

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Case No. 07 C 5597
)	
v.)	Judge Wayne R. Andersen
)	
SPEAR SYSTEMS, INC., a)	Magistrate Judge Michael T. Mason
Wyoming corporation;)	
)	
BRUCE PARKER, individually, and as an officer)	
or director of Spear Systems, Inc.;)	
)	
LISA KIMSEY, individually, and as an officer)	
of Spear Systems, Inc.; and)	
)	
XAVIER RATELLE, individually, and doing)	
business as eHealthyLife.com,)	
)	
Defendants.)	
)	

**PLAINTIFF FTC’S MOTION FOR ENTRY OF A
PRELIMINARY INJUNCTION AS TO XAVIER RATELLE**

Plaintiff Federal Trade Commission (“FTC”), by its undersigned attorneys, brings this motion for entry of a Preliminary Injunction as to Defendant Xavier Ratelle. The FTC seeks a Preliminary Injunction against Mr. Ratelle that: (1) maintains the terms of the Temporary Restraining Order signed by this Court on October 3, 2007; and (2) orders the disablement of certain Web sites under his control that continue to make false and unsubstantiated dietary supplement product claims in violation of the Court’s Temporary Restraining Order. In support thereof, the FTC states:

INTRODUCTION

1. On October 3, 2007, the FTC filed its Complaint in this matter against Spear Systems, Inc., Bruce Parker, Lisa Kimsey and Xavier Ratelle, seeking preliminary and permanent injunctive and other equitable relief, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and Section 7(a) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (“CAN-SPAM Act”), 15 U.S.C. § 7706(a). The FTC’s Complaint alleged that Defendants deceptively marketed and sold dietary supplements on Internet Web sites – including a “human growth hormone” pill called HGHLife and a “hoodia” weight loss pill called HoodiaLife – utilizing a flood of illegal “spam” email messages.

2. On October 3, 2007, the Court granted the FTC’s motion for an *ex parte* Temporary Restraining Order with Asset Freeze, Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue (“TRO”). (*See* Exhibit 1, TRO.) Among other things, the TRO ordered that:

Defendants, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile or otherwise, . . . are hereby temporarily restraining and enjoined from making, or assisting others in making . . . any false or misleading oral or written statement or representation in connection with the marketing, advertising, promotion, offering for sale, sale or provision of any Hoodia- or HGH-related products, or any other products or services[.]

(*Id.*, TRO § I, at pp. 5-6.) The TRO set a hearing on the FTC’s request for a preliminary injunction for October 11, 2007. (*Id.* § XVII, at pp. 19-20.) On October 11, 2007, the Court extended the TRO through October 25, 2007, and re-set the motion hearing for that date. (*See* R. 23.)

XAVIER RATELLE HAS RECEIVED APPROPRIATE NOTICE

3. An adverse party must be given notice before a preliminary injunction can be issued. *See* Fed. R. Civ. P. 65(a)(1). The Seventh Circuit has stated:

Rule 65 does not specify what constitutes sufficient notice. One court, however, has stated that notice should apprise a defendant of a hearing and provide adequate time to prepare a defense. We leave the question of what constitutes sufficient notice primarily to the district court’s discretion and apply a deferential standard of review.

People ex rel. Hartigan v. Peters, 871 F.2d 1336, 1340 (7th Cir. 1989) (citation omitted). *See also Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 434 & n. 7 (1974) (stating that notice required by Rule 65(a) implies “a fair opportunity to oppose the application and to prepare for such opposition”).

4. Mr. Ratelle – a resident of Montreal, Quebec – has received more than adequate notice that the FTC seeks a preliminary injunction in this matter. On October 5, 2007, FTC Staff Attorney Steven Wernikoff was contacted by telephone by Mr. Ratelle. (*See* Exhibit 2, Wernikoff Declaration, ¶ 2.) At that time, Staff Attorney Wernikoff informed Mr. Ratelle that he was a defendant in this matter and that the Court had entered the TRO. (*Id.*) Mr. Ratelle requested that he be sent the relevant court papers to a fax number that he provided. (*Id.*) Staff Attorney Wernikoff then faxed Mr. Ratelle the Court’s TRO, among other documents, and notified him in a cover letter of the October 11, 2007 hearing. (*Id.* ¶ 3, Att. A.) On October 16, 2007, Staff Attorney Wernikoff faxed another letter to the same fax number informing Mr. Ratelle that the Court had extended the TRO through October 25, 2007. (*Id.* ¶ 4, Att. B.) The letter explicitly noted that the Court had indicated that it would entertain entry of a preliminary injunction against Mr. Ratelle at the October 25, 2007 hearing. (*Id.*)

5. Moreover, a process server company in Montreal hired by the FTC has tried repeatedly to personally serve Mr. Ratelle since October 5, 2007. Bailiffs have made a total of eight visits to three different addresses where Mr. Ratelle is believed to work or reside. During one visit, at the address immediately next door to the address listed on Mr. Ratelle's driver's license, a bailiff spoke to Mr. Ratelle's father, Bernard Ratelle. Bernard Ratelle told the bailiff that he did not know his son's home address or phone number. Another bailiff saw a car suspected to be Mr. Ratelle's at two of the locations he attempted to serve, but was never able to locate Mr. Ratelle. By all accounts, Mr. Ratelle has attempted to evade formal service. (See Exhibit 3, Process Server Declarations.)¹

6. Despite receiving notice of the TRO, as of the date of the filing of this motion, certain Web sites under the control of Mr. Ratelle continue to fraudulently promote the HoodiaLife and HGHLife products. (See Exhibit 4, McKenney Declaration ¶ 2, Att. A.)²

ENTRY OF A PRELIMINARY INJUNCTION IS APPROPRIATE

7. Entry of a preliminary injunction as to Xavier Ratelle is appropriate. "The standards for issuing temporary restraining orders are identical to the standards for preliminary injunctions." *Long v. Bd. of Educ., Dist. 128*, 167 F. Supp. 988, 990 (N.D. Ill. 2001). See also *Charter Nat'l Bank & Trust v. Charter One Fin., Inc.*, No. 01 C 905, 2001 WL 527404, at *1 (N.D. Ill. May 15, 2001) (Andersen, J.) ("The standards for a temporary restraining order and the standards for a preliminary injunction are identical.").

¹ The FTC has also sent this motion to Mr. Ratelle at each of the three addresses.

² The Web sites include www.ehealthylife.com, www.ehghlife.com, www.ehghlife.net, www.ehoodialife.com, and www.purevie.com. Ratelle purchased the domain names for the Web sites. (See R. 11, Vol. II Exhs. In Support of TRO, PX 9 ¶¶ 3, Att. A at INT003-10.)

8. The FTC submitted two volumes of exhibits in support of its motion for a TRO, including substantial evidence tying Mr. Ratelle directly to the illegal practices at issue in this case. (*See, e.g.*, R. 9, FTC's Mem. in Support, at p. 5.) In granting the FTC's motion for a TRO, the Court found:

There is good cause to believe that Defendants have engaged in and are likely to continue to engage in acts and practices that violate . . . the FTC Act . . . and . . . CAN-SPAM, and that the Commission is therefore likely to prevail on the merits of this action[.]

* * *

There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of monetary redress or disgorgement will occur from the sale, transfer, or other disposition or concealment by Defendants of their assets or records unless Defendants are immediately restrained and enjoined by Order of this Court.

(Exhibit 1, TRO at p. 2.)

9. Based on the previous findings of the Court, and the evidence that Mr. Ratelle continues to be responsible for fraudulent product claims in violation of the Court's TRO, the FTC seeks entry of the preliminary injunction order attached as Exhibit 5. The proposed preliminary injunction contains the same terms as the TRO entered by the Court on October 3, 2007, except that it additionally seeks entry of an order provision disabling the Web sites that continue to make false and unsubstantiated product claims. (*See* Exhibit 5, Proposed Preliminary Injunction Order, § III, at p. 8.) The FTC has been granted similar injunctive relief against other defendants who utilized Internet Web sites to promote fraud. *See, e.g., FTC v. Stuffingforcash.com Corp.*, 02 C 5022 (N.D. Ill. July 16, 2002) (Norgle, J.) (signed order viewable at <http://www.ftc.gov/os/2002/07/stuffingtro.pdf>, at § II); *FTC v. TLD Network Ltd.*,

No. 02 C 1475 (N.D. Ill. Feb. 28, 2002) (Holderman, J.) (signed order viewable at <http://www.ftc.gov/os/2002/03/tldtro.pdf>, at §§ III, IV).

WHEREFORE, Plaintiff Federal Trade Commission respectfully requests that this Court grant its application for entry of the attached proposed Preliminary Injunction Order against Mr. Ratelle that: (1) maintains the terms of the Temporary Restraining Order signed by this Court on October 3, 2007; and (2) orders the disabling of the Web sites that continue to make false and unsubstantiated product claims in violation of the Court's Temporary Restraining Order.

Respectfully Submitted,

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