

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

_____)	
FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Case No. 05C 6737
)	
v.)	Judge William J. Hibbler
)	
ZACHARY A. KINION,)	Magistrate Judge Nan R. Nolan
)	
Defendant.)	
_____)	

PRELIMINARY INJUNCTION ORDER

WHEREAS, on November 29, 2005, Plaintiff Federal Trade Commission ("Commission" or "FTC") filed a Complaint for Injunctive and Other Equitable 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 57b, and Section 7(a) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM" or "the CAN-SPAM Act"), 15 U.S.C. § 7706(a);

WHEREAS, on December 1, 2005, Defendant Zachary A. Kinion was properly served with the Complaint and Summons, as well as the FTC's Motion For a Temporary Restraining Order, Other Equitable Relief and Order to Show Cause Why a Preliminary Injunction Should Not Issue and the memorandum and exhibits supporting that motion;

WHEREAS, on December 7, 2005, this Court granted the FTC's Motion For a Temporary Restraining Order, Other Equitable Relief and Order To Show Cause Why a

DEFINITIONS

1. "Affirmative Consent," with respect to a commercial email message, means that

"the recipient expressly consented to receive the message either in response to a clear and



promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose)." 15 U.S.C. § 7702(2) (A).

5. "Defendant" means Zachary A. Kinion, by whatever name he might be known.

6. "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,

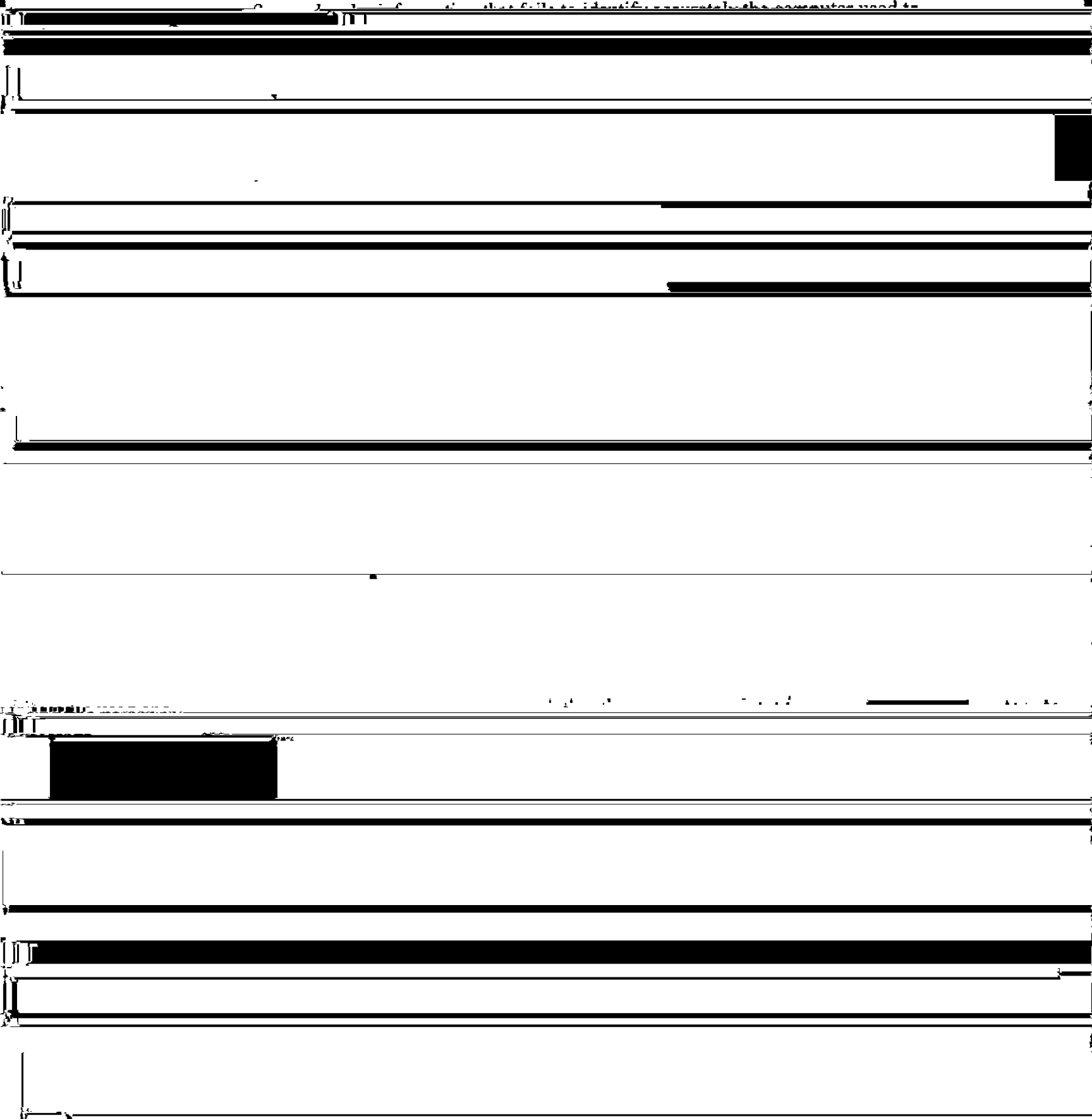
10. **“Procure,”** when used with respect to the initiation of a commercial email

[REDACTED]

[REDACTED]

2. a "from" line (the line identifying or purporting to identify the person initiating the messages) that does not accurately identify any person who initiated the message;

that fails to identify accurately the computer used to



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

accounts, Internet service accounts, or online payment service accounts, without notifying

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

accurate physical mailing address, a working email address, a working telephone number, and any identification codes associated with or used by such person or entity;

R. The amount of payment and information necessary to process such payment for

[REDACTED]

[REDACTED]

VI.

ASSET PRESERVATION

IT IS FURTHER ORDERED that:

A. Defendant, whether acting directly or through a trust, corporation, subsidiary, division, or other device, or any of them, is hereby restrained and enjoined from selling, transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, perfecting a security interest in, or otherwise disposing of any assets or any interest therein, wherever located, including any assets outside the territorial United States, other than those that are actual, ordinary, and necessary living expenses that Defendant reasonably incurs.

B. The assets affected by this Section shall include both existing assets and assets acquired after the effective date of this Order.

[REDACTED] Notwithstanding Section VI A above, Defendant may withdraw, transfer

VII.

FINANCIAL REPORTS AND ACCOUNTING

IT IS FURTHER ORDERED that Defendant, if he has not done so already as required by the Court's TRO entered on December 7, 2005, immediately shall prepare and deliver to counsel for the Commission:

- A. A completed financial statement on the forms attached to the Court's TRO Order as **Attachment A**. The financial statement shall be accurate as of the date of its completion; and
- B. A complete accounting of all gross and net profits obtained from, derived from, or related in any way to products, services, Web page memberships, or any other commercial venture promoted in any way through commercial electronic mail messages from January 1, 2004 through the submission of the accounting.

VIII.

IDENTIFICATION OF MARKETERS

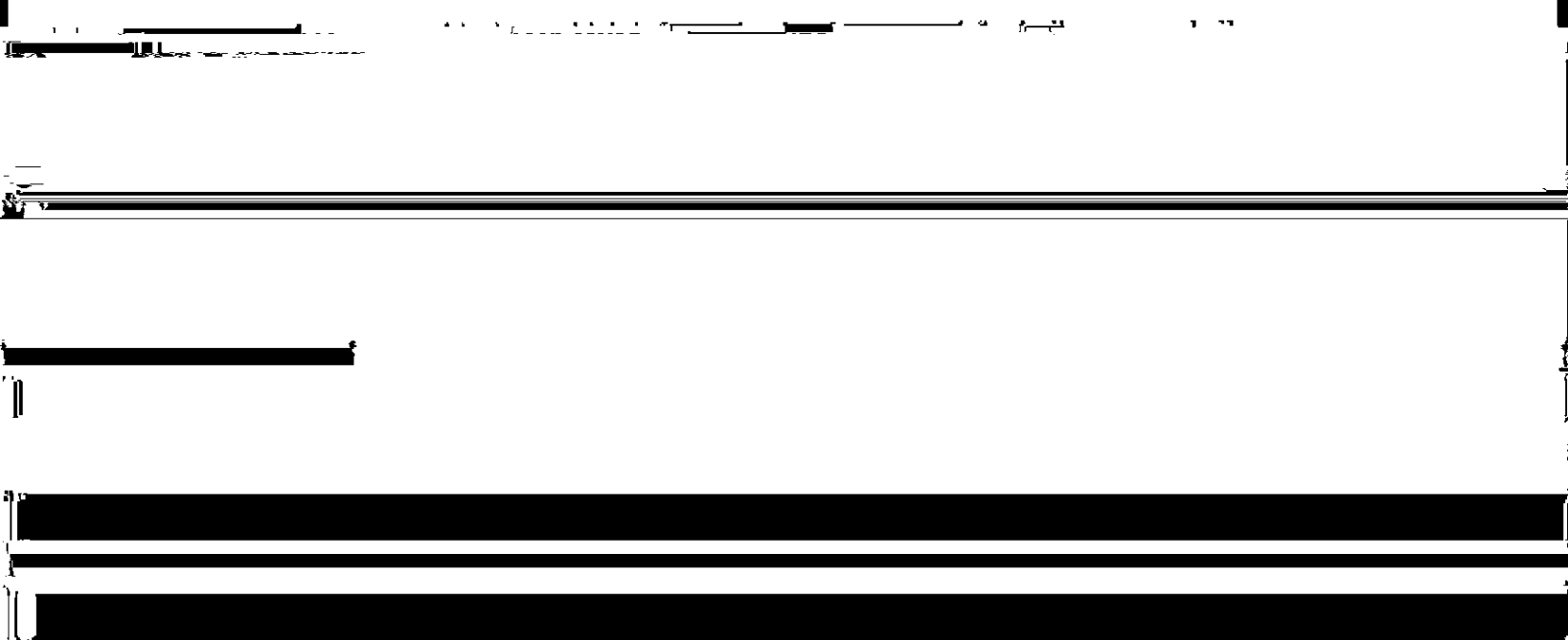
IT IS FURTHER ORDERED that, to the extent that he has not already done so as required by the Court's TRO entered on December 7, 2005, Defendant immediately shall prepare and deliver to counsel for the Commission a completed statement identifying all affiliates, sub-affiliates, agents, mailers, vendors, employees, contractors, or other persons or entities that have sent commercial email on Defendants' behalf since January 1, 2004, on the form attached to the Court's TRO as **Attachment B**. The statement shall be accurate as of the date of its completion.

IX.

**PRESERVATION AND MAINTENANCE OF RECORDS
AND NOTICE OF NEW VENTURES**

IT IS FURTHER ORDERED that Defendant and his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from:

A. Destroying, erasing, mutilating, falsifying, concealing, writing over, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any documents or records, including but not limited to, any and all computerized files, storage media (including but not limited to floppy disks, hard drives, CD-Roms, Zip disks, punch cards, magnetic tape, backup



C. Creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing the Commission with a written statement disclosing:

1. the name of the business entity;
2. the address, telephone number, email address, and Web site address of the business entity;
3. the names of the business entity's officers, directors, principals, managers, and employees;
4. the names and addresses of any persons or entities providing online

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 financial institution or other entity or person that may have possession, custody, or control of any documents or assets of Defendant, or that may otherwise be subject to any provision of this Order. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution.

XII.

CONSUMER CREDIT REPORTS

IT IS FURTHER ORDERED that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer report concerning Defendant to the Commission.

XIII.

EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that the parties are granted leave at any time after service of this Order and pursuant to Federal Rules of Civil Procedure 30(a), 34 and 45 to: (1) take the deposition of any person or entity for the purpose of discovering the nature, status, extent, location or other relevant information relating to Defendant's assets and the nature and location of documents reflecting the business transactions of Defendant; and (2) demand the production of documents from any person or entity relating to the nature, status, extent, and location or other relevant information relating to Defendant's assets and the location of documents reflecting the business transactions of Defendant. Seventy-two (72) hours notice shall be deemed sufficient for

including but not limited to financial institutions, accountants, stock brokers, and financial planners.

The limitations and conditions set forth in Fed. R. Civ. P. 30(a)(2)(B) and 31(a)(2)(B) regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Section. Any such depositions taken pursuant to this Section shall not be counted toward any limit on the number of depositions under the Federal Rules of Civil Procedure, including those set forth in Fed. R. Civ. P. 30(a)(2)(A) and 31(a)(2)(A) or the Local Rules. Additionally, the production of documents submitted pursuant to this provision shall not in any way waive the Commission's rights to seek the production of additional documents.

XIV.

