

1 Thomas W. McNamara  
mcnamarat@ballardspahr.com  
2 655 West Broadway, Suite 1600  
San Diego, California 92101-8494  
3 Telephone: 619-696-9200  
Facsimile: 619-696-9269

4 *Temporary Receiver*

5 Andrew W. Robertson (SBN 62541)  
robertsona@ballardspahr.com  
6 Daniel M. Benjamin (SBN 209240)  
benjamind@ballardspahr.com  
7 Ballard Spahr LLP  
8 655 West Broadway, Suite 1600  
San Diego, California 92101-8494  
9 Telephone: 619-696-9200  
Facsimile: 619-696-9269

10 *Attorneys for Temporary Receiver*

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.

TATTO, INC., et al.,

Defendants.

CASE NO. LACV13-8912 DSF (FFM<sub>x</sub>)

**PRELIMINARY REPORT OF  
TEMPORARY RECEIVER**

JUDGE: Hon. Dale S. Fischer  
CTRM: 840

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

## Table of Contents

	<b>Page</b>
I. Introduction .....	1
II. Receivership Activities .....	2
A. Corporate Defendants' Sites .....	2
B. Financial Accounts of Corporate Defendants .....	4
C. Documents/Information/Electronic Data .....	5
D. Forensic Accountants .....	7
E. The Business of Corporate Defendants.....	7
III. Conclusion .....	10

1                                   **PRELIMINARY REPORT OF TEMPORARY RECEIVER**

2   **I.**

3   **Introduction**

4           On December 5, 2013, this Court entered a Temporary Restraining Order  
5 with an Asset Freeze and Other Equitable Relief (“TRO”) which appointed me,  
6 Thomas W. McNamara, Temporary Receiver (“Receiver”) for the business  
7 activities of Corporate Defendants, defined as “Tatto, Inc., Bullroarer, Inc.,  
8 Shaboom Media, LLC, Bune, LLC, Mobile Media Products, LLC, Chairman  
9 Ventures, LLC, Galactic Media, LLC, Virtus Media, LLC, and their d/b/a’s,  
10 successors, and assigns” (TRO, page 3).

11           Section XIV of the TRO directs that I report to the Court on six specific  
12 topics prior to the date set for the hearing to Show Cause regarding Preliminary  
13 Injunction. As to those topics, I can report as follows:

14           (1)   **Steps taken by the Receiver to implement the TRO.** I have found  
15 no active business premises or operations for any Corporate Defendant. While  
16 some or all of these Corporate Defendants had previously been active, high volume  
17 participants in the “Premium SMS” business, I did not find indications that the  
18 enlistment of new consumers continued after the Fall of 2012 (although I  
19 understand the FTC has records indicating some recent financial activity). Based  
20 on presently known information, there have thus been no operational steps to  
21 implement the TRO’s prohibition against the placement of new unauthorized  
22 charges on a consumer’s mobile phone bill for Premium SMS services. As a  
23 caveat, Defendant Bullroarer, Inc. is based in Australia and our efforts to reach  
24 Bullroarer’s principal, Mike Pearce, have been ignored. As such, we have not  
25 secured firsthand information as to its current operations.

26           (2)-(3) **Corporate Defendants’ assets and liabilities.** We have identified  
27 nominal liquid assets in bank accounts of the Corporate Defendants, which are now  
28 frozen, as set forth below in Section II.B. At this time, those appear to be the sum

1 total of their assets, as most assets appear to have been transferred to the Individual  
2 Defendants or other companies controlled by the Individual Defendants. We do  
3 not yet have a calculation for overall liabilities. Further investigation may also  
4 reveal additional business entities subject to the receivership as “d/b/a’s,  
5 successors, and/or assigns” of the named Corporate Defendants and/or which were  
6 funded by the proceeds of Corporate Defendants’ Premium SMS businesses.

7 (4) **The steps the Receiver intends to take to prevent any diminution**  
8 **of assets, pursue assets from third parties, and adjust liabilities.** The bank  
9 accounts of Corporate Defendants, with nominal balances, have been frozen. We  
10 will investigate all possible claims against third parties, including possible  
11 clawback claims against the Individual Defendants who received substantial  
12 disbursements from Corporate Defendants and/or against other businesses  
13 controlled by the Individual Defendants that were funded by the proceeds of the  
14 Corporate Defendants’ Premium SMS business.

15 (5) **The Receiver’s assessment of whether the business can be**  
16 **operated in compliance with the TRO.** This topic is presently moot as we have  
17 yet to find active operations by Corporate Defendants as to the Premium SMS  
18 business described in the TRO. In concept, Premium SMS is a lawful business  
19 which can be conducted lawfully and profitably, subject to meticulous compliance  
20 with procedures to secure and confirm a knowing authorization from the consumer.

21 (6) **Any other matters which the Receiver believes should be brought**  
22 **to the Court’s attention.** These matters are set forth below in this Preliminary  
23 Report.

## 24 II.

### 25 Receivership Activities

#### 26 A. Corporate Defendants’ Sites

27 As directed and authorized by Section X(c) of the TRO, at approximately  
28 9:00 a.m. on Thursday, December 5, 2013, Andrew Robertson (my counsel), Joe

1 Cipollini (computer forensic expert), and I began the process of identifying and  
2 securing any active business premises of Corporate Defendants. We were aware of  
3 three potential addresses in the Los Angeles area:

- 4 i. 5900 Wilshire Boulevard, Suite 2100, Los Angeles, California. This  
5 is the headquarters site for “Be Great Partners,” a company owned by  
6 Individual Defendant Lin Miao. It claims to be a start-up business  
7 “incubator.” Mr. Miao was not present. We were told that other  
8 senior employees were also not available. We could not identify any  
9 on-site operations related to Corporate Defendants or Premium SMS  
10 services, other than the fact that Mr. Miao maintained an office there.
- 11 ii. 9107 Wilshire Boulevard, Suite 450, Beverly Hills, California. This  
12 suite is home to Apollo Business Center, which operates an executive  
13 suites business. No Corporate Defendant currently maintains an  
14 office at this site.
- 15 iii. 6565 West Sunset Boulevard, Suite 520, Los Angeles, California.  
16 Tatto had previously been a tenant of this space, but a new, unrelated,  
17 tenant is now in place.

18 We were also aware of an address in Boston for Tatto (155 Federal Street,  
19 Suite 600) and in San Francisco for Bullroarer (731 Market Street and 20  
20 California Street), but those are not active office sites. Based on internet searches,  
21 Bullroarer does appear to have an office site in Sydney, Australia.

22 We traveled to two homes in Beverly Hills and Los Angeles owned by Mr.  
23 Miao. We did locate Mr. Miao at approximately 11:00 a.m. at the Los Angeles  
24 home. He reported to us at that time that neither Tatto nor any other Corporate  
25 Defendants have active operations or office sites – with the exception of  
26 Bullroarer, which he understood to have an office with several employees in  
27 Australia. He stated that he did not own or control Bullroarer.

28 ///

1           **B. Financial Accounts of Corporate Defendants**

2           Beginning December 5, 2013, the TRO was served on banks where  
3 Defendants were known to have accounts. The following accounts with positive  
4 balances have been frozen:

5 <b>Account Holder</b>	6 <b>Financial Institution</b>	7 <b>Acct. Ending</b>	8 <b>Balance Frozen</b>
9           Tatto, Inc.	Bank of America	1738	\$5,462.69
10          Tatto, Inc.	Bank of America	3667	\$524.05
11          Tatto, Inc.	Bank of America	4049	\$1,380.15
12          Tatto, Inc.	Bank of America	4859	\$0.15
13          Tatto, Inc.	Bank of America	5115	\$4,788.03
14          Lin Miao, Kelly Li Miao	Bank of America	5339	\$53,747.54
15          Lin Miao, Kelly Li Miao	Bank of America	5342	\$2,787,489.27
16          Lin Miao	Bank of America	7172	\$14.00
17          Lin Miao	Bank of America	7185	\$148.36
18          Lin Miao	Bank of America	8038	\$1,617.54
19          Lin Miao	Bank of America	8222	\$0.03
20          Lin Miao	Merrill Lynch	3367	\$3,850,347.52
21          Lin Miao	Merrill Lynch	8331	\$875,579.09
22          Andrew Bachman	RBS Citizens (Citizens Bank of Rhode Island)	4761	\$45,256.30

<b>Account Holder</b>	<b>Financial Institution</b>	<b>Acct. Ending</b>	<b>Balance Frozen</b>
Andrew Bachman	RBS Citizens (Citizens Bank of Rhode Island)	9028	\$410,516.57
ARB Group	RBS Citizens (Citizens Bank of Rhode Island)	7709	\$47,286.48
ARB Group	RBS Citizens (Citizens Bank of Rhode Island)	1726	\$312,748.30
ARB Group	RBS Citizens (Citizens Bank of Rhode Island)	5964	\$94,118.06
Game Plans Holding Inc. dba Sporting Blood Nutrition LLC	RBS Citizens (Citizens Bank of Rhode Island)	7113	\$15,490.47
Game Plans Holding Inc. dba Sporting Blood Nutrition LLC	RBS Citizens (Citizens Bank of Rhode Island)	7628	\$152,868.74
<b>Total</b>			<b>\$8,659,383.34</b>

Other than the approximate \$12,000 in Tatto's accounts at Bank of American, the named Corporate Defendants do not appear to have substantial assets thus far.

### **C. Documents/Information/Electronic Data**

Mr. Miao identified the corporate Gmail account of Tatto as the repository of all electronic data available to him relating to the Corporate Defendants and the Premium SMS business. He advised that all his spreadsheets, bank statements, statements and correspondence from carriers and aggregators, and internal communications were contained in those email files. He could not identify any location where paper records of the businesses would be housed. As to customer and sales records, he stated that this data would be on servers maintained by

1 Bullroarer in Australia as to which he stated he had no access. He did note,  
2 however, that when the business was active he could log in to the Bullroarer server  
3 to review data, but that he did not make copies or back ups of any such data. Mr.  
4 Miao said he believed that Mike Pearce, Bullroarer's principal, would likely be  
5 amenable to providing a copy of the server data and Mr. Miao was agreeable to  
6 assisting us in that regard. Unfortunately, all efforts to reach Mr. Pearce have been  
7 ignored.

8 For his part, Defendant Andrew Bachmann also stated he was not aware of  
9 any location that would presently house paper records of these businesses other  
10 than some incorporation papers that might be at his home; further, he stated he had  
11 no knowledge as to electronic data and deferred to Mr. Miao.<sup>1</sup>

12 During our meeting with Mr. Miao, he provided us access to the Tatto  
13 corporate emails maintained on a Gmail account. The access password was  
14 changed to a receivership password and the data was thereby secured. Our  
15 computer forensic experts immediately began the process of making a mirror  
16 image of the data.

17 Given the large size of the Gmail database (43 mailboxes and 1 terabyte of  
18 data), the downloading process has been painstakingly slow. At this point, 42 of  
19 the 43 mailboxes have been imaged. As such, we have not yet had an opportunity  
20 to conduct a thorough review. We have received requests from counsel for the  
21 FTC and counsel for Mr. Miao to provide them copies pursuant to Section X(Q) of  
22 the TRO which provides that the Receiver "[u]pon request by any party, make  
23 available to that party within three calendar days copies of any documents obtained  
24 pursuant to the Receivership." Mr. Miao's counsel has also registered concerns  
25 about the production of any attorney-client privileged communications. Although  
26 the law is clear that the Receiver stands in the shoes of the Corporate Defendants

27 \_\_\_\_\_  
28 <sup>1</sup> The Corporate Defendants did have offices in Boston and later in Los Angeles. As such, we are perplexed about the lack of any paper records.



1 and can, therefore, waive the privilege as to the Corporate Defendants, I have  
2 advised the FTC to quarantine this email database and not access it until we can  
3 reach a resolution of the attorney-client privilege claim.

4 We have placed Bullroarer's principal in Australia on notice of the  
5 receivership and the need to provide the receivership immediate access to its  
6 database, but we have received no responsive communication. It may be necessary  
7 to retain Australian counsel to pursue the Bullroarer data. However, given the  
8 nominal funds in the Corporate Defendants' accounts, I am reluctant to incur the  
9 expenses at this point until adequate funds to support such activity are located.

10 **D. Forensic Accountants**

11 I retained Thad Meyer, CPA and President at Alliance Turnaround  
12 Management, Inc. ("Alliance") to lead a forensic accounting investigation, to  
13 reconstruct the financial activities of Corporate Defendants, and identify any  
14 potential third parties who have received funds from Corporate Defendants and  
15 may be subject to clawback claims to return such funds to Corporate Defendants.

16 **E. The Business of Corporate Defendants**

17 Based on interviews with Messrs. Miao and Bachman and a very  
18 preliminary review of the voluminous Tatto Gmail corporate account, we have  
19 been able to roughly construct a capsule history of the business of the Corporate  
20 Defendants. I should caution that this summary is preliminary and based on an  
21 initial and incomplete review of currently available records.

22 At the outset, I should note that both Mr. Miao and Mr. Bachmann and their  
23 counsel have cooperated with the receivership staff and have made themselves  
24 available to respond to our inquiries. I have, however, found Mr. Bachman's  
25 responses to often lack credibility.

26 The Premium SMS business which is the subject of the FTC's action  
27 evolved from an earlier Tatto "lead generation" business launched from the dorm  
28 rooms of enterprising Babson College students, including Miao and Bachman, in

1 approximately 2005. Although the principals have slightly different versions of  
2 the exact details and timing of that evolution, the main events are relatively  
3 undisputed – *i.e.*, by at least early 2011, Tatto, with Miao a majority owner and  
4 Bachman a minority owner, and its related entities were large participants in the  
5 Premium SMS world.

6 Miao described Tatto as an “on-line advertiser” tasked to drive consumers to  
7 sign up for text subscription programs offered by third party “content providers”  
8 who controlled the customer data. Our investigation indicates, however, that Tatto  
9 and its related entities were part of an interconnected enterprise with high  
10 incentives for sales and high consciousness of the risks related to unauthorized  
11 charges. It also appears that the Corporate Defendants – with Messrs. Miao and  
12 Bachman at the helm – were the hub of the Premium SMS enterprise. They sought  
13 out the affiliates (the entities which signed up online consumers), aggregators  
14 (which billed the cellular carriers), and the “content provider” (Bullroarer and  
15 others). Mr. Miao also explained the basic economic model – the carrier keeps  
16 50% of the fees paid to it by the consumers; the remaining 50% is disbursed to the  
17 aggregator, which then disburses approximately 70% of that to Tatto as the online  
18 advertiser, which in turn disburses 10% of its share to Bullroarer as content  
19 provider. As such, each dollar paid by a consumer is allocated approximately 50%  
20 carrier, 5% aggregator, 40% advertiser, and 5% content provider, although those  
21 percentages will vary with specific contractual arrangements.

22 A very preliminary review of email traffic reveals that Mr. Miao was the  
23 primary decision maker for the Premium SMS enterprise, Mr. Bachman was kept  
24 in the loop, and that the Defendants – Corporate and Individual – were acutely  
25 aware of the rules and the business risks. For example:

- 26 • Miao explained during our interview that Corporate Defendants  
27 Shaboom Media, Bune, Mobile Media, Chairman Ventures,  
28 Galactic Media, and Virtus Media were shells formed to hold short

1 codes – this maneuver was designed to reduce the risk of a major  
2 shut down because carriers would shut down all short codes owned  
3 by an entity if any one of their short codes received too many  
4 complaints or charge backs.

- 5 • Miao dispatched regular financial summaries to Bachman showing  
6 gross revenues less costs resulting in a net number “left to  
7 distribute” and in some cases, a number for “each” which was  
8 generally a 50/50 split. Costs included substantial payments to  
9 affiliates tasked to sell the programs, substantial allocations for  
10 “refunds,” substantial allocations to Bullroarer and/or Mike Pearce,  
11 Bullroarer’s principal, and costs to acquire new short codes. *See*  
12 *Exhibit 1.*
- 13 • Some of Miao’s financial summaries were directed to Bachman  
14 and Bullroarer principal, Mike Pearce, reflecting 1/3 splits of the  
15 net to “each.” *See Exhibit 2.*
- 16 • Miao instructed the Tatto team to develop clever ways to disguise  
17 reminder messages on renewals by including them with a content  
18 message. *See Exhibits 3 and 4.*
- 19 • Miao understood that carrier refunds were running at roughly 21%.  
20 *See Exhibit 20.*
- 21 • Tatto kept current on carrier audit procedures and penalty  
22 calculations. *See Exhibit 5.*
- 23 • Tatto was regularly in the market to buy or lease new short codes,  
24 often in a manner to disguise the real owner, and was regularly  
25 looking at maneuvers to adapt to and/or circumvent carrier audit  
26 procedures. *See Exhibits 6-19.*

27 In our interview, Andrew Bachman added little of substance about the  
28 details of the business, portraying himself as the “sales guy” with minimal

1 knowledge of the technology and the day-to-day workings of the business and its  
2 finances. E-mail traffic indicates, however, that he was copied on major business  
3 decisions and highly aware of finances.

4 The email database gives insight into the business operations, but we cannot  
5 examine in detail authorization practices, consumer complaints, and chargeback  
6 rates at a granular level without the Bullroarer database. As noted above,  
7 Bullroarer has ignored our contact.

8 **III.**

9 **Conclusion**

10 Based upon the information presently known, if a preliminary injunction is  
11 entered, my mission as Receiver in this matter will be focused on securing  
12 whatever records remain, assembling any available assets, and identifying and  
13 pursuing any viable claims to clawback funds from any third parties to whom  
14 Corporate Defendants disbursed out funds from the alleged illegal Premium SMS  
15 operations.

16 Dated: December 16, 2013

THOMAS W. MCNAMARA

17  
18 By: /S/ Thomas W. McNamara  
Thomas W. McNamara  
19 Temporary Receiver  
20  
21  
22  
23  
24  
25  
26  
27  
28