

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

FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ.No. 09 C 2927
	)	Judge Grady
TRANSCONTINENTAL WARRANTY,	)	
INC., a Delaware corporation,	)	
	)	
CHRISTOPHER D. COWART	)	
	)	
Defendants.	)	

**PLAINTIFF FEDERAL TRADE COMMISSION’S MEMORANDUM  
IN SUPPORT OF ITS MOTION FOR A TEMPORARY RESTRAINING  
ORDER WITH ASSET FREEZE AND THE APPOINTMENT OF A RECEIVER**

**I. INTRODUCTION**

This action has been brought to stop the deceptive and abusive tactics of a seller of purported extended automobile “warranties,” which lies about who it is and what it sells, and brazenly violates a panoply of federal laws in virtually every one of the millions of telemarketing calls it makes each week. Defendants target consumers for fraudulent sales of automobile service contracts through deceptive mailings, direct telemarketing calls, and “robocalls”– the mass transmission of prerecorded telemarketing calls. Regardless of the medium, defendants mislead consumers to believe that defendants are, or directly affiliated with, either the manufacturer or dealer of the consumers’ automobile. Often, defendants’ telemarketers baldly claim to be calling from the manufacturer of the consumer’s automobile. Defendants also assert that the expiration of the consumers’ original vehicle warranty is imminent and that their product is an extension of the original manufacturer’s warranty, regardless of the status of the consumer’s warranty or whether the consumer even owns an automobile.

Defendants, however, are not affiliated with the consumer’s vehicle manufacturer or dealership, have no information as to the status of the consumer’s original warranty, and do not sell extensions of the original manufacturer’s warranty. It is only after defendants’ telemarketers



reveals an enterprise utterly permeated with fraud, leaving no doubt that the Commission is likely to succeed in showing that defendants are violating the FTC Act and the TSR. As a result, we ask the Court to issue a temporary restraining order that includes a freeze of defendants' assets, expedited discovery, and the appointment of a temporary receiver over the corporate defendant.<sup>2</sup> The requested relief is necessary to prevent continued injury to consumers, the destruction of evidence, and the dissipation of assets, thereby preserving the Court's ability to provide effective final relief.

## **II. DEFENDANTS**

Defendants are a corporation and its President and CEO Christopher D. Cowart. The corporate Defendant, Transcontinental Warranty, Inc., is a Delaware corporation with its headquarters in Fort Lauderdale, Florida.<sup>3</sup> It was incorporated in May 17, 2007, by Christopher D. Cowart. It previously used the name Transamerica Warranty, Inc., and recently registered a fictitious name in Florida, Guaranteemycar.com.<sup>4</sup> Although Transcontinental's registered address is in Fort Lauderdale, it uses a P.O. Box in Pompano Beach, Florida, when corresponding with consumers.<sup>5</sup>

## **III. DEFENDANTS' ILLEGAL CONDUCT**

Since at least 2007, defendants have operated a scam selling motor vehicle service contracts, which they characterize as "extended automobile warranties," to consumers throughout the United States. Defendants' scheme is designed to convince potential customers (1) that defendants either are, or are working on behalf of, the manufacturer or dealer of the

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<sup>2</sup> Unlike similar cases filed by the FTC, the FTC has not requested *ex parte* relief in this case, nor has it sought to have the record temporarily sealed. In the course of the investigation resulting in today's filing of the *Voice Touch* case, the *Voice Touch* defendants became aware of the investigation. An attorney for one or more of the *Voice Touch* defendants subsequently contacted the FTC. Several weeks later, an attorney representing defendants in this action contacted the FTC, offering to assist the FTC in its investigation of *Voice Touch*. In light of these contacts, the FTC is providing notice of its motions to the various defendants in both actions.

<sup>3</sup> PX 2, Menjivar Dec. ¶¶ 4(d) & 6.

<sup>4</sup> PX 2, Menjivar Dec. ¶ 4(f).

<sup>5</sup> PX 13, Dempsey Dec. Att. G; PX 15, Hauser Dec. Att. B; PX 16, Kane Dec. Att. C; PX 20, Weegar Dec. ¶ 9.

customer's vehicle, (2) that the consumer's original automobile warranty is about to expire, and (3) that defendants are selling extensions of the consumers' original vehicle warranty. All too often, defendants' scheme succeeds, resulting in consumers purchasing extended service contracts that they otherwise would not want or do not need.

**A. Defendants Violate the FTC Act**

**1. Defendants' Deceptive Sales Calls and Mailings**

Defendants' entire sales pitch is rife with misrepresentations and outright lies. Defendants rely on a variety of methods to initially contact consumers. But whether consumers are initially contacted by robocall, direct telemarketing calls, or direct mail, the claims are the same. Consumers are led to believe that defendants are, or work for, the manufacturer or dealer of the consumer's automobile and that the consumer's warranty is expiring or has expired. Defendants' intent is to create a false sense of urgency that their offer for the extended warranty will expire if they do not act immediately.

The key component of Transcontinental's telemarketing campaign involves robocalls. When consumers answer a robocall, they hear a brief prerecorded message warning them that their automobile warranty is about to expire. It then instructs consumers to "press one" to speak to a warranty specialist.<sup>6</sup> When consumers "press one," the calls are transferred to a live representative at one of Transcontinental's call centers.<sup>7</sup> Because these calls state that the consumer's vehicle warranty is expiring, the message falsely indicates that the caller is associated with the consumer's automobile dealer or manufacturer. The prerecorded messages also warn consumers that they must "extend coverage before it is too late," conveying to consumers that their dealership or manufacturer is contacting them to avoid a gap in coverage.<sup>8</sup>

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<sup>6</sup> PX 8, Ames Dec. ¶ 4; PX 10, Ciaburri Dec. ¶ 5; PX 11, Davis Dec. ¶ 3; PX 13, Dempsey Dec. ¶ 16; PX 17, O'Brien Dec. ¶ 5; PX 18, Potter Dec. ¶¶ 5, 7; PX 20, Springer Dec. ¶ 9; PX 20, Weegar ¶ 9.

<sup>7</sup> PX 3, Israel Dec. ¶¶ 5, 10.

<sup>8</sup> Defendants do not sell "warranties" at all, but "service contracts," as those terms are defined in the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6), (7), and (8). By definition, a warranty is provided by the original supplier of a consumer product and only at the time the product is sold. A "service contract" means a contract in writing to perform, over a fixed period of time, services relating to the maintenance or repair (or both) of a consumer product. Referring to their product as a "warranty" is designed to reinforce the notion that defendants are connected to the manufacturer of the consumer's

Defendants also mail postcards to consumers with messages that are designed to mislead them into believing that their original warrantor is contacting them about their warranty. While these postcards include Transcontinental's company name and return address on the upper-left hand corner, they state the make, model, and year of the consumer's car in large bold print, along with a vehicle "owner ID no." These postcards repeatedly invite consumers to "renew" their warranty and state that the consumers' vehicle warranty will expire or may have recently expired.<sup>9</sup>

Defendants' sales are all made over the telephone by defendants' call center sales agents, whether the initial contact is a robocall, postcard, or direct outbound telemarketing call. These calls reinforce the initial deceptive claims. Defendants' telemarketing scripts instruct the telemarketers to use a generic name, "Warranty Service Center," and describe themselves as "warranty specialists" during the calls.<sup>10</sup> The telemarketers ask consumers for the year, model, and mileage of the consumer's car, and then say, "Please allow me to put you on hold while I pull up your information . . . Even though we have not heard from you and before we close out your file, we give you one last courtesy [sic] call to extend your warranty or reinstate it." Of course, defendants have no information or file to look up. Everything they say is designed to reinforce the impression that defendants are affiliated with the consumer's automobile dealership or manufacturer. In fact, telemarketers "confirm" that their records show the consumer's original vehicle warranty is about to expire, even when the consumer lies and claims to own a non-existent car.<sup>11</sup> Not surprisingly, consumers whose warranties are far from expiration, or long past expiration, are still told that their warranties are about to expire.<sup>12</sup> While these scripts themselves are misleading, defendants' telemarketers frequently go beyond the scripts to deceive

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automobile.

<sup>9</sup> PX 2, Menjivar Dec. ¶¶ 34, 37, & 39.

<sup>10</sup> PX 2, Menjivar Dec. ¶ 30 & Att. U, pp. 41, 43, 45, 47, 50, 52, & 56; PX 3, Israel Dec. Att. B; PX 8, Ames Dec. ¶ 7; PX 11, Davis Dec. ¶ 14.

<sup>11</sup> PX 11, Davis Dec. ¶ 9; PX 18, Potter Dec. ¶ 7

<sup>12</sup> PX 8, Ames Dec. ¶¶ 9, 11; PX 10, Ciaburri Dec. ¶ 6; PX 11, Davis Dec. ¶ 3; PX 12, Dabrowski Dec. ¶ 5; PX 17, O'Brien Dec. ¶ 6; PX 20, Springer Dec. ¶ 7; PX 20, Weegar Dec. ¶ 7.

consumers, often expressly stating that they work for the consumer's automobile manufacturer or dealership.<sup>13</sup> Transcontinental's training manual states that if asked the question, "Who Are You?", telemarketers are to respond: "We are *the Warranty Service Center*. We provide warranty services for \_\_\_\_\_ (Ford, GMC, Honda, Toyota, Nissan, etc.) throughout the United States and Canada."<sup>14</sup> Similarly, defendants' telemarketer who trains new employees, referred to himself as an "administrator" for the consumer's automobile manufacturer during a telemarketing call.<sup>15</sup> Defendants' telemarketers who are unwilling to lie about their affiliation are instructed to simply hang up on any consumer who asks them the name of their firm,<sup>16</sup> or face termination.<sup>17</sup>

The experience of Stephanie O'Brien is illustrative. In February 2009, O'Brien received a phone call on her home telephone, which is on the Registry.<sup>18</sup> When she answered the telephone, a recorded message played indicating that this was her "final notice" and that her warranty was expiring. The message told her to 'press 1' to speak to a representative. The representative expressly told her that "he was from Toyota" and that they had been calling her for the past 90 days to inform her that her car warranty was "about to expire."<sup>19</sup> He told her that it was her final notice to renew her "car warranty" and that she "needed to renew now" because she "would not get another chance to do so." Feeling pressured, O'Brien accepted the offer.

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<sup>13</sup> PX 3, Israel Dec. ¶ 15; PX 8, Ames Dec. ¶ 7.; PX 17, O'Brien Dec. ¶¶ 6, 7.

<sup>14</sup> PX 2, Menjivar Dec. ¶ 30 & Att. U, p. 50.

<sup>15</sup> PX 3, Israel Dec. ¶ 15.

<sup>16</sup> PX 3, Israel Dec. ¶ 13; PX 15, Hauser Dec. ¶ 13; PX 11, Davis Dec. ¶ 9, PX 17, O'Brien Dec. ¶ 13; PX 18, Potter Dec. ¶ 8.

<sup>17</sup> PX 3, Israel Dec. ¶¶ 13, 15.

<sup>18</sup> PX 17, O'Brien Dec. ¶¶ 3, 5.

<sup>19</sup> PX 17, O'Brien Dec. ¶ 7.

manufacturer.<sup>20</sup>

## **2. The Extended Service Contracts**

Although defendants claim to sell extended “warranties” to consumers, what they actually sell are extended service contracts, administered by third-party vendors and financed by other third-parties.<sup>21</sup> In fact, defendants have no relationship with any manufacturer or dealer.<sup>22</sup> During the course of the sales pitch, defendants’ telemarketers frequently provide a synopsis of what will be covered under the “warranty,” but never provide a copy of the contract until after payment has been made.<sup>23</sup> The service contracts cost up to \$3,000, and most consumers agree to pay about \$450 as a down payment and the balance in monthly payments.

The first time most consumers learn that the “warranty” is actually a service agreement, which is not connected to their original warranty or automobile manufacturer, is when they receive an introductory packet including the vehicle service contract and a payment schedule with a financing company if the consumer agreed to finance the “warranty.” When consumers receive this packet, they also learn that the warranties are laden with conditions and restrictions, unlike their original manufacturer’s warranty or the “bumper-to-bumper coverage” they were promised.<sup>24</sup> In many cases, although the sales pitch is predicated on the supposed imminent expiration of the consumer’s original warranty and consumers are told that they are purchasing “sign and drive” warranties, the coverage does not begin until 30-60 days later.<sup>25</sup> For consumers whose original manufacturer warranty is still in effect, the extended service contracts expressly disclaim any coverage.<sup>26</sup>

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<sup>20</sup> PX 17, O’Brien Dec. ¶¶ 12, 18.

<sup>21</sup> PX 3, Israel Dec. ¶ 7 & Att. C; PX 8, Ames Dec. ¶ 12 & Att. A; PX 13, Dempsey Dec. Att. A; PX 16, Kane Dec. Att. A.

<sup>22</sup> PX 3, Israel Dec. ¶ 7 & Att. C; PX 15, Hauser Dec. ¶ 8; PX 17, O’Brien Dec. ¶ 18.

<sup>23</sup> PX 3, Israel Dec. ¶ 23; PX 15, Hauser Dec. ¶¶ 5-8; PX 16, Kane Dec. ¶¶ 5-8.

<sup>24</sup> PX 8, Ames Dec. ¶¶ 8, 13; PX 15, Hauser Dec. ¶ 8; PX 16, Kane Dec. ¶¶ 9-10 & Att. A.

<sup>25</sup> PX 3, Israel Dec. ¶ 22; PX 17, O’Brien Dec. Att. C, p. 4.

<sup>26</sup> PX 8, Ames Dec. ¶ 13; & Att. A; PX 16, Kane Dec. Att. A; PX 17, O’Brien Dec. Att. C, pp. 9 & 24.

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<sup>27</sup> The TSR requires the seller, either directly or



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<sup>31</sup> PX 3, Israel Dec. ¶ 11.

<sup>32</sup> PX 3, Israel Dec. ¶¶ 11, 12.

<sup>33</sup> An outbound call is abandoned if a consumer answers and is not connected to an in-person<sup>8</sup>

#### **IV. LEGAL ARGUMENT**

Defendants have bilked millions of dollars from U.S. consumers with their deceptive business practices, which clearly violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and multiple provisions of the TSR, 16 C.F.R. Part 310. To prevent any further injury to innocent consumers, the Commission seeks a temporary restraining order and a preliminary injunction prohibiting defendants' ongoing deceptive practices. The Commission also asks that the Court freeze defendants' assets, both corporate and personal, to preserve them for restitution to victims, and the appointment of a receiver to both preserve assets and manage the affairs of this enterprise. The Court has full authority to enter the requested relief, which is strongly supported by the evidence.

##### **A. This Court Has the Authority to Grant the Relief Requested**

The FTC Act provides that “in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction.” 15 U.S.C. § 53(b). The practice of defrauding consumers by misrepresenting or omitting material facts in violation of Section 5(a) of the FTC Act presents a “proper case” for injunctive relief under 15 U.S.C. § 53(b). *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1028 (7th Cir. 1988). Once the Commission invokes the federal court's equitable powers, the full breadth of the court's authority is available, including the power to grant such ancillary final relief as rescission of contracts and restitution. *FTC v. Febre*, 128 F.3d 530, 534 (7th Cir. 1997); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 571-72 (7th Cir.), *cert. denied*, 493 U.S. 954 (1989). The court may also enter a temporary restraining order, a preliminary injunction, and whatever additional preliminary relief is necessary to preserve the possibility of providing effective final relief. *World Travel*, 861 F.2d at 1026; *see also Amy Travel*, 875 F.2d at 571. Such ancillary relief may include a freeze of defendants' assets to preserve them for eventual restitution to victims, and the appointment of a receiver. *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1432-34 (11th Cir. 1984); *see also World Travel*, 861 F.2d at 1031; *FTC v. Am. Nat'l Cellular, Inc.*, 810 F.2d 1511, 1512, 1514 (9th Cir. 1987).

The FTC is empowered to enforce the TSR with the same functions and powers as the FTC Act. *See* 15 U.S.C. § 6105(b). Courts are authorized to enter any relief necessary to redress injury to consumers caused by the TSR violation, including the “rescission or

reformation of contracts [and] the refund of money or return of property.” 15 U.S.C. § 57b(a)(1) & (b).

**B. The FTC Meets the Applicable Standard for Injunctive Relief**

To grant preliminary injunctive relief in an FTC Act case, the district court must “(1) determine the likelihood that the Commission will ultimately succeed on the merits and (2) balance the equities.” *World Travel*, 861 F.2d at 1029 (quoting *FTC v. Warner Commc’ns, Inc.*, 742 F.2d 1156, 1160 (9th Cir. 1984)). Under this “public interest” test, “it is not necessary for the FTC to demonstrate irreparable injury.” *Id.* Unlike a private litigant, who generally must show a strong or substantial likelihood of success on the merits, the Commission need only make the statutory showing of a likelihood of ultimate success. *Id.* And when the court balances the equities, the public interest “must receive far greater weight” than any private concerns. *Id.* Preliminary injunctive relief is therefore appropriate if the Commission shows a likelihood of success on the merits and that a balancing of the equities, giving greater weight to the public interest, favors such relief.

**C. The FTC has Demonstrated a Likelihood of Success on the Merits**

**1. Defendants are Violating the FTC Act and the TSR**

There is no doubt that defendants’ activities qualify as deceptive acts or practices under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). An act or practice is deceptive if it involves a material misrepresentation or omission that is likely to mislead consumers acting reasonably under the circumstances. *FTC v. Bay Area Bus. Council*, 423 F.3d 627, 635 (7th Cir. 2005); *FTC v. World Media Brokers*, 415 F.3d 758, 763 (7th Cir. 2005); *World Travel*, 861 F.2d at 1029. The materiality requirement is satisfied if the misrepresentation or omission involves information that is likely to affect a consumer’s choice of, or conduct regarding, a product or service. *Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992), *cert. denied*, 507 U.S. 909 (1993) In deciding whether particular statements are deceptive, courts must look to the “overall net impression” of consumers. *See id.*

The same conduct that violates the FTC Act violates the TSR. The TSR prohibits sellers and telemarketers from (1) making a false or misleading statement to induce any person to pay for goods or services, (2) misrepresenting any material aspects of the goods or services for sale, and (3) misrepresenting their affiliation with any person or entity. 16 C.F.R. § 310.3(a)(4), 16

C.F.R. § 310.3(a)(2)(iii), 16 C.F.R. § 310.3(a)(2)(vii).<sup>37</sup>

In this case, defendants violate the FTC Act and the TSR by making a series of false claims that are designed to induce consumers to purchase or to pay for vehicle service contracts. As described above, defendants misrepresent that they are affiliated with the manufacturer or dealer of the consumer's automobile and that the consumer's warranty is about to expire. Defendants further misrepresent that what they is selling is an extension of the consumer's original warranty. The Commission's sworn consumer declarations demonstrate that these misrepresentations often succeed in misleading consumers to purchase vehicle service contracts that they otherwise would not want or need. The misrepresentations are clearly material, in that they are likely to and do affect consumers' conduct.

As described above, defendants' conduct also violates a series of specific provisions in the TSR. In addition to prohibiting misrepresentations and material omissions, the TSR imposes requirements that apply to specified practices. Defendants violate § 310.4(b)(1)(iii)(B) of the TSR by calling consumers on the Registry, and § 310.4(b)(1)(iii)(A) of the TSR by calling consumers who have previously told Transcontinental not to call them. Defendants also violate § 310.8 of the TSR, which requires a seller, either directly or through another person, to pay an annual fee for access to a given area code before a telemarketer can initiate calls on the seller's behalf to any person within that area code. Defendants have not paid the required annual fee for access to telephone numbers listed on the Registry. Defendants also violate § 310.4(b)(1)(iv) of the TSR by "abandoning" calls, which is defined as not connecting a call to a sales representative within two seconds of the recipient's completed greeting. Defendants fail to transmit their actual name and telephone number to consumers, by masking or "spoofing" the caller ID information, in violation of § 310.4(a)(7) of the TSR. Finally, defendants violate Section 310.4(d) of the TSR, 16 C.F.R. § 310.4(d), by failing to disclose promptly and in a clear and conspicuous manner (1) the identity of the seller, (2) the purpose of the telemarketing call, which is to sell goods or services, and (3) the nature of the goods or services. By failing to make the same disclosures in their prerecorded messages in calls placed after December 1, 2008, Transcontinental has been violating § 310.4(b)(1)(v)(B)(ii) of the TSR.

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<sup>37</sup> Defendants qualify as "sellers" or "telemarketers" as defined by the Rule and are engaged in "telemarketing" as defined in the Rule. 16 C.F.R. § 310.2(r), (t), and (u).

2. **The Equities Tip Decidedly in the Commission's Favor**

entity); *Amy Travel*, 875 F.2d at 574. Moreover, Cowart actively participates in the deceptive acts and practices of Transcontinental. He has an office directly adjacent to Transcontinental's main telemarketing room.<sup>38</sup> Consumers have, on occasion, talked directly to Cowart about refund issues.<sup>39</sup> Cowart has demonstrated that he knows of allegations that Transcontinental violates do-not-call laws.<sup>40</sup> Moreover, Cowart signed the paperwork necessary to set up Transcontinental's mail drop in Pompano Beach, Florida in September 2007.<sup>41</sup> A former employee also reported that Cowart advised him as to the best way to sell the warranties.<sup>42</sup> Given this type of active participation in the business, there can be little doubt that Cowart has sufficient knowledge to be held individually liable, including for restitution.

**D. An Asset Freeze is Necessary to Preserve Assets for Effective Consumer Redress**

Part of the relief sought by the FTC in this case is restitution to consumers who were defrauded by defendants' misrepresentations. To preserve the possibility for such relief, the Commission seeks a freeze of defendants' assets and an immediate accounting to prevent concealment or dissipation of assets pending a final resolution of this litigation.

An asset freeze is appropriate once the Court determines that the Commission is likely to prevail on the merits and that restitution would be an appropriate final remedy. *See World Travel*, 861 F.2d at 1031 & n.9. In the words of the Seventh Circuit, the district court at that juncture has "a duty to ensure that the assets of the corporate defendants [are] available to make restitution to injured consumers." *Id.* at 1031. In a case such as this, where the Commission is

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<sup>38</sup> PX 3, Israel Dec. ¶ 24.

<sup>39</sup> PX 16, Kane Dec. ¶ 16.

<sup>40</sup> PX 2, Menjivar Dec. ¶ 39 & Att. X.

<sup>41</sup> PX 2, Menjivar Dec. ¶ 9 & Att. K.

<sup>42</sup> PX 3, Israel Dec. ¶ 24.

*Bank*, 379 U.S. 378, 384 (1965). Such an order is necessary and appropriate here to ensure the possibility of effective final relief.

**E. Appointment of a Receiver is Necessary to Ensure Effective Relief**

The appointment of a temporary receiver over the corporate defendant is necessary to preserve the potential for a complete remedy. Such an appointment is particularly appropriate where defendants' pervasive fraud presents the likelihood of continued misconduct. If defendants are allowed to remain in control of their business, it is likely that evidence will be destroyed and the fruits of their fraud will be dissipated. By taking custody of the business, a neutral receiver would prevent further harm to consumers and prevent destruction or concealment of assets and records without disrupting any legitimate business activity. At the same time, a temporary receiver would be helpful to the court in assessing the extent of defendants' fraud, tracing the proceeds of that fraud, preparing an accounting, and making an independent report of defendants' activities to the Court.

**V. CONCLUSION**

Defendants have caused and are likely to continue to cause substantial injury to the public through their violations of the FTC Act and the TSR. The Commission respectfully requests that the Court issue the proposed TRO to protect the public from further harm and to help ensure the possibility of effective final relief for defrauded consumers.<sup>43</sup>

Respectfully submitted,

DAVID C. SHONKA  
Acting General Counsel

Dated: May 14, 2009

s/David A. O'Toole

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<sup>43</sup> The FTC has submitted a proposed Temporary Restraining Order with its papers.