

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

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	Case No. 04C 6901
v.)	
)	Judge William J. Hibbler
INTERNATIONAL RESEARCH AND)	
DEVELOPMENT CORPORATION OF)	Magistrate Judge Ian H. Levin
NEVADA, <i>et al.</i> ,)	
)	
Defendants.)	
)	

**STIPULATED ORDER FOR PERMANENT INJUNCTION
AND FINAL JUDGMENT AS TO DEFENDANTS DIVERSE MARKETING
GROUP, INC., DIVERSE MARKETING GROUP, LLC AND MARK C. AYOUB**

WHEREAS Plaintiff Federal Trade Commission (“Commission” or “FTC”) filed a Complaint For Injunctive And Other Equitable Relief (the “Complaint”) on October 27, 2004, 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. § 7701 *et seq.*;

WHEREAS the FTC and Defendants Diverse Marketing Group, Inc., Diverse Marketing Group, LLC and Mark C. Ayoub have consented to the entry of this Stipulated Order for Permanent Injunction and Final Judgment (“Stipulated Order”) without a trial or adjudication of any issue of law or fact herein;

NOW, THEREFORE, the Commission and Defendants, having requested the Court to enter this Stipulated Order, and the Court having considered the Stipulated Order reached among

the parties and for other cause appearing, it is **ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §§ 1331 and 1337(a), and 15 U.S.C. § 53(b).

2. The Complaint states a claim upon which relief may be granted against Defendants, under 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. § 7701 *et seq.*

3. Defendants have entered into this Order freely and without coercion. Defendants further acknowledge that they have read the provisions of this Order and are able to abide by them.

4. Defendants do not admit any of the allegations set forth in the Complaint other than jurisdictional facts, and the Commission and Defendants have agreed that the entry of this Order resolves all matters of dispute between them arising from the Complaint in this action, up to the date of entry of this Order.

5. Defendants waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Defendants further waive and release any claims they may have against the Commission, its employees, representatives or agents.

6. Defendants agree that this Order does not entitle them to seek or to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996), and Defendants further waive any right to attorneys' fees that may arise under said provision of law.

7. This Order resolves only claims against the named Defendants and does not preclude the Commission from initiating further action or seeking any remedy against any other persons or entities, including but not limited to persons or entities who may be subject to portions of this Order by virtue of actions taken in concert or participation with Defendants, and persons or entities in any type of indemnification or contractual relationship with Defendants.

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

DEFINITIONS

1. **“Assisting others”** means: (1) performing customer service functions including, but not limited to, receiving or responding to consumer complaints, (2) providing, or arranging for the provision of, names of potential customers; (3) performing marketing services of any kind; (4) acting as an officer or director of a business entity; or (5) providing credit or debit card account processing.

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. **“Customer”** means any person who has paid, or may be required to pay, for goods or services offered for sale or sold by Defendants.

4. **“Defendant”** or **“Defendants,”** for purposes of this Order, means Defendants Diverse Marketing Group, Inc., Diverse Marketing Group LLC and Mark C. Ayoub d/b/a EPRO 2000, and each of them, by whatever names each may be known.

5. **“Document”** is synonymous in meaning and equal in scope to the same 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.

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

7. **“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.

I. BUSINESS ACTIVITIES PROHIBITED BY THE FTC ACT

IT IS THEREFORE 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, are hereby restrained and enjoined from making, or assisting others in making, expressly or by implication, 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 fuel saving or emissions decreasing devices, or any other products or services over the Internet, including, but not limited to:

A. Representing that “FuelMAX,” “Super FuelMAX,” “Fuel Saver Pro,” or any other substantially similar product, causes a substantial increase in gas mileage;

B. Representing that “FuelMAX,” “Super FuelMAX,” “Fuel Saver Pro,” or any other substantially similar product, causes a substantial reduction in emissions;

C. Making any representation about the 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;

D. Misrepresenting any other fact material to a consumer’s decision to purchase any product; and

E. Assisting others who violate any provision of Paragraphs A through D of this Section.

II. PROHIBITION AGAINST PROVIDING OTHERS WITH THE MEANS AND INSTRUMENTALITIES TO VIOLATE THE FTC ACT

IT IS FURTHER 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, are hereby restrained and enjoined from providing to others the means and instrumentalities with which to make, expressly or by implication, orally or in writing, any false or misleading statement or representation of material fact, including, but not limited to the representations contained in Section I.A through I.D above, in connection with the marketing, advertising, promotion, offering for sale, sale or provision of any fuel saving or emissions decreasing devices, or any other products or services over the Internet.

III. PROHIBITED BUSINESS ACTIVITIES UNDER CAN-SPAM

IT IS FURTHER 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, are hereby restrained and enjoined from violating, or assisting others in violating, the provisions contained in Sections 5 and 6 of 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 in violation of Section 5(a)(1) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(1); and/or

B. Fails to include a valid physical postal address of the sender in violation of Section 5(a)(5)(iii) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(5)(iii).

IV. MONETARY RELIEF

A. Judgment in the amount of \$292,000 is hereby entered in favor of the Commission against Defendants, jointly and severally, as equitable monetary restitution for consumer injury relief; *provided, however*, that this judgment shall be suspended until further Order of the Court pursuant to Section V of this Order (Right to Reopen), and provided further that this judgment shall be subject to the conditions set forth in Section V.

B. If any funds are paid pursuant to Section IV and/or Section V, those funds shall be deposited into a fund administered by the Commission 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. Defendants shall cooperate fully to assist the Commission in identifying consumers who may be entitled to redress pursuant to this Order. In the event that direct redress is wholly or partially impracticable or funds remain after redress is completed, the Commission

may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Section; and

C. For purposes of any subsequent proceeding to enforce payments required by this Section, including, but not limited to, a non-dischargeability complaint filed in a bankruptcy proceeding, Defendants waive any right to contest any allegations in the Commission's Complaint.

V. RIGHT TO REOPEN AS TO MONETARY JUDGMENT

IT IS FURTHER ORDERED THAT Defendants, within five (5) business days after this date of entry of this Order, shall submit to the Commission a truthful sworn statement that shall reaffirm and attest to the truthfulness, accuracy, and completeness of the Financial Statement of Individual Defendant executed by Defendant Mark C. Ayoub on February 3, 2005, and the Financial Statement of Corporate Defendant executed by Defendant Mark C. Ayoub on February 3, 2005. The Commission's agreement to this Order is expressly premised upon the financial condition of Defendants, as represented in the above referenced financial statements, which contain material information upon which the Commission relied in negotiating and agreeing upon this Order.

If, upon motion of the Commission, the Court finds that Defendants failed to file the sworn statement required by this Section, or that Defendants failed to disclose any material asset or misrepresented any material asset in the financial statement, the Court shall enter judgment

against Defendants, and in favor of the Commission, in the amount of \$292,000, which shall become immediately due and payable, less any amount already paid.

Provided, however, that in all other respects, this judgment shall remain in full force and effect, unless otherwise ordered by the Court; *provided further,* that proceedings to reopen instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the Commission may initiate to enforce this Order.

VI. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

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

VII. 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, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such defendant's possession or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

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 and 45;
2. posing as consumers and suppliers to Defendants, Defendant's 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 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)).

VIII. COMPLIANCE REPORTING BY DEFENDANT

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

- A. For a period of three (3) years from the date of entry of this Order,
 1. Defendant Mark C. Ayoub shall notify the Commission of the following:
 - (a) Any changes in residence, mailing addresses and telephone numbers, within ten (10) days of the date of such change;

- (b) Any changes in employment status (including self-employment) within ten (10) days of such change. Such notice shall include the name and address of each business the defendant is affiliated with or employed by, or performs services for; a statement of the nature of the business, and a statement of the defendant's duties and responsibilities in connection with the business or employment; and
- (c) Any changes in the defendant's name or use of any aliases or fictitious names; and

2. Defendants shall notify the Commission of any changes in corporate structure or any business that Defendant Mark C. Ayoub directly or indirectly controls, or has an ownership interest in, 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 thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about what the defendant learns less than thirty (30) days prior to the date such action is to take place, defendants 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, Defendants Diverse Marketing Group, Inc., Diverse Marketing Group, LLC and Mark C. Ayoub shall provide a written report to the Commission, 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 Defendant Mark C. Ayoub:

- (a) his then-current residence address, mailing address, and telephone numbers;**
- (b) his then-current employment and business addresses and telephone numbers, a description of the business activities of each such employer or business, and his title and responsibilities, for each such employer or business; and**
- (c) Any other changes required to be reported under subparagraph A of this Section.**

2. For all Defendants:

- (a) A copy of each acknowledgment of receipt of this Order obtained by Defendants pursuant to Section X; and**
- (b) Any other changes required to be reported under subparagraph A of this Section.**

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:

Federal Trade Commission
Director, Midwest Region
55 East Monroe Street, Suite 1860
Chicago, Illinois 60603
Re: FTC v. International Research and Development;

D. For purposes of the compliance reporting required by this Section, the Commission is authorized to communicate directly with Defendant, unless Defendant indicates that he is represented by counsel and provides the name and address of such counsel to the Commission.

IX. MONITORING COMPLIANCE WITH SALES PERSONNEL

IT IS FURTHER ORDERED that Defendants, in connection with any business in which: (1) Defendant Mark C. Ayoub 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.

X. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, Defendants shall deliver a copy of this Order as directed below:

A. **Corporate Defendants:** Defendants Diverse Marketing Group, Inc. and Diverse Marketing Group, LLC must deliver a copy of this Order to all of their principals, officers, directors and managers. Defendants Diverse Marketing Group, Inc. and Diverse Marketing Group, LLC also must deliver copies of this Order to all of their employees, agents, and representatives who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

B. **Individual Defendants as Control Person:** For any business that Defendant Mark C. Ayoub controls, directly or indirectly, or in which Defendant Mark C. Ayoub has a majority ownership interest, he must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Defendant Mark C. Ayoub must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. 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 Defendants as employee or non-control person:** For any business where Defendant Mark C. Ayoub is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, he 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 days of delivery, from all persons receiving a copy of the Order pursuant to this Section X.

XI. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of this Order, in connection with any business in which Defendant Mark C. Ayoub is the majority owner of the business or directly or indirectly manages or controls the business, and where (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, Defendants and their agents, officers, corporations, successors, and assigns, 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; and

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials.

XII. COOPERATION WITH COMMISSION COUNSEL

IT IS FURTHER ORDERED that Defendant Mark C. Ayoub, in connection with this action or any concurrent or subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the Complaint, cooperate in good faith with the Commission's reasonable requests for documents and testimony. Upon written notice Defendant Mark C. Ayoub shall: (1) appear at such places and times as the Commission reasonably requests for interviews, conferences, pretrial discovery, review of documents, and for such other matters, after written notice; and (2) produce such documents and information in a manner as may be reasonably requested by the Commission. If requested in writing by the Commission, Defendant Mark C. Ayoub shall make himself available for trial testimony in any trial, deposition or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the service of civil investigative demand or subpoena.

XIII. TRANSFER OF CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendants are hereby restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who submitted such information to Defendants as a result of, derived from, or otherwise related to the activities alleged to be in violation of the FTC Act in Counts I

and II of the Commission's Complaint; *provided, however*, that Defendants may disclose such information to a law enforcement agency, to the Commission, or as required by any law, regulation, or court order.

XIV. 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.

XV. RETENTION OF JURISDICTION

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

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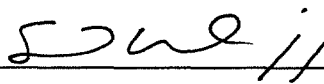
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STIPULATED AND AGREED TO BY:

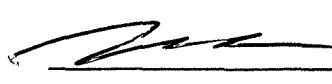
FOR THE PLAINTIFF:

 4-19-05
Dated

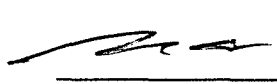
Steven M. Wernikoff
Federal Trade Commission
55 East Monroe Street, Suite 1860
Chicago, Illinois 60603
(312) 960-5634 [Telephone]
(312) 960-5600 [Facsimile]

Attorney for Plaintiff
FEDERAL TRADE COMMISSION

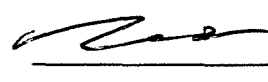
FOR THE DEFENDANTS:

 2-7-05
Dated

Mark C. Ayoub, on behalf of Defendant
DIVERSE MARKETING GROUP, INC.

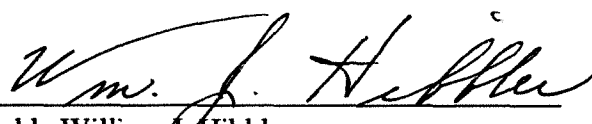
 2-7-05
Dated

Mark C. Ayoub, on behalf of Defendant
DIVERSE MARKETING GROUP, LLC

 2-7-05
Dated

Mark C. Ayoub, individually

IT IS SO ORDERED, this 20th day of APRIL, 2005


Honorable William J. Hibbler
United States District Judge