results pages that divert consumers searching for the Making Home Affordable program of the United States government to websites offering paid loan modification services;

5. In compliance with Local Rule 65.1, counsel for the FTC has submitted a certification evidencing the FTC's efforts to provide notice to Defendants of the submission of the FTC's TRO motion and copies of all pleadings and papers filed in the action to date. Although FTC counsel avers that Defendants' identities were unknown to the FTC at the time that it filed this action, he states that four search engine providers who placed Defendants advertisements on search engine results web pages should be aware of Defendants identities and have the means to contact Defendants. FTC counsel states that the FTC has provided these four search engine providers with advance notice of the filing of the TRO Motion and offered to provide them or any person who appears to be a "Defendant," as defined by this TRO, with copies of all pleadings and papers filed in this action to date. The FTC also has requested that the search engine providers provide the FTC with contact information for any person who may be a "Defendant." The FTC avers that it has provided the information and documents required by Local Rule 65.1 to any person who requested them as a result of this notification process;

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

Fed. R. Civ. P. 65(c); and

7. This temporary restraining order is in the public interest.

DEFINITIONS

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

1. “Assisting others” means knowingly providing any of the following goods or services to another person or entity:
 - A. performing customer service functions, including, but not limited to, receiving or responding to consumer complaints;
 - B. formulating or providing, or arranging for the formulation or provision of, any Internet advertisement or any other marketing material;
 - C. providing names of, or assisting in the generation of, potential customers;
or
 - D. performing marketing services of any kind.
2. “Defendants” means any person who since April 28, 2009:
 - A. caused paid advertisements that contain an active hyperlink labeled MakingHomeAffordable.gov, as defined below, to be placed on Internet search results pages when consumers conducted a search that includes the phrase “making home affordable;” and
 - B. caused the Internet browsers of consumers who clicked on or otherwise activated such hyperlink to request web pages from any website other than the official United States government website,
<http://www.makinghomeaffordable.gov>.

3. “Document” is equal in scope and synonymous in meaning 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 any other data compilations from which information can be obtained. A draft or non-identical copy is a separate document within the meaning of the term.

4. “MakingHomeAffordable.gov” means a title or hyperlink that includes MakingHomeAffordable.gov, MakingHomeAffordable.com, MakingHomeAffordable.net, MakingHomeAffordable.org, or MakingHomeAffordable.info, any variations of these names that differ only in the introduction or omission of spaces, capitalization, or punctuation, or any Uniform Resource Locator (“URL”) that contains these names.

5. “Mortgage loan modification or foreclosure relief service” means any service, product, or program that is represented, expressly or by implication, to assist a homeowner in any manner to:

- A. obtain or arrange a modification of any term of a home loan, deed of trust, or mortgage;
- B. obtain or arrange a refinancing, recapitalization, or reinstatement of a home loan, deed of trust, or mortgage;
- C. obtain or arrange a pre-foreclosure sale, short sale, or deed-in-lieu of foreclosure;
- D. stop, prevent, or postpone any home mortgage or deed of trust foreclosure sale;
- E. obtain any forbearance from any beneficiary or mortgagee;

- F. obtain a loan or advance of funds that is connected to the consumer's home ownership;
- G. avoid or ameliorate the impairment of the owner's credit standing, credit rating or credit profile that is connected to the consumer's home ownership; or
- H. save the owner's residence from foreclosure.

6. "Person" means a natural person, organization, or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, or any other group or combination acting as an entity.

ORDER

I. PROHIBITED REPRESENTATIONS

IT IS THEREFORE ORDERED that Defendants and their successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, offering for sale or sale of any mortgage loan modification or foreclosure relief service or any other service or product, are hereby temporarily restrained and enjoined from:

A. causing, or assisting other to cause, paid advertisements that contain active hyperlinks that are labeled "MakingHomeAffordable.gov," or any other domain name containing the top level domain name "gov" to be placed on Internet search results pages when consumers conduct a search;

B. causing, or assisting others to cause, the Internet browsers of consumers who click on a hyperlink labeled “MakingHomeAffordable.gov” or any other domain name containing the top level domain name “gov” in any Internet advertisement to be directed to any website other than the official government website implied by the hyperlink label;

C. falsely representing, or from assisting others who are falsely representing, expressly or by implication, any of the following:

1. that any Defendant operates www.makinghomeaffordable.gov; or
2. that any Defendant is affiliated, associated, acting in partnership, or under contract with, the United States government.

II. ORDER TO INTERNET SEARCH ENGINES

IT IS FURTHER ORDERED that, pursuant to Rule 65(d)(2)(C) of the Federal Rules of Civil Procedure, pending determination of the Commission’s request for a preliminary injunction, the operators of any Internet search engine who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, shall:

A. identify all persons who, since April 28, 2009, paid them to place advertisements that contained an active hyperlink labeled MakingHomeAffordable.gov on Internet search results pages provided to consumers who conducted a search that included the phrase “making home affordable;” and caused the Internet browsers of consumers who clicked on or otherwise activated such hyperlink to request web pages from any website other than the official United States government website, <http://www.makinghomeaffordable.gov>;

B. refuse to place paid advertisements that contain active hyperlinks that are labeled MakingHomeAffordable.gov, or any other domain name containing the top level domain name

“gov,” for any such person; and

C. provide to the counsel for the FTC at the address identified in Section XI. below, within three (3) business days of notice of this Order, a sworn statement that includes:

1. all identifying information that they have about such person, including the names, addresses, telephone number(s), email address(es), of such person, and the same identifying information for any individual who communicated with them on behalf of such person; and
2. copies of all advertisements placed on search results pages on behalf of such person since March 19, 2009, and for each such advertisement: the conditions or triggering words that determined when such advertisement was placed on search results pages, the number of times that the hyperlinks in such advertisement were clicked or otherwise activated; and the total amount paid by such person for placement of the advertisement.

III. PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that Defendants and their successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby temporarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any documents that relate to the business practices, or business or personal finances, of any Defendant.

IV. LIMITED EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that the Commission is authorized to conduct certain expedited discovery, and that, commencing with the entry of this order, in lieu of the time periods, notice provisions, and requirements of Federal Rules of Civil Procedure 26(d) and (f) and 30(a)(2)(C), and Local Rule 26.2, and pursuant to Federal Rules of Civil Procedure 30(a), 34, and 45, the FTC is granted leave to:

A. take the deposition, on two (2) calendar days' notice, of any person, whether or not a party, in any judicial district, for the purpose of discovering relevant information relating to any Defendant's identities, assets, and/or business activities. The depositions may be conducted by phone or in person, Monday through Saturday. Transcripts that have not been signed by the witness may be used for purposes of the hearing on the order to show cause why a preliminary injunction should not issue. Notwithstanding Fed. R. Civ. P. 30(a)(2), this Section shall not preclude any further depositions by the FTC, and any deposition taken pursuant to this Section shall be in addition to, and not subject to the presumptive limits on depositions set forth in Fed. R. Civ. P. 30(a)(2)(A); and

B. demand the production of documents, on five (5) calendar days' notice, including through the use of a Rule 45 subpoena, from any person, whether or not a party, relating to any Defendants' identities, assets, and/or business activities. Three (3) calendar day's notice shall be deemed sufficient for the production of any such documents stored only as electronic data. Provided that, service of discovery taken pursuant to this Section shall be sufficient if made by email, facsimile, or overnight delivery.

**V. ORDER TO SHOW CAUSE AND
PRELIMINARY INJUNCTION HEARING**

IT IS FURTHER ORDERED, pursuant to Fed. R. Civ. P. 65(b), that Defendants shall appear on the 25th day of June, 2009 at 10:30 A.M. at the United States Courthouse, Courtroom 28A, Washington, DC, to show cause, if any there be, why this Court should not enter a preliminary injunction, pending final ruling on the claims in the complaint, enjoining Defendants from further violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), continuing the terms of this order, and imposing such additional relief as may be appropriate.

VI. SERVICE OF PLEADINGS

IT IS FURTHER ORDERED that the parties shall serve on the Court and on counsel for all other parties all memoranda, affidavits, and other evidence on which they intend to rely at the preliminary injunction hearing in this matter at least three (3) calendar days prior to the hearing by 3:00 p.m., Eastern Time.

VII. IDENTIFICATION OF WITNESSES

IT IS FURTHER ORDERED that the any party intending to present the testimony of any witness at the preliminary injunction hearing shall serve on the Court and on counsel for all other parties a statement disclosing the name, address, and telephone number of any such witness, and either a summary of the witness' expected testimony or an affidavit revealing the substance of such witness' expected testimony, at least three (3) calendar days prior to the hearing by 3:00 p.m., Eastern Time.

**VIII. ACKNOWLEDGMENT OF RECEIPT
OF ORDER BY DEFENDANT**

IT IS FURTHER ORDERED that Defendant, within three (3) business days of receipt

of this Order, shall submit to counsel for the Commission a truthful sworn statement acknowledging receipt of this Order.

**IX. PROOF OF DISTRIBUTION OF
ORDER BY DEFENDANT**

IT IS FURTHER ORDERED that each Defendant shall immediately provide a copy of this Order to his agents, servants, employees, consultants, any other persons or entities subject in any part to his direct or indirect control, persons with whom Defendants place advertising, and persons who operate websites to which Defendants refer consumers. Within five (5) business days of receipt of this Order, Defendant shall submit to counsel for the Commission a truthful sworn statement identifying those persons and entities to whom this Order has been distributed.

X. SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission or email, personal or overnight delivery, or U.S. Express Mail, by agents and employees of the FTC or any state or federal law enforcement agency or by private process server, upon Defendants or any other person or entity that may be subject to any provision of this Order

XI. SERVICE UPON THE FTC

IT IS FURTHER ORDERED that for the purposes of this Order, all service on the Commission's counsel shall be performed by overnight mail delivery, facsimile, or email to the attention of:

Lawrence Hodapp
Attorney, Division of Financial Practices
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room NJ-3158

