WILLIAM BLUMENTHAL i(% General Counsel f'

' JOHN D. JACOBS
CABarNo. 134154
Federal Trade Commission
10877 Wilshire Boulevard, Suite 700

CLERK,

Preliminary Injunction Should Not Issue pursuant to Federal Rule of Civil Procedure 65. On October 6,2005, thi~ Coua granted Plaintiffs application and entered a Temporary Restraining Order with an order to show cause why a preliminary injunction should not issue against all defendants named in this action. By and through their respective counsel, Plaintiff and Defendants Pacific
Herbal Sciences, Inc., and John A. Bracken, Jr., without any admission of any wrongdoing or violation of law, voluntarily have agreed to the entry of the following stipulated order for preliminary injunction ("Order"):
The Court, being advised in the premises, finds as follows:
FINDINGS OF FACT
1. This Court has jurisdiction over the subject matter of this case and
and there is good cause to believe that the Court will have jurisdiction over all parties.
2. Venue lies properly with this Court.
3. Plaintiffs Complaint states a claim upon which relief may be granted
against all Defendants under 15 U.S.C. $4 45(a), 52, and 7704(a).
4. The acts and practices of Defendants are in or affecting commerce, as
defined in Section 4 of the FTC Act, 15 U.S.C. $ 44.
5. This Order is in the public interest.

DEFINITIONS

1. "Asset" or "Assets" means any (means)Tj 0 Tc 13.625dn Tc 1t2)1ng14.125 0 0 1

$ -063Tj 0 Tc includ0 T,me57(bu7 06(no7 0-3c 2mi [(be)1(g Td (in)T0.350.009 Tc o,982 0 Td (grant9009 Tc45 0 Tte(betels,g14.1)102(4)]TJ5)Tj 0 T(goods,982 0 Td (po7)Tj 0 Tc 1.66rume Td,me56 equipme T)599(fixtu (p,merce,)64(as)]T /270.009 Tcgeneral982 0 Td (-131Tj 0 Tc 1.tangibl.p,me11(e1.09 p,merce, 23 3-0.)]TJ -28.34leaseholds,g14.1)10ief)]TJ5-0.027 Tcmaing14.1)102(4)]his80.009 Tc 1.021 0 Td (or7)Tj 0 Tc o 1.1.0-4403liveri(p,merce,)64(as)]6.650.009 Tcinve Tory,982 0 Td (12)Tj 0 Tc checks)59(cno7(p,me-9 2ccou Td,me3(credi p,merce, 18J5 709 Tc45 0 Tc cont1.67p,me8Td [ceivabl.p,me42(shfenmmerce,)102(4)]h Tc00.009 Tc 3.788 0 Td (of9.6397sTcstock,g14.1)102(4)]Tj -0.097sTcffens,982 0 Td (po6-0.018 Tcmoni(p,me4.1)102(4)]TJ38)Tj 0 Tc 1.80-20(3.05rce,Td (upo79)Tj 0 Tc cash,me11(w1.1evdants)7-24 29409 Tc37 0 Tc loca [(,0224(0 clud0 T)93(bo 1merce,)64(as)]Tc 6)Tj 0 Ttwith 6.184 0 Td (in 3 360.009 Tc 1.808 0 Td (an82.Tj 0 Tc outsid.0286c 1.02rce, (U.S.C.)Tj ET /Suspe27 230.51.4 206.4378 0 15.1f 1343.3432 393.2391]>>BDC BT /T1_0 1 Tf 13.8727 230.51.3 109.6798 Td riTori1ng14.11 TTm ($)Tj ET EMC BT /T1_0 1 Tf 13.8785 0 51.3 109.6798[(Uni [(be-3cSta7(p,me18 1.80-10(shf3.05rce, (U.S.C.)Tj ET /Susp5331386.773925 155po6015.3-0[38653432 393.2391]>>BDC B)64941in)T0.)Tj 0 T9 13.75331386.77392433.3195 i::ig14.11 TTm ($.S.C.)Tj ET /Susp53 0 0 157.62 0 1555po6015

include both existing assets and assets acquired after the date of entry of this

c3 Order. i u - -1. --. 2. "Assisting others" means: (1) performing customer service functions 2;
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including, but not limited to, receiving or responding to consumer complaints, .n receiving identifying and financial information from consumers, and .\ communicating with consumers; (2) developing, providing, or arranging for the development or provision of marketing materials, including, but not limited to,
Web site and commercial electronic message content; (3) providing names of, or arranging for the provision of names of, potential customers; (4) performing marketing services of any kind; or (5) acting as an officer or director of a business entity.
3. "Customer" means any person who has paid, or may be required to
pay, for goods or services offered for sale or sold by Defendants.
4. "Defendant" or "Defendants" means Pacific Herbal Sciences, Inc.,
Inc., and John A. Brackett, Jr., individually and as an officer or director of Pacific Herbal Sciences, Inc.
5. "Document" is synonymous in meaning and equal in scope to the
usage of the term as defined in Federal Rule of Civil Procedure 34(a), and includes

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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.

7. "Header Information" is defined in 15 U.S.C. 5 7702(8) and means

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hormone, and includes, but is not limited to, "HGH Revolution," "HGH-R," and "Natural Rejuvenator," or any substantially similar products.

ORDER
I. PROHIBITED BUSINESS ACTIVITIES PURSUANT TO THE FTC ACT IT IS THEREFORE ORDERED that Defendants, and their officers,
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, facsimile, or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby temporarily restrained and enjoined f7om making, or assisting others in making, expressly or by implication, including through the use of a trade name or endorsement, any false or misleading statement or representation in connection with the marketing, advertising, promotion, offering for sale, sale, or provision of any HGH-related product, drug, or dietary supplement, including but

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preliminarily restrained and enjoined from violating, or assisting others in
violating, the provisions contained in Sections 5 and 6 of the CAN-SPAM Act, c-3

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15 U.S.C. $3 7704 and 7705, as currently promulgated or as it may hereafter be il *:c

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23 may use to submit a reply electronic mail message or other form of Intemet-based I1

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amended, or any rule, regulation, or requirement adopted pursuant thereto, , .? including, but not limited to, by initiating the transmission, to protected \\ computers, of a commercial email message that:
A. Contains, or is accompanied by, header information that is materially
false or misleading in violation of Section 5(a)(l) of the CAN-SPAM Act,
15 U.S.C. 6 7704(a)(l), including but not limited to a message with header information that is misleading because the person initiating the message knowingly uses another protected computer to relay or retransmit the message for purposes of disguising its origin;
B. Contains subject headings that are likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message, in violation of Section 5(a)(2) of the CAN-SPAM Act, 15 U.S.C. $7704(a)(2);
C. Fails to include a clear and conspicuous notice of the recipient's

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24 communication requesting not to receive future commercial electronic mail I

opportunity to decline to receive further electronic mail messages from the sender, in violation of Section 5(a)(5)(A)(ii) of the CAN-SPAM Act, 15 U.S.C.
6 7704(a)(5)(A)(ii);
D. Fails to include a functioning return electronic mail address or other Intemet-based mechanism, clearly and conspicuously displayed, that a recipient

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STIPULATED PRELIMINARY

E. Advertises or promotes products or services but fails to include clear

0 and conspicuous identification that the,message is an advertisement or solicitation, IU - <- in violation of Section 5(a)(5)(A)(i) of the CAN-SPAM Act, 15 U.S.C. ,?

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5 7704(a)(5)(A)(i); and i.0 F. Advertises or promotes products or services but fails to include a
valid physical postal address of the sender in violation of Section S(a)(S)(A)(iii) of the CAN-SPAM Act, 15 U.S.C. 5 7704(a)(5)(A)(iii).

111. ASSET FREEZE

IT IS FURTHER ORDERED that Defendants, and their officers, 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, facsimile, or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, except as agreed to in writing by the parties or as directed by further order of the Court, are temporarily restrained and enjoined from, except as provided in paragraph 1II.D: A. Selling, liquidating, assigning, transferring, converting, loaning, encumbering, pledging, concealing, dissipating, spending, disbursing, withdrawing, or otherwise disposing of any assets wherever located, including any assets outside the territorial United States, that are:
1. In the actual or constructive possession of any Defendant;
2. Owned or controlled by, or held for the benefit of, or subject to
access by, or belonging to, any Defendant; or
3. In the actual or constructive possession of, owned or controlled
by, subject to access by, or belonging to, any corporation, partnership, trust, or any other entity directly or indirectly
owned, managed, or controlled by, or under common control
with, any Defendant including, but not limited to, any assets

STIPULATED PRELIMINARY INJLJNCTION- Page 8

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1 (1 of, or relating or belonging to, any Defendant, shall, except as provided in
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paragraph 1II.D: 13

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7 A. Hold and retain within such entity's or person's control, and prohibit ;j

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the withdrawal, removal, assignment, transfer, pledge, hypothecation, , 1,"

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11 2. In any account maintained in the name of, or subject to

encumbrance, disbursement, dissipation, conversion, sale, liquidation, or other
disposal of any funds, documents, property, or other assets held by or under such

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lo I1 withdrawal by, any Defendant; or

entity's or person's control:
1. On behalf of, or for the benefit of, any Defendant;

11 11 3. Subject to access or use by, or under the signatory power of,

121 any Defendant;
B. Deny access to any safe deposit boxes that are either:
1. Titled in the name, individually or jointly, or held on behalf or
for the benefit, of any Defendant; or

l6 11 2. Subject to access by any Defendant;
I 17 11 C. Provide to counsel for the Commission, within five (5) business days, 1 18 11 if not previously provided pursuant to the Temporary Restraining Order entered on
19 11 October 6,2005, by facsimile or by overnight delivery, a sworn statement setting
1 20 forth:
1. The identification of each account or asset titled in the name,
individually or jointly, or held on behalf or for 0.0183 Tc 130forth:

4. If the account, safe deposit box, or other asset has been closed

or

1 property, and any other data which, in reasonable detail, accurately and fairly

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1 11 of service of each person or

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Nov-16-2005 03:OBpm From-LIPOW 1 HARRIS

RETENTION OF JlTRTSDICTION

2 I IT IS FURTHER ORDERED hat this Court shall retain jurisdiction of

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Dated: 1)- 14 -gr

John A. Bracken, Jr.

Dated: 11- 16 -or
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STIPULATED PRELIMMARY INJUNCTION- Page 14

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MARY T. BENFIELD
Attome s for Plaintiff
Federal f rade Comssion

RONALD S.W. LEW ,tk
Dated November, 1 r ZOOS.
TlqEH0R-m
UNITED STATES DISTRICT ~~DGE

CERTIFICATE OF SERVICE 0

I hereby certify that I caused the 'foregoing Stipulated Preliminary UJ - &

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Injunction and Order for Other Equitable Relief as to Pacific Herbal Sciences,.Inc., ,2

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and John A. Brackett, Jr., to be served on all defendants on the date set forth
below by providing a fill, true, and correct copy thereof by mail, in a sealed, first-class postage-prepaid envelope, deposited with the United States Postal Service at Seattle, Washington, addressed as follows, with a courtesy copy by fax to the indicated fax telephone numbers, to which complete transmission was confirmed:

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- to counsel for defendants Pacific Herbal Sciences, Inc., and John A. Brackett, Jr.:
Jeffrey A. Lipow, Lipow & Hanis, 9952 Santa Monica Boulevard,
First Floor, Beverly Hills, California 90212, (3 10) 282-0507 (voice),
(3 10) 286- 1 17 1 (fax); and

J - to counsel for defendants Lei Lu, Natural Health Product, Inc., and New Star Marketing Group, Inc.:
David Brockway, Root Brockway & Rothblatt, 801 S. Garfield Ave.,
202, Alhambra, California 91801, (626) 588-2003 (voice), (626)
588-21 13 (fax).

f Dated /&' /b \/- ,2005.

J &,&ydWJk Gerald Fondow

STIPULATED PRELIMINARY INJUNCTION- Page 15

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