

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

QT, INC., Q-RAY, COMPANY,
BIO-METAL, INC., QUE TE PARK,
a.k.a. ANDREW Q. PARK,
and JUNG JOO PARK,

Defendants.

Case No. 03 C 3578

**EX PARTE TEMPORARY RESTRAINING ORDER WITH
ASSET FREEZE AND OTHER EQUITABLE RELIEF**

Plaintiff Federal Trade Commission ("Commission" or "FTC"), having filed its complaint for a permanent injunction and other relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and having moved *ex parte* for a temporary restraining order with an asset freeze, an accounting, expedited discovery, and other equitable relief, pursuant to Rule 65 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65, and the Court having considered the complaint, declarations, exhibits and memorandum of law filed in support thereof, and now being advised in the premises, finds that:

1. This Court has jurisdiction over the subject matter of the case, and there is good cause to believe that the Court will have jurisdiction over the parties;
2. Venue lies properly with this Court;
3. There is good cause to believe that Defendants have engaged in and are likely to engage in acts and practices that violate Sections 5(a) and 12 of the FTC Act, as amended, 15 U.S.C. §§ 45(a) and 52, and that the Commission is likely to prevail on the merits of this action;

4. There is good cause to believe that immediate and irreparable harm will result from Defendants' ongoing violations of Section 5(a) and 12 of the FTC Act unless Defendants are restrained and enjoined by order of this Court;

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

6. Good cause exists for ordering Defendants to provide an accounting of their business and individual assets as set forth herein and permitting the Commission to take expedited discovery;

7. There is good cause for issuing this Temporary Restraining Order with Asset Freeze and Other Equitable Relief ("Order") pursuant to Federal Rule of Civil Procedure 65(b) and for relieving the Plaintiff of the duty to provide Defendants with prior notice of the Plaintiff's motion;

8. Weighing the equities and considering the Plaintiff's likelihood of ultimate success, a temporary restraining order with an asset freeze, accounting, expedited discovery, and other equitable relief is in the public interest; and

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

IT IS THEREFORE ORDERED AS FOLLOWS:

I. DEFINITIONS

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

A. "Defendants" shall refer to QT, Inc., Q-Ray, Company, Bio-Metal, Inc., Que Te Park, and Jung Joo Park, individually and as officers of the companies, and any entity through which they do business.

B. "Pain-relief product" shall refer to any product or device that is advertised, marketed, promoted, offered for sale, distributed or sold with express or implied representations that the product will relieve musculoskeletal or other pain, including but not limited to, the Q-Ray Ionized Bracelet ("Q-Ray Bracelet") and any other substantially similar product or device.

C. "Advertising" means any written or verbal statement, illustration or depiction that is designed to effect a sale or create interest in the purchasing of goods or services, whether it appears in a brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, packaging, package insert, label, film, slide, radio, television or cable television, audio program transmitted over a telephone system, program-length commercial ("infomercial"), Internet or in any other medium.

D. "Asset(s)" means any legal or equitable interest in, right to, or claim to, any real and personal property, including without limitation, chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, funds, all cash, wherever located, and shall include both existing assets and assets acquired after the date of entry of this Order.

E. The terms "and" and "or" in this Order shall be construed conjunctively or disjunctively, as necessary, to make the applicable sentence or phrase inclusive, rather than exclusive.

F. The term "including" shall mean "including without limitation."

II. PROHIBITED BUSINESS ACTIVITIES

IT IS FURTHER ORDERED that Defendants and their officers, directors, agents, servants, employees, salespersons, distributors, corporations, subsidiaries, affiliates, successors, assigns, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise are hereby enjoined from making, or assisting others in making, directly or by implication, any material false or misleading oral or written statement or representation in connection with the advertising, marketing, promotion, offer for sale, distribution, or sale of any pain-relief product, including but not limited to:

A. Misrepresenting, expressly or by implication, including through the use of endorsements, that the Q-Ray Bracelet, or any other pain-relief product, provides immediate, significant or complete relief from pain, including but not limited to musculoskeletal pain, sciatic pain, persistent headaches, sinus problems, tendinitis, or injuries;

B. Misrepresenting, expressly or by implication, including through the use of endorsements, that tests prove that the Q-Ray Bracelet, or any other pain-relief product, relieves pain; and

C. Misrepresenting, expressly or by implication, that the guarantee for the Q-Ray Bracelet, or any other pain-relief product, permits consumers to readily obtain a full refund of the purchase price if they return the product within 30 days.

III. PACKAGING AND LABELING RECALL

IT IS FURTHER ORDERED that Defendants shall immediately recall from any person, partnership, corporation or other entity that is offering for sale, selling or distributing to consumers, all packaging and labeling for pain-relief products containing, expressly or by implication, any of the representations set forth in Paragraph II above; provided, however, that in lieu of a recall, Defendants may immediately repackage and relabel all offending packages and labels of pain-relief products in such a manner as to ensure that no representations prohibited by this Order are disseminated.

IV. ASSET FREEZE

IT IS FURTHER ORDERED that Defendants and their officers, directors, agents, servants, employees, attorneys, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby temporarily restrained and enjoined from:

A. Selling, liquidating, assigning, transferring, converting, loaning, encumbering, pledging, concealing, dissipating, spending, withdrawing, or otherwise disposing of any funds, real or personal property, or other assets or any interest therein, wherever located, including any assets outside the territorial United States, that are:

1. owned or controlled by any Defendant, in whole or in part; or
2. in the actual or constructive possession of any Defendant; or
3. owned, controlled by, or in the actual or constructive possession of, or otherwise held for the benefit of, any corporation, partnership, trust or other entity directly or indirectly owned, managed or controlled by any Defendant;

B. Opening or causing to be opened any safe deposit box titled in the name of any

Defendant, or subject to access by any Defendant;

C. Incurring charges or cash advances on any credit or debit card issued in the name, singly or jointly, of any Defendant, or any corporation, partnership or other entity directly or indirectly owned, managed, or controlled by any Defendant;

D. Transferring any funds or other assets subject to this Order for attorneys' fees, living expenses, or ordinary and customary business expenses, except from accounts or other assets identified by prior written notice to the Commission and prior approval by the Court; *provided* that no attorneys' fees, living expenses, or ordinary and customary business expenses, other than those set forth in Subparagraph IV.E below, and only in accordance with the procedures set forth in Subparagraph IV.E below, shall be paid from funds or other assets subject to this Order until the financial statements required by Subparagraph VII.B, below, are provided to counsel for the Commission.

E. Notwithstanding the above, any Defendant may pay from his personal funds reasonable, usual, ordinary, and necessary living expenses and attorney's fees, not to exceed \$5,000, prior to the submission of the financial statements required by Subparagraph VII.B, below. No such expenses, however, shall be paid from funds subject to this Order except from cash on the person of any Defendant, or from an account designated by prior written notice to counsel for the Commission.

IT IS FURTHER ORDERED THAT the funds, property and assets affected by this section shall include both existing assets and assets acquired after the effective date of this Order, including without limitation, those acquired by loan or gift. Defendants, or any third party holding assets for the benefit of Defendants, shall hold all assets, including without limitation, payments, loans, and gifts received after service of this Order.

V. RETENTION OF ASSETS BY THIRD PARTIES

IT IS FURTHER ORDERED that, pending determination of the Commission's request for a preliminary injunction, any bank, savings and loan, financial or brokerage institution, fund, escrow agent, trustee, mail receipt facility, or other person or entity served with a copy of this Order, or who

otherwise has actual knowledge of this Order, that has possession, custody, or control of any account, asset, or document held on behalf of, or relating or belonging to, any Defendant, shall:

A. Hold and retain within such entity's or person's control, and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation, or other disposal of any funds, documents, property, or other assets held by or under such entity's or person's control:

1. on behalf of, or for the benefit of, QT, Inc., Q-Ray, Company, Bio-Metal, Inc., Que Te Park, Jung Joo Park, or any other party subject to Paragraph IV above;
2. in any account maintained in the name of, or subject to withdrawal by, QT, Inc., Q-Ray, Company, Bio-Metal, Inc., Que Te Park, Jung Joo Park, or any other party subject to Paragraph IV above; or
3. that are subject to access or use by, or under the signatory power of, QT, Inc., Q-Ray, Company, Bio-Metal, Inc., Que Te Park, Jung Joo Park, or any other party subject to Paragraph IV above.

B. Deny access to any safe deposit boxes that are either:

1. titled in the name, individually or jointly, of QT, Inc., Q-Ray, Company, Bio-Metal, Inc., Que Te Park, Jung Joo Park, or any other party subject to Paragraph IV above; or
2. subject to access by QT, Inc., Q-Ray, Company, Bio-Metal, Inc., Que Te Park, Jung Joo Park, or any other party subject to Paragraph IV above.

C. Provide to counsel for the Commission, within three (3) days, a statement setting forth:

1. the identification of each account or asset titled in the name, individually or jointly, or held on behalf of, or for the benefit of, QT, Inc., Q-Ray, Company, Bio-Metal, Inc., Que Te Park, Jung Joo Park, or any other party subject to Paragraph IV above, whether in whole or in part;
2. the balance of each such account, or a description of the nature and value of such asset;

3. the identification of any safe deposit box that is either titled in the name of, individually or jointly, or is otherwise subject to access or control by, QT, Inc., Q-Ray, Company, Bio-Metal, Inc., Que Te Park, Jung Joo Park, or any other party subject to Paragraph IV above, whether in whole or in part; and
4. if the account, safe deposit box, or other asset has been closed or removed, the date closed or removed and the balance on said date.

The accounts subject to this provision include existing assets and assets deposited after the effective date of this Order. This Paragraph shall not prohibit transfers in accordance with any provision of this Order, or any further order of the Court.

VI. PRESERVATION OF RECORDS AND OTHER EVIDENCE

IT IS FURTHER ORDERED that Defendants, and their officers, directors, agents, servants, employees, salespersons, distributors, corporations, subsidiaries, affiliates, successors, assigns, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, are hereby enjoined from:

- A. Destroying, erasing, mutilating, concealing, altering, transferring or otherwise disposing of, in any manner, directly or indirectly, any weight-loss or cellulite treatment product advertised, marketed, promoted, offered for sale, distributed, sold, or purchased by any Defendant;
- B. 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, documents evidencing or referring to Defendants' pain-relief 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

C. 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 any Defendant or other entity directly or indirectly under the control of any Defendant.

VII. ACCOUNTING PROVISIONS

IT IS FURTHER ORDERED that, within three (3) days after service of this Order, for all pain-relief products advertised, marketed, promoted, offered for sale, distributed, or sold by Defendants, and their officers, directors, agents, servants, employees, salespersons, distributors, corporations, subsidiaries, affiliates, successors, or assigns,

A. Defendants shall serve on the Commission a detailed accounting of:

1. the names and active components of all such pain-relief products, including a description of such mechanical or other processes necessary for the purported efficacy of such pain-relief products;
2. all gross revenues obtained from the sale of all such pain-relief products from inception of sales through the date of the issuance of this Order;
3. all net profits obtained from the sale of all such pain-relief products from inception of sales through the date of the issuance of this Order;
4. the total amount of all such pain-relief products sold; and
5. the full names, addresses, and telephone numbers of all purchasers of all such pain-relief products, and the amount of pain-relief products purchased by each purchaser. This customer list shall be provided in the form of a searchable electronic document formatted in Word, Word Perfect, Excel, or Access and supplied on (a) 3.5-inch microcomputer floppy diskettes, high-density, double-sided, formatted for IBM compatible computers (1.44 MB capacity) (b) Iomega ZIP disks formatted for

IBM compatible PCs (100 MB capacity); or (c) CD-R74 CD-ROM readable disks formatted to ISO 9660 specifications (650 MB capacity).

B. Defendants shall prepare and provide to the Commission a complete and accurate individual or corporate financial statement, as the case may be, signed under penalty of perjury, on the forms attached to this Order as Appendices A and B, respectively.

C. Defendants shall further provide counsel for the Commission with a statement, verified under oath, of all transfers and assignments of assets and property worth \$1,000 or more since January 1, 2002, that shall include the amount or value transferred or assigned, the name and address of the transferee or assignee, the date of the transfer or assignment, and the type and amount of consideration paid to any Defendant. Each statement shall specify where applicable the name and address of each financial institution and brokerage firm, both domestic and foreign, at which the Defendant has an account or safe deposit boxes, and the account number or other identification of each such account or safe deposit box.

VIII. EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that the Commission is granted leave at any time after service of this Order to demand a deposition of, or the production of documents from, any person or entity relating to the nature, status, extent, location or other relevant information relating to the Defendants' assets, income, personal or business financial records or the location of a Defendant. Forty-eight (48) hours notice shall be deemed sufficient for any such deposition or document production from the Defendants and three (3) business days notice shall be deemed sufficient for any such document production from any other person or entity, including but not limited to any bank, savings and loan, financial or brokerage institution, fund, escrow agent, or trustee. The taking of depositions or receipt of documents submitted pursuant to this provision shall not in any way waive Plaintiff's rights to seek additional depositions or the production of additional documents.

IX. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each affiliate, partner, subsidiary, division, sales entity, successor, assign, officer, director,

employee, independent contractor, agent, attorney, advertising agency, call center, domain registrar, reseller, media outlet, mail receipt center, fulfillment house, and representative of the Defendants, and within ten (10) days following service of this Order by the FTC, Defendants shall provide the FTC with a sworn statement that they have complied with this provision of the Order, which statement shall include the names, titles, and addresses of each such person or entity who received a copy of the Order.

X. SERVICE OF THIS ORDER BY PLAINTIFF

IT IS FURTHER ORDERED that copies of this Order may be served by facsimile transmission, personal or overnight delivery, or U.S. Mail, by employees of the Federal Trade Commission, employees of any other law enforcement agency, or agents of any process servers retained by the Federal Trade Commission, on (1) Defendants, (2) any financial or brokerage institution, entity or person that holds, controls, or maintains custody of any account or asset of any Defendant, or (3) any other person or entity that may be subject to any provision of this Order. Service upon any branch or office of any entity shall effect service upon the entire entity.

XI. ORDER TO SHOW CAUSE

IT IS FURTHER ORDERED, pursuant to Federal Rule of Civil Procedure 65(b), that Defendants shall appear before this Court on the 9th day of June, 2003, at 10:00 A.M., to show cause, if there is any, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint against Defendants, enjoining them from further violations of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, and imposing such additional relief as may be appropriate.

XII. SERVICE OF ANSWERING AFFIDAVITS, MEMORANDA AND EVIDENCE

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 Commission no later than three (3) business days prior to the preliminary injunction hearing in this matter. The Commission may file responsive or

supplemental pleadings, materials, affidavits, or memoranda with the Court and serve the same on counsel for Defendants no later than one (1) business day prior to the preliminary injunction hearing in this matter. 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 Subparagraph.

B. Any party who desires to present live testimony at the preliminary injunction hearing in this matter shall file with this Court and serve on all opposing parties, no later than three (3) business days prior to the preliminary injunction hearing in this matter, a witness list that shall include the name, address, and telephone number of any such witness, and either a summary of, or the witness' declaration revealing the substance of, such witness' expected testimony. 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 date listed in the previous sentence.

XIII. CORRESPONDENCE WITH AND NOTICE TO PLAINTIFF

IT IS FURTHER ORDERED that for purposes of this Order, all correspondence and pleadings to the Commission shall be addressed to:

Serena Viswanathan
Federal Trade Commission
600 Pennsylvania Avenue, NW
Mail Drop NJ-3212
Washington, DC 20580
(202) 326-3244

or by facsimile to: (202) 326-2190.

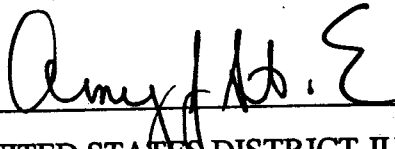
XIV. EXPIRATION OF TEMPORARY RESTRAINING ORDER

IT IS FURTHER ORDERED that the temporary restraining order granted herein shall expire at 11:59 p.m. on June 9, 2003, unless within such time the temporary restraining order, for good cause shown, is extended, or unless, as to any Defendant, the Defendant consents that it should be extended for a longer period of time.

XV. RETENTION OF JURISDICTION

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

SO ORDERED, this 28th day of May, 2003, at 4:55 A.M. (P.M.)



UNITED STATES DISTRICT JUDGE

RECEIVED

MAY 28 2003

**JUDGE AMY ST. EVE
United States District Court**