

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

FEDERAL TRADE COMMISSION,)
)
)
 Plaintiff,)
)
 v.)
)
 SPEAR SYSTEMS, INC., a 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.;)
)
 XAVIER RATELLE, individually, doing)
 business as eHealthyLife.com, and as an officer)
 or director of 9151-1154 Quebec, Inc., 9064-)
 9252 Quebec, Inc., and HBE, Inc.;)
)
 ABARAGIDAN GNANENDRAN, individually,)
 and doing business as eHealthyLife.com;)
)
 9151-1154 QUEBEC, INC. d/b/a Q WEB,)
 a Quebec corporation;)
)
 9064-9252 QUEBEC, INC., a Quebec corporation;)
 and)
)
 HBE, INC., a St. Kitts and Nevis corporation,)
)
 Defendants.)

Case No. 07 C 5597

Judge Wayne R. Andersen

Magistrate Judge Michael T. Mason

**DEFAULT JUDGMENT AND ORDER FOR PERMANENT INJUNCTION AND
MONETARY RELIEF AS TO DEFENDANTS XAVIER RATELLE, ABARAGIDAN
GNANENDRAN, 9151-1154 QUEBEC, INC., 9064-9252 QUEBEC, INC., AND HBE, INC.**

On October 3, 2007, Plaintiff Federal Trade Commission ("Commission" or "FTC"),
pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C.

§§ 53(b) and 57b, and the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM"), 15 U.S.C. § 7706(a), filed a Complaint for Injunctive and Other Equitable Relief against Defendants Spear Systems, Inc., Bruce Parker, Lisa Kimsey, and Xavier Ratelle. On May 15, 2008, the FTC filed an Amended Complaint, which named four additional defendants: Abaragidan Gnanendran, 9151-1154 Quebec, Inc., 9064-9252 Quebec, Inc., and HBE, Inc. The FTC entered into a Stipulated Order for Permanent Injunction and Final Judgment with Defendants Spear Systems Inc., Bruce Parker, and Lisa Kimsey on May 23, 2008. The remaining Defendants were all properly served with the Complaint and a copy of the summons. None have filed an Answer.

On October 30, 2008, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, the Court entered default against Defendants Abaragidan Gnanendran, 9151-1154 Quebec, Inc., 9064-9252 Quebec, Inc., and HBE, Inc. On January 8, 2009, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, the Court entered default against Xavier Ratelle. The FTC now has moved for entry of a default judgment on all counts of the Complaint against all remaining Defendants pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure. The FTC's Motion for Entry of Default Judgment Against Defendants is hereby granted, and **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and the parties hereto.
2. Venue and service of process are proper.
3. Defendants have engaged in activities in or affecting commerce, as "commerce" is defined in 15 U.S.C. § 44.

4. This action was instituted by the FTC under Sections 5, 12, 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45, 52, 53(b), and 57b and CAN-SPAM, 15 U.S.C. § 7706(a). The Commission seeks permanent injunctive relief and monetary and other equitable relief for deceptive acts or practices by Defendants in connection with the sale of hoodia gordonii and human growth hormone (“HGH”) products and the initiation of commercial e-mail messages in violation of CAN-SPAM. Pursuant to Sections 13(b) and 19, 15 U.S.C. §§ 53(b) and 57b, the FTC has the authority to seek the relief it has requested.

5. The FTC’s Complaint states a claim upon which relief may be granted against Defendants under Sections 5, 12, 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45, 52, 53(b) and 57b.

6. Defendants were served with the Amended Complaint and Summons as required by Rules 4(e) and 4(h) of the Federal Rules of Civil Procedure.

7. On October 25, 2007, the Court entered a Preliminary Injunction Order with Asset Freeze and Other Equitable Relief as to Xavier Ratelle.

8. On October 30, 2008, the Court granted the FTC’s motion for entry of default against Defendants Abaragidan Gnanendran, 9151-1154 Quebec, Inc., 9064-9252 Quebec, Inc., and HBE, Inc. On January 8, 2009, the Court granted the FTC’s motion for entry of default against Xavier Ratelle. The FTC is therefore entitled to a default judgment pursuant to Rule 55(b) of the Federal Rules of Civil Procedure against these Defendants.

9. The Court now finds that, in connection with the advertising, marketing and sale of their hoodia products, Defendants violated Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, by falsely representing, expressly or by implication, that their hoodia products:

- (A) cause rapid and substantial weight loss, including as much as twenty-five pounds in a month;
- (B) cause users to lose safely three or more pounds per week for multiple weeks; and
- (C) cause permanent weight loss.

10. The Court further finds that, in connection with the advertising, marketing, and sale of HGH products, Defendants violated Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, by falsely representing, expressly or by implication, that the HGH products:

- (A) contain human growth hormone and/or cause a clinically meaningful increase in a consumer's growth hormone levels; and/or
- (B) will turn back or reverse the aging process, including, but not limited to, causing effects such as: (i) reducing cellulite, (ii) improving hearing and vision, (iii) causing new hair growth, (iv) improving emotional stability, (v) increasing muscle mass, and (vi) causing fat and weight loss.

11. The Court further finds that Defendants have initiated the transmission, to protected computers, of commercial e-mail messages that contained, or were accompanied by, header information that is materially false or materially misleading in violation of Section 5(a)(1) of CAN-SPAM, 15 U.S.C. § 7704(a)(1).

12. The Court further finds that Defendants have initiated the transmission, to protected computers, of commercial e-mail messages that contained subject headings that would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message in violation of Section 5(a)(2) of CAN-SPAM, 15 U.S.C. § 7704(a)(2).

13. The Court further finds that Defendants have initiated the transmission, to protected computers, of commercial e-mail messages that fail to provide:

- (A) clear and conspicuous notice of the recipient's opportunity to decline to receive further commercial electronic mail messages from the sender;
and/or
- (B) a functioning return e-mail address or other internet-based mechanism, clearly and conspicuously displayed, that a recipient could use to submit a reply requesting not to receive future commercial e-mail from Defendants, and that remains capable of receiving such messages for no less than 30 days after the transmission of the original message,

in violation of Sections 5(a)(5)(A)(ii) and/or 5(a)(3) of CAN-SPAM, 15 U.S.C. § 7704(a)(5)(A) and/or § 7704(a)(3).

14. The Court further finds that Defendants have initiated the transmission, to protected computers, of commercial e-mail messages that fail to provide the senders' valid physical postal address in violation of Section 5(a)(5)(A)(iii) of CAN-SPAM, 15 U.S.C. § 7704(a)(5)(A)(iii).

15. The Court further finds that Defendants 9151-1154 Quebec, Inc. d/b/a Q Web, 9064-9252 Quebec, Inc., and HBE, Inc. have operated as a common enterprise by sharing officers, employees, office locations, and commingling funds in furtherance of Defendants' scheme to engage in unfair or deceptive acts or practices in or affecting commerce. Therefore, 9151-1154 Quebec, Inc. d/b/a Q Web, 9064-9252 Quebec, Inc., and HBE, Inc. are jointly and severally liable for the injuries caused by their violations of the FTC Act and CAN-SPAM. *See, e.g., FTC v. Bay Area Bus. Council*, 423 F.3d 627, 635 (7th Cir. 2005).

16. The Court further finds that Defendant Ratelle is the sole officer of Defendants 9151-1154 Quebec, Inc., 9064-9252 Quebec, Inc., and HBE, Inc. He has participated directly in the deceptive acts or practices and had authority to control them. He also knew or should have known about the deceptive practices. Defendant Ratelle is thus individually liable for the deceptive acts and practices in this matter. *See FTC v. World Media Brokers*, 415 F.3d 758, 764 (7th Cir. 2005); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 573-74 (7th Cir. 1989).

17. The Court further finds that Defendant Gnanendran participated directly in the deceptive acts or practices and had authority to control them. He also knew or should have known about the deceptive practices. Defendant Gnanendran is thus also individually liable for the deceptive acts and practices in this matter. *See World Media Brokers*, 415 F.3d at 764; *Amy Travel Serv.*, 875 F.2d at 573-74.

18. It is proper in this case to issue a permanent injunction prohibiting Defendants from making, or assisting in making, false or misleading statements or representations with the advertising, marketing, offering for sale, or sale of any good or service, or from further violations of CAN-SPAM. *See FTC v. Febre*, 128 F.3d 530, 534 (7th Cir. 1997); *Amy Travel*, 875 F.2d at 572.

19. It is proper in this case to enter equitable monetary relief against Defendants for consumer injury caused by Defendants' violation of the FTC Act for the deceptive sale of hoodia and HGH products through illegal spam email messages. *See Febre*, 128 F.3d at 534, 537 (court may "order repayment of money for consumer redress as restitution" and may order disgorgement of ill-gotten gains to "prevent[] the defendant from being unjustly enriched by the fraud"). The Court finds that the total amount of consumer injury and ill-gotten gains caused by Defendants' violations of the FTC Act and CAN-SPAM Act is \$3,701,088.33.

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

DEFINITIONS

1. **“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 for a commercial purpose).”** 15 U.S.C. § 7702(2)(A).

2. **“Competent and reliable scientific evidence”** means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

3. **“Corporate Defendants”** means 9154-1154 Quebec, Inc. d/b/a Q Web; 9064-9252 Quebec, Inc.; and HBE, Inc.; and their successors and assigns.

4. **“Individual Defendants”** means Xavier Ratelle and Abaragidan Gnanendran d/b/a eHealthyLife or eHealthyLife.com.

5. **“Defendants”** means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

6. **“Document”** is synonymous in meaning and equal in scope to the term, as defined 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, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of this term.

7. **“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).

8. **“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).

9. **“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.

10. **“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.

11. **“Initiate,”** “when used with respect to a commercial email message, means to originate or transmit such message or procure the origination or transmission of such message, but shall not include actions that constitute routine conveyance of such message.... [M]ore than one person may be considered to have initiated a message.” 15 U.S.C. § 7702(9).

12. **“Material”** means likely to affect a person’s choice of, or conduct regarding, goods or services.

13. **“Person”** means a natural person, organization, or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

14. **“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).

15. **“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).

16. **“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. 15 U.S.C. § 7702(16).

I.

PROHIBITIONS AGAINST PRODUCT MISREPRESENTATIONS

IT IS THEREFORE ORDERED that Defendants, and their officers, agents, servants, employees and attorneys, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby 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 the HGH Products contain human growth hormone and/or cause a statistically significant and clinically meaningful increase in a consumer's growth hormone levels;
- E. 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 hearing and vision, (iii) causing new hair growth, (iv) improving emotional stability, (v) increasing muscle mass, and (vi) causing fat and weight loss;
- F. Making any representation about the health benefits, performance, efficacy, or safety of any product unless, at the time of making such representation, Defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation; and
- G. Misrepresenting any other fact material to a consumer's decision to purchase any product.

II.

PROHIBITIONS AGAINST VIOLATIONS OF CAN-SPAM

IT IS FURTHER ORDERED that Defendants and their officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby restrained and enjoined from violating, or assisting others in violating, the provisions contained in CAN-SPAM, or any rule, regulation, or requirement adopted pursuant thereto, including, but not limited to, initiating the transmission of a commercial email message that:

- A. Contains, or is accompanied by, materially false or materially 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; or
- D. Fails to include a valid physical postal address of the sender.

III.

EQUITABLE MONETARY RELIEF

IT IS FURTHER ORDERED that

- A. Judgment is hereby entered against Defendants, jointly and severally, in the amount of three million, seven hundred and one thousand, eighty eight dollars and thirty three cents (\$3,701,088.33) as equitable monetary relief for violations of

the FTC Act and the CAN-SPAM Act. This monetary judgment shall become immediately due and payable by Defendants upon entry of this Order, and interest computed at the rate prescribed under 28 U.S.C. § 1961(a), as amended, shall immediately begin to accrue on the unpaid balance.

- B. All payments under this Section shall be made by certified check or other guaranteed funds payable to and delivered to the Commission, or by wire transfer in accord with directions provided by the Commission.
- C. All funds paid pursuant to this Section shall be deposited into a fund administered by the FTC or its agent to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the FTC may apply any remaining funds for other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Defendants' practices alleged in the Complaint. Defendants shall have no right to challenge the FTC's choice of remedies under this Subsection. The Commission, in its sole discretion, may use a designated agent to administer consumer redress. This judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.

IV.

ASSETS HELD BY THIRD PARTIES

IT IS FURTHER ORDERED that Defendants shall have no right, title and interest to assets frozen pursuant to Section XII of the Preliminary Injunction entered by the Court on October 25, 2007, including assets held by ePassporte, N.V., eFulfillment Service Inc., and First Data Corporation. In order to partially satisfy the monetary judgment set forth in Section III above, any financial or brokerage institution, escrow agent, title company, commodity trading company, automated clearing house, network transaction processor, business entity, or person that holds, controls, or maintains custody of any account or asset of, on behalf of, or for the benefit of, the Defendants, including ePassporte, N.V., eFulfillment Service Inc., and First Data Corporation, shall turn over such account or asset to the Commission within ten (10) business days of receiving notice of this Order by any means, including, but not limited to, via facsimile.

V.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order:

- A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendants each shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in each Defendant's possession or direct or indirect control to inspect the business operation;

- B. In addition, the Commission is authorized to use all other lawful means, including but not limited to:
1. obtaining discovery from any person, without further leave of Court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69; and
 2. posing as consumers and suppliers to Defendants, their employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice; and
- C. Defendants each shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

VI.

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,
1. Each Individual Defendant shall notify the FTC of the following:

- a. Any changes in such Defendant's residence, mailing addresses and telephone numbers, within ten (10) days of the date of such change;
 - b. Any changes in such Defendant's employment status (including self-employment) and any change in such Defendant's ownership in any business entity within ten (10) days of such change. Such notice shall include the name and address of each business that such Defendant is affiliated with or employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of such Defendant's duties and responsibilities in connection with the business or employment;
and
 - c. Any changes in such Defendant's name or use of any aliases or fictitious names;
2. Defendants shall notify the Commission of any changes in structure of any Corporate Defendant or any business entity that any Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or a change in the business name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the

business entity about which a Defendants learn less than thirty (30) 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 and annually thereafter for a period of five (5) years, Defendants shall provide a written report to the Commission, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which each Defendant has complied and is complying with this Order. This report shall include, but not be limited to:

1. For each Individual Defendant:
 - a. such Defendant's then-current residence address, mailing addresses, and telephone numbers;
 - b. such Defendant's then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that such Defendant is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of such Defendant's duties and responsibilities in connection with the business or employment; and
 - c. Any other changes required to be reported under Subsection A of this Section.

2. For all Defendants:
 - a. A copy of each acknowledgment of receipt of this Order obtained by Defendants pursuant to the Section titled "Distribution of Order;" and
 - b. Any other changes required to be reported under Subsection A of this Section.
- C. Each Defendant shall notify the Commission of the filing of a bankruptcy petition by such Defendant within fifteen (15) days of filing.
- D. For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier all reports and notifications required by this Order to the Commission, to the following address:

Associate Director of Enforcement
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room NJ-2122
Washington, D.C. 20580
Re: *FTC v. Spear Systems*, 07 C 5597 (N.D. Ill.)

Provided that, in lieu of overnight courier, Defendants may send such reports or notifications by first-class mail, but only if Defendants contemporaneously send an electronic version of such report or notification to the Commission at:
DEBrief@ftc.gov.
- E. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with each Defendant.

VII.

MONITORING COMPLIANCE OF SALES PERSONNEL

IT IS FURTHER ORDERED that Defendants, in connection with any business in which: (1) any Defendant is a majority owner of the business or directly or indirectly manages or controls the business; and (2) the business is engaged in, or assists others in engaging in, the offering for sale or sale of any product or service over the Internet, are hereby permanently restrained and enjoined from:

- A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Sections I and II of this Order;
- B. Failing to investigate promptly and fully any consumer complaint received by any business to which this Section applies; and
- C. Failing to take corrective action with respect to any sales person whom any Defendant determines is not complying with this Order, which may include training, disciplining, and/or terminating such sales person.

VIII.

DISTRIBUTION OF ORDER

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

- A. Corporate Defendant: Each Corporate Defendant must deliver a copy of this Order to (1) all of its principals, officers, directors, and managers; (2) all of its employees, agents, and representatives who engage in conduct related to the

subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon such Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

- B. Individual Defendant as Control Person: For any business that an Individual Defendant controls, directly or indirectly, or in which such Defendant has a majority ownership interest, such Defendant must deliver a copy of this Order to (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon the Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.
- C. Individual Defendant as employee or non-control person: For any business where an Individual Defendant is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, such Defendant must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.
- D. Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

IX.

RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, Defendants, in connection with any business in which Defendant Ratelle or Gnanendran is the majority owner of the business or directly or indirectly manages or controls the business, or where the business is engaged in, or assists others in engaging in, the offering for sale or sale of any product or service over the Internet, and their agents, employees, officers, corporations, 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 failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; 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;
- C. Customer files containing the names, addresses, telephone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaint and refund requests (whether received directly, indirectly, or through any third party), and any responses to those complaints or refund requests;

- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and
- F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order required by the Sections titled "Distribution of Order" and "Acknowledgment of Receipt of Order" and all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting."

X.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that each Defendant, 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.

XI.

ENTRY OF THIS JUDGMENT


IT IS FURTHER ORDERED that, as there is no just reason for delay of entry of this judgment, pursuant to Fed. R. Civ. P. 54(b), the clerk shall enter this Order immediately.

XII.

RETENTION OF JURISDICTION

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

IT IS SO ORDERED, this 29th day of January, 2009.


Honorable Wayne R. Andersen
United States District Judge

Respectfully submitted by:

/s/ Marissa J. Reich
Steven M. Wernikoff
Marissa J. Reich
Federal Trade Commission
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Chicago, IL 60603
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