

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Civil Action No. **05-21964**

UNITED STATES OF AMERICA,

Plaintiff,

v.

BANGBROS.COM, INC.,  
a Florida corporation,

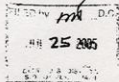
RK NETMEDIA, INC.,  
a Florida corporation,

OX IDEAS, INC.,  
a Florida corporation,

Defendants.

**GIV-MOORE**

MAGISTRATE JUDGE  
**GARBER**



**STIPULATED ORDER OF JUDGMENT FOR CIVIL PENALTIES,  
PERMANENT INJUNCTION, AND OTHER EQUITABLE RELIEF**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or the "Commission"), pursuant to Section 16(a)(1) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 56(a)(1), has filed a complaint pursuant to Sections 5(a)(1), 5(m)(1)(A), 13(b), and 16(a) of the FTC Act, 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and 56(a), and under Section 7(a) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM" or the "CAN-SPAM Act"), 15 U.S.C. § 7706(a), to secure civil penalties, a permanent injunction, and other equitable relief for Defendants' violations of Sections 5(a) and (d) of CAN-SPAM, 15 U.S.C. §§ 7704(a) and (d), and the FTC's Adult Labeling Rule (the "Adult Labeling Rule" or the "Rule"), 16 C.F.R. Part 316.4. The parties to this action agree to settlement of this action without adjudication of any issue

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of fact or law and without Defendants admitting liability for any of the matters alleged in the complaint.

THEREFORE, on the joint motion of the parties, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

### FINDINGS

1. This Court has jurisdiction over the subject matter pursuant to 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), 57b, and 7706(a), and 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355.
2. Plaintiff and Defendants consent to jurisdiction and venue in this District.
3. The activities of Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The complaint states a claim upon which relief may be granted against Defendants under Sections 5(a) and (d) of the CAN-SPAM Act, 15 U.S.C. §§ 7704(a) and (d), and the FTC's Adult Labeling Rule, 16 C.F.R. Part 316.4.
5. The parties hereto stipulate and agree to this Consent Decree, without trial or final adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising from the allegations in the Complaint. Although the Defendants agree to enter into this Order, Defendants deny all of the allegations set forth in the Complaint other than the jurisdictional facts set forth in the Complaint.
6. Defendants hereby waive all rights to appeal or otherwise challenge or contest the validity of this Order.
7. Defendants agree that this Order does not entitle Defendants to seek or to obtain

attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, and Defendants further waive any rights to attorneys' fees that may arise under said provision of law.

8. Entry of this Order is in the public interest.

### DEFINITIONS

For the purpose of this Order, the following definitions shall apply:

1. "Affiliate Program" means any agreement whereby any person agrees to provide Defendants with, or refers to Defendants, potential or actual customers.
2. "Commercial electronic mail ('email') message" means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet web site operated for a commercial purpose) and that further satisfies the requirements of 16 C.F.R. 316.1 *et seq.*
3. Unless otherwise specified, "Defendants" means Bangbros.com, Inc., RK Netmedia, Inc., Ox Ideas, Inc., and each of them, and their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other entity.
4. "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 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, into reasonably usable form through detection devices. A draft or non-identical copy is a separate document within the meaning of the term.

5. "Electronic mail ('email') address" means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the "local part") and a reference to an Internet domain (commonly referred to as the "domain part"), whether or not displayed, to which an electronic mail message can be sent or delivered.

6. "Electronic mail ('email') message" means a message sent to a unique electronic mail address.

7. "Initiate," when used with respect to a commercial electronic mail message, means to originate or transmit such message or to procure the origination or transmission of such message, but shall not include actions that constitute routine conveyance of such message. For purposes of this Order, more than one person may be considered to have initiated a message.

8. "Person" means a natural person or a corporation, partnership, proprietorship, limited liability company, or other organization or legal entity, including an association, cooperative, or agency, or other group or combination acting as an entity.

9. "Procure," when used with respect to the initiation of a commercial electronic mail message, means intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one's behalf. *Provided, however,* that for the purposes of this Order, Defendants have not procured the initiation of commercial electronic mail messages that violate the CAN-SPAM Act or its implementing regulations: (1) if they have contractually prohibited affiliates from sending commercial electronic mail or, in the case of persons who are not affiliates, have not requested any such persons to send commercial electronic mail; and (2) if they have complied with the requirements set forth in Section III of this Order.

10. "Recipient," when used with respect to a commercial electronic mail message, means

an authorized user of the electronic mail address to which the message was sent or delivered. If a recipient of a commercial electronic mail message has one or more electronic mail addresses in addition to the address to which the message was sent or delivered, the recipient shall be treated as a separate recipient with respect to each such address. If an electronic mail address is reassigned to a new user, the new user shall not be treated as a recipient of any commercial electronic mail message sent or delivered to that address before it was reassigned.

11. "Sender" when used with respect to a commercial electronic mail message, means a person who initiates such a message and whose product, service, or Internet web site is advertised or promoted by the message.

12. "Sexually oriented material" means any material that depicts sexually explicit conduct (as that term is defined in section 2256 of title 18, United States Code) unless the depiction constitutes a small and insignificant part of the whole, the remainder of which is not primarily devoted to sexual matters.

13. "Valid physical postal address" means a sender's current street address, a Post Office box a sender has registered with the United States Postal Service, or a private mailbox a sender has registered with a commercial mail receiving agency that is established pursuant to United States Postal Service regulations.

## **ORDER**

### **I. PROHIBITION AGAINST VIOLATING THE CAN-SPAM ACT**

IT IS THEREFORE ORDERED that Defendants are hereby permanently restrained and enjoined from violating the CAN-SPAM Act, 15 U.S.C. §§ 7701 *et seq.*, including, but not limited to, procuring the transmission of a commercial email message:

- A. that does not contain a functioning return email address or other Internet-based mechanism, clearly and conspicuously displayed, that (i) a recipient may use to submit, in a manner specified in the message, a reply email message or other form of Internet-based communication requesting not to receive future commercial email messages from that sender at the email address where the message was received; and (ii) remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message; and
- B. that does not contain a clear and conspicuous display of an accurate, valid, physical postal address of the Defendant who is the sender of the message.

Defendants are further permanently restrained and enjoined from procuring the transmission of a commercial email message that does not contain a clear and conspicuous notice of a recipient's opportunity to decline to receive future commercial email messages from each Defendant whose products, services, or Internet websites are being advertised or promoted by such message.

## **II. PROHIBITION AGAINST VIOLATING THE ADULT LABELING RULE**

IT IS FURTHER ORDERED that Defendants are hereby permanently restrained and enjoined from violating the Adult Labeling Rule, 16 C.F.R. § 316.4, including but not limited, to the extent applicable, to procuring the transmission of a commercial email message that includes sexually oriented material:

- A. that does not contain the phrase "SEXUALLY-EXPLICIT: " as the first nineteen (19) characters at the beginning of the subject line of the message;
- B. that includes sexually oriented materials within the subject line of the message; and

- C. that includes sexually oriented materials within the content of the message that is initially viewable by the recipient, when the message is opened by the recipient and absent any further action by the recipient.

### **III. MONITORING BY DEFENDANTS FOR COMPLIANCE**

IT IS FURTHER ORDERED that Bangbros.com, Inc., RK Netmedia, Inc., Ox Ideas, Inc., and each of them, and their successors, assigns, officers, agents, servants, and employees are hereby permanently restrained and enjoined from failing to immediately take the following steps to ensure compliance with Sections I and II of this Order:

- A. Prior to a person's participation in a Defendant's affiliate program, that Defendant shall require each prospective participant to provide to that Defendant their first and last name, physical address, country, telephone number, email address, date of birth, and bank account information (where used to make payments to that person). In the event that the prospective participant is not a natural person, but is a corporation, partnership, proprietorship, limited liability company, or other organization or legal entity, including an association, cooperative, agency, or other group or combination acting as an entity, that Defendant shall also require from that prospective participant the first and last name, physical address, country, telephone number, email address, and date of birth for the natural person(s) who owns, manages, or controls that prospective participant;
- B. Prior to a person's acceptance into a Defendant's affiliate program, each Defendant shall (1) provide each prospective participant in that Defendant's affiliate program a copy or summary (to be agreed upon by counsel for Defendants and the Commission)

of this Order; (2) obtain from each prospective participant an express agreement to comply with this Order and the CAN-SPAM Act; and (3) obtain from each prospective participant a signed and dated statement (which signature may be obtained electronically, provided that the signature would comply with the signature requirements of the Electronic Signatures in Global and National Commerce Act, ("E-Sign Act"), 15 U.S.C. § 7001 *et seq.*), acknowledging receipt of this Order;

- C. Each Defendant shall establish, implement, and maintain an email address or other Internet-based mechanism that is clearly and conspicuously disclosed on the first page a consumer visits upon entering that Defendant's web site, (i) that invites visitors to report commercial email messages promoting the Defendant's web site, and that permits the Defendant to associate affirmative responses, if any, to such invitation with the referring affiliate, and (ii) for receiving and responding to consumer complaints, whether received directly by that Defendant or through an intermediary, concerning violations of the CAN-SPAM Act, the Adult Labeling Rule, or any provision of this Order;
- D. Each Defendant shall promptly and fully investigate, in accordance with industry standards, any information received by that Defendant regarding a commercial email message that promotes that Defendant's web site(s), including, but not limited to, responses received pursuant to Section III.C, and complaints received from consumers, Internet Service Providers, the Commission or other law enforcement agencies, to determine whether such commercial email message violates a contractual provision of the Defendant's affiliate program, the CAN-SPAM Act, the Adult



Labeling Rule, or any provision of this Order;

- E. Each Defendant shall collect, on a continuing basis, data from a random sample of new subscribers as to the manner in which they were directed to the Defendant's web sites (i.e., email message, banner ad, pop-up window, etc.). The methodology for selecting such a sample is to be agreed upon by counsel for Defendants and the Commission. If a new subscriber indicates that he or she was referred to a Defendant's web site through a commercial email message, and that Defendant determines that it did not itself send a commercial email message to the new subscriber, that Defendant shall promptly and fully investigate to determine whether a commercial email message was sent in violation of a contractual provision of the Defendant's affiliate program, the CAN-SPAM Act, the Adult Labeling Rule, or any provision of this Order;
- F. Defendants shall immediately terminate from all Defendants' affiliate programs, and cease payments to, any person who Defendants reasonably conclude has sent a commercial email message on a Defendant's behalf that violates a contractual provision of that Defendant's affiliate program prohibiting the sending of commercial email, the CAN-SPAM Act, the Adult Labeling Rule, or any provision of this Order.
- G. On the web page where a person registers to become a member of a Defendant's affiliate program, each Defendant shall clearly and conspicuously disclose that a violation of the affiliate program's commercial email policy will result in immediate termination of a person's affiliate account and the forfeiture of all monies earned or owed to that person. Such message shall also include a hyperlink to that Defendant's

commercial email policy if that policy is not included on that web page;

- H. Each Defendant shall require each person who participates in that Defendant's affiliate program to create, maintain, and retain the records and documents necessary to demonstrate each person's full compliance with each provision of this Order.

*Provided, however,* that this Section does not authorize or require Defendants to take any action that violates any federal, state, or local law.

#### IV. COMPLIANCE REPORTING BY DEFENDANTS

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Order, each Defendant shall notify the Commission of any changes in corporate structure that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least seven (7) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which a Defendant learns less than seven (7) days prior to the date such action is to take place, such Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.
- B. One hundred eighty (180) days after the date of entry of this Order, each Defendant shall provide a written report to the FTC, sworn to under penalty of perjury, setting

forth in detail the manner and form in which it has complied and is complying with this Order. This report shall include, but not be limited to:

1. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Sections III.B, VI.B, and VII of this Order;
2. Any changes required to be reported pursuant to subsection A of this Section;
3. A list that identifies every person who is marketing or promoting, through commercial email messages, any goods or services of a Defendant since entry of this Order;
4. A list of all names under which each Defendant did or currently does business since entry of this Order; and
5. A list of all domain names and web page addresses each Defendant has registered or used since entry of the Order.

- C. For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Marketing Practices  
Federal Trade Commission  
600 Pennsylvania Ave., N.W., Room 238  
Washington, DC 20580  
Re: United States v. Bangbros.com, Inc.  
Civ. No. \_\_\_\_\_.

- D. For the purposes of this Order, each Defendant shall, unless otherwise directed by a representative of Plaintiff, identify all written notifications required to be sent to Plaintiff as in reference to DJ# 102-3289, and mail them to:

Director, Office of Consumer Litigation  
U.S. Department of Justice - Civil Division  
P.O. Box 386  
Washington, DC 20044.

- E. For purposes of the compliance reporting and monitoring required by this Order, representatives of Plaintiff and the Commission are authorized to communicate directly with Defendants' officers.

#### V. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, each Defendant is hereby restrained and enjoined from failing to create and retain the following records in connection with the marketing, advertising, promotion, offering for sale, or sale of that Defendant's goods or services through each Defendant's affiliate program, and from failing to make such records (or reports concerning such records) available for inspection and copying within ten (10) days of receipt of a written request from a representative of Plaintiff or Commission:

- A. Standard accounting records generated in the ordinary course of business including, but not limited to, balance sheets, income statements, and annual reports;
- B. Accounting records that reflect revenue generated by sales to individuals referred through an affiliate program and corresponding disbursements to participants in each Defendant's affiliate program on an individual basis, including copies of the most recently deposited check for each such participant paid by check;
- C. Records accurately reflecting during their employment: the name, physical address, and telephone number of each person employed by that Defendant, including as an independent contractor (but not as an affiliate) with responsibilities relating to

compliance with this Order; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

- D. Records that reflect, for every written or oral consumer complaint received by each Defendant relating to the activities of any affiliates promoting that Defendant's goods and services via commercial email messages, whether directly or indirectly or through any third party, including affiliates: (1) the name, address, and telephone number provided by the complaining consumer; (2) the written complaint or request, if any; (3) the basis of the complaint or request if known; (4) the nature and result of any investigation conducted concerning the complaint or request; (5) each response and the date of such response to the complaint or request; (6) any final resolution of the complaint or request, and the date of such resolution; and (7) in the event of a denial of any resolution, the reason for the denial;
- E. Copies of responses gathered in accordance with Sections III.C and III.E and records that accurately reflect Defendant's investigation of said responses;
- F. Copies of all information obtained, pursuant to Section III, from each person who participates in Defendants' affiliate programs;
- G. All other records and documents reasonably necessary to demonstrate full compliance with each provision of this Order, including but not limited to, all documents obtained, created, generated or which in any way relate to the requirements, provisions or terms of this Order, copies of signed and dated acknowledgments of receipt of this Order, required by Sections III.B, VI.B, and VII

of this Order, and all reports submitted to the FTC pursuant to this Order.

#### **VI. DISTRIBUTION OF ORDER BY DEFENDANT**

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendants shall deliver copies of this Order as directed below.

- A. Defendants must deliver a copy of this Order to all of their officers, directors, and managers. Defendants must also deliver a copy or summary (to be agreed upon by counsel for Defendants and Commission) of this Order to all of their employees, agents, independent contractors, and persons who engage in conduct related to the subject matter of this Order. For current personnel, delivery shall be within five (5) days of service of this Order. For new personnel, delivery shall occur prior to them assuming their responsibilities.
- B. Defendants must secure a signed and dated written or electronic statement (which signature may be obtained electronically provided that the signature would comply with the signature requirements of the Electronic Signatures in Global and National Commerce Act, ("E-Sign Act"), 15 U.S.C. § 7001 et seq.), acknowledging receipt of this Order, within thirty (30) days of delivery, from all persons receiving a copy or summary of this Order pursuant to this Section.

#### **VII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**

IT IS FURTHER ORDERED that Defendants, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

### **VIII. CIVIL PENALTIES**

IT IS FURTHER ORDERED that Defendants, jointly and severally, and their successors and assigns, shall pay to Plaintiff a civil penalty, pursuant to section 5(m)(1)(A) of the Federal Trade Commission Act, 15 U.S.C. § 45(m)(1)(A), in the amount of \$650,000 as follows:

- A. Defendants shall make the payment required by this Part within ten (10) business days of the date of entry of this Order by electronic fund transfer in accordance with the instructions provided by the Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, D.C. 20530, for appropriate disposition;
- B. In the event of any default in payment, which default continues for ten (10) business days beyond the due date of payment, the entire unpaid penalty, together with interest, as computed pursuant to 28 U.S.C. § 1961, from the date of default to the date of payment, shall immediately become due and payable.

### **IX. FEES AND COSTS**

IT IS FURTHER ORDERED that each party to this Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

### **X. SEVERABILITY**

IT IS FURTHER ORDERED that the provisions of this Order are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

### **XI. RETENTION OF JURISDICTION**

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Order.