

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT  
CIVIL ACTION NO. 05-1856-H

COMMONWEALTH OF MASSACHUSETTS,  
Plaintiff,

v.

LEO KUVAYEV, VLADISLAV KHOKHOLKOD,  
PAVEL TKACHUK, ANNA ORLOVA,  
MICHELLE MARCO, DENNIS NARTIKOEV,  
PAVEL YASHIN, 2K SERVICES, INC.,  
AND ECASH PAY, Ltd.

Defendants.

FINAL JUDGMENT AND PERMANENT INJUNCTION AGAINST DEFENDANTS

This action came on for hearing before the Court upon the motion and affidavits filed by Plaintiff, the Commonwealth of Massachusetts (the "Commonwealth"), through the Office of the Attorney General, Thomas F. Reilly, in the above-captioned matter, for a default judgment by the Court pursuant to Mass. R. Civ. P. 55(b)(2). This Court, having considered the Complaint and affidavits filed therewith as well as the Commonwealth's Motion for Assessment of Damages and Entry of Final Judgment and memorandum filed in support thereof, and it appearing to the Court that the Commonwealth on May 13, 2005 duly served the Summons and Complaint on Defendants Leo Kuvayev, Vladislav Khokholkod, Pavel Tkachuk, Anna Orlova, Michelle DeMarco, Dennis Nartikoev, Pavel Yashin, 2K Services, Inc., and Ecash Pay, Ltd. (collectively, "Defendants"), as appears from the Commonwealth's Affidavit of Service dated

May 31) 2005 and Notice of Service of Process dated June 3, 2005; and that the Commonwealth on September 11, 2005) served this proposed Final Judgment and Permanent Injunction on Defendants; and that Defendants have filed no appearance, answer, or other defense or otherwise taken any action in this proceeding, the Courts enters judgment as follows:

### **FINDINGS**

This Court, based on allegations in the Complaint and affidavits presented, makes the following findings:

1. This Court has jurisdiction over the subject matter of this action pursuant to G. L. c. 93A, § 4, and G. L. c. 214, § 1.
2. Personal jurisdiction over Defendants is proper pursuant to G.L. c. 223A, §2, or G.L. c. 223A, §3.
3. Venue is proper in Suffolk County Pursuant to G. L. c. 93A, § 4.
4. Defendants conduct business using a Massachusetts business address of 2193 Commonwealth Avenue, Box 313, Brighton, Massachusetts, 02135. As part of their business operations) Defendants have assumed thousands of names and Internet domains under which they advertise, promote, and conduct business.
5. During the course and conduct of their business) Defendants have sent numerous commercial e-mail communications to consumers in the Commonwealth and throughout the United States that violate the Controlling Assault of Non-Solicited Pornography and Marketing Act, or "CAN-SPAM Act") 15 U.S.C. § 7704 *et seq.* as follows:
  - a. Defendants violated 15 U.S.C § 7704(a)(3)(A)(i) and (ii) of the CAN-SPAM Act by failing to provide recipients of their commercial electronic mail messages with a functioning mechanism allowing them to seek to opt out of receiving future messages for at least 30 days following the transmission of the original message;
  - b. Defendants violated 15 U.S.C §§ 7702(8), 7704(a)(1), and (6) of the CAN-SPAM

Act by including materially false or misleading header information in their commercial e-mail messages, specifically a non-functioning originating e-mail address;

- c. Defendants violated 15 U.S.C § 7704(a)(5)(A)(i) of the CAN-SPAM Act by failing to clearly and conspicuously identify their messages as an advertisement or solicitation;
- d. Defendants violated 15 U.S.C § 7704(a)(5)(A)(iii) of the CAN-SPAM Act by failing to include a valid physical postal address in their messages;
- e. Defendants violated section 15 U.S.C § 7704(d)(3) of the CAN-SPAM Act by failing to place warning labels on commercial electronic mail containing sexually oriented material;
- f. Defendants violated section 15 U.S.C § 7704(b)(1) of the CAN-SPAM Act by obtaining recipients' e-mail address by automated means; and
- g. Defendants violated section 15 U.S.C § 7704(b)(1) of the CAN-SPAM Act by using another third party's Internet domain without their permission.

6. Defendants' violations of the CAN-SPAM Act constitute violations of 940 C.M.R. 3.16 (4) and,

therefore, violations of G.L. c. 93A, § 2(a).

7. Defendants have violated the Federal Food, Drug, and Cosmetic Act ("FDCA ") by distributing, selling, mislabeling and importing drugs that have not been approved for sale in the United States and dispensing such drugs to consumers without a valid prescription. Defendants' violations of the FDCA constitute violations of 940 C.M.R 3.16 (4) and, therefore, violations of G.L. c. 93A, § 2(a).

8. Defendants have also engaged in a pattern and practice of unfair and deceptive acts or practices in connection with their online businesses that violate G. L. c. 93A, § 2(a) by knowingly: 1) promoting and selling unapproved and counterfeit drugs through the Defendants' online pharmacies; 2) misrepresenting the authenticity of computer software products sold on Defendants' online websites; 3) offering online mortgage brokering services without a valid mortgage brokers license in violation of G.L. c. 255E, § 2; and 4) violating the Attorney

General's advertising regulations, 940 C.M.R 8.04, for mortgage brokers in collection with Defendants' online mortgage brokerage business.

## ORDER FOR JUDGMENT

Wherefore, this Court grants the Commonwealth's demand for relief and it is ordered and adjudged that:

1. Judgment is entered under Counts I, II, III, IV, V, and VI of the Complaint in favor of the Commonwealth and against Defendants;

2. Defendants are permanently enjoined and must refrain from violating the Massachusetts Consumer Protection Act, G. L. c. 93A, inclusive but not limited to the following practices:

(a) Advertising, promoting and offering for sale online or offline prescription drugs, counterfeit computer software, mortgage, loans, and pornography;

(b ) Sending any unsolicited e-mails advertising, promoting and offering for sale online or offline unapproved and/or counterfeit prescription drugs, counterfeit computer software, mortgage loans, and pornography;

(c) Sending commercial e-mail messages with originating e-mail addresses that do not receive reply messages;

(d) Sending commercial e-mail messages that do not provide a functioning mechanism that recipients can use to request that no further messages be sent to them by the defendant;

(e) Sending messages with header information that is materially false or misleading, including, but not limited to, a non-functioning originating e-mail address;

(t) Sending messages with an invalid postal address;

(g) Sending e-mails that do not contain warnings regarding the sexually oriented content of the e-mails;

(h) Sending messages that fail to clearly and conspicuously notify the recipient that it is an advertisement or solicitation;

- (i) Registering any domain name or maintaining any domain name registration using information that is incorrect or falsifying the identity of the actual registrant;
- (j) Promoting or facilitating the sale or- delivery of any product or services through use of deceptive means for the benefit of any of the Defendants;
- (k) Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly (including engaging others to act on Defendants' behalf, any documents, computers, computerized files, storage media on which information is stored or saved, contracts, accounting data, correspondence (including electronic correspondence), advertisements, web-pages, customer lists, affiliate codes and lists, financial records and any other documents. or records of any kind that relate to the acts, practices and personal finances of each Defendant, including acting individually or in concert with others; and
- (l) Forming a business or organizational identity as a method of avoiding the terms and conditions of this permanent injunction; and affirmatively requiring each Defendant to disclose the terms and conditions of this permanent injunction to all officers, employees, representatives, affiliates, agents, successors, assigns, or any other person who acts under or who, will act under, by, through, or on behalf of any Defendant engaged in any activity involving commercial e-mail, instant messaging, or internet promotion.

3. The Commonwealth is awarded civil penalties pursuant to G. L. c. 93A, § 4, in the amount of \$37,481,500 for violations of G. L. c. 93A, § 2, found against the Defendants including, \$ 37,461,500 for Defendants' transmission of over 149,846 email communications that violate both the CAN-SPAM Act and G.L. c. 93A, § 2 (149,846 emails x \$250 penalty per email) and \$20,000 for Defendants' online sale of counterfeit, unapproved drugs without a prescription and counterfeit software (4 sales x \$5,000 penalty per sale).

4. The Commonwealth is awarded the costs of bringing this action, including attorney's fees, in the sum of \$17,300.

Dated at Boston, Massachusetts, this 26<sup>th</sup> day of September, 2005.

[C. Brian MacDonald signature]

Justice of the Superior Court