

AL

UNITED STATES DISTRICT COURT

**FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

BRIAN McMULLEN, also doing business
as BM ENTERTAINMENT and B PIMP.

Case No. 05C 6911

Judge David H. Coar

Magistrate Judge Nan R. Nolan

PRELIMINARY INJUNCTION ORDER

WHEREAS, on December 8, 2005, Plaintiff Federal Trade Commission ("Commission")

seeks equitable relief in this matter pursuant to

WHEREAS the Court having considered the pleadings, memoranda, declarations and

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

DEFINITIONS

“the recipient expressly consented to receive the message, either in response to a clear and conspicuous request for such consent or at the recipient’s own initiative;” and “if the message is

from a party other than the party to which the recipient communicated such consent, the recipient

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 Brian McMullen, also doing business as BM Entertainment and B Pimp, by whatever name he might be known.

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

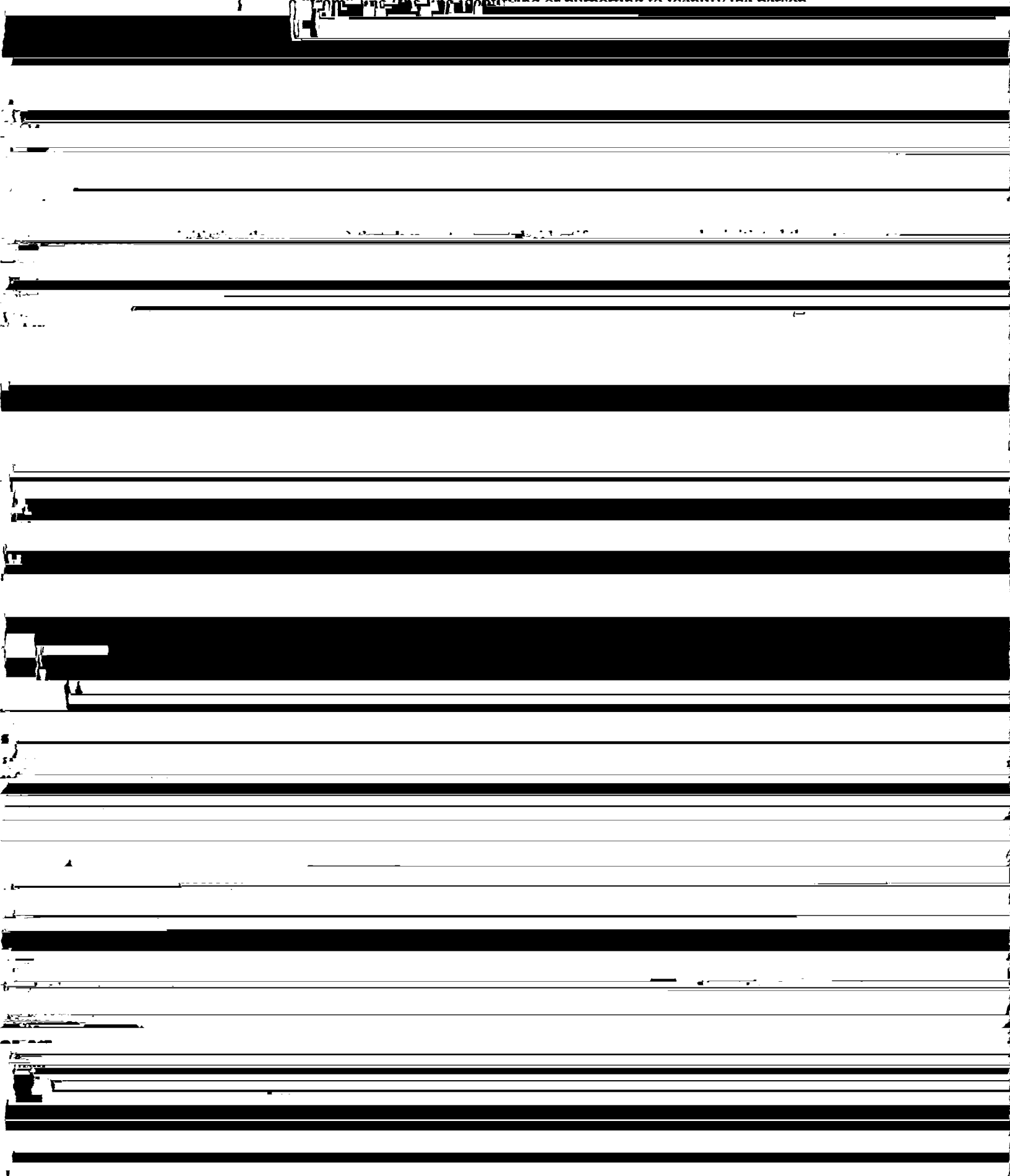
recordings, computer records, and other data compilations from which information can be

message, means "intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one's behalf." 15 U.S.C. § 7702(12).

which is used in interstate or foreign

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"[redacted]" line (the line identifying or attempting to identify the person



the message was received, and that remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message; and/or

- C. Does not include the sender's valid physical postal address.

III.

PROHIBITIONS AGAINST FAILING TO IDENTIFY AN EMAIL MESSAGE AS AN ADVERTISEMENT OR SOLICITATION

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 restrained and enjoined

from initiating the transmission of commercial email that fails to provide clear and conspicuous

identification that the message is an advertisement or solicitation.

PROVIDED, HOWEVER, that the requirements of this Section do not apply to commercial email messages transmitted only to recipients for whom Defendant has Affirmative

consent from such recipients.

accounts, Internet service accounts, or online payment service accounts, without notifying counsel for the Commission within 72 hours of such registrations. The notice shall include:

A. The true identity of the registrant, account holder, or user, including the complete and accurate physical mailing address, email address, and telephone number;

B. The means and source of payment for the registration, including the credit card number or bank account number used;

C. The name and address of the person or entity to whom such registration was submitted;

D. The date and time the registration was created; and

E. The purpose of the domain names, Web sites, Web pages, or email accounts, Internet service accounts, or online payment service accounts registered.

V.

INJUNCTION AGAINST USING ANY PERSONS OR ENTITIES

IT IS FURTHER ORDERED that [redacted] shall be enjoined from the promotion, advertising

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;

B. The amount of payment and information necessary to process such payment for the affiliate, sub-affiliate, agent, mailer, vendor, employee, contractor, or other person or entity

C. A copy of the body and subject line of each unique commercial email being sent by the affiliate, sub-affiliate, agent, mailer, vendor, employee, contractor, or other person or entity;

D. A list of each of the email addresses from which the affiliate, sub-affiliate, agent,

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 ~~interests in any real or personal property located, including any assets outside the territorial United States~~

[REDACTED]

[REDACTED]

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 21, 2005, immediately shall prepare and deliver to counsel for the Commission:

- A. A completed financial statement on the form attached to the Court's TRO 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

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~~

~~... all computerized files, storage media (including but~~

~~Creating, operating, or exercising 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 marketing, advertising, or mailing services for the business entity; and
5. a detailed description of the business entity's intended activities.

~~IT IS FURTHER ORDERED that in order to ensure all active and inactive computers~~

directly or indirectly, to Defendant's activities as alleged in the Complaint and/or Defendant's assets or assets held on Defendant's behalf, as well as any computers, electronic 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 (including any and all equipment needed to read any such material), contracts, accounting data, correspondence (including, but not limited to, electronic correspondence), solicitations

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, receipts, order confirmations, credit card statements, appointment books, copies of federal, state or local business or personal income or property tax returns, W-2 forms, 1099 forms, and other documents, records, or equipment related to Defendant's activities as alleged in

C. Copies of any web pages or web sites that are or were operated by, registered to, or created by Defendant, Defendant's affiliates, sub-affiliates, agents, mailers, vendors,

Defendant's behalf, or promote or have promoted any product or service for Defendant since January 1, 2004;

any email message (including header information) and the content or header of

any email message, relating to the promotion of any product, service or web site, sent or

Defendant, and shall, within ten (10) days from the date of entry of this Order, provide the Commission with a sworn statement that Defendant 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.

XII.

SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means,

including personal service, electronic mail, or any financial institution or other entity

or person that may have possession, custody, or control of any documents or assets of Defendant

to form any person or entity relating to the nature, status, extent, and location or other

of payments reflecting the