

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1481397CIV-MARRA

FEDERAL TRADE COMMISSION, and STATE
OF FLORIDA

Plaintiffs,
v.

BoostSoftware, Inc., a Massachusetts Corporation,

Vast Tech Support, LLC, a Florida limited liability
company, also does business as OMG Tech Hel
OMG Total Protection, OMG Back Up,
Downloadsoftware.com, and
Softwaretechsupport.com,

OMG Tech Help, LLC, a

Plaintiffs, the Federal Trade Commission (“FTC” or the “Commission”) and the State of Florida have filed a

3. Plaintiffs have sufficiently demonstrated that immediate and irreparable harm will result from the Defendants' ongoing violations of Section 5 of the FTC Act, the TSR and Section 501.204 of FDUTPA unless Defendants are restrained and enjoined by Order of this Court;

4. Plaintiffs have sufficiently demonstrated that immediate and irreparable damage to this Court's ability to grant effective relief for consumers, including monetary restitution, rescission, disgorgement or refunds, will occur from the sale, transfer, or other disposition or concealment by Defendants of their Assets or records if Defendants are provided with advance notice of this Order, and that therefore in accordance with Fed. R. Civ. P. 65(b), the interests of justice require that this Order be granted without prior notice to Defendants. There is good cause for relieving the FTC and the State of Florida of the duty to provide Defendants with prior notice of the FTC and the State of Florida's application;

5.

6. "Defendants" means individually, collectively, or in any combination, each Corporate Defendant and Individual Defendant

14. "Plaintiff s" means the Federal Trade Commission and the State of Florida
15. "Receiver" or "Temporary Receiver" means the temporary receiver appointed
iect

any of them, and their successors and assigns, individually, collectively, or in any combination.

22.

- B. Violating the Telemarketing Sales Rule 16 C.F.R. Part 310, attached as Appendix A.

III.

SUSPENSION OF CORPORATE DEFENDANTS' WEB SITES

IT IS FURTHER ORDERED that any party hosting phealthboost.com or any webpage or website for any Vast Corporate Defendant and any domain registrar who has provided or is providing domain name registration services to phealthboost.com or any Vast Corporate Defendant's behalf are hereby temporarily restrained and enjoined from failing to:

A. Immediately take whatever steps may be necessary to ensure that phealthboost.com and any webpage or website operated, in whole or in part, in connection with the Vast Corporate Defendants' provision of Tech Support Products or Services be accessed by the public; and

B. Prevent the destruction or erasure of phealthboost.com.

V

Defendants at any bank or savings and loan institution, or at/with any broker dealer, escrow agent, title company, insurance company, commodity trading company, precious metal dealer, payment processor, credit card processor, acquiring bank, merchant bank, independent sales organization, third party processor, payment gateway or other financial institution or depository of any kind;

5. held by an agent of any Vast Corporate Defendant as a retainer for the agent's provision of services to Vast Defendants;
6. held in any account for which any Vast Corporate Defendant is, or was on the date that this Order was signed, an authorized signatory, except as necessary to comply with Section XIII of this Order;
7. in the possession, custody, or control of any Vast Individual Defendant that is owned by a Vast Corporate Defendant or in which any Vast Corporate Defendant has any legal or equitable interest or claim;
8. property of any kind, including cash, that is in the possession, custody, or control of any Vast Individual Defendant which was transferred or received from any Vast Corporate Defendant within thirty (30) days prior to the entry of this Temporary Restraining Order.

B. Physically opening or causing to be opened any safe deposit boxes, commercial mail boxes, or storage facilities titled in the name of any Vast Defendant, either individually or jointly, or subject to access by any Vast Defendants, except as necessary to comply with Section XIII of this Order;

C. Incurring charges or cash advances on any credit card issued in the name, individually or jointly, of any of the Vast Corporate Defendants, any corporation or partnership. This includes, but is not limited to, any corporate bank card or corporate credit card account for which any Vast Defendant

conversion, sale, or other disposal of any such Assets as well as all Documents or other property related to such Assets except by further order of the Court;

B. Deny any person except the Receiver acting pursuant to Section 541(c)(2) of this Order, access to any safe deposit box, commercial mailbox, or storage facility that is

1. Titled in the name of any corporate Vast Defendant, either individually or jointly; or
2. Otherwise subject to access by any Vast Defendant;

C. Provide the FTC's counsel and the Receiver, within ten (10) business days of receiving a copy of this Order, a sworn statement setting forth:

1. The identification number of each account or Asset:
 - a) titled in the name, individually or jointly, of any of the corporate Vast Defendants;
 - b) held on behalf of, or for the benefit of, any of the corporate Vast Defendants; or
 - c) associated with credit or debit charges made on behalf of corporate Vast Defendants;
2. The balance of each such account, or a description of the nature and value of each such Asset as of the close of business on the day on which this Order is served, and, if the account or other Asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other Asset was remitted;

3. The identification of any safe deposit box, commercial mail box, or storage facility that is either titled in the name, individually or jointly, of any of the Defendants, or is otherwise subject to access by any of the Defendants; and

D. Upon request of the Plaintiff or the Receiver, promptly provide the Plaintiff with copies of all records or other documentation pertaining to such account or asset, including originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, including wire transfers and wire transfer instructions, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and all logs and records pertaining to safe deposit boxes, commercial mail boxes and storage facilities.

VII .

INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that Vast Defendant and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, director, manager, member, affiliate, independent contractor, accountant, financial advisor, or other device, hereby

IX.

PRESERVATION OF RECORDS
AND REPORT OF NEW BUSINESS ACTIVITY

IT IS FURTHER ORDERED that Defendants and their Representatives, as well as any document custodians receiving actual notice of this Order, whether acting directly or through any entity, corporation, subsidiary, division, director, manager, member, affiliate, independent contractor, accountant, financial advisor, or other device, are hereby temporarily restrained and enjoined from:

A. Destroying, erasing, falsifying, writing over, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, Documents that relate to: (1) the business, business practices, Assets, or business or ~~finances~~ of any Defendant, (2) the business practices or finances of entities directly or indirectly under the control of any Defendant, or (3) the business practices or finances of entities directly or indirectly under common control with any other Defendant, including: any and all marketing materials, Internet pages, consumer complaints, call detail records, telephone logs, telephone scripts, contracts, correspondence, email, corporate books and records, accounting data, financial statements, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, calendars, appointment books, and tax returns;

B. Failing to create and maintain Documents that, in reasonable detail, accurately, fairly, and completely reflect Defendants' incomes, disbursements, transactions, and use of the Defendants' Assets; and

C. Creating, operating, or exercising any control over any new business entity, whether newly formed or previously inactive, including any partnership, limited partnership, joint venture, sole proprietorship, or corporation, without first providing counsel for the Plaintiffs

with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers, and employees; and (4) a detailed description of the business entity's intended activities.

X.

PROHIBITION ON RELEASE
OF CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, director, manager, member, affiliate, independent contractor, accountant, financial advisor, or other ~~party~~ hereby temporarily restrained and enjoined from:

A. Selling, renting, leasing, transferring, disclosing, or otherwise benefitting from the name, address, telephone number, credit card number, bank account number, e address, or other identifying information of ~~any~~ Person that Defendant obtained prior to entry of this Order in connection with any activity that pertains to the subject matter of this ~~Order~~

B. Benefitting from or using the name, address, birth date, telephone number, address, Social Security number, Social Insurance number, credit card number, bank account number, or other financial or identifying personal information of any Person from whom or about whom any Defendant obtained such information in connection with any activity that pertains to the subject matter of this Order.

PROVIDED, HOWEVER, that the Defendants may disclose such identifying information to any civil or criminal law enforcement agency or as required by any law, regulation, or court order.

XI.

APPOINTMENT OF TEMPORARY RECEIVER

IT IS FURTHER ORDERED that David S. Mandel is appointed temporary receiver for the Vast Corporate Defendants and any of their telephone sales, technical support, or customer service operations, wherever located, with the full power of an equity receiver. Receiver shall be the agent of this Court, and solely the agent of this Court, in acting as Receiver under this Order. The Receiver shall be accountable directly to this Court.

XII.

RECEIVER'S DUTIES AND AUTHORITIES

IT IS FURTHER ORDERED that the Receiver is authorized and directed to accomplish the following:

A. Assume full control of the Vast Corporate Defendants by removing, as the Receiver deems necessary or advisable, any director, officer, independent contractor, employee, or agent of any of the Vast Corporate Defendants, including any Defendant, from control of, management of, or participation in, the affairs of the Vast Corporate Defendants;

B. Take exclusive custody, control, and possession of all Assets and Documents of, or in the possession, custody, or under the control of, the Vast Corporate Defendants, wherever situated. The Receiver shall have full power to divert mail and to sue for, collect, receive, take in possession, hold, and manage all Assets and Documents of the Vast Corporate Defendants and other persons or entities whose interests are now under the direction, possession, custody, or control of, the Vast Corporate Defendants. The Receiver shall assume control over the income and profits therefrom and all sums of money now or hereafter due or owing to the Vast Corporate Defendants. *Provided, however,* that the Receiver shall not attempt to collect any

amount from a consumer if the Receiver believes the consumer was a victim of the deceptive acts or practices or other violations of law alleged in the Complaint in this matter, without prior Court approval;

C. Take all steps necessary to secure and take exclusive custody of each location from which the Vast Corporate Defendants operate their business. Such steps may include, but are not limited to, any of the following, as the Receiver deems necessary or advisable: (1) serving this Order; (2) completing a written inventory of all Receiver Defendants' Assets; (3) obtaining pertinent information from all employees and other agents of the Vast Corporate Defendants, including, but not limited to, the name, home address, Social Security Number, job description, company history, passwords or access codes, method of compensation, and all accrued and unpaid commissions and compensation of each such employee or agent; (4) photographing and videotaping any or all portions of the location; (5) securing the location by changing the locks and disconnecting any internet access or other means of access to the computers, internet or other records maintained at that location; and (6) requiring any persons present on the premises at the time this 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 Vast Corporate Defendants. Law enforcement personnel, including, but not limited to, police or sheriffs, may assist the Receiver in implementing these provisions and do keep the peace and maintain security. If requested by the Receiver, the United States Marshal will provide appropriate and necessary assistance to the Receiver to implement this Order and is authorized to use any necessary and reasonable force to do so;

D. Conserve, hold, and manage all Assets of the Vast Corporate Defendants, and perform all acts necessary or advisable to preserve the value of those Assets in order to prevent any irreparable loss, damage, or injury to consumers or creditors of the Vast Corporate Defendants, including, determining the available Assets and preventing the unauthorized transfer, withdrawal, or misapplication of Assets;

E. Enter into and cancel contracts and purchase insurance as advisable or necessary;

F. Prevent the inequitable distribution of Assets and determine, adjust, and protect the interests of consumers and creditors who have transacted business with the Vast Corporate Defendants;

G. Manage and administer the business of the Vast Corporate Defendants until

payments that the Receiver deems necessary or advisable to secure Assets of the Vast Corporate Defendants, such as rental payments;

J. Suspend business operations of the Vast Corporate Defendants if in the judgment of the Receiver such operations cannot be continued legally and profitably;

K.

P. Issue subpoenas to obtain Documents and records pertaining to the Receivership, and conduct discovery in this action on behalf of the Receivership estate;

U. Cooperate with reasonable requests for information or assistance from any state or federal civil or criminal law enforcement agency and

V. File timely reports with the Court at reasonable intervals, or as otherwise directed by the Court.

XIII.

TRANSFER OF RECEIVERSHIP PROPERTY TO RECEIVER

IT IS FURTHER ORDERED that the Defendants, their Representatives, and any other Person, with possession, custody or control of property or records relating to the Receivership Defendants shall, upon notice of this Order by personal service or otherwise, immediately notify the Receiver of, and,

E. All keys, codes, user names and passwords necessary to gain or to secure access to any Assets or Documents of the Receivership Defendants, including access to their business premises, means of communication, accounts, computer systems, or other property.

In the event that any person or entity fails to deliver or transfer any Asset or Document, or otherwise fails to comply with any provision of this Section, the Receiver ~~may~~ file an Affidavit of Non-Compliance regarding the failure and a motion seeking compliance

XIV .

PROVISION OF INFORMATION TO RECEIVER

IT IS FURTHER ORDERED that Defendants shall provide to the Receiver, immediately upon request, the following:

A. A list of all Assets and property, including ahe Ree2(ve)-6(r)02(e2(ve)-6 up]-5(l)-ce6(t)v

C. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any Assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, the Receivership Defendants or the Receiver; and

D. Refusing to cooperate with the Receiver or the Receiver's duly authorized agents in the exercise of their duties or authority under any order of this Court.

XVII .

RECEIVER'S BOND

IT IS FURTHER ORDERED that the Receiver shall file with the Clerk of this Court a bond in the sum of \$25,000.00 with sureties to be approved by the Court, conditioned that the Receiver will well and truly perform the duties of the office and abide by and perform all acts the Court directs. 28 U.S.C. § 754.

XVIII.

COMPENSATION OF THE RECEIVER

IT IS FURTHER ORDERED that the Receiver and all persons or entities retained or hired by the Receiver as authorized under this Order, including counsel to the Receiver and accountants, shall be entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual-out-of-pocket expenses incurred by them, from the Assets now held by, in the possession or control of, or which may be received by, the Receivership Defendants. The Receiver shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation, with the first such request filed no more than sixty (60) days after the date of entry of this Order. The Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

XIX .

ACCESS TO VAST CORPORATE DEFENDANTS'
BUSINESS PREMISES AND RECORDS

IT IS FURTHER ORDERED that, in order to allow the FTC, the State of Florida and the Receiver to preserve Assets and evidence relevant to this action, and to expedite discovery, Plaintiffs and the Receiver, and their agents and assistants, shall have immediate access to all business premises and storage facilities, owned, controlled, or used by the Vast Corporate Defendants, including but not limited to the offices of the Vast Corporate Defendants. Such locations include, but are not limited to 2855 S. Congress Avenue, Suite AB, Delray Beach, Florida, 33445. The FTC, the State of Florida, and the Receiver are authorized to obtain the assistance of the U.S. Marshal's office and other federal, state and local law enforcement officers, as they deem necessary to effect service and to implement peacefully the provisions of this Order. The FTC, the State of Florida, and the Receiver, and their representatives, agents, and assistants, are authorized to remove Documents from the Vast Corporate Defendants' premises in order that they may be inspected, inventoried, and copied for the purpose of preserving discoverable material in connection with this action. Plaintiffs shall return such material within seven (7) business days of completing inspection, inventory and copying. Plaintiff's access to the Vast Corporate Defendants' documents pursuant to this Section shall not provide grounds for the Vast Corporate Defendants to object to any subsequent request for documents served by any Plaintiff.

The Vast Defendants and all employees or agents of the Vast Corporate Defendants shall provide the FTC, the State of Florida, and the Receiver with any necessary means of access to the Vast Corporate Defendants' Documents and records, including, without limitation,

locations of the Vast Corporate Defendants' business premises, keys and combinations to locks,

Defendant

XXIII.

DURATION OF TEMPORARY RESTRAINING ORDER

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire fourteen (14) days from the date of entry noted below unless, within such time, the Order is extended for an additional period not to exceed fourteen (14) days for good cause shown, or unless, as to any Defendant, such Defendant consents to an extension for a longer period.

XXIV .

PRELIMINARY INJUNCTION HEARING


IT IS FURTHER ORDERED, pursuant to Federal Rule of Civil Procedure 65(b), that each Defendant shall appear before this Court on the 24th day of November 2014, at 1:00 o'clock p.m., 701 Clematis Street, West Palm Beach, FL 33401, Courtroom 4, to show cause, if there is any, why this Court should not enter a Preliminary Injunction enjoining the violations of law alleged in the Complaint, continuing the freeze of their assets, and imposing such additional relief as may be appropriate.

XXV.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

DONE AND ORDERED in chambers in West Palm Beach, Palm Beach County, Florida, this 12th day of November, 2014 at 2:16 p.m.


KENNETH A. MARRA
United States District Judge