

**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 INTERNATIONAL RESEARCH AND
DEVELOPMENT CORPORATION OF NEVADA AND ANTHONY RENDA**

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 filed a motion for Temporary Restraining Order, Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue as to Defendants International Research and Development Corporation of Nevada and Anthony Renda ("TRO"), and the Court granted the TRO, as amended, on November 10, 2004;

WHEREAS Defendants have received service of the Complaint, Summons and TRO;

WHEREAS the FTC and Defendants International Research and Development Corporation of Nevada and Anthony Renda 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 International Research and Development Corporation of Nevada and Anthony Renda 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. **"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.

2. **“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.

3. **“Assisting others”** means: (a) performing customer service functions for any person or entity (other than traditional fulfillment services, *i.e.*, storing and shipping product and handling product returns), including, but not limited to, outbound or inbound telemarketing, upselling, cross-selling, handling consumer complaints (other than returns), credit card or debit account processing, Web design and marketing, or designing or preparing or assisting in the preparation of product labeling or packaging; (b) formulating or providing, or arranging for the formulation or provision of, any sales scrip! or any other advertising or marketing material for any person or entity; (c) providing or arranging for the provision of, names of potential customers; or (d) performing advertising or marketing services or consulting services of any kind.

4. **“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.

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

6. **“Defendant”** or **“Defendants,”** for purposes of this Order, means Defendants International Research and Development Corporation of Nevada and Anthony Renda also d/b/a International Research & Development and/or IRD, and each of them, by whatever names each may be known.

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. **“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.

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

I. PROHIBITED CLAIMS FOR FUEL DEVICES

IT IS THEREFORE ORDERED that Defendants, and their officers, agents, servants, and employees, 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 material 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, *e.g.*, FuelMAX, Super FuelMAX or any substantially similar product, including, but not limited to:

- A. Representing that the product causes a substantial increase in gas mileage;
- B. Representing that the product causes a substantial reduction in emissions;
- C. Making any representation about the performance or efficacy of such products 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 the product; or
- E. Assisting others who violate any provision of Paragraphs A through D of this Section.

II. PROHIBITED CLAIMS FOR OTHER PRODUCTS

IT IS FURTHER ORDERED that Defendants, and their officers, agents, servants, and employees, 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 materially false or misleading oral or written statement

or representation in connection with the marketing, advertising, promotion, offering for sale, sale or provision of HeatMAX, AromaMAX, FishMAX, BatteryMAX, SoapMAX or PowerMAX, or any substantially similar products, including, but not limited to:

- A. Making any representation about the performance or efficacy of such product unless, at the time of making such representation, Defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation;
- B. Misrepresenting any other fact material to a consumer's decision to purchase the product; or
- C. Assisting others who violate any provision of Paragraphs A through B of this Section.

III. 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, and employees, 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, false or misleading statements or representations of material fact enjoined in Section I.A through I.D and Section II.A through II.B above; *provided, however*, that, for purposes of this Order, the sale of the products set forth in Section I shall not, standing alone, constitute means and instrumentalities in the event that Defendants comply with Sections IV and V of this Order.

IV. PACKAGING RECALL AND DISTRIBUTION

A. **IT IS FURTHER ORDERED** that Defendants shall promptly recall from any person, partnership, corporation, or other entity that is offering for sale, selling, or distributing to consumers, all packaging and/or marketing material for the "FuelMAX," "Super FuelMAX," or any other substantially similar product, containing, expressly or by implication, any representations prohibited by Section I above.

Provided, however, that in lieu of a recall, Defendants may provide new replacement packaging and/or marketing material that does not violate Section I of this Order to any person, partnership, corporation, or other entity to which Defendants have sold or distributed "FuelMAX," "Super FuelMAX," or any other substantially similar product, prior to November 10, 2004. Such replacement packaging shall contain the following verbatim statement (herein "Notice"):

"Previously, International Research & Development Corporation of Nevada ("MAXProducts") has claimed that its "FuelMAX" and "Super FuelMAX" products can cause a substantial increase in gas mileage and cause a substantial reduction in emissions. The Federal Trade Commission has taken the position that these product claims are false and that there is no scientific basis for the products to work as claimed. The matter is currently the subject of litigation in United States federal court in Chicago – *FTC v. International Research & Development*, 04 C 6901 (N.D. Ill.)"

The Notice shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it prior to making the product purchase, in print that contrasts with the background against which it appears.

B. **IT IS FURTHER ORDERED** that Defendants may not sell or distribute any fuel saving or emissions decreasing devices, including "FuelMAX," "Super FuelMAX," or any other substantially similar product, unless Defendants:

1. utilize packaging that does not violate Section I of this Order. Such replacement packaging shall contain the Notice set forth in Section IV.A of this Order. The Notice shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it prior to making the product purchase, in print that contrasts with the background against which it appears;
2. provide each of their purchasers with a clear and prominent copy of the Notice set forth in Section IV.A of this Order. For purposes of this sub-section, "clear and prominent" shall mean: In the event the Notice is provided in written form (in paper or electronic form), the statement contained therein must be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears. No other text unrelated to the Notice may appear on the printed or electronic page on which the statement appears. If the Notice is provided via mail, e-mail, or facsimile, no other materials unrelated to the Notice, except an order form or order cancellation instructions, may be included with or accompany the Notice. In the event the Notice is provided by audio means, the statement quoted above must be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The audio recording must contain nothing other than the above-quoted statement, except for instructions concerning placing or cancelling an order; and
3. possess a verifiable record that their purchasers received the Notice.

Provided further that Defendants and their agents shall not, directly or indirectly, make any oral or written statement contrary to, inconsistent with, or in mitigation of the Notice set forth in Section IV.A of the Order.

V. MONITORING

IT IS FURTHER ORDERED that Defendants are hereby enjoined from:

A. Failing to institute a reasonable program of surveillance within twenty (20) days of the entry of this Order adequate to reveal whether any Defendant, its officers, directors, agents, employees, salespersons, associates, or distributors are disseminating advertisements or promotional materials that contain any representation that is prohibited by Section I of this Order.

B. Failing to terminate all sales of "FuelMAX," "Super FuelMAX," or any other substantially similar product, or any payments or other compensation to any officer, director, agent, employee, salesperson, associate, or distributor who is engaged in disseminating advertisements or promotional materials that contain any representation that is prohibited by Section I of this Order, as soon as Defendants know or should know that such person is or has been engaged in such prohibited conduct.

VI. 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 transfers 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 providing counsel for the Commission written notice via facsimile or e-mail at least five (5) days prior to such payment, or upon prior approval by the Court. *Provided, however*, upon good cause shown, the Court may, in its discretion raise the amount subject to the above notice provision to ten thousand dollars (\$10,000). *Provided further* that Defendants collectively may pay a total of twenty-five thousand dollars (\$25,000) as a retainer to legal counsel in this matter without providing notice to the Commission. Any payments thereafter to legal counsel shall be subject to the notice provision in this Section.

VII. RECORD KEEPING/MAINTAINING BUSINESS RECORDS

IT IS FURTHER ORDERED that Defendants, and their officers, agents, servants, and employees, 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.

VIII. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants shall promptly provide a copy of this Order to each officer, agent, servant, and employee, 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.

IX. 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.

X. 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.

XI. FINANCIAL REPORTS AND ACCOUNTING

IT IS FURTHER ORDERED that Section VIII of the Temporary Restraining Order signed by the Court on November 10, 2004 obligated Defendants to provide certain information and make various disclosures to the Commission. The entry of this Preliminary Injunction does not relieve Defendant from any of those obligations to the extent that they may remain unfulfilled or incomplete.

XII. 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.

XIII. STATUS OF THE TRO/DURATION OF THE PRELIMINARY INJUNCTION

IT IS FURTHER ORDERED that the provisions of this Stipulated Preliminary Injunction supercede and replace the Temporary Restraining Order signed by the Court on


November 10, 2004, except where explicitly noted in this Order. The Stipulated Preliminary Injunction granted herein shall remain in full force and effect until further Order of the Court.

XIV. RETENTION OF JURISDICTION

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

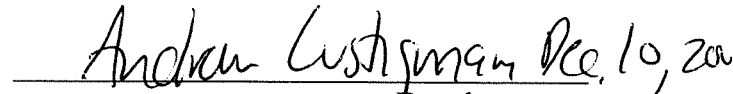
STIPULATED AND AGREED TO BY:

FOR THE PLAINTIFF:

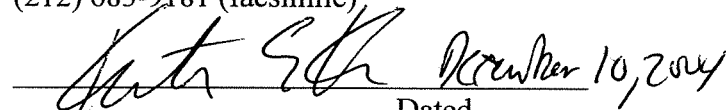
 12/10/04
Dated

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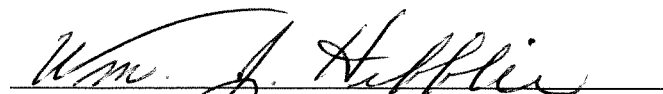
 Dec. 10, 2004
Dated

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 December 10, 2004
Dated

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IT IS SO ORDERED, this 13TH day of DECEMBER, 2004


Honorable William J. Hibbler
United States District Judge