

**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 PRELIMINARY INJUNCTION ORDER
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 in this matter on October 27, 2004, pursuant to Sections 13(b) and 19 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 Preliminary Injunction without further adjudication or findings other than as contained herein.

It is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and has jurisdiction over all parties to this Stipulated Preliminary Injunction;
2. Venue properly lies with this Court;
3. The Commission and Defendants agree that this Order is binding in form and scope pursuant to Fed. R. Civ. P. 65(d).
4. Entry of this Order is in the public interest.
5. The Court's entry of this Stipulated Preliminary Injunction does not represent a finding that Defendants Diverse Marketing Group, Inc., Diverse Marketing Group LLC and Mark C. Ayoub have violated the law as alleged in the Commission's Complaint;
6. No security is required of any agency of the United States for the issuance of an injunction. *See* Fed. R. Civ. P. 65(c).

DEFINITIONS

1. **"Asset"** or **"Assets"** means any legal or equitable interest in, right to, or claim to, any real and/or personal property, including but limited to chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, funds, monies, shares of stock, and all cash, wherever located, and shall include both existing assets and assets acquired after the date of entry of this Order.
2. **"Assisting others"** means: (1) performing customer service functions including, but not limited to, receiving or responding to consumer complaints; (2) providing names of, or

arranging for the provision of, names of potential customers; or (3) performing marketing services of any kind.

3. **“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.

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

5. **“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.

6. **“Distributor”** shall mean any purchaser or other transferee of any covered product who acquires such product from any Defendant for resale and is entitled to or has received any commission or bonus in connection with the sale or distribution of any covered product.

7. **“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.

8. **“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, or precious metal dealer.

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

10. **“Means and instrumentalities”** shall mean any information, including but not necessarily limited to any advertising, labeling, or promotional materials, for use by Distributors in their marketing or sale of any covered product.

11. **“Person”** means a natural person, an 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.

12. **“Plaintiff”** means the Federal Trade Commission (“Commission” or “FTC”).

I. PROHIBITED BUSINESS ACTIVITIES PURSUANT TO 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, 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.

III. PROHIBITED BUSINESS ACTIVITIES UNDER THE CAN-SPAM ACT

IT IS FURTHER ORDERED that the 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. ASSET PRESERVATION

A. **IT IS FURTHER ORDERED** that Defendants are enjoined from directly or indirectly selling, transferring, alienating, liquidating, encumbering, pledging, loaning, assigning, concealing, dissipating, converting, withdrawing or making any other disposition of any assets or any interest therein, wherever located, including any assets outside the territorial United States, other than those that are actual, ordinary, and necessary business or living expenses that Defendants reasonably incur.

B. **IT IS FURTHER ORDERED** that the assets affected by this Section shall include both existing assets and assets acquired after the effective date of this Order.

C. **NOTWITHSTANDING** the asset preservation provisions of Paragraphs A and B of this Section, Defendants may pay amounts in excess of five thousand dollars (\$5,000) only after prior written agreement by counsel for the Commission, or prior approval by the Court.

V. RECORD KEEPING/MAINTAINING BUSINESS RECORDS

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:

A. Failing to make and keep books, records, accounts, bank statements, current accountants' reports, general ledgers, general journals, cash receipts ledgers, cash disbursements ledgers and source documents, documents indicating title to real or personal property, and any other data which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Defendants; and

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' products or services, 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 Defendants or other entities directly or indirectly under the control of Defendants.

VI. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each officer, agent, servant, employee, and attorney, and those persons in active concert or participation with them. Within ten (10) calendar days from the date of entry of this Order, each Defendant shall serve on Plaintiff an affidavit identifying the name, title, address, telephone number, date of service, and manner of service of each person or entity Defendant served with a copy of this Order in compliance with this provision.

VII. SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, electronic mail, personal or overnight delivery, or by U.S. Mail, by agents and employees of the FTC, by any law enforcement agency, or by private process server, upon any entity or person that may have possession or control of any documents of Defendants, or that may be subject to any provision of this Order.

VIII. CREDIT REPORTS

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

IX. FINANCIAL REPORTS AND ACCOUNTING

IT IS FURTHER ORDERED that within ten (10) calendar days after entry of this Order, each of the Defendants shall each provide to counsel for the FTC:

A. A completed financial statement accurate as of the date of entry of this Order, in the form provided as **Attachment A** for individuals and **Attachment B** for businesses, as the case may be, signed under penalty of perjury;

B. A complete and accurate list of Defendants' customers that purchased "FuelMax," "Super FuelMAX," and/or "Fuel Saver Pro," or any other substantially similar products, including, if available, the customer's name, address, electronic mail address, date of purchase, type of product purchased, and the amount paid for the purchase;

C. A detailed accounting of:

1. the names of all products advertised, marketed, promoted, offered for sale, distributed, or sold, by, for, or on behalf of each of the Defendants;

2. gross revenues and net profits (in U.S. Dollars) obtained from the sale of each product identified in Subsection IX.C.1. above, from inception of sales through the date of entry of this Order;

3. the full name, address, telephone number, electronic mail address, Web site address, and identification number or code (including affiliate monikers) of each entity or person who advertised, marketed, promoted, offered for sale, distributed, or sold any product for or on behalf of Defendants; and

4. the name, address, telephone number, electronic mail address, Web site address, and contact person of each entity or person that: (i) supplied, manufactured, formulated, or created any product that is advertised, marketed, promoted, offered for sale, distributed, or sold by or on behalf of Defendants, and (ii) provided any order fulfillment services of any kind, including, but not limited to, drop shipping, mailing, and/or distributing products, for or on behalf of Defendants.

X. CREATION OF OTHER BUSINESSES

IT IS FURTHER ORDERED that Defendants are hereby restrained and enjoined from creating, operating, or controlling any business entity, whether newly-formed or previously inactive, including any partnership, limited partnership, joint venture, sole proprietorship, or corporation, without first providing the Commission with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers, and employees; and (4) a detailed description of the business entity's intended activities.

XI. RETENTION OF JURISDICTION

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

STIPULATED AND AGREED TO BY:

FOR THE PLAINTIFF:

 11/9/04

Dated

Steven M. Wernikoff
Defendant
Christine M. Hinkle
Federal Trade Commission
55 East Monroe Street, Suite 1860
Chicago, Illinois 60603

(312) 960-5630 [Telephone]
(312) 960-5600 [Facsimile]

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

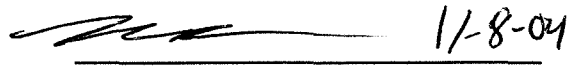
FOR THE DEFENDANTS:

 11-8-04

Dated

Mark C. Ayoub, on behalf of

DIVERSE MARKETING GROUP, INC.

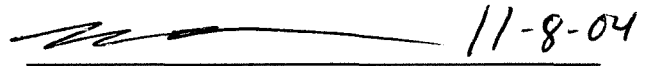
 11-8-04

Dated

Mark C. Ayoub, on behalf of

Defendant

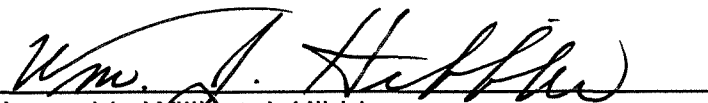
DIVERSE MARKETING GROUP, LLC

 11-8-04

Dated

Mark C. Ayoub, individually

IT IS SO ORDERED, this 10th day of NOVEMBER, 2004


Honorable William J. Hibbler
United States District Judge