

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

COMMODITY FUTURES
TRADING COMMISSION

Plaintiff,

vs.

COCOON TRADE INC., et al.

Defendants.

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Civil Action No.:

DKC 2008-789

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~~PROPOSED~~ ORDER

This matter came on for hearing the 4th day of April, 2008 on the Motion of Plaintiff U.S. Commodity Futures Trading Commission (the "Commission") for a: (1) Statutory Restraining Order; (2) Order Permitting Immediate, Expedited Discovery; and (3) Order to Show Cause re: Preliminary Injunction. The Court, having considered Plaintiff's Complaint, Motion, Memorandum in Support, Exhibits, other materials, all other evidence presented by Plaintiff filed herein, and having heard the arguments of all parties, finds that:

1. This Court has jurisdiction over the parties and over the subject matter of this action pursuant to Section 6c of the Commodity Exchange Act, as amended (the "CEA"), 7 U.S.C. § 13a-1 (2002).
2. Venue lies properly within this District pursuant to Sections 6c(e) of the CEA, 7 U.S.C. § 13a-1(e) (2002). There is good cause to believe that the Defendants have engaged, are engaging and/or are about to engage in acts and practices constituting violations of the CEA, 7 U.S.C. §§ 1, et seq. (2002).

3. There is good cause to believe that Defendants have engaged in, are engaging in, or are about to engage in violations of Sections 4b(a)(2)(i) and (iii), 4k(2) and (3), 4o(1) and 4m(1) of the CEA, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), 6k(2) and (3), 6o(1) and 6m(1) (2002), and Commission Regulations (“Regulations”) 4.20(a)(1), (b) and (c), 4.21, 4.22 and 4.31, 17 C.F.R. §§ 4.20(a)(1), (b) and (c), 4.21, 4.22 and 4.31 (2007).

4. There is good cause to believe that immediate and irreparable damage to the Court’s ability to grant effective final relief for investors in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition by Defendants of assets or records unless Defendants are immediately restrained and enjoined by Order of this Court.

5. Good cause exists for the freezing of assets, owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants in order to assure payment of restitution and disgorgement as authorized and for the benefit of pool participants and other investors.

6. Good cause exists for entry of an order prohibiting Defendants from destroying records and denying agents of the Commission access to inspect and copy records.

7. Good cause exists to permit expedited discovery before the early meeting of counsel pursuant to Rule 26(d) of the Federal Rules of Civil Procedure, in order to ascertain the existence and location of assets, clarify the source of funds and identify all pool participants and other investors.

8. Good cause exists to require an accounting to determine the location and disposition of pool participants’ and other investors’ funds.

9. Good cause exists to order repatriation of Defendants’ assets to assure payment of restitution and disgorgement as authorized and for the benefit of pool participants and other investors.

10. Pursuant to Rule 30(a)(2) of the Federal Rules of Civil Procedure, immediate depositions are consistent with the principles of Rule 26(b)(2) of the Federal Rules of Civil Procedure.

11. Weighing the equities and considering the Commission's likelihood of success in its claims for relief, the issuance of a statutory restraining order is in the public interest.

DEFINITIONS

For the purposes of this Order, the following definitions apply:

12. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes, but is not limited to, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

13. "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, including but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts including bank accounts and accounts at financial institutions, credits, receivables, lines of credit, contracts including spot and futures contracts, insurance policies, and all cash, wherever located.

14. "Defendants" means Cocoon Trade Inc. ("Cocoon") and Kenneth L. Branch ("Branch") and for all parties includes any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of any or all of the Defendants, and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is

acting in concert or participation with Defendants.

RELIEF GRANTED

I.

ORDER AGAINST TRANSFER, DISSIPATION, AND DISPOSAL OF ASSETS

IT IS HEREBY ORDERED that

15. Defendants are restrained and enjoined from directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, including those owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants, wherever located, including assets held outside the United States, except as provided in Paragraph III of this Order, or as otherwise ordered by the Court. The assets affected by this paragraph shall include both existing assets and assets acquired after the effective date of this Order.

16. Defendants, and their agents, servants, employees, attorneys, and persons in active concert or participation with them who receive actual notice of this Order by personal service except as otherwise ordered by this Court, are restrained and enjoined from directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, including those owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants, wherever located, including assets held outside the United States, except as provided in Paragraph III of this Order, or as otherwise ordered by the Court. The assets affected by this paragraph shall include both existing assets and assets acquired after the effective date of this Order.

17. Defendants are restrained and enjoined from directly or indirectly opening or causing to be opened any safe deposit boxes titled in the name or subject to access by the

Defendants.

II.

DIRECTIVES TO FINANCIAL INSTITUTIONS AND OTHERS

IT IS FURTHER ORDERED, pending further Order of this Court, that any financial or brokerage institution, business entity, or person that holds, controls, or maintains custody of any account or asset owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants, or has held, controlled, or maintained custody of any account or asset owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants at any time since January 1, 2005, shall:

18. Prohibit Defendants and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise disposing of any such asset except as directed by further order of the Court;

19. Deny Defendants and all other persons access to any safe deposit box that is: (a) titled in the name of the Defendants either individually or jointly; or (b) otherwise subject to access by the Defendants;

20. Provide counsel for the Commission, within five (5) business days of receiving a copy of this Order, a statement setting forth: (a) the identification number of each and every such account or asset titled in the name, individually or jointly, of the Defendants, or owned, controlled, managed, or held by, on behalf of, or for the benefit of the Defendants: (b) the balance of each such account, or a description of the nature and value of 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;

and (c) the identification of any safe deposit box that is either titled in the name, individually or jointly, of the Defendants or is otherwise subject to access by the Defendants; and

21. Upon request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

III.

ACCOUNTING AND TRANSFER OF FUNDS AND DOCUMENTS

IT IS FURTHER ORDERED that within ^{twenty (20)} ~~five (5)~~ business days following the service of this Order, Defendants shall:

22. Provide the Commission with a full accounting of all funds, documents, and assets, including those outside of the United States, that are owned, managed, or held by, on behalf of, or for the benefit of, or under the direct or indirect control of Defendants, whether jointly or singly;

23. Transfer to the territory of the United States all funds, documents, and assets located in foreign countries which are owned, managed, or held by, on behalf of, or for the benefit of, or under the direct or indirect control of Defendants, whether jointly or singly; and

24. Provide the Commission access to all records of the Defendants held by financial institutions located outside the territorial United States by signing the Consent to Release of Financial Records attached to this Order.

IV.

MAINTENANCE OF BUSINESS RECORDS

IT IS FURTHER ORDERED that:

25. Defendants and all persons or entities who receive notice of this Order by personal service or otherwise, are restrained and enjoined from directly or indirectly destroying, mutilating, erasing, altering, concealing or disposing of, in any manner, directly or indirectly, any documents that relate to the business practices or business or personal finances of the Defendants.

V.

INSPECTION AND COPYING OF BOOKS AND RECORDS

IT IS FURTHER ORDERED that:

26. Representatives of the Commission be ~~immediately~~ allowed to inspect the books, records, and other documents of the Defendants and their agents including, but not limited to, electronically stored data, tape recordings, and computer discs, wherever they may be situated and whether they are on the person of the Defendants or others, and to copy said documents, data and records, either on or off the premises where they may be situated; and

27. Defendants and their agents, servants, employees, attorneys, and persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, including facsimile transmission, shall cooperate fully with the Commission to locate and provide to representatives of the Commission all books and records of the Defendants, wherever such books and records may be situated.

VI.

BOND NOT REQUIRED OF PLAINTIFF

IT IS FURTHER ORDERED that:

28. Plaintiff Commission is an agency of the United States of America and, accordingly, no bond need be posted by the Commission.

VII.

ORDER TO SHOW CAUSE

IT IS FURTHER ORDERED that:

29. Defendants shall appear before this Court on the ___ day of ____ 2008, at _____ m., before the United States District Judge _____ at the United States Courthouse for the District of Maryland, to show cause, if there be any, why an Order for Preliminary Injunction should not be granted to prohibit further violations of the CEA and why the other relief requested should not be granted pending trial on the merits of this action.

30. Should any party wish to file a memorandum of law or other papers in opposition to Plaintiff's Motion for a Preliminary Injunction, all papers shall be filed on or before _____, 2008 and served no later than _____.

VIII.

ORDER PERMITTING EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that:

31. The prohibition upon discovery before the early meeting of counsel is removed pursuant to Rule 26(d) of the Federal Rules of Civil Procedure.

32. The prohibition upon the immediate commencement of depositions is removed pursuant to Rule 30(a)(2)(C) of the Federal Rules of Civil Procedure.

33. The parties may proceed to take the oral deposition of any person upon three calendar days actual notice if the notice is served upon the parties personally or by telecopier to the party's last known business telecopier number.

34. The parties may take the deposition of any person for the purpose of discovering the nature, location, status, source and extent of assets of the Defendants and the location of any documents reflecting those assets.

35. *This discovery shall not commence until the time for answer has elapsed.*

IX.

SERVICE OF ORDER

IT IS FURTHER ORDERED that:

35. This Order shall be served on Defendants by personal service consistent with Federal Rule of Civil Procedure Rule 4(e). All subsequent pleadings, correspondence, notices required by this Order, and other materials shall be served consistent with Federal Rule of Civil Procedure Rule 4.

X.

FORCE AND EFFECT

IT IS FURTHER ORDERED that this Order shall remain in full force and effect until further order of this Court, and that this Court retains jurisdiction of this matter for all purposes.

SO ORDERED, at Greenbelt, Maryland, on the 4th day of April 2008.

Hebra K. Charney
UNITED STATES DISTRICT JUDGE

CONSENT TO DISCLOSURE OF BANK ACCOUNT INFORMATION

I, Kenneth L. Branch, do hereby direct the following bank(s)

and its officers, employees and agents, to disclose all information and deliver copies of all documents of every nature in your possession or control which relate (a) to any bank account over which I have an authorized signature in my personal name, in the name of a company, or in the name of a third party, (b) any bank account under my control or in which I have an interest; and (3) any bank account of any kind upon which I am authorized to draw, including account number(s)

Records to be produced include all account records, including bank statements and all deposits, wire transfers, cancelled checks for the period January 1, 2005 to March 28, 2008. These records are to be produced immediately at the request of the Commodity Futures Trading Commission.

Kenneth L. Branch

KENNETH L. BRANCH

Date: 4/4/08

I hereby attest and certify on 4/4/2008 that the foregoing document is a full, true and correct copy of the original on file in my office and in my legal custody

FELICIA C. CANNON
CLERK, U. S. DISTRICT COURT
DISTRICT OF MARYLAND

State of _____)

County of _____)

By Theresa D. Davis Deputy

Subscribed and sworn to before me this ___ day of _____, 2008.

Notary Public
My Commission Expires: