

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Paul Navestad aka Paul Richard
individually and doing business
as the Cash Grant Institute,
Global Ad Agency, Global
Advertising Agency, Domain
Leasing Company and/or Cash
Grant Search, and

Chintana Maspakorn aka
Christina Maspakorn
individually and doing business
as the Cash Grant Institute,
Global Ad Agency, Global
Advertising Agency, Domain
Leasing Company and/or Cash
Grant Search,

Defendants.

Case No.: 09-CV-6329(T)

ORDER GRANTING PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

On Thursday, June 25, 2009, the Court granted Plaintiff Federal Trade Commission's ("FTC") Ex Parte Motion for a Temporary Restraining Order against Defendants Paul Navestad aka Paul Richard individually and doing business as the Cash Grant Institute, Global Ad Agency, Global Advertising Agency, Domain Leasing Company and/or Cash Grant Search, and Chintana Maspakorn aka Christina Maspakorn individually and doing business as the Cash Grant Institute, Global Ad Agency, Global Advertising Agency, Domain Leasing Company and/or Cash Grant Search (collectively "the Defendants"). The Court set

a hearing on the Order to Show Cause Why a Preliminary Injunction Should Not Issue for 10 a.m. on Thursday, July 2, 2009. The FTC subsequently sought an extension, and the issuance of a Revised Temporary Restraining Order. The Revised Temporary Restraining Order also applied to Global BPO and USA Asia Telecom. The Court granted the extension, issued the revised Temporary Restraining Order, and as part of the Revised Temporary Restraining Order, set an Order to Show Cause Hearing for July 15, 2009 at 10:00 a.m.

The motion for a Preliminary Injunction came before the Court on the Order to Show Cause Hearing on July 15, 2009. The hearing was held on the papers. Russell Deitch and Janis Kestenbaum appeared on behalf of the FTC. No one appeared for the Defendants. The Defendants did not file any papers.

Upon consideration of the FTC's complaint, Memorandum of Points and Authorities in Support of Plaintiff's Ex Parte Motion for a Temporary Restraining Order and Other Relief, Plaintiff's Supplemental Memorandum in Support of an Application for a Preliminary Injunction, and the declarations, and exhibits in support thereof, this Court finds that:

1. Under Section 415.20 of the California Code of Civil Procedure, if a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served, service of the summons and complaint may be effectuated by delivering a copy of the summons to an adult other than a defendant at the defendant's usual mailing address, informing the adult of

the contents thereof, and by subsequently mailing, by first-class mail, the documents to the defendant at that address. Cal. Code of Civ. Proc. § 415.20. Service is complete on the 10th day after mailing. Id.

2. The FTC has tried with reasonable diligence to personally deliver the summons and complaint to the Defendants but has been unsuccessful in its efforts to do so.

3. 8960 Cynthia Street, Number 206, West Hollywood, California, 90069, is an apartment or condominium in a residential complex, and is the Defendants' usual mailing address.

4. On July 3, 2009, a process server retained by the FTC went to 8960 Cynthia Street, Number 206, West Hollywood, California, 90069. The process server delivered the summons, complaint, temporary restraining order, and other documents on an adult, other than the Defendants, living in Number 206, and informed the adult of the contents of the papers being delivered.

5. On July 6, 2009, the process server sent by first-class mail the summons, complaint, temporary restraining order and other documents to the Defendants at 8960 Cynthia Street, Number 206, West Hollywood, California, 90069.

6. The above-described service by the FTC of the summons and complaint to the Defendants via their usual mailing address at 8960 Cynthia Street, #206, West Hollywood, California, 90069 satisfies Section 415.20 of the California Code of Civil Procedure, with service being effective on July 16, 2009. As a consequence, the

FTC has also satisfied the service requirements of Rule 4(e)(1) of the Federal Rules of Civil Procedure. Service may be effected pursuant to the law of the state in which service is made. Fed. R. Civ. P. 4(e)(1). Both Defendants have been served pursuant to Rule 4(e)(1).

7. The FTC also provided notice of the lawsuit and request for a preliminary injunction to the Defendants, prior to the Order to Show Cause Hearing, in satisfaction of Rule 65(a) of the Federal Rules of Civil Procedure, through additional means including e-mail, phone and the public posting of the Complaint and the Revised Temporary Restraining Order.

8. The FTC has made a substantial showing of the likelihood of success as to both a current violation and the risk of repetition. The FTC has presented substantial evidence that the Defendants violated Section 5 of the FTC Act, and the Telemarketing Sales Rule ("TSR"). Additionally, the Defendants have engaged in extensive violations of the law, and Defendant Navestad has a well documented history of making misrepresentations, and therefore there is a risk of repetition of violations of Section 5 of the FTC Act and the TSR absent injunctive relief.

9. The Defendants lure consumers by holding out the promise of easy and quick access to grants to overcome personal financial problems. In the Cash Grant Institute scam, the Defendants represent to consumers that they have already qualified for, or are likely to receive, free grant money to overcome their financial

problems. Similarly, in the Cash Grant Search scam, the Defendants represent that government grants are available to everyone for almost any purpose.

10. In reality, the Defendants' representations are false. For example, the FTC has submitted a Declaration from David Bauer, who has over twenty years of experience with government and private grants, and the Declaration sets forth the following facts.¹ Federal grants are awarded for public purposes, like medical research.² Federal grants are not awarded to individual consumers for use for their personal financial difficulties.³ Grants from state, county, or local governments are also awarded to accomplish or support a public purpose, such as creation of an after-school program for economically disadvantaged children.⁴ They are rarely, if ever, available to provide financial assistance, such as paying a mortgage or credit card debt.⁵ Grants from private sources are also awarded to promote the public interest or address a societal need, such as conducting medical research or running a homeless shelter.⁶ Private grants are rarely awarded for personal financial

¹Declaration of David Bauer, Exhibit 4 in Support of Plaintiff's Ex Parte Application for a Temporary Restraining Order. [Docket Entry 14-2]

²Ex. 4, Bauer Decl. ¶¶ 10 -11.

³Ex. 4, Bauer Decl. ¶¶ 10 - 11.

⁴Ex. 4, Bauer Decl. ¶ 12.

⁵Ex. 4, Bauer Decl. ¶ 12.

⁶Ex. 4, Bauer Decl. ¶ 12.

assistance such as paying a mortgage or credit card debt.⁷ Additionally, most grants are offered to state and local government entities, education and research institutions, and not-for-profit organizations.⁸ Only a very limited number of grants are available to individuals.⁹ Moreover, obtaining a grant is not an instantaneous, easy, or quick process.¹⁰ Grant seekers must apply for a grant, meet often stringent and specific selection criteria, and be approved by the grant providers.¹¹ This process takes time. For a federal grant, it normally takes one to one-and-a-half years.¹²

11. The Defendants' false claims violate Section 5(a) of the FTC Act, 15 U.S.C. Section 45(a)(1). Section 5 provides that "unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful." 15 U.S.C. 45(a)(1).

12. The Defendants have also violated the TSR.

13. Since October 17, 2003, sellers and telemarketers have been prohibited from initiating an outbound call to a person when that person's number is on the Registry. 16 C.F.R. § 310.4(b)(1)(iii)(B). The Defendants are sellers or telemarketers

⁷Ex. 4, Bauer Decl. ¶ 12.

⁸Ex. 4, Bauer Decl. ¶ 13.

⁹Ex. 4, Bauer Decl. ¶ 13.

¹⁰Ex. 4, Bauer Decl. ¶¶ 14 - 17.

¹¹Ex. 4, Bauer Decl. ¶¶ 14 - 17.

¹²Ex. 4, Bauer Decl. ¶ 17.

under the TSR since they arrange for the sale of goods or services, or initiate or cause telemarketers to initiate outbound telephone calls. The Defendants' calls are sales calls to induce the purchase of grant related services.

14. The Defendants in this case called consumers, throughout the United States, who are on the National Do Not Call Registry from July 2008 until at least April 2009. The Defendants' calls to consumers and numbers on the Registry are numerous. The FTC has received over 1,800 Do Not Call complaints against phone numbers connected to Global Ad Agency, of which at least 700 are complaints concerning the Cash Grant Institute and ***requestagrants.com***.

15. Since October 17, 2003, sellers and telemarketers have been generally prohibited from calling any telephone number within a given area code, unless the seller has first paid the annual fee for access to the telephone numbers, within that area code, that are included in the National Do Not Call Registry. 16 C.F.R. § 310.8(a) and (b). The Defendants were telemarketers for the Cash Grant Institute. Neither the Cash Grant Institute, nor any of Defendants, paid the required fee for access to the registry prior to making the calls.

16. Since October 1, 2003, sellers and telemarketers have been prohibited from abandoning any outbound telephone call. 16 C.F.R. § 310.4(b)(1)(iv). An outbound call is "abandoned" if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) second of the person's

completed greeting. The Defendants' calls were comprised of prerecorded messages, and consumers who answered their phones were not connected to a live operator within two seconds.

17. Since December 1, 2008, the law has mandated that, in the case of a call that can be answered by a consumer, that the message disclose an automated interactive voice and/or keypress-activated opt-out mechanism that a call recipient can use to assert a Do Not Call request pursuant to § 310.4(b)(1)(iii)(A) at any time during the message. In the case of a call that could be answered by an answering machine or voicemail service, the TSR requires that the message disclose a toll-free telephone number that a call recipient can use to assert a Do Not Call request pursuant to § 310.4(b)(1)(iii)(A). 16 C.F.R. § 310.4(b)(1)(v). Defendants' Cash Grant Institute message fails to include a toll-free number to assert a Do Not Call Request.

18. The TSR prohibits any seller or telemarketer from making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution. 16 C.F.R. § 310.3(a)(4). The Defendants falsely claimed that consumers are already qualified for, or are likely to receive, free grant money to overcome their financial problems, and that government grants are available to everyone for almost any purpose. Defendants made these claims to induce consumers to pay for grant-related services. Therefore, Defendants violated the TSR by making false claims to induce the purchase of goods or services.

19. The FTC's evidence shows that the Defendants repeatedly make false claims about the availability and likelihood of receiving grants. Moreover, Defendant Navestad uses front companies located outside the United States and an alias, all of which lead to the conclusion that he is likely to dissipate assets. Thus, continuation of the asset freeze imposed as part of the temporary restraining order is appropriate here to preserve the status quo and ensure that funds do not disappear during the course of this litigation.

20. The FTC seeks the continuation of the appointment of the receiver over the Defendants' businesses as well as all affiliated websites. Continuing the appointment of the receiver appointed by the Court with the temporary restraining order is appropriate to preserve the potential for a complete remedy in this case. It will serve to maintain the status quo, including the destruction of documents and the sequestration of assets while the case is pending. Such an appointment is particularly appropriate where, as here, the Defendants' extensive illegal activity presents the likelihood of continued misconduct and the public faces a risk that the business may continue to operate unlawfully without a receiver's oversight.

21. It is in the interest of justice and the public interest to grant the Commission's motion for a Preliminary Injunction. Accordingly,

IT IS HEREBY ORDERED that the Court **GRANTS** Plaintiff's motion for a Preliminary Injunction.

IT IS FURTHER ORDERED that the Court shall issue a separate Preliminary Injunction.

ALL OF THE ABOVE IS SO ORDERED.

S/ Michael A. Telesca

MICHAEL A. TELESCA
United States District Judge

Dated: Rochester, New York
July 21, 2009