

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.	)	

**PRELIMINARY INJUNCTION ORDER WITH ASSET FREEZE  
AND OTHER EQUITABLE RELIEF AS TO XAVIER RATELLE**

WHEREAS, on October 3, 2007, Plaintiff Federal Trade Commission (“FTC” or “Commission”) filed a Complaint for Injunctive and Other Equitable Relief in this matter 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” or “CAN-SPAM Act”), 15 U.S.C. § 7706(a);

WHEREAS, on October 3, 2007, this Court granted the FTC’s *Ex Parte* Motion for a Temporary Restraining Order With Asset Freeze, Other Equitable Relief, and Order To Show Cause

Why a Preliminary Injunction Should Not Issue pursuant to Rule 65 of the Federal Rules of Civil Procedure ("TRO");

WHEREAS, on October 5, 2007, and on subsequent occasions, Defendant Xavier Ratelle was apprised of the proceedings in this Court, served with a copy of the TRO, and notified of the FTC's application for entry of a preliminary injunction;

WHEREAS, the Court having considered the pleadings, memoranda, declarations and other exhibits filed herein, and being fully advised in the premises, it is now **ORDERED, ADJUDGED, AND, AND DECREED** as follows:

#### FINDINGS

1. This Court has jurisdiction over the subject matter of this case and over Defendant Xavier Ratelle.
2. Venue is proper in this District.
3. There is good cause to believe that Defendant Xavier Ratelle has engaged in and is likely to continue to engage in acts and practices that violate Section 5 of the FTC Act, 15 U.S.C. § 45 and Sections 5(a) of CAN-SPAM, 15 U.S.C. § 7704(a), and that the Commission is therefore likely to prevail on the merits of this action.
4. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief to consumers in the form of monetary redress or disgorgement will occur from the sale, transfer, or other disposition or concealment by Defendant Xavier Ratelle of his assets or records unless he is restrained and enjoined by Order of this Court. The evidence set forth in the FTC's Memorandum in Support of its Motion for TRO, and in the accompanying declarations and exhibits, demonstrates that Defendant Xavier Ratelle has engaged in a concerted

course of illegal activity by deceptively marketing products in violation of Section 5 of the FTC Act and by initiating commercial email messages in violation of Section 5 of the CAN-SPAM, 15 U.S.C. § 7704 *et seq.* Xavier Ratelle's practices have regularly involved the concealment of his identity to avoid detection. He has retained ill-gotten gains derived from these and other practices. There is good cause to believe that unless he is restrained from doing so by order of this Court, he will continue with these illegal actions, and he will attempt to conceal the scope of his illegal actions through the destruction of evidence and secreting of assets.

5. Weighing the equities and considering the FTC's likelihood of success, this preliminary injunction is in the public interest.

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

#### **DEFINITIONS**

1. "**Asset**" or "**Assets**" mean any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leases, premises, contracts, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.

2. "**Clear and conspicuous**" or "**clearly and conspicuously**" with regard to the display of a notice means that the information shall be presented in writing, in a type size, color, and location sufficient for an ordinary consumer to read and comprehend it, and shall be disclosed in a manner that would be easily recognizable and understandable in language and syntax to an ordinary

consumer. If the information is contained in a multi-page print document, the disclosure shall appear on the first page.

3. **“Commercial electronic mail message”** (or **“commercial email”**) **“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 website operated for a commercial purpose).”** 15 U.S.C. § 7702(2) (A) (2004).

4. **“Defendant”** means Xavier Ratelle, individually and doing business as eHealthyLife.com.

5. **“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 writing, drawings, graphs, charts, Internet sites, Web pages, Web sites, electronic correspondence, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

6. **“Electronic mail 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.”** 15 U.S.C. § 7702(5).

7. **“Header information”** **“means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person initiating the message.”** 15 U.S.C. § 7702(8).

8. **"HGH Products"** shall refer to any products that are advertised, marketed, promoted, offered for sale, distributed, or sold with express or implied representations that the product contains any form of Human Growth Hormone and/or may cause a statistically significant and clinically meaningful increase in a consumer's growth hormone levels, and include, but are not limited to, "HGHLife," "HGHPlus," or any other substantially similar products.

9. **"Hoodia Products"** shall refer to any products that are advertised, marketed, promoted, offered for sale, distributed, or sold with express or implied representations that the product contains any form of Hoodia gordonii, and include, but are not limited to, "HoodiaLife," "HoodiaPlus," or any other substantially similar products.

10. **"Initiate,"** "when used with respect to a commercial email message, means to originate or transmit such message or to procure the origination or transmission of such message." 15 U.S.C. § 7702(9).

11. **"Procure,"** "when used with respect to the initiation of a commercial email message, means intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one's behalf." 15 U.S.C. § 7702(12).

12. **"Protected computer"** means a computer which is used in interstate or foreign commerce or communication, including a computer located outside the United States that is used in a manner that affects interstate or foreign commerce or communication of the United States. 15 U.S.C. § 7702(13); 18 U.S.C. § 1030(e)(2)(B).

13. **"Sender"** means a person who initiates a commercial electronic mail message and whose product, service, or Internet website is advertised or promoted by the message. 15 U.S.C. § 7702(16).

**I. PROHIBITED BUSINESS ACTIVITIES PURSUANT TO THE FTC ACT**

**IT IS THEREFORE ORDERED** that Defendant, and his officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby temporarily restrained and enjoined from making, or assisting others in making, expressly or by implication, including through the use of a trade name or endorsement, 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, including, but not limited to:

- A. Misrepresenting that the Hoodia Products cause rapid and substantial weight loss, including as much as twenty-five pounds in a month;
- B. Misrepresenting that the Hoodia Products cause users to lose safely three or more pounds per week for multiple weeks;
- C. Misrepresenting that the Hoodia Products cause permanent weight loss;
- D. Misrepresenting that scientific research establishes that the Hoodia Products cause substantial weight loss;
- E. Representing that the HGH Products contain human growth hormone and/or cause a statistically significant and clinically meaningful increase in a consumer's growth hormone levels;
- F. Misrepresenting that the HGH Products will turn back or reverse the aging process, including, but not limited to, causing effects such as: (i) reducing cellulite, (ii) improving vision, (iii)

causing new hair growth, (iv) improving emotional stability, (v) increasing muscle mass, and (vi) causing fat and weight loss;

G. Misrepresenting that any product, or any ingredient contained in it, is effective in the diagnosis, cure, mitigation, treatment, or prevention of any disease;

H. Making any representation about the health benefits, performance, efficacy, or safety of any product unless, at the time of making such representation, Defendant possesses and relies upon competent and reliable scientific evidence that substantiates the representation;

I. Misrepresenting any other fact material to a consumer's decision to purchase any product; and

J. Assisting others who violate any provision of Paragraphs A through I of this Section.

**II. PROHIBITED BUSINESS ACTIVITIES UNDER THE  
CONTROLLING THE ASSAULT OF NON-SOLICITED  
PORNOGRAPHY AND MARKETING ACT OF 2003**

**IT IS FURTHER ORDERED** that Defendant, and his officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby temporarily restrained and enjoined from violating, or assisting others in violating, the provisions contained in the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM Act"), 15 U.S.C. §§ 7704 and 7705, as currently promulgated or as it may hereafter be amended, or any rule, regulation, or requirement adopted pursuant thereto, including, but not limited to, initiating the transmission of a commercial electronic mail message that:

A. Contains, or is accompanied by, false or misleading header information;

- B. Contains subject headers that misrepresent the content or subject matter of the message;
- C. Fails to include a clear and conspicuous notice of the opportunity to decline to receive further electronic mail messages from the sender; and/or
- D. Fails to include a valid physical postal address of the sender.

### **III. DISABLEMENT OF WEB SITES**

**IT IS FURTHER ORDERED** that, pending further Order of this Court:

- A. Any party hosting the Web sites [www.ehealthylife.com](http://www.ehealthylife.com), [www.ehghlife.com](http://www.ehghlife.com), [www.ehghlife.net](http://www.ehghlife.net), [www.ehoodialife.com](http://www.ehoodialife.com) and [www.purevie.com](http://www.purevie.com), including but not limited to Xsventures, LLC, d/b/a Alcolo.com, shall immediately take whatever steps may be necessary to ensure that the Web site [www.ehealthylife.com](http://www.ehealthylife.com) cannot be accessed by the public; and
- B. Any domain name registrar, including but not limited to Intercosmos Media Group, Inc., d/b/a DirectNIC, shall immediately suspend the registration and prevent the transfer of the domain names [www.ehealthylife.com](http://www.ehealthylife.com), [www.ehghlife.com](http://www.ehghlife.com), [www.ehghlife.net](http://www.ehghlife.net), [www.ehoodialife.com](http://www.ehoodialife.com) and [www.purevie.com](http://www.purevie.com) by any and all means, including by removing name server records for the domain names from the registry root file.

### **IV. INJUNCTION AGAINST NEW ACCOUNT REGISTRATIONS WITHOUT REPORTING**

**IT IS FURTHER ORDERED** that in connection with the promotion, advertising, marketing, sale, or offering for sale of any product or service, Defendant and his officers, agents,

servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, are restrained and enjoined from registering or creating any new domain names, Web sites, Web pages, email accounts, Internet service accounts, or online payment service accounts, without notifying counsel for the Commission within 72 hours of such registrations. The notice shall include:

- A. The true identity of the registrant, account holder, or user, including the complete and accurate physical mailing address, email address, and telephone number;
- B. The means and source of payment for the registration, including the credit card number or bank account number used;
- C. The name and address of the person or entity to whom such registration was submitted;
- D. The date and time the registration was created; and
- E. The purpose of the domain names, Web sites, Web pages, or email accounts, Internet service accounts, or online payment service accounts registered.

**V. INJUNCTION AGAINST USING ANY PERSONS OR ENTITIES TO SEND  
COMMERCIAL EMAIL WITHOUT REPORTING**

**IT IS FURTHER ORDERED** that in connection with the solicitation of consumers for personal information or in the promotion, advertising, marketing, sale, or offering for sale of any product or service, Defendant is restrained and enjoined from using any affiliates, sub-affiliates, agents, mailers, vendors, employees, contractors, or other persons or entities to send commercial email on his behalf without notifying counsel for the Commission prior to the initiation of any commercial email message by such persons or entities. The notice shall include:

- A. The identity of the affiliate, sub-affiliate, agent, mailer, vendor, employee, contractor, or other person or entity including the name of an individual, the complete and accurate physical mailing address, a working email address, a working telephone number, and any identification codes associated with or used by such person or entity;
- B. The amount of payment and information necessary to process such payment for the affiliate, sub-affiliate, agent, mailer, vendor, employee, contractor, or other person or entity, including the account name and number used;
- C. A copy of the body and subject line of each unique commercial email being sent by the affiliate, sub-affiliate, agent, mailer, vendor, employee, contractor, or other person or entity;
- D. A list of each of the email addresses from which the affiliate, sub-affiliate, agent, mailer, vendor, employee, contractor, or other person or entity will send the commercial email message;
- E. A list of the Web site addresses and/or domain names promoted in the commercial email message;
- F. A description of the procedures Defendant has to ensure that:
  - 1. Such person or entity does not send commercial email messages to recipients who have previously requested not to receive commercial email messages from Defendant; and
  - 2. Defendant will receive all requests received by such persons or entities from email recipients who request not to receive commercial email messages from Defendant; and

- G. A certification that such person or entity has agreed, in writing, to comply with this Order and the provisions of the CAN-SPAM Act.

#### VI. ASSET PRESERVATION

IT IS FURTHER ORDERED that Defendant and his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from:

- A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, perfecting a security interest in, or otherwise disposing of any assets wherever located, inside or outside the United States of America, that are owned, controlled or held by, or for the benefit of, in whole or in part, Defendant, or in the actual or constructive possession of Defendant, including, but not limited to,
1. accounts held with ePassportc;
  2. accounts held with PayPal;
  3. accounts held with Privacash; and/or
  4. any assets held in any account at any bank or savings and loan institution, or any credit card processing agent, customer service agent, commercial mail receiving agency, or mail holding or forwarding company, or any credit union, online payment service, IRA custodian, money market or mutual fund, storage company, trustee, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution or depository of any kind;

- B. Opening or causing to be opened any safe deposit boxes, commercial mail boxes, or storage facilities titled in the name of Defendant, or subject to access by Defendant or under Defendant's control, without providing the Commission prior notice and an opportunity to inspect the contents in order to determine that they contain no assets covered by this Section;
- C. Incurring liens or encumbrances on real property, personal property, or other assets in the name, singly or jointly, of any Defendant; and
- D. Transferring any funds or other assets subject to this Order for attorney's fees or living expenses; **provided, however, that**, Defendant may pay reasonable, usual, ordinary, and necessary living expenses, and reasonable attorney's fees, but only after written prior approval by the Commission or as otherwise authorized by the Court.

#### **VII. FINANCIAL REPORTS**

**IT IS FURTHER ORDERED** that Defendant, if he has not done so already as required by the Court's TRO entered on October 3, 2007, immediately shall prepare and deliver to counsel for the FTC a completed financial statement on the form attached to the Court's TRO Order as Attachment A.

#### **VIII. IDENTIFICATION OF MARKETERS**

**IT IS FURTHER ORDERED** that, to the extent that he has not already done so as required by the Court's TRO entered on October 3, 2007, Defendant shall immediately prepare and deliver to counsel for the FTC a completed statement identifying all affiliates, sub-affiliates, agents, mailers, vendors, employees, contractors, or other persons or entities that have sent

commercial email on Defendant's behalf since January 1, 2004, on the form attached to this Order as Attachment C. The statement shall be accurate as of the date of its completion.

**IX. REPATRIATION OF FOREIGN ASSETS AND DOCUMENTS**

**IT IS FURTHER ORDERED** that within five (5) days following service of this Order, Defendant shall:

- A. Repatriate to the United States all assets and all documents located in foreign countries held, directly or indirectly:
  1. by Defendant;
  2. for Defendant's benefit; or
  3. under Defendant's direct or indirect ownership or control;
- B. On the same business day as any repatriation under Paragraph A above, notify the FTC of the name and location of the financial institution or other entity that is the recipient of such assets or documents and the corresponding account names or numbers; and
- C. Hold and retain all repatriated assets and documents and prevent any transfer, disposition, or dissipation whatsoever of any such assets.

**Provided, however,** Defendant may transfer any repatriated documents to the FTC as required by this Order.

**Provided further,** that Defendant shall provide the FTC access to his records and documents held by financial institutions or other institutions outside the territorial United States, by signing the Consent to Release of Financial Records attached as Attachment D to the TRO signed by this Court on October 3, 2007.

**X. INTERFERENCE WITH REPATRIATION**

**IT IS FURTHER ORDERED** that Defendant is hereby restrained and enjoined from taking any action, directly or indirectly, which may result in the transfer, encumbrance, or dissipation of foreign assets, or in the hindrance of the repatriation required by Section IX of this Order, including but not limited to:

- A. Sending any statement, letter, fax, email or wire transmission, telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a “duress” event has occurred under the terms of a foreign trust agreement until such time that all assets have been fully repatriated pursuant to Section IX of this Order; and
- B. Notifying any trustee, protector or other agent of any foreign trust or other related entities of either the existence of this Order, or of the fact that repatriation is required pursuant to a court order, until such time that all assets have been fully repatriated pursuant to Section IX of this Order.

**XI. PRESERVATION AND MAINTENANCE OF RECORDS  
AND NOTICE OF NEW VENTURES**

**IT IS FURTHER ORDERED** that Defendant and his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, are hereby temporarily restrained and enjoined from:

- A. Destroying, erasing, mutilating, falsifying, concealing, writing over, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any documents or records, including but not limited to, any and all computerized files,

storage media (including but not limited to floppy disks, hard drives, CD-ROMs, Zip disks, punch cards, magnetic tape, backup tapes, and computer chips) on which information has been saved (including any and all equipment needed to read any such material), contracts, accounting data, registrations, correspondence, advertisements (including, but not limited to, advertisements placed on the World Wide Web or the Internet or sent via email), FTP logs, Service Access Logs, USENET Newsgroups postings, World Wide Web pages, email messages, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind that relate to the business practices, or business or personal finances, of Defendant;

- B. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of money; and
- C. Creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing the FTC with a written statement disclosing:
  - 1. the name of the business entity;
  - 2. the address, telephone number, email address, and Web site address of the business entity;

3. the names of the business entity's officers, directors, principals, managers, and employees;
4. the names and addresses of any persons or entities providing online marketing, advertising, or mailing services for the business entity; and
5. a detailed description of the business entity's intended activities.

**XII. DUTIES OF PERSONS OR ENTITIES HOLDING DEFENDANT'S ASSETS**

**IT IS FURTHER ORDERED** that any financial or brokerage institution, escrow agent, title company, commodity trading company, entity, trust, or person that holds, controls or maintains accounts or assets of, or on behalf of, Defendant, or has held, controlled or maintained any account or asset of, or on behalf of, Defendant at any time since January 1, 2004, that has been served with a copy of this Order, or otherwise has actual or constructive knowledge of this Order, shall:

- A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any such asset except by further Order of the Court;
- B. Deny Defendant access to any safe deposit box that is:
  1. titled in Defendant's name, individually or jointly; or
  2. otherwise subject to access by Defendant; and
- C. Provide the FTC, within five (5) days of receiving a copy of this Order, a sworn statement setting forth:

1. the identification number of each such account or asset titled in the name, individually or jointly, of Defendant, or held on behalf of, or for the benefit of Defendant;
  2. the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order was received, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and
  3. the identification of any safe deposit box that is titled in the name, individually or jointly, of Defendant, or is otherwise subject to access by Defendant; and
- D. Upon request by the Commission, promptly provide the FTC with copies of all records or other documentation pertaining to each such account or asset, including but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

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

**IT IS FURTHER ORDERED** that Defendant shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, client company, agent, attorney, spouse, and representative of

Defendant, and shall, within ten (10) days from the date of entry of this Order, provide the FTC with a sworn statement that Defendant has complied with this provision of the Order, which statement shall include the names and addresses of each such person or entity who received a copy of the Order.

#### **XIV. SERVICE OF ORDER**

**IT IS FURTHER ORDERED** that copies of this Order may be served by any means, including transmission by facsimile or electronic mail message, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of Defendant, or that may otherwise be subject to any provision of this Order. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution.

#### **XV. CONSUMER CREDIT REPORTS**

**IT IS FURTHER ORDERED** that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer report concerning Defendant to the FTC.


#### **XVI. EXPEDITED DISCOVERY**

**IT IS FURTHER ORDERED** that, notwithstanding the provisions of Fed. R. Civ. P. 26(d) and (f), the parties may seek discovery from any source at any time after entry of this Order.

**XVII. RETENTION OF JURISDICTION**

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

**SO ORDERED**, this 25<sup>th</sup> day of October, 2007

  
Honorable Wayne R. Andersen  
United States District Judge