

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

06-61429
CIVIL ACTION

Case No. _____ -Civ- _____

MAGISTRATE JUDGE
TURNOFF ✓

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

JUAN MATOS, individually and
doing business as QTX,
and BELINDA CURE,

Defendants.

**TEMPORARY RESTRAINING ORDER WITH OTHER EQUITABLE
RELIEF AND ORDER FOR DEFENDANTS TO SHOW CAUSE WHY PRELIMINARY
INJUNCTION SHOULD NOT ISSUE**

The Federal Trade Commission (“FTC”), has filed a Complaint seeking a permanent injunction and other 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 the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. § 6101 *et seq.*, and a motion for a temporary restraining order with an accounting, document preservation, expedited discovery, and other equitable relief, pursuant to Rule 65 of the Federal Rules of Civil Procedure, and an order to show cause why a preliminary injunction should not be issued. This Court has considered the pleadings and exhibits filed in support of the FTC’s motion, and finds that:

1. This Court has jurisdiction over the subject matter of this case, there is good cause to believe it will have jurisdiction over all the parties hereto, and venue in this district is proper;

2. The plaintiff provided notice to all defendants of the filing of this action and of this motion.

3. There is good cause to believe that Defendant Juan Matos, individually and doing business under the name QTX, and Defendant Belinda Cure have engaged and are likely to continue to engage in acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310 in connection with the marketing and sale of work-at-home business opportunities. There is good cause to believe that Defendants misrepresent that consumers are likely to earn a substantial level of earnings, namely \$500 per week, assembling houses made of beads at home. There also is good cause to believe that Defendants fail to disclose that after sending materials to consumers, consumers must complete a sample bead house and send it to Defendants for approval. There is also good cause to believe that Defendants routinely reject the sample bead house and otherwise fail to fulfill their earnings promises to consumers. Therefore, there is good cause to believe that the FTC is likely to prevail on the merits of this action;

4. Good cause exists for ordering Defendants to preserve financial and business records, provide an accounting of their business as set forth herein, and permitting the FTC to take expedited discovery as to the existence and location of assets and the location of documents reflecting Defendants’ business transactions.

5. Weighing the equities and considering the FTC’s likelihood of ultimate success, a temporary restraining order with an accounting, document preservation, expedited discovery as to the existence and location of assets and documents, and other equitable relief, is in the public interest;

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

7. This temporary restraining order is in the public interest.

IT IS THEREFORE ORDERED AS FOLLOWS:

DEFINITIONS

For the purposes of this Order, the following definitions shall apply:

A. "Defendants" means Juan Matos, individually and doing business under the name QTX, and Belinda Cure and their successors and assigns.

B. "Document(s)" or "record(s)" means

1. The original or a true copy of any written, typed, printed, electronically stored, transcribed, taped, recorded, filmed, punched, or graphic matter or other data compilations of any kind, including, but not limited to, letters, e-mail or other correspondence, messages, memoranda, interoffice communications, notes, reports, summaries, manuals, magnetic tapes or discs, tabulations, books, records, checks, invoices, work papers, journals, ledgers, statements, returns, reports, schedules, or files; and

2. Any information stored on any desktop personal computer ("PC") and workstations, laptops, notebooks, and other portable computers, whether assigned to individuals or in pools of computers available for shared use; and home computers used for work-related purposes; backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether stored onsite with the computer used to generate them, stored offsite in another company facility or stored offsite by a third-party, such as in a disaster recovery center; and computers and

related offline storage used by Defendants' participating associates, which may include persons who are not employees of the company or who do not work on company premises.

C. "Assets" means 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, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, receivables, funds, monies, and all cash, wherever located, and shall include both existing assets and assets acquired after the date of entry of this Order.

D. "Financial institution" means any bank, savings and loan institution, credit union, or any financial depository of any kind, including but not limited to any brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, commercial check cashing facility, or any entity or person that holds, controls, or maintains custody of any account or asset of any Defendants.

E. "Work-at-home business opportunity" means any program, plan, product or service that enables or purports to enable a participant or purchaser to earn money by working at home.

F. "Telemarketing" means any plan, program or campaign (whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310) that is conducted to induce the purchase of goods or services by means of the use of one or more telephones.

ORDER PROHIBITING CERTAIN CONDUCT

I. IT IS HEREBY ORDERED that:

A. Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with Defendants who receive actual notice of this

Order by personal service or otherwise, and each of them, are hereby restrained and enjoined from making, or assisting others in making, directly or by implication, any false or misleading oral or written statement or representation in connection with the advertising, marketing, promotion, offering for sale, distribution, or sale of work-at-home business opportunities, including but not limited to:

1. Misrepresenting, directly or by implication, that consumers who pay Defendants a fee are likely to earn a substantial level of earnings, such as \$500 per week, assembling products at home for Defendants;
2. Misrepresenting, directly or by implication, that in exchange for a fee, Defendants will send product materials to consumers and pick up completed products for pay;
3. Failing to disclose, in a clear and conspicuous manner, that Defendants require consumers to complete a sample product and send it to Defendants for approval;
4. Misrepresenting any assistance they will provide to consumers in furtherance of any work-at-home business opportunity; and
5. Misrepresenting any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer.

B. Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with Defendants who receive actual notice of this

Order by personal service or otherwise, and each of them, are hereby restrained and enjoined from violating or assisting others in violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, in the course of offering for sale and selling work-at-home business opportunities through telemarketing, including, but not limited to:

1. Misrepresenting, directly or by implication, material aspects of the performance, efficacy, nature, or central characteristic of goods or services including, but not limited to, misrepresenting that consumers who pay Defendants a fee are likely to earn a substantial level of earnings, such as \$500 per week, assembling products at home for Defendants; and

2. Failing to disclose, in a clear and conspicuous manner, all material terms and conditions of any refund, cancellation, exchange or repurchase policy.

FINANCIAL REPORTS AND ACCOUNTING

II. IT IS FURTHER ORDERED that:

A. Within three business days after service of this Order, each Defendant shall prepare and serve on the FTC a complete and accurate individual or corporate financial statement, as applicable, signed under penalty of perjury, on the forms attached to this Order as Attachments A and B, respectively;

B. Within ten business days after service of this Order, for all work-at-home business opportunities advertised, marketed, promoted, offered for sale, distributed, or sold by Defendants, provide the FTC with a completed statement, verified under oath reporting:

1. All revenues collected and obtained by Defendants, directly or through any other corporation, partnership, limited liability corporation, or other entity;

2. The total number of units of each work-at-home business opportunity sold;

3. The full names, addresses, and telephone numbers of all purchasers of each such work-at-home business opportunity.

4. The amount of all refunds provided by Defendants to consumers, directly or through any other corporation, partnership, limited liability corporation, or other entity;
5. All costs and expenses incurred by Defendants, directly or indirectly; and
6. All net profits collected and obtained by Defendants, directly or indirectly.

EXPEDITED DISCOVERY

III. IT IS FURTHER ORDERED that the FTC is granted leave to conduct certain expedited discovery, and that, commencing with the time and date of this Order, in lieu of the time periods, notice provisions, and other requirements of Rules 26, 30, 34, and 45 of the Federal Rules of Civil Procedure, and S.D. Fla. L.R. 26.1, expedited discovery as to parties and non-parties shall proceed as follows:

A. The FTC may, upon two business days notice, take the deposition of any person or entity, whether or not a party, for the purpose of discovering (1) the nature, location, status and extent of assets of Defendants or their affiliates or subsidiaries; (2) the nature and location of documents reflecting the business transactions of Defendants or their affiliates or subsidiaries; and (3) compliance with this Order. Such depositions may be taken Monday through Friday. Deposition transcripts that have not been signed by the witness may be used at the preliminary injunction hearing in this matter. *Provided that*, notwithstanding Fed. R. Civ. P. 30(a)(2), this Subparagraph shall not preclude any future depositions by the FTC. *Provided further*, that any deposition taken pursuant to this sub-paragraph shall be in addition to, and not subject to, the presumptive limits on depositions set forth in Fed. R. Civ. P. 30(a)(2)(A) and S.D. Fla. L.R. 26.1. Service of discovery upon a party, taken pursuant to this Section, shall be sufficient if made by facsimile or by overnight delivery.

B. The FTC may, upon five business days notice, demand the production of documents from any person or entity, whether or not a party, relating to (1) the nature, status, extent, or location of assets of Defendants or their affiliates or subsidiaries; (2) the nature and location of documents reflecting the business transactions of Defendants or their affiliates or subsidiaries; and (3) compliance with this Order. *Provided* that two days notice shall be deemed sufficient for the production of any such documents that are maintained or stored only as electronic data.

C. The FTC is granted leave to subpoena documents immediately from any financial institution, account custodian, or other entity or person that holds, controls, or maintains custody of any account or asset of any Defendant, or has held, controlled or maintained custody of any account or asset of any Defendant concerning the nature, location, status, and extent of Defendants' assets, and compliance with this Order, and such financial institution, account custodian or other entity shall respond to such subpoena within five business days after service. For purposes of this subsection, the FTC may serve any such subpoena by facsimile or overnight courier.

RECORD KEEPING PROVISIONS

IV. IT IS FURTHER ORDERED that Defendants and any entity through which they do business, and their successors, assigns, officers, agents, servants, employees, and those other persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are hereby restrained and enjoined from:

A. Destroying, erasing, mutilating, concealing, altering, transferring or otherwise disposing of, in any manner, directly or indirectly, contracts, agreements, customer files,

customer lists, customer addresses and telephone numbers, correspondence, advertisements, brochures, sales material, training material, sales presentations, scripts, documents evidencing or referring to Defendants' products, data, computer tapes, disks, or other computerized records, books, written or printed records, handwritten notes, telephone logs, "verification" or "compliance" tapes or other audio or video tape recordings, receipt books, invoices, postal receipts, 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, including electronically-stored materials, that relate to the business practices or business or personal finances of any Defendant or other entity directly or indirectly under the control of any Defendant; and

B. Failing to create and maintain books, records, and accounts which, in reasonable detail, accurately, fairly, and completely reflect the incomes, assets, disbursements, transactions and use of monies by Defendants or other entity directly or indirectly under the control of any Defendant.

COMPLIANCE MONITORING

V. **IT IS FURTHER ORDERED** that, for purposes of monitoring compliance with any provision of this Order, the FTC is authorized to pose as customers or potential customers of Defendants, their employees, or any other entity managed or controlled in whole or in part by any of them without the necessity of identification or prior notice.

NOTICE TO EMPLOYEES

VI. **IT IS FURTHER ORDERED** that Defendants shall immediately provide a copy of this Order to each of their corporations, subsidiaries, affiliates, and participating associates. Within

ten (10) calendar days following service of this Order by the FTC, Defendants shall provide the FTC with an affidavit identifying the names, titles, addresses, and telephone numbers of the persons and entities that Defendants have served with a copy of this Order in compliance with this provision.

CREDIT REPORTS

VII. IT IS FURTHER ORDERED that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), the FTC is authorized to request a credit report and any credit reporting agency receiving such request shall furnish a credit report concerning any Defendant to the FTC.

ORDER TO SHOW CAUSE

VIII. IT IS FURTHER ORDERED, pursuant to Fed. R. Civ. P. 65, that Defendant shall appear on the 2nd day of November, 2006, at 8:30 a. .m. at the United States Courthouse, Courtroom 4, Miami, Florida, to show cause, if any there be, why this Court should not enter a preliminary injunction, pending final ruling on the complaint, against Defendants enjoining them from further violations of the FTC Act and the TSR, and imposing such additional relief as may be appropriate.

SERVICE OF PLEADINGS; EVIDENCE, WITNESS LISTS

IX. IT IS FURTHER ORDERED that

A. Defendants shall file any answering affidavits, pleadings, or legal memoranda with the Court and serve the same on counsel for the FTC no later than three business days prior to the preliminary injunction hearing in this matter. The FTC may file responsive or supplemental pleadings, materials, affidavits, or memoranda with the Court and serve the same

on counsel for Defendant no later than one business day prior to the preliminary injunction hearing in this matter. *Provided* that service shall be performed by personal or overnight delivery or by facsimile, and documents shall be delivered so that they shall be received by the other parties no later than 4 p.m. (EDT) on the appropriate dates listed in this sub-paragraph.

B. The question of whether this Court should enter a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining the defendants during the pendency of this action shall be resolved on the pleadings, declarations, exhibits, and memoranda filed by and oral argument of the parties. Live testimony shall be heard only on further order of this Court on motion filed with the Court and served on counsel for the other parties at least three business days prior to the preliminary injunction hearing in this matter. Such motion shall set forth the name, address, and telephone number of each proposed witness, a detailed summary or affidavit revealing the substance of each proposed witness' expected testimony, and an explanation of why the taking of live testimony would be helpful to this Court. Any papers opposing a timely motion to present live testimony or to present live testimony in response to live testimony to be presented by another party shall be filed with this Court and served on the other parties at least two business days prior to the preliminary injunction hearing in this matter. *Provided* that service shall be performed by personal or overnight delivery or by facsimile, and documents shall be delivered so that they shall be received by the other parties no later than 4 p.m. (EDT) on the appropriate dates listed in this sub-paragraph. .

CORRESPONDENCE WITH PLAINTIFF

X. **IT IS FURTHER ORDERED** that, for the purposes of this Order, all service on and correspondence to the FTC shall be addressed to: Laura Schneider, Federal Trade Commission,

