

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,
Plaintiff,
v.
SALE SLASH, LLC, et al.,
Defendants.

CV 15-3107 PA (AJW)
PRELIMINARY INJUNCTION (“PI”) as filed

Application for Preliminary Injunction as to Defendants Apex Customer Care LLC, Penway
LLC, Renvee LLC, Optima Pro, LLC, Optima0 “ %B€ LLC, Renvee LLC, ù enve

1 2. Venue in this district, process, and service of process are proper.

2 3. There is good cause to believe that defendants Apex Custom Care LLC,
3 Penway LLC, Renvee LLC, Optim Products LLC, and Edgar Baley (collectively
4 "Defendants"), have engaged and are likely to continue to engage in acts or practices that
5 violate Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) & 52, and Section 5(a) of
6 the CAN-SPAM Act, 15 U.S.C. § 7704(a), and that the FTC is more likely to prevail on
7 the merits of this action.

8 4. There is good cause to believe that consumers will suffer immediate and
9 continuing harm from Defendants' ongoing violations of Section 5(a) and 12 of the FTC Act
10 and Section 5(a) of the CAN-SPAM Act unless Defendants are restrained and enjoined by
11 order of this Court.

12 5. There is good cause to believe that immediate and irreparable damage to the
13 Court's ability to grant effective final relief for consumers in the form of monetary
14 restitution and/or disgorgement of ill-gotten gains will occur from the transfer, dissipation,
15 or concealment by Defendants of their assets or business records unless Defendants are
16 immediately restrained and enjoined by order of this Court. Therefore, there is good cause
17 for an asset freeze.

18 6. Weighing the equities and considering the FTC's likelihood of
19 success, this Order is in the public interest.

20 7. See and

21
22
23
24
25
26
27
28

1 contracts, m

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 e. The disclosure must use diction and syntax understandable to ordinary
2 consumers and must appear in each language in which the representation that requires the
3 disclosure appears.

4 f. The disclosure must comply with these requirements in each medium
5 through which it is received, including all electronic devices and face-to-face
6 communications.

7 g. The disclosure must not be contradicted, originated by or inconsistent
8 with, anything else in the communication.

9 4. "Commercial electronic mail message" (or "commercial email") means any
10 electronic mail message the primary purpose of which is the commercial advertisement or
11 promotion of a commercial product or service (including the content on an Internet website
12 operated for commercial purposes). 15 U.S.C. § 7702(2).

13 5. "Competent and reliable scientific evidence" means tests, analyses, research,
14 studies that have been conducted and evaluated in an objective manner by qualified
15 persons and are generally accepted in the profession to yield accurate and reliable results.

16 6. "Corporate Defendants" means Sale Slash, LLC, a California limited liability
17 company, Purists Choice LLC, a California limited liability company, Apex Customer Care
18 LLC, a California limited liability company, Penway LLC, a California limited liability
19 company, Renvee LLC, a California limited liability company, and OptimProducts Envee ny orni

20
21
22
23
24
25
26
27
28

1 9. "Document" or "Documents" means any materials listed in Federal Rule of
2 Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio
3 and video recordings, computer records, and other data compilations from which
4 information can be obtained and translated, if necessary, through detection devices into
5 reasonably usable form. A draft or non-identical copy is a separate document within the
6 meaning of the term.

7 10. "Financial Institution" means any bank, savings and loan institution, credit
8 union, or any financial depository of any kind, including, but not limited to, any brokerage
9 house, trustee, broker-dealer, escrow agent, title company, commodity trading company, or
10 precious metal dealer.

11 11. "Header Information" means the source, destination, and routing information
12 attached to an electronic mail message, including the originating domain name and
13 originating electronic mail address, and any other information that appears in the line
14 identifying, or purporting to identify, a person initiating the message. 15 U.S.C. § 7702(8).

15 12. "Individual Defendants" means Edgar Babayan, Artur Babayan, and Vahe
16 Haroutounian, or by whatever other name each may be known.

17 13. "Initiate," when used with respect to a commercial electronic mail message,
18 means to originate or transmit such message or to procure the origination or transmission of
19 such message. 15 U.S.C. § 7702(9).

20 14. "New Corporate Defendants" means Apex Customer Care LLC, a California
21 limited liability company, Penway LLC, a California limited liability company, Renvee
22 LLC, a California limited liability company, and OptimProducts LLC, a California limited
23 liability company, and their successors and assigns, as well as subsidiaries, and any
24 fictitious business entities or business entities created or used by these entities.

25 15. "New Individual Defendant" means Edgar Babayan, or by whatever other
26 name he may be known.

27
28

1 16. "Person" means a natural person, an organization or other legal entity
2 including a corporation, partnership, sole proprietorship, limited liability company,
3 association, cooperative, or any other group or combination acting as an entity

4 17. "Plaintiff," "Commission," or "FTC" means the Federal Trade Commission.

5 18. "Procure," when used with respect to the initiation of a commercial electronic
6 mail message, means intentionally to pay or provide other consideration to, or induce,
7 another person to initiate such message on one's behalf

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 defined above, that is sufficient in quality and quantity based on standards generally
2 accepted in the scientific fields, when considered in light of the entire body of relevant and
3 reliable scientific evidence, to substantiate the representation is true.

4 II. PROHIBITED MISREPRESENTATIONS

5 IT IS FURTHER ORDERED that Defendants and their officers, agents, servants,
6 employees, and attorney and all other persons in active concert or participation with any
7 them who receive actual notice of this Order by personal service or otherwise, whether
8 acting directly or through any corporation, subsidiary, division, or other device, in
9 connection with the advertising, marketing, promotion, offering for sale, or sale of any
10 Covered Product, are hereby restrained and enjoined from misrepresenting, or assisting
11 others in misrepresenting, directly or indirectly, expressly or by implication, any material
12 fact, including, but not limited to, that any Covered Product is or has been used, endorsed, or
13 approved by specifically identified celebrities such as Oprah Winfrey and The Doctors
14 television show.

15 III. PROHIBITIONS AGAINST COMMERCIAL EMAIL
16 MISREPRESENTATIONS

17 IT IS FURTHER ORDERED that Defendants and their officers, agents, servants,
18 employees, and attorney and all other persons in active concert or participation with any
19 them who receive actual notice of this Order by personal service or otherwise, whether
20 acting directly or through any corporation, subsidiary, division, or other device, in
21 connection with the advertising, marketing, promotion, offering for sale, or sale of any
22 product, service, or program are hereby restrained and enjoined from initiating the
23 transmission of a commercial email that:

24 A. Contains, or is accompanied by materially false or materially misleading
25 header information, including but not limited to:

- 26 1. an originating electronic mail address, domain name, or Internet
27 Protocol address when the access to such originating electronic mail address, domain name
28

1 or Internet Protocol address was obtained by means of false or fraudulent pretenses or
2 representations; or

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

6 B. Contains a subject heading likely to mislead recipients, acting reasonably
7 under the circumstances, about material facts regarding the contents or subject matter of the
8 message.

9 IV. PROHIBITIONS AGAINST OPT-OUT

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 1 C. Does not include the sender's valid physical postal address; or
- 2 D. Is sent to a recipient's email address, more than 10 days after the sender
- 3 receives a request from that email recipient not to receive future commercial electronic mail
- 4 messages from the sender at the recipient's email address.

5 V. ASSET FREEZE

6 IT IS FURTHER ORDERED that Defendants and their officers, agents, servants,

7 employees, attorneys, and all other persons in active concert or participation with any

8 them who receive actual notice of this Order by personal service or otherwise, whether

9 acting directly or through any trust, corporation, subsidiary, division, or other device, except

10 as provided herein, as stipulated by the parties, or as directed by further order of the Court,

11 are hereby restrained and enjoined from:

12 A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling,

13 concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or

14 security interest or other interest in, or otherwise disposing of funds, real or personal

15 property accounts, contracts, shares of stock, lists of consumer names, or other assets, or

16 any interest therein, wherever located, including outside the territorial United States, that

17 are:

- 18 1. Owned, controlled, or held by in whole or in part, for the benefit of, or
- 19 subject to access by or belonging to, any Defendant;
- 20 2. In the actual or constructive possession of any Defendant; or
- 21 3. In the actual or constructive possession of, owned, controlled, or
- 22 held by or subject to access by or belonging to, any other corporation, partnership, trust, or
- 23 any other entity directly or indirectly owned, managed, or controlled by or under common
- 24 control with, any Defendant, including, but not limited to, any assets held by or for any
- 25 Defendant in any account at any bank or savings institution

26
27
28

1 A. Hold and retain within its control and prohibit the withdrawal, ~~own,~~
2 assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation,
3 conversion, sale, liquidation, or other disposal of the assets, funds, documents, or
4 other property held by or under its control:

5 1. On behalf of, or for the benefit of, any Defendant or any other Person
6 subject to Section V above;

7 2. In any account maintained in the name of, or for the benefit of, or
8 subject to withdrawal by any Defendant or other Person subject to Section V above; and

9 3. That are subject to access or used by under the signature power of
10 any Defendant or other Person subject to Section V above;

11 B. Deny Defendants access to any safe deposit boxes or storage facilities that are
12 either:

13 1. Titled in the name, individually or jointly, of any Defendant, or other
14 Person subject to Section V above; or

15 2. Subject to access by any Defendant or other Person subject to Section V
16 above;

17 C. Within five (5) days of the date of service of this Order, provide Plaintiff a
18 sworn statement setting forth:

19 1. The identification number of each account or asset titled in the name
20 individually or jointly, of any Defendant, or held on behalf of, or for the benefit of, any
21 Defendant or other Person subject to Section V above, including all trust accounts
22 on behalf of any Defendant or subject to any Defendant's control;

23 2. The balance of each such account, or a description of the nature and
24 value of such asset;

25 3. The identification and location of any safe deposit box, commercial
26 mail box, or storage facility that is either titled in the name, individually or jointly, of any
27 Defendant, or is otherwise subject to access or control by any Defendant or other Person
28 subject to Section V above, whether in whole or in part; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
~~26~~
27
28

1 personal finances of Defendants; to the business practices or finances of entities directly or
2 indirectly under the control of Defendants; or to the business practices or finances of entities
3 directly or indirectly under common control with any other Defendant; and

4 C. Creating, operating, or exercising control over any new business entity
5 whether newly formed or previously inactive, including any partnership, limited partnership,
6 joint venture, sole proprietorship, or corporation, without first providing Plaintiff with a
7 written statement disclosing: (1) the name of the business entity; (2) the address, telephone
8 number, email address, and website address of the business entity; (3) the names of the
9 business entity officers, directors, principals, managers, and employees; and (4) a detailed
10 description of the business entity intended activities.

11 VIII. PROHIBITION ON DISCLOSING CUSTOMER INFORMATION

12 IT IS FURTHER ORDERED that Defendants and their officers, agents, servants,
13 employees, attorneys, and all other persons in active concert or participation with any
14 of them, who receive actual notice of this Order by personal service or otherwise, whether
15 acting directly or through any trust, corporation, subsidiary, division, or other device, are
16 hereby restrained and enjoined from:

17 A. Selling, renting, leasing, transferring, or otherwise disclosing the name
18 address, birth date, telephone number, email address, Social Security number, Social
19 Insurance number, credit card number, bank account number, or other financial or
20 identifying personal information of any person from whom or about whom any Defendant
21 obtained such information in connection with activities alleged in Plaintiff's Complaint; and

22 B. Benefitting from or using the name, address, birth date, telephone number,
23 email address, Social Security number, Social Insurance number, credit card number, bank
24 account number, or other financial or identifying personal information of any person from
25 whom or about whom any Defendant obtained such information in connection with activities
26 alleged in Plaintiff's Complaint.

27
28

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Defendant or are under a Defendant's direct or indirect control, jointly, severally or
2 individually, including the addresses and names of any foreign or domestic financial
3 institution or other entity holding the documents and assets, along with the account names
4 and balances;

5 C. Hold and retain all such documents and assets and prevent transfer,
6 disposition, or dissipation whatsoever of such documents or assets; and

7 D. Unless previously completed in full compliance with the TRO or May 12,
8 2015 Preliminary Injunction, within three (3) business days following entry of this Order,
9 provide Plaintiff access to Defendants' records and documents held by financial institutions
10 or other entities outside the territory of the United States of America, by signing and
11 delivering to Plaintiff's counsel the Consent to Release Financial Records attached to this
12 Order as Attachment A.

13 XI. INTERFERENCE WITH REPATRIATION

14 IT IS FURTHER ORDERED that Defendants are hereby restrained and enjoined
15 from taking any action, directly or indirectly, which may result in the encumbrance or
16 dissipation of foreign assets, or in the hindrance of the repatriation required by the preceding
17 Section X of this Order, including, but not limited to:

18 A. Sending any statement, letter, facsimile, email or wire transmission, or
19 telephoning or engaging in any other act, directly or indirectly, that results in a determination
20 by a foreign trustee or other entity that a "duress" event has occurred under the terms of a
21 foreign trust agreement, until such time that assets have been fully repatriated pursuant to the
22 preceding Section of this Order; and

23 B. Notifying any trustee, protector or other agent of any foreign trust or other
24 related entities of either the existence of this Order, or of the fact that repatriation is required
25 pursuant to a Court order, until such time as assets have been fully repatriated pursuant to
26 the preceding Section of this Order.

27
28

DISTRIBUTION OF ORDER BY DEFENDANTS

provide a copy of
s, directors, officers,
s, agents, representatives, sales

3 this Order to each of their corporations, subsidiaries, affiliates, division

4 age, successors, assigns, employees, attorneys,

5 entities, sales persons, telemarketers, independent contra

6 FURTHER ORDERED that Defendants shall immediately

7 and any other persons

8

9

10

11

12

13

14

15

16

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTACHMENT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SALE SLASH, LLC, et al.,

Defendants.

CV 15-3107 PA (AJW)

CONSENT TO RELEASE FINANCIAL
INFORMATION

I, _____, of _____ (city or province and county) do hereby direct any person, bank, savings and loan association, credit union, depository institution, finance company, commercial lending company, payment processor, payment processing entity, common carrier, customs broker, commercial mail receiving agency, mail holding and/or forwarding company, brokerage house, escrow agent, money market or mutual fund, title company, commodity trading company, or trustee, that holds, controls or maintains custody of assets, wherever located, that are owned or controlled by me, or any of the above Defendants, in whole or in part, or at which I, or any of the above Defendants, have an account of any kind upon which I am authorized to draw, and its officers, employees and agents, to disclose all information and deliver copies of all documents of every nature in its possession or control which relate to the said accounts to

1 any attorney for Plaintiffs, and to give evidence relevant thereto, in the above captioned

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

10 fahe" hR " F†Fâ A -â F†VFY F æS A F...,if