

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No. 10-1362(EGS)
v.)	
)	
DANIEL CHAPTER ONE,)	
)	
and)	
)	
JAMES FEIJO,)	
)	
Defendants.)	

ORDER

Pending before the Court is the government's motion for preliminary injunction and defendants' motion to dismiss. In its motion, the government asks the Court to enjoin defendants from violating the final cease and desist order issued by the Federal Trade Commission on January 25, 2010 (the "Order"), including "(1) prohibiting defendants from continuing to make representations in violation of Part II of the Order on their radio show, online forum, Facebook page, and other websites, (2) requiring defendants to remove audio recordings of their radio show and any written representations that violate Part II of the Order, along with any links to the Guide Book from their online forum, Facebook page, and other websites, and (3) requiring defendants to send the notice detailed in Part V.B of the Order [to its customers]." Pl.'s Revised Mot. for Prelim. Inj. at 25.

Defendants oppose the government's request for a preliminary injunction and further argue that this case must be dismissed for lack of subject matter jurisdiction because an appeal challenging the legality and constitutionality of the Order is currently pending before the United States Court of Appeals for the District of Columbia Circuit.

Upon consideration of the motions, the responses and replies thereto, the applicable law, the entire record, the arguments of counsel made during the motions hearing held on September 14, 2010, and for the reasons stated on the record during the September 14, 2010 hearing, it is by the Court hereby

ORDERED that the government's motion for a preliminary injunction enjoining defendants from violating the Commission's Order is **DENIED** for lack of subject matter jurisdiction, see 15 U.S.C. § 45(d) ("Upon the filing of the record with it the jurisdiction of the [circuit] court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive."); and it is

FURTHER ORDERED that defendants' motion to dismiss is **DENIED**, see 15 U.S.C. § 45(l) (permitting the Attorney General of the United States to file an action to recover civil penalties against "[a]ny person, partnership, or corporation who violates an order of the Commission after it has become final, and while such order is in effect"); see also *United States v. Standard*

Educ. Soc'y, 55 F. Supp. 189, 193 (N.D. Ill. 1943) ("The Circuit Court of Appeals is vested with exclusive jurisdiction to enforce the Commission's cease and desist orders under Section 5(d), but that court has no jurisdiction over penalty suits. . . . Continuance of the enforcement proceedings in the Circuit Court of Appeals appears to be no bar to the commencement of a penalty suit, if, prior to the commencement of the suit, the Commission's order . . . has become final"); and it is

FURTHER ORDERED that this case is **STAYED** pending resolution of defendants' pending appeal before the United States Court of Appeals for the District of Columbia Circuit (Case No. 10-1064).

SO ORDERED.

Signed: Emmet G. Sullivan
United States District Judge
September 14, 2010