

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**ODYSSEUS MARKETING, INC.,
and WALTER RINES,**

Defendants.

Case No. 05-CV-330-SM

**(Proposed)
CIVIL CONTEMPT ORDER**

WHEREAS, on October 24, 2006, this Court entered a stipulated Permanent Injunction (“Permanent Injunction”) enjoining the defendants, and all other persons or entities acting in concert or in participation with them with actual notice of the Permanent Injunction, to obtain consumers’ prior, express consent before distributing online content that displays advertisements on their computers or collects their personal information, and to refrain from distributing content that modifies functions of computer applications or redirects consumers’ Internet web browsers to websites other than those the consumers choose to visit, as set forth in Paragraphs II.A, II.B.1, II.B.2, and IV.A of that Order; and

WHEREAS the Court’s Permanent Injunction further requires defendant Walter Rines (“Rines”) to secure a \$500,000 performance bond before participating in the display of online advertisements and related activities, as specifically set forth in Paragraph IX of that Order, and

WHEREAS Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), has filed a motion, with a supporting memorandum and exhibits, seeking to hold defendant

Rines and two entities with notice of the Permanent Injunction in active concert or participation with him, contempt defendants Sanford Wallace (“Wallace”) and Online Turbo Merchant, Inc. (“OTM”) (all three, collectively, “contempt defendants”), in civil contempt for violations of the Permanent Injunction; and

WHEREAS this Court has fully considered the Commission’s motion and supporting papers, as well as the full record, and applicable case and statutory law, and has concluded that contempt defendants are in civil contempt, the Court now finds as follows:

1. The contempt defendants received actual notice of this Court’s Permanent Injunction.
2. The contempt defendants acted in concert or participation with each other in distributing computer code or other content to users of the Internet website MySpace.com (“MySpace”) without obtaining consumers’ prior, express consent, and specifically distributed code or other content that redirected consumers’ Internet web browsers to websites other than those the consumers choose to visit, modified or replaced the functions of users’ web browsers, and collected users’ personally identifiable information without those users’ prior, express consent.
3. The evidence indicates that the contempt defendants’ actions violated Paragraphs II.A, II.B.1, II.B.2, and IV.A of the Court’s Permanent Injunction. These order violations commenced no later than November 2006.
4. The evidence further indicates that defendant Rines also violated Paragraph IX of the Permanent Injunction by failing to procure a \$500,000 performance bond or to provide the FTC with a copy of that bond before participating or assisting others in the downloading of code or other content that causes the display of an advertisement, modifies any web browser software, or collects any personally identifiable information, in violation of Paragraph IX of the Court’s Permanent Injunction. This order violation commenced no later than November 2006.

5. The evidence further indicates that the harm caused by the contempt defendants' contumacious conduct is at least \$555,850.04.
6. The Court finds defendant Rines and contempt defendants Wallace and OTM in civil contempt of its Permanent Injunction, and deems it necessary to issue the present Civil Contempt Order to coerce compliance with the Permanent Injunction and to order the contempt defendants to pay for harm resulting from their contumacious conduct.
7. Entry of this Order is in the public interest.
8. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies.

I.

IT IS ORDERED that the contempt defendants shall pay, for the harm caused as a result of their contempt, the amount of \$ _____ by the close of business on _____, 2008.

II.

IT IS FURTHER ORDERED that there is no just reason for delay of entry of this Order, and, pursuant to FED. R. CIV. P. 54(b), the Clerk shall enter this Order immediately.

III.

IT IS FURTHER ORDERED the Court shall continue to retain jurisdiction of this matter for all purposes.

IT IS SO ORDERED, this ____ day of _____, 2008.

STEVEN J. MCAULIFFE
Chief U.S. District Judge
United States District Court for the
District of New Hampshire