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DISTRICT OF NEVADA

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27 UNITED STATES DISTRICT COURT
28 DISTRICT OF NEVADA

19 FEDERAL TRADE COMMISSION,

20 Plaintiff,

21 v.

22 SEASILVER USA, INC.,
23 AMERICALOE, INC., BELA BERKES,
24 JASON BERKES, BRETT
25 RADEMACHER, individually, and d/b/a
26 Netmark International and NetmarkPro,
27 and DAVID R. FRIEDMAN, D.C.,

28 Defendants.

CV-S-03-0676-RLH(LRL)

**TEMPORARY RESTRAINING
ORDER WITH ASSET
FREEZE AND OTHER
EQUITABLE RELIEF, AND
ORDER TO SHOW CAUSE
WHY A PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE**

Plaintiff Federal Trade Commission ("FTC" or "Commission"), having filed its

9

1 Complaint for Injunctive and Other Equitable Relief, including redress to consumers, and
2 having applied *ex parte* for a temporary restraining order and other equitable relief
3 against defendants Seasilver USA, Inc., Americaloe, Inc., Bela Berkes, Jason Berkes,
4 Brett Rademacher, and David R. Friedman, D.C. (“defendants”) pursuant to Fed. R. Civ.
5 P. 65(b), and the Court having considered the Complaint, plaintiff’s Application for
6 Temporary Restraining Order, and the Memorandum of Points and Authorities and other
7 materials filed in support thereof, and now being advised in the premises, finds:

8 1. This Court has jurisdiction over the subject matter of this case, and there is
9 good cause to believe it will have jurisdiction over all the parties to the case, and venue
10 in this district is proper;

11 2. There is good cause to believe that defendants have engaged in and are
12 likely to engage in acts that violate Sections 5(a) and 12 of the Federal Trade
13 Commission Act (“FTC Act”), as amended, 15 U.S.C. §§ 45(a) and 52, and that the
14 Commission is likely to prevail on the merits of this action;

15 3. There is good cause to believe that immediate and irreparable harm will
16 result from defendants’ ongoing violations of the FTC Act through the present
17 advertising, packaging, labeling, and marketing of the product Seasilver unless
18 defendants are restrained and enjoined by order of this Court;

19 4. There is good cause to believe that immediate and irreparable damage to
20 the Court’s ability to grant effective final relief to consumers in the form of monetary
21 redress will occur from the sale, transfer, or other disposition or concealment by
22 defendants of their assets or business records unless defendants are immediately
23 restrained and enjoined by order of this Court;

24 5. In accordance with Fed. R. Civ. P. 65(b), the interests of justice therefore
25 require that this order be granted without prior notice to defendants. There is good cause
26 for relieving the Commission of the duty to provide defendants with prior notice of the
27 Commission’s application;

28 6. There is good cause for the Court to appoint a temporary receiver over:

1 corporate defendants Seasilver USA, Inc., and Americaloe, Inc.;

2 7. Good cause exists for requiring defendants to produce an accounting of
3 their business, sworn financial statements, profit-and-loss statements, and individual
4 assets, and for giving the Commission immediate access to the business premises of the
5 corporate defendants;

6 8. Weighing the equities and considering the Commission's likelihood of
7 ultimate success, a temporary restraining order with asset freeze and other equitable relief
8 is in the public interest; and

9 9. No security is required of any agency of the United States for issuance of a
10 restraining order. Fed. R. Civ. P. 65(c).

11 **ORDER**

12 **DEFINITIONS**

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

14 1. "Advertising" means any written or verbal statement, illustration or
15 depiction that is designed to effect a sale or create interest in the purchasing of goods or
16 services, whether it appears in a brochure, newspaper, magazine, pamphlet, leaflet,
17 circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart,
18 billboard, public transit card, point of purchase display, packaging, package insert, label,
19 film, slide, radio, television or cable television, audio program transmitted over a
20 telephone system, program-length commercial ("infomercial"), Internet, or in any other
21 medium;

22 2. "Assets" means any legal or equitable interest in, right to, or claim to, any
23 real and personal property, including, but not limited to, chattels, goods, instruments,
24 equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries,
25 inventory, checks, notes, accounts, credits, receivables (as those terms are defined in the
26 Uniform Commercial Code), contracts, shares of stock, and all cash, wherever located;

27 3. "Defendants" means Seasilver USA, Inc., Americaloe, Inc., Bela Berkes,
28 Jason Berkes, Brett Rademacher, and David R. Friedman, D.C., and each of them, and

1 any entity through which they do business, including, but not limited to, Netmark
2 International and NetmarkPro;

3 4. "Receivership defendants" means, collectively, Seasilver USA, Inc., and
4 Americaloe, Inc., and their respective subsidiaries, divisions, affiliates, successors, and
5 assigns; and "receivership defendant" means either of the receivership defendants;

6 5. "Target product" means Seasilver and any substantially similar product
7 including, but not limited to, any product containing aloe vera, phyto-silver, sea
8 vegetables, the herb Pau D'Arco, or cranberry extract; and

9 6. The terms "and" and "or" in this Order shall be construed conjunctively or
10 disjunctively as necessary, to make the applicable sentence or phrase inclusive rather
11 than exclusive.

12 **I. PROHIBITED BUSINESS ACTIVITIES**

13 **IT IS HEREBY ORDERED** that defendants and their officers, directors, agents,
14 servants, employees, salespersons, distributors, corporations, subsidiaries, affiliates,
15 successors, assigns, and those persons or entities in active concert or participation with
16 them who receive actual notice of this Order by personal service, facsimile, or otherwise
17 are hereby enjoined from making, or assisting others in making, expressly or by
18 implication, including through the use of endorsements, any false or misleading oral or
19 written statement or representation in connection with the advertising, marketing,
20 promotion, offer for sale, distribution, or sale of any target product, including, but not
21 limited to:

22 A. Misrepresenting that any target product, or any of its ingredients, cures or
23 treats cancer;

24 B. Misrepresenting that any target product, or any of its ingredients, enables
25 nine out of ten diabetes patients to completely stop their insulin medication;

26 C. Misrepresenting that any target product, or any of its ingredients, causes
27 rapid, substantial, and permanent weight loss without dieting;

28 D. Misrepresenting that any target product, or any of its ingredients, is

1 clinically or scientifically proven to be effective in treating or curing over 650 diseases,
2 including cancer and AIDS;

3 E. Misrepresenting that any target product, or any of its ingredients, is
4 clinically or scientifically proven to be effective in treating or curing typhoid and
5 anthrax;

6 F. Misrepresenting that any target product, or any of its ingredients, is
7 clinically or scientifically proven to be non-toxic; or

8 G. Making any representation about the health benefits, performance, efficacy,
9 or safety of any target product, or any of its ingredients, unless, at the time of making
10 such representation, defendants possess and rely upon competent and reliable scientific
11 evidence that substantiates the representation. For purposes of this provision,
12 "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies,
13 or other evidence based on the expertise of professionals in the relevant area, that have
14 been conducted and evaluated in an objective manner by persons qualified to do so, using
15 procedures generally accepted in the profession to yield accurate and reliable results.

16 For the purposes of this Paragraph, the term "endorsement" shall mean as defined
17 in 16 C.F.R. § 255.0(b).

18 **II. PACKAGING AND LABELING RECALL**

19 **IT IS FURTHER ORDERED** that defendants shall immediately recall from any
20 person, partnership, corporation, or other entity that is offering for sale, selling, or
21 distributing to consumers, all packaging and labeling, including all descriptive materials
22 such as product brochures, for the target products containing, expressly or by implication,
23 any of the representations set forth in Paragraph I above, *provided, however*, that in lieu
24 of a recall, defendants may immediately repackage and relabel all offending packages
25 and labels, including all descriptive materials such as product brochures, of the target
26 products in such a manner as to ensure that no representations prohibited by this Order
27 are disseminated.

28

1 **III. ASSET FREEZE**

2 **IT IS FURTHER ORDERED** that defendants and their officers, directors,
3 agents, servants, employees, salespersons, distributors, corporations, subsidiaries,
4 affiliates, successors, assigns, and those persons or entities in active concert or
5 participation with them who receive actual notice of this Order by personal service,
6 facsimile, or otherwise, are hereby temporarily restrained and enjoined from:

7 A. Selling, liquidating, assigning, transferring, converting, loaning,
8 encumbering, pledging, concealing, dissipating, spending, withdrawing, or otherwise
9 disposing of any funds, real or personal property, or other assets or any interest therein,
10 wherever located, including any assets outside the territorial United States, that are:

- 11 1. in the actual or constructive possession of any defendant; or
- 12 2. owned or controlled by, or held, in whole or in part for the benefit
13 of, or subject to access by, or belonging to, any defendant; or
- 14 3. in the actual or constructive possession of, or owned or controlled
15 by, or subject to access by, or belong to, any corporation,
16 partnership, trust, or other entity directly or indirectly under the
17 control of any defendant;

18 B. Opening or causing to be opened any safe deposit boxes titled in the name
19 of any defendant, or subject to access by any defendant;

20 C. Incurring charges or cash advances on any credit or debit card issued in the
21 name, singly or jointly, of any defendant, or any corporation, partnership, or other entity
22 directly or indirectly owned, managed, or controlled by any defendant; and

23 D. Failing to disclose to the Commission, immediately upon service of this
24 Order, information that fully identifies each asset of any defendant, and each entity
25 holding such asset, including, but not limited to, the entity's name, address, and
26 telephone number, the number of the account, and the name under which the account is
27 held.

28 E. **Provided, however,** that the freeze imposed in this Paragraph shall be

1 construed to apply to assets that defendants Bela Berkes, Jason Berkes, Brett
2 Rademacher, and David R. Friedman acquire following service of this Order only if such
3 assets are derived from the sale of, or assistance with the sale of, any target product.

4 **Provided further**, that, pending further order of the Court, defendants Bela
5 Berkes, Jason Berkes, Brett Rademacher, and David R. Friedman shall each be allowed
6 to spend up to, but no more than, \$ 250.00 per day of previously acquired assets for
7 living expenses out of a personal account which has been identified to the Commission.

8 **IV. RETENTION OF ASSETS BY THIRD PARTIES**

9 **IT IS FURTHER ORDERED** that, pending determination of the Commission's
10 request for a preliminary injunction, any bank, savings and loan, financial or brokerage
11 institution, fund, escrow agent, trustee, mail receipt facility, or other person or entity
12 served with a copy of this Order, or who otherwise has actual knowledge of this Order,
13 that has possession, custody, or control of any account, asset, safe deposit box, or
14 document held on behalf of, or relating or belonging to Seasilver USA, Inc., Americaloe,
15 Inc., Bela Berkes, Jason Berkes, Brett Rademacher, Netmark International, NetmarkPro,
16 or David R. Friedman, D.C., shall:

17 A. Hold and retain within such entity's or person's control, and prohibit the
18 withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance,
19 disbursement, dissipation, conversion, sale, liquidation, or other disposal of any funds,
20 documents, property, or other assets held by or under such entity's or person's control:

- 21 1. on behalf of, or for the benefit of, any defendant;
- 22 2. in any account maintained in the name of, or subject to withdrawal
23 by, any defendant; or
- 24 3. that are subject to access or use by, or under the signatory power of,
25 any defendant.

26 B. Deny access to any safe deposit boxes that are:

- 27 1. titled in the name, individually or jointly, of any defendant; or
- 28 2. subject to access by any defendant;

1 3. **Provided, however,** that the Temporary Receiver may have access
2 to any safe deposit box titled in the name of Seasilver USA, Inc., or
3 Americaloce, Inc., or subject to access by agents of Seasilver USA,
4 Inc., or Americaloce, Inc.;

5 C. Provide to counsel for the Commission and to the Temporary Receiver,
6 within three (3) days, a statement setting forth:

- 7 1. the identification of each account or asset titled in the name,
8 individually or jointly, or held on behalf of, or for the benefit of, any
9 defendant, whether in whole or in part;
- 10 2. the balance of each such account, or a description of the nature and
11 value of such asset;
- 12 3. the identification of any safe deposit box that is either titled in the
13 name of, individually or jointly, or is otherwise subject to access or
14 control by, any defendant, whether in whole or in part; and
- 15 4. for any account, safe deposit box, or other asset that has been closed
16 or removed within one year from the date of entry of this Order, the
17 date closed or removed and the balance on said date; and

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

25 The accounts subject to this Paragraph include existing assets and assets deposited
26 after the effective date of this Order. This Paragraph shall not prohibit transfers or
27 withdrawals in accordance with any provision of this Order, authorized in writing by
28 counsel for the Commission, by the Temporary Receiver, or by further order of the Court.

1 **V. PRESERVATION OF RECORDS AND OTHER EVIDENCE**

2 **IT IS FURTHER ORDERED** that defendants, and their officers, directors,
3 agents, servants, employees, salespersons, distributors, corporations, subsidiaries,
4 affiliates, successors, assigns, and those persons or entities in active concert or
5 participation with them who receive actual notice of this Order by personal service,
6 facsimile, or otherwise, are hereby enjoined from:

7 A. Destroying, erasing, mutilating, concealing, altering, transferring or
8 otherwise disposing of, in any manner, directly or indirectly, any target product
9 advertised, marketed, promoted, offered for sale, distributed, sold, or purchased by any
10 defendant;

11 B. Destroying, erasing, mutilating, concealing, altering, transferring or
12 otherwise disposing of, in any manner, directly or indirectly, contracts, agreements,
13 customer files, customer lists, customer addresses and telephone numbers,
14 correspondence, advertisements, brochures, sales material, training material, sales
15 presentations, documents evidencing or referring to defendants' target products, data,
16 computer tapes, disks, or other computerized records, books, written or printed records,
17 handwritten notes, telephone logs, "verification" or "compliance" tapes or other audio or
18 video tape recordings, receipt books, invoices, postal receipts, ledgers, personal and
19 business canceled checks and check registers, bank statements, appointment books,
20 copies of federal, state or local business or personal income or property tax returns, and
21 other documents or records of any kind, including electronically-stored materials, that
22 relate to the business practices or business or personal finances of any defendant or other
23 entity directly or indirectly under the control of any defendant; and

24 C. Failing to create and maintain books, records, and accounts which, in
25 reasonable detail, accurately, fairly, and completely reflect the incomes, assets,
26 disbursements, transactions, and use of monies by any defendant or other entity directly
27 or indirectly under the control of any defendant.

28

1 **VI. REPATRIATION OF ASSETS**

2 **IT IS FURTHER ORDERED** that within five (5) business days following
3 service of this Order, all defendants shall:

4 A. Repatriate to the United States all funds, documents, or assets in foreign
5 countries held, jointly or singly, either by, for the benefit of, or under the direct or
6 indirect control of any defendant;

7 B. On the same business day as any repatriation under Subparagraph A above,

8 1. notify the Commission and the Temporary Receiver of the name and
9 location of the financial institution or other entity that is the
10 recipient of such funds, documents, or assets; and

11 2. serve this Order on any such financial institution or other entity;

12 C. Provide the Commission and the Temporary Receiver with a full
13 accounting of all funds, documents, and assets outside of the territory of the United
14 States held, jointly or singly, either by, for the benefit of, or under the direct or indirect
15 control of any defendant; and

16 D. Hold and retain all repatriated funds, documents, and assets and prevent
17 any transfer, disposition, or dissipation whatsoever of any such assets or funds.

18 **VII. NOTIFICATION OF BUSINESS ACTIVITIES**

19 **IT IS FURTHER ORDERED** that defendants Bela Berkes, Jason Berkes, Brett
20 Rademacher, and David R. Friedman are hereby restrained and enjoined from creating,
21 operating, or exercising any control over any business entity, including any partnership,
22 limited partnership, joint venture, sole proprietorship, or corporation, without first
23 providing counsel for the Commission with a written statement disclosing the following:
24 (1) the name of the business entity; (2) the address and telephone number of the business
25 entity; (3) the names of the business entity's officers, directors, principals, managers, and
26 employees; and (4) a detailed description of the business entity's intended activities.

27 **IT IS FURTHER ORDERED** that defendants Bela Berkes, Jason Berkes, Brett
28 Rademacher, and David R. Friedman shall notify the Commission at least seven (7) days

1 prior to any affiliation with any new or previously inactive business or employment.
2 Each notice shall include the applicable defendant's new business address and a
3 statement of the nature of the new business or employment and of his duties and
4 responsibilities in connection with that business or employment.

5 **VIII. APPOINTMENT OF TEMPORARY RECEIVER**

6 **IT IS FURTHER ORDERED** that Thomas W. McNamara is hereby appointed
7 Temporary Receiver, with the full power of an equity receiver, for the receivership
8 defendants. The receiver shall be the agent of this Court and solely the agent of this
9 Court in acting as receiver under this Order. The receiver shall be accountable directly to
10 this Court. The receiver shall comply with all Local Rules of this Court governing
11 receivers. The receiver has the directions and authority to:

12 A. Assume full control of the receivership defendants and all power of the
13 receivership defendants' directors, officers, and managers, and remove defendant Jason
14 Berkes, and any other officer, independent contractor, employee, attorney, or agent of the
15 receivership defendants, from control or management of, or participation in, the affairs of
16 the receivership defendants as the receiver deems necessary and advisable;

17 B. Take immediate and exclusive custody, control, and possession of all
18 properties, premises, assets, and documents of, in the possession of, or under the control
19 of, any receivership defendant, wherever situated, including, but not limited, to 2045
20 Corte del Nogal, and 1950, 2310, 2350, and 2385 Camino Vida Roble, all in Carlsbad,
21 California. The receiver shall have full power to divert mail and to sue for, collect,
22 receive, and take possession of:

- 23 1. all assets and documents of the receivership defendants and
24 members of the public whose interests are now held by or are under
25 the direction, possession, custody, or control of any receivership
26 defendant; and
27 2. all sums of money now or hereafter due and owing to any
28 receivership defendant. Provided, however, that the receiver shall

1 not attempt to collect any amount from a consumer if the receiver
2 believes the consumer was a victim of the unfair or deceptive acts or
3 practices alleged in the Complaint in this matter;

4 C. Perform all acts necessary to conserve, hold, manage, and preserve the
5 value of all such assets;

6 D. Hold, preserve, and administer the business of the receivership defendants
7 until further order of this Court, with full authority to perform all acts necessary or
8 incidental thereto, including retaining, hiring, or dismissing any employees, independent
9 contractors, or agents;

10 E. Take such actions and enter into such agreements in connection with the
11 administration of the receivership defendants as the Temporary Receiver deems
12 necessary;

13 F. Choose, engage, and employ attorneys, accountants, appraisers, and other
14 independent contractors, and technical specialists, as the Temporary Receiver deems
15 advisable or necessary in the performance of duties and responsibilities under the
16 authority granted by this Order;

17 G. Make payments and disbursements from the receivership estate that the
18 Temporary Receiver deems necessary to secure or preserve the receivership defendants'
19 assets or to carry out the Temporary Receiver's mandate under this Order;

20 H. Institute, prosecute and defend, compromise, intervene in, or become party
21 to such actions or proceedings in state, federal, or foreign court that the Temporary
22 Receiver deems necessary to collect, recover, protect, maintain, or preserve the value of
23 the assets of the receivership defendants or to carry out the Temporary Receiver's
24 mandate under this Order;

25 I. Defend, compromise, or otherwise dispose of any actions or proceedings
26 instituted against the Temporary Receiver in his role as temporary receiver or the
27 receivership defendants, whether now pending or hereinafter filed, that the Temporary
28 Receiver deems necessary to preserve the assets of the receivership defendants or to carry

1 out the Temporary Receiver's mandate under this order;

2 J. Take all steps the Temporary Receiver deems necessary to secure the
3 business premises of the receivership defendants, including, but not limited to:

- 4 1. completing a written inventory of all receivership assets;
- 5 2. obtaining pertinent information from all employees and other agents
6 of the receivership defendants, such as the name, home address,
7 social security number, job description, method of compensation,
8 accrued and unpaid commission and compensation of each
9 employee or agent;
- 10 3. changing the locks and disconnecting any computer modems or
11 other means of access to the computer or other documents
12 maintained at that location; or
- 13 4. requiring any persons present on the premises at the time this Order
14 is served to leave the premises, to provide the Temporary Receiver
15 with proof of identification, and to demonstrate to the Temporary
16 Receiver's satisfaction that such persons are not removing from the
17 premises any of the receivership defendants' documents or assets;

18 K. Obtain, by presentation of this Order, tangible and intangible assets as well
19 as information in the custody or control of any person, firm, or entity sufficient to
20 identify the accounts, employees, properties, or other assets or obligations of the
21 receivership defendants;

22 L. Issue subpoenas to obtain documents pertaining to the receivership,
23 conduct discovery in this action on behalf of the receivership estate, attend any
24 deposition noticed by any party to this action, and ask any question of any deponent
25 which, in the receiver's opinion, is pertinent to the receivership estate;

26 M. Allow representatives of the Commission and the defendants reasonable
27 access to inspect the receivership defendants' books, records, accounts, premises, and
28 other property, wherever located;

1 N. Determine and implement the manner in which the receivership defendants
2 will comply with, and prevent violations of, this Order and all other applicable laws,
3 including, but not limited to, revising sales materials and implementing monitoring
4 procedures;

5 O. Continue and conduct the business of the receivership defendants in such
6 manner, to such extent, and for such duration as the receiver may in good faith deem to
7 be necessary or appropriate to operate the business profitably and lawfully, if at all;
8 provided, however, that the continuation and conduct of the business shall be conditioned
9 upon the receiver's good faith determination that the businesses can be lawfully operated
10 at a profit using the assets of the receivership estate; and

11 P. Open one or more bank accounts in San Diego County, California, as
12 designated depositories for funds of the receivership defendants. The Temporary
13 Receiver shall deposit all funds of the receivership defendants in such designated
14 accounts and shall make all payments and disbursements from the receivership estate
15 from such accounts.

16 **IX. COMPENSATION FOR RECEIVER**

17 **IT IS FURTHER ORDERED** that the Temporary Receiver and all personnel
18 hired by the Temporary Receiver shall be entitled to reasonable compensation for the
19 services they render to the receivership estate and for the cost of actual out-of-pocket
20 expenses incurred by them, from the assets now held by, in the possession or control of,
21 or which may be received by the receivership defendants. The Temporary Receiver shall
22 file with the Court and serve on the parties periodic requests for payment, outlining the
23 services rendered and the related fees and expenses, with the first such request filed no
24 more than sixty (60) days after the entry of this Order. The Temporary Receiver shall not
25 increase the hourly rates used as the bases for such fee applications without prior
26 approval of the Court.

27 **X. TEMPORARY RECEIVER'S BOND**

28 **IT IS FURTHER ORDERED** that the Temporary Receiver shall file with the

1 Clerk of this Court a bond in the sum of Twenty-five Thousand Dollars (\$25,000.00)
2 with sureties to be approved by the Court, conditioned that the receiver will well and
3 truly perform the duties of the office and abide by and perform all acts the Court directs.

4 **XI. DELIVERY OF RECEIVERSHIP PROPERTY**

5 **IT IS FURTHER ORDERED** that defendants and any other person or entity
6 served with a copy of this Order, shall immediately deliver or transfer possession,
7 custody, and control of the following to the Temporary Receiver:

8 A. All assets of the receivership defendants;

9 B. All documents and records relating to the assets of the receivership
10 defendants, including, but not limited to, financial and accounting records, balance
11 sheets, income statements, bank records (including monthly statements, canceled checks,
12 records of wire transfers, and check registers), distributor lists, and title documents;

13 C. All keys, lock combinations, passwords, or codes required to open, gain
14 access to, or secure any of the receivership defendants' assets or documents, including,
15 but not limited to, access to their business premises, computer systems or files, telephone
16 or other communication systems, and bank accounts; and

17 D. Information identifying the assets, employees, or obligations of the
18 receivership defendants.

19 **IT IS FURTHER ORDERED** that in the event any person or entity fails to
20 deliver or transfer any asset or otherwise fails to comply with any provision of this
21 Paragraph, the Temporary Receiver may file *ex parte* an Affidavit of Non-Compliance
22 regarding the failure. Upon filing of the affidavit, the Court may authorize, without
23 additional process or demand, Writs of Possession or Sequestration or other equitable
24 writs requested by the receiver. The writs shall authorize and direct the United States
25 Marshal or any sheriff or deputy sheriff of any county (pursuant to Fed. R. Civ. P.
26 4(c)(1)), or any other federal or state law enforcement officer, to seize the asset,
27 document, or other thing and to deliver it to the receiver.

28

1 **XII. COOPERATION WITH THE RECEIVER**

2 **IT IS FURTHER ORDERED** that all defendants, and their agents, servants,
3 employees, and attorneys, and all persons or entities directly or indirectly under the
4 control of any of them, and all other persons or entities in active concert or participation
5 with any of them who receive actual notice of this Order by personal service or
6 otherwise, and each such person, shall cooperate fully with and assist the Temporary
7 Receiver. Such cooperation and assistance shall include, but not be limited to, providing
8 any information to the Temporary Receiver that the Temporary Receiver deems
9 necessary to exercise the authority and discharge the responsibilities of the Temporary
10 Receiver under this Order; providing any password required to access any computer or
11 electronic files in any medium; or advising all persons who owe money to any of the
12 receivership defendants (other than customers) that all debts should be paid directly to
13 the Temporary Receiver. All defendants are hereby restrained and enjoined from directly
14 or indirectly:

15 A. Transacting any of the business of the receivership defendants, or
16 transacting business under the names Seasilver USA, Inc., Americaloe, Inc., or any
17 substantially similar names;

18 B. Destroying, secreting, defacing, transferring, or otherwise altering or
19 disposing of any documents of either of the receivership defendants, including, but not
20 limited to, books, records, accounts, or any other papers of any kind or nature;

21 C. Transferring, receiving, altering, selling, encumbering, pledging, assigning,
22 liquidating, or otherwise disposing of any assets owned, controlled, or in the possession
23 or custody of, or in which an interest is held or claimed by, either of the receivership
24 defendants, or the Temporary Receiver;

25 D. Excusing debts owed to any receivership defendant;

26 E. Failing to notify the Temporary Receiver of any asset, including accounts,
27 of any receivership defendant held in any name other than the name of any receivership
28 defendant, or by any person or entity other than the receivership defendants, or failing to

1 provide any assistance or information requested by the Temporary Receiver in
2 connection with obtaining possession, custody, or control of such assets; or

3 F. Doing any act or refraining from any act whatsoever to interfere with the
4 Temporary Receiver's taking custody, control, possession, or management of the assets
5 or documents subject to this receivership; or to harass or interfere with the Temporary
6 Receiver in any way; or to interfere in any manner with the exclusive jurisdiction of this
7 Court over the assets or documents of any receivership defendants; or to refuse to
8 cooperate with the Temporary Receiver or the Temporary Receiver's duly authorized
9 agents in the exercise of their duties or authority under any order of this Court.

10 **XIII. TRANSFER OF FUNDS TO THE TEMPORARY RECEIVER**

11 **IT IS FURTHER ORDERED** that, upon service of a copy of this Order, all
12 banks, broker-dealers, savings and loan associations, escrow agents, title companies,
13 commodity trading companies, and other financial institutions shall cooperate with all
14 reasonable requests of the Temporary Receiver relating to implementation of this Order,
15 including transferring funds at his direction and producing records related to the assets of
16 either of the receivership defendants.

17 **XIV. STAY OF ACTIONS**

18 **IT IS FURTHER ORDERED** that, except by leave of this Court and except for
19 any federal, state, or local law enforcement or regulatory authority action against the
20 receivership defendants, during the pendency of the receivership, defendants and all
21 other persons seeking to establish or enforce any claim, right, or interest against or on
22 behalf of any receivership defendant, be and hereby are stayed from:

23 A. Commencing, prosecuting, continuing, or enforcing any suit against any
24 receivership defendant, except that such actions may be filed to toll any applicable statute
25 of limitations;

26 B. Commencing, prosecuting, continuing, or enforcing any suit or proceeding
27 in the name of or on behalf of any receivership defendant;

28 C. Accelerating the due date of any receivership defendant's obligation or

1 claimed obligation; enforcing any lien upon, or taking, attempting to take, or retaining
2 possession of any receivership defendant's assets; attempting to foreclose, forfeit, alter,
3 or terminate any interests of any receivership defendant, whether such acts are part of a
4 judicial proceeding or otherwise;

5 D. Using self-help or executing or issuing any process to impound, take
6 possession of, interfere with, create, or enforce a lien upon any asset owned by or in the
7 possession of any receivership defendant, the Temporary Receiver, or any agent
8 appointed by the Temporary Receiver; and

9 E. Committing any act to interfere with the Temporary Receiver's taking
10 control, possession, or management of the receivership defendants and their assets and
11 documents, or to interfere with the exclusive jurisdiction of this Court over the property
12 and assets of the receivership defendants.

13 **Provided** that this Paragraph does not stay any suit pending in a State court, upon
14 motion and a finding by the Court that the moving party will suffer substantial injury if it
15 is not permitted to proceed.

16 **XV. EXPEDITED DISCOVERY**

17 **IT IS FURTHER ORDERED** that the Commission is granted leave at any time
18 after service of this Order to demand the production of documents from any person or
19 entity relating to the nature, status, extent, location, or other relevant information relating
20 to defendants' assets, income, personal or business financial records, or the location of a
21 defendant. Forty-eight (48) hours notice shall be deemed sufficient for any such
22 production of documents from the defendants and three (3) business days notice shall be
23 deemed sufficient for any such production of documents from any other person or entity,
24 including, but not limited to, any bank, savings and loan, financial or brokerage
25 institution, fund, escrow agent, or trustee. The production of documents submitted
26 pursuant to this provision shall not in any way waive the Commission's rights to seek the
27 production of additional documents.

28

1 **XVI. RIGHT OF IMMEDIATE ACCESS**

2 **IT IS FURTHER ORDERED** that defendants, the Temporary Receiver, and any
3 other person who receives actual notice of this Order by personal service or otherwise,
4 shall permit the Commission's employees, agents, and assistants immediate access to any
5 defendant's business premises and storage facilities, whether owned, controlled, or used
6 by any defendant in whole or in part, including, but not limited to, the offices located at
7 2045 Corte del Nogal and 1950, 2310, 2350, and 2385 Camino Vida Roble, Carlsbad,
8 California. The purpose of this access shall be to effect service and to inspect, copy, and
9 inventory documents or other material relevant to this action. The Commission's
10 representatives may remove original documents from defendants' business premises to
11 make photocopies, provided that the originals are returned within a reasonable period of
12 time. Defendants, to the extent that they are in possession of documents relevant to this
13 action, shall provide Commission employees, agents, and assistants with any necessary
14 means of access to these documents including, but not limited to, keys and lock
15 combinations, computer access codes, and storage access information. Defendants are
16 hereby enjoined and restrained from interfering with the Commission's right of access
17 described herein.

18 **IT IS FURTHER ORDERED** that the Temporary Receiver shall subsequently
19 allow the Commission's representatives, and the representatives of the corporate
20 defendants and of defendants Bela Berkes and Jason Berkes, and defendants Bela Berkes
21 and Jason Berkes themselves reasonable access to the business premises of the
22 receivership defendants for the purpose of inspecting and copying any and all books,
23 records, accounts, and other property owned by or in the possession of the receivership
24 defendants. The Temporary Receiver shall have the discretion to determine the time and
25 manner of this access.

26 **IT IS FURTHER ORDERED** that if, at the time of service of this Order, any
27 records or property relating to any defendant's business or assets are located in the
28 personal residence of any individual defendant, then such individual defendant shall,

1 within forty-eight (48) hours of service of this Order, produce to the Commission, at a
2 location designated by the Commission:

3 A. All contracts, accounting data, written or electronic correspondence,
4 advertisements, computer tapes, discs, or other computerized or electronic records,
5 books, written or printed records, handwritten notes, telephone logs, telephone scripts,
6 telephone bills, receipt books, ledgers, membership records and lists, refund records,
7 receipts, ledgers, bank records (including personal and business monthly statements,
8 canceled checks, records of wire transfers, and check registers), appointment books,
9 copies of federal, state, and local business or personal income or property tax returns,
10 1099 forms, title records, and other documents or records of any kind that relate to any
11 defendant's business and assets; and

12 B. All computers and data in whatever form, used by defendants, in whole or
13 in part, relating to any defendant's business and assets.

14 **XVII. CONSUMER REPORTS**

15 **IT IS FURTHER ORDERED** that the Commission may obtain consumer reports
16 concerning any defendant pursuant to Section 604(a)(1) of the Fair Credit Reporting Act,
17 15 U.S.C. § 1681b(a)(1), and that, upon written request, any credit reporting agency from
18 which such reports are requested shall provide them to the Commission.

19 **IT IS FURTHER ORDERED** that the Commission may provide to the
20 Temporary Receiver copies of any consumer reports it receives pursuant to this
21 provision.

22 **XVIII. DISTRIBUTION OF ORDER BY DEFENDANTS**

23 **IT IS FURTHER ORDERED** that defendants shall immediately provide a copy
24 of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer,
25 director, employee, independent contractor, distributor, agent, attorney, ad broker,
26 advertising agency, fulfillment house, call center, domain registrar, mail receipt facility,
27 and representative of the defendants, and, within ten (10) calendar days following service
28 of this Order on defendants, defendants shall provide the Commission with an affidavit

1 identifying the names, titles, addresses, and telephone numbers of the persons and entities
2 that defendants have served with a copy of this Order in compliance with this provision.

3 The Temporary Receiver has no obligation under this provision.

4 **XIX. SERVICE OF THIS ORDER BY THE COMMISSION**

5 **IT IS FURTHER ORDERED** that copies of this Order, together with copies of
6 the Complaint and exhibits, the Motion for Temporary Restraining Order and all
7 supporting documents, shall be served by facsimile transmission, personal or overnight
8 delivery, or U.S. Mail, by employees of the Commission, employees of any other law
9 enforcement agency, agents of any process servers retained by the Commission, the
10 Temporary Receiver, or agents of the Temporary Receiver on (1) defendants, (2) any
11 financial or brokerage institution, entity, or person that holds, controls, or maintains
12 custody of any account or asset of any defendant, or (3) any other person or entity that
13 may be subject to any provision of this Order. Service upon any branch or office of any
14 entity shall effect service upon the entire entity.

15 **XX. RIGHT TO INVESTIGATE AND ADD ADDITIONAL PARTIES**
16 **AND CLAIMS**

17 Nothing in this Temporary Restraining Order should be construed as limiting or
18 restricting the Commission's right or ability to investigate, take discovery from, add to
19 this action, or bring further actions against any person or entity not specifically named
20 herein as a defendant who may be in active concert or participation with any defendant.

21 **XXI. ORDER TO SHOW CAUSE**

22 **IT IS FURTHER ORDERED**, pursuant to Fed. R. Civ. P. 65(b), that defendants
23 shall appear before this Court on the 26 day of June, 2003 at 9:00 a.m., in Courtroom
24 6D, before the Honorable Kent J. Dawson, to show cause, if there is any, why this Court
25 should not enter a preliminary injunction, pending final ruling on the Complaint, against
26 defendants enjoining them from violations of Sections 5(a) and 12 of the FTC Act, 15
27 U.S.C. §§ 45(a) and 52, and imposing such additional relief as may be appropriate.

28

1 **XXII. SERVICE OF ANSWERING AFFIDAVITS, MEMORANDA, AND**
2 **EVIDENCE**

3 **IT IS FURTHER ORDERED** that

4 A. Defendants shall file any answering affidavits, pleadings, or legal
5 memoranda with the Court and serve the same on counsel for the Commission no later
6 than four (4) business days prior to the preliminary injunction hearing in this matter. The
7 Commission may file responsive or supplemental pleadings, materials, affidavits, or
8 memoranda with the Court and serve the same on counsel for defendants no later than
9 two (2) business days prior to the preliminary injunction hearing in this matter. *Provided*
10 *that* service shall be performed by personal or overnight delivery or by facsimile, and
11 documents shall be delivered so that they shall be received by the other parties no later
12 than 4 p.m. Eastern Time on the appropriate service dates required by this Subparagraph.

13 B. There will be no direct examination of witnesses at the preliminary
14 injunction hearing in this matter. Direct testimony shall be presented in the form of
15 declarations or affidavits.

16 **XXIII. SERVICE UPON THE COMMISSION**

17 **IT IS FURTHER ORDERED**, with regard to any correspondence, pleadings, or
18 notifications related to this Order, that service on the Commission shall be performed by
19 either (A) overnight delivery or (B) facsimile and first class mail delivery to:

20 DAVID M. NEWMAN
21 Federal Trade Commission
22 901 Market Street, Suite 570
23 San Francisco, CA 94103
24 Phone (415) 848-5100/Fax (415) 848-5184

25 and

26 CHRISTA VECCHI
27 Federal Trade Commission
28 601 New Jersey Ave., N.W.
Mail Drop NJ-3212
Washington, D.C. 20001
Phone (202) 326-3166/Fax (202) 326-3259

1 **XXIV. EXPIRATION OF THIS ORDER**

2 **IT IS FURTHER ORDERED** that the Temporary Restraining Order granted
3 herein shall expire ten (10) days after entry unless within such time the Order, for good
4 cause shown, is extended, or unless, as to any defendant, the defendant consents that it
5 should be extended for a longer period of time and the reasons therefor are entered of
6 record.

7 **XXV. RETENTION OF JURISDICTION**

8 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this
9 matter for all purposes.

10 **IT IS SO ORDERED:**

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13 DATED: 13 June 2003


14 UNITED STATES DISTRICT JUDGE
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