

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

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Case No. 11 C 2485
)	
v.)	Judge Samuel Der-Yeghiayan
)	
RICARDO JOSE LABRA, individually,)	Magistrate Judge Michael T. Mason
)	
Defendant.)	
)	

STIPULATED PRELIMINARY INJUNCTION

WHEREAS, Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), having filed its Complaint for Permanent Injunction and Other Equitable Relief in this matter on April 13, 2011, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b);

WHEREAS, the FTC moved for a Temporary Restraining Order with Other Equitable Relief and Order to Show Cause Why a Preliminary Injunction Should Not Issue (“TRO”) pursuant to Rule 65 of the Federal Rules of Civil Procedure;

WHEREAS, Defendant Ricardo Jose Labra has received service of the Complaint, Summons, and the papers filed in support of the FTC’s motion for a TRO;

WHEREAS, the Court entered the parties’ Stipulated TRO on April 19, 2011; and

WHEREAS, the FTC and Defendant Ricardo Jose Labra, acting by and through their respective counsel, have consented to entry of this Stipulated Preliminary Injunction Order,

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

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and over the parties.

2. Venue lies properly with this Court.

3. There is good cause to believe that Defendant Ricardo Jose Labra has engaged in, and is likely to engage in the future in, acts and practices that violate Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a), 52, and that the Commission is therefore likely to prevail on the merits of this action.

4. 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 restitution will occur from the sale, transfer, assignment, or other disposition or concealment by Defendant of his assets or records unless Defendant is immediately restrained and enjoined by order of this Court. Therefore, there is good cause for the entry of the ancillary relief contained in this Order, including an order preserving Defendant's assets and prohibiting the Defendant from destroying records.

5. Weighing the equities and considering the Commission's likelihood of ultimate success, this Preliminary Injunction is in the public interest.

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

DEFINITIONS

For purposes of this Preliminary Injunction (“Order”), the following definitions shall apply:

1. **“Acai Berry Product”** or **“Acai Berry Products”** shall refer to any products, sold alone or in combination with companion products, that are advertised, marketed, promoted, offered for sale, distributed, or sold with express or implied representations that the product contains acai berries.
2. **“Asset”** or **“Assets”** means any legal or equitable interest in, right to, or claim to, any real or personal property, including, but not limited to, “goods,” “instruments,” “equipment,” “fixtures,” “general intangibles,” “inventory,” “checks,” or “notes” (as these terms are defined in the Uniform Commercial Code), lines of credit, chattels, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and all cash, wherever located.
3. **“Assisting others”** includes, but is not limited to: (a) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any sales script or other marketing material; (c) providing names of, or assisting in the generation of, potential customers; (d) verifying, processing, fulfilling, or arranging for the fulfillment of orders; (e) performing or providing marketing, billing, or collection services of any kind, including, but not limited to, creating, hosting, or maintaining websites, or recruiting affiliates; or (f) acting as an officer or director of a business entity.

4. **“Competent and reliable scientific evidence”** means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

5. **“Covered Product”** means any dietary supplement, food, or drug, including, but not limited to, Acai Berry Products.

6. **“Defendant”** means Ricardo Jose Labra, and by whatever other names he may be known.

7. **“Document” or “Documents”** means any materials listed 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, into reasonably usable form through detection devices. A draft or nonidentical copy is a separate Document within the meaning of the term.

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

9. **“Material connection”** means any relationship that materially affects the weight or credibility of any endorsement and that would not be reasonably expected by consumers.

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.

I.

**PROHIBITED BUSINESS ACTIVITIES
RELATING TO ANY PRODUCT, SERVICE, OR PROGRAM**

IT IS THEREFORE ORDERED that Defendant, and his officers, agents, servants, employees and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product, service, or program, are hereby restrained and enjoined from:

A. Misrepresenting, or assisting others in misrepresenting, any material fact, expressly or by implication, including, but not limited to, that:

1. Any website or other publication is an objective news report;
2. Objective news reporters have performed independent tests of any product, service, or program, including, but not limited to, Acai Berry Products, work-at-home programs, or surplus auction services;
3. Independent tests demonstrate the effectiveness of any product, service, or program featured in any website or other publication, including, but not limited to, Acai Berry Products, work-at-home programs, or surplus auction services; and
4. Comments posted on websites express the views of independent consumers;

B. Failing to disclose, or disclose adequately:

1. Any material connection, when one exists, between any user or endorser of any product, service, or program and Defendant or any other person manufacturing,

advertising, labeling, promoting, offering for sale, selling or distributing such product, service, or program; and

2. If applicable, that the content of any website or other publication has not been authored by an objective journalist but is in fact an advertisement placed for compensation.

II.

PROHIBITED BUSINESS ACTIVITIES RELATING TO ANY COVERED PRODUCT

IT IS FURTHER ORDERED that Defendant, and his officers, agents, servants, employees and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, in connection with the advertising, marketing, promotion, offering for sale, or sale of any Covered Product, are hereby restrained and enjoined from making, or assisting others in making, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, any representation that such product causes weight loss or rapid weight loss and any other representation about the health benefits, performance, or efficacy of such product, unless the representation is non-misleading, and, at the time of making such representation, Defendant possesses and relies upon competent and reliable scientific evidence, as that term is defined above, that is sufficient in quality and quantity based on standards generally accepted in the scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate the representation is true.

III.

ASSET PRESERVATION

IT IS FURTHER ORDERED that:

A. Defendant, and his officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby restrained and 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, that are owned, controlled or held by, or for the benefit of, in whole or in part, Defendant, or in the actual or constructive possession of Defendant, other than those assets that are used for actual, ordinary, and necessary business or living expenses that Defendant reasonably incurs.

B. The assets affected by this Section shall include both existing assets and assets acquired after the effective date of this Order.

C. Notwithstanding Section III.A above, and excluding the retainer fee already paid to Defendant's counsel and local counsel, Defendant may withdraw, transfer, encumber, or otherwise dissipate assets in excess of two thousand six hundred dollars (\$2,600) every thirty (30) days after the effective date of this Order only with prior written agreement by counsel for the Commission, or prior approval by the Court. ***Provided, however,*** that solely during the first thirty (30) days after the effective date of this Order, Defendant may withdraw up to five

thousand dollars (\$5,000) for actual, ordinary and necessary business expenses to engage in business activity that is not prohibited by this Order and, *provided further* that any amount in excess of the original five thousand dollars (\$5,000) that Defendant earns from such business activity may thereafter be used for actual, ordinary and necessary business expenses to engage in business activity that is not prohibited by this Order.

D. To the extent that Defendant withdraws, transfers, encumbers, or otherwise dissipates assets pursuant to Section III.A of this Order, he shall provide an accounting of each expense in excess of two-hundred and fifty dollars (\$250) to counsel for the Commission every thirty (30) days after the effective date of this Order. To the extent that Defendant withdraws, uses, or dissipates assets for business expenses pursuant to Section III.C of this Order, he shall provide an accounting of his business expenditures and profits to counsel for the Commission every thirty (30) days after the effective date of this Order.

IV.

FINANCIAL REPORTS AND ACCOUNTING

IT IS FURTHER ORDERED that, if he has not done so already in compliance with the TRO, Defendant shall serve upon counsel for the Commission, no later than five (5) business days after entry of this Order:

A. A completed financial statement accurate as of the date of entry of this Order, in the form provided as attachment A to the TRO, signed under penalty of perjury. The financial statement shall include assets held outside the territory of the United States, shall be accurate as of the date of the entry of this Order, and shall be verified under oath. Defendant shall attach to this completed financial statement copies of all local, state, provincial, and federal income and

property tax returns, with attachments and schedules, as called for by the instructions to the financial statements; and

B. A detailed accounting of:

1. the names of all products advertised, marketed, promoted, offered for sale, distributed, or sold since January 1, 2008;

2. gross revenues and net profits (in U.S. Dollars) obtained from the advertising, marketing, or sale of each product identified in Section IV.B.1. above, from inception of the advertising, marketing, or sale of that product through the date of entry of this Order; and

3. the name, address, telephone number, e-mail address, website 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 Defendant, (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 Defendant, and (iii) paid Defendant, whether directly or indirectly, related to Defendant's advertisement of any products.

V.

REMOVAL OF WEBSITES

IT IS FURTHER ORDERED that, immediately upon entry of this Order, Defendant, and his officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary,

division, or other device, or any of them, and any other person or entity served with a copy of this Order, shall immediately take whatever action is necessary to ensure that any website used by Defendant for the advertising, marketing, promotion, offering for sale, or sale of Acai Berry Products, including, but not limited to, the websites located at ConsumersNewsPick.com, ConsumersTrickWeekly.com, Kates-Tips.com, KristinGotSkinny.com, Laurens-Diet-Success.com, Michelles-Diet-Success.com, MyNews3Online.com, Rachael's-Blog.com, RickisWeightLoss.com, and SmartLifestyle.org, shall be removed from the Internet.

VI.

PRESERVATION OF RECORDS AND REPORT OF NEW BUSINESS ACTIVITY

IT IS FURTHER ORDERED that Defendant and his officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby restrained and enjoined from:

A. Failing to create and maintain 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, fairly, and completely reflect Defendant's income, and the disbursements, transactions, dispositions, and uses of Defendant's assets;

B. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any documents, including electronically-

stored materials, that relate in any way to: the business practices or business or personal finances of Defendant; or the business practices or finances of entities directly or indirectly under the control of Defendant; and

C. Creating, operating, or exercising any control over 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, telephone number, e-mail address, and website address 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.

VII.

EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that pursuant to Federal Rules of Civil Procedure 30(a), 31(a), 34, and 45, and notwithstanding the provisions of Federal Rules of Civil Procedure 26(d) and (f), 30(a)(2)(A), and 31(a)(2)(A), the parties are granted leave, at any time after entry of this Order to:

A. Take the deposition of any person, whether or not a party, for the purpose of discovering the nature, location, status, and extent of the assets of Defendant, and Defendant's affiliates and subsidiaries; the nature and location of documents reflecting the business transactions of Defendant, and Defendant's affiliates and subsidiaries; the location of any premises where Defendant, directly or through any third party, conducts business operations; the

Defendant's whereabouts; and/or the applicability of any evidentiary privileges to this action;
and

B. Demand the production of Documents from any person, whether or not a party, relating to the nature, status, and extent of the assets of Defendant, and Defendant's affiliates and subsidiaries; the nature and location of documents reflecting the business transactions of Defendant, and Defendant's affiliates and subsidiaries; the location of any premises where Defendant, directly or through any third party, conducts business operations; the Defendant's whereabouts; and/or the applicability of any evidentiary privileges to this action.

Three (3) days notice shall be deemed sufficient for any such deposition, five (5) days notice shall be deemed sufficient for the production of any such documents, and twenty-four (24) hours notice shall be deemed sufficient for the production of any such documents that are maintained or stored only as electronic data. The provisions of this Section shall apply both to parties to this case and to non-parties. The limitations and conditions set forth in Federal Rules of Civil Procedure 30(a)(2)(A)(ii) and 31(a)(2)(A)(ii) regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Section. Any such depositions taken pursuant to this Section shall not be counted toward any limit on the number of depositions under the Federal Rules of Civil Procedure or the Local Rules of Civil Procedure for the United States District Court for the Northern District of Illinois, including those set forth in Federal Rules of Civil Procedure 30(a)(2)(A) and 31(a)(2)(A). Service of discovery upon a party, taken pursuant to this Section, shall be sufficient if made through the means described in Section IX of this Order.

VIII.

DISTRIBUTION OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that Defendant shall immediately provide a copy of this Order to each of his corporations, subsidiaries, affiliates, divisions, directors, officers, agents, partners, successors, assigns, employees, attorneys, agents, representatives, sales entities, sales persons, telemarketers, independent contractors, and any other persons in active concert or participation with them. Within ten (10) calendar days from the date of entry of this Order, Defendant shall serve on the Commission 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 Commission, by any law enforcement agency, or by private process server, upon any person that may have possession or control of any document of Defendant, or that may be subject to any provision of this Order.

X.

CONSUMER REPORTING AGENCIES

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 or credit report concerning Defendant to the Commission.

XI.

CORRESPONDENCE WITH AND NOTICE TO PARTIES

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

Joannie T. Wei
Staff Attorney
Federal Trade Commission
55 West Monroe Street, Suite 1825
Chicago, IL 60603
Email: jwei@ftc.gov

All correspondence and pleadings to Defendants shall be addressed to:

Thomas A. Cohn and Heather L. Maly
Venable LLP
Rockefeller Center
1270 Avenue of the Americas, 7th Floor
New York, NY 10020
tacohn@venable.com
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XII.

RETENTION OF JURISDICTION

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

SO STIPULATED:

/s/ Joannie T. Wei

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IT IS SO ORDERED, this 18 day of May, 2011, at 9:45 a.m.



Honorable Samuel Der-Yeghiayan
United States District Judge