

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

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FEDERAL TRADE COMMISSION,)		
)		
Plaintiff,)	Case No.:	2:11-cv-11618
)		
v.)		
)	Judge:	Robert H. Cleland
COULOMB MEDIA, INC.,)		(presiding)

Media”), and Cody Low aka Joe Brooks (“Low”), have engaged in, and are likely to engage in the future, 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 Defendants of their assets or records unless Defendants Coulomb Media and Low are restrained and enjoined by order of this Court. Therefore, there is good cause for the entry of the ancillary relief contained in this Stipulated Preliminary Injunction, including an order preserving Defendant’s assets and prohibiting the Defendants from destroying records.

5. Weighing the equities and considering the Commission’s likelihood of ultimate success, this Stipulated 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 Stipulated Preliminary Injunction (“Preliminary Injunction”), 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,

or used by these entities, or any of them.

8. **“Defendants”** means the Individual Defendant and the Corporate Defendant, individually, collectively, or in any combination.

9. **“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.

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

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

12. **“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.

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

I.

PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that Defendants, and their 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 Preliminary Injunction 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 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 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

II.

IT IS FURTHER ORDERED that Defendants, and their 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 Preliminary Injunction 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, Defendants possess and rely 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. Defendants, and their 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 Preliminary Injunction 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, Defendants, or in the actual or constructive possession of Defendants, other than those assets that are used for actual, ordinary, and necessary business or living expenses that Defendants reasonably incur; **provided that** nothing shall prohibit the parties from agreeing to additional business or living expenses.

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

C. Notwithstanding Section III.A above, Defendants may withdraw, transfer, encumber, or otherwise dissipate assets in excess of Five Thousand Dollars (\$5,000) per calendar month only with prior written agreement by counsel for the Commission, or prior approval by the Court; that nothing in this Section shall prohibit Defendants from funding a retainer for attorney's fees in the amount of Five Thousand Dollars (\$5,000) in addition to funds already paid for that purpose, and **provided further that** nothing in that Order or in this Order shall prohibit the parties from agreeing to additional amounts for that purpose.

D. To the extent that either Defendant withdraws, transfers, encumbers, or otherwise dissipates assets pursuant to Section III.A of this Preliminary Injunction, that Defendant shall provide an accounting of its expenses to counsel for the Commission for each calendar month.

sold by or on behalf of Defendant(s), (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(s), and (iii) paid Defendants, whether directly or indirectly, related to Defendant'(s) advertisement of any products.

V.

POSTING NOTICE OF LAWSUITS ON WEBSITES

IT IS FURTHER ORDERED that, to the extent Defendants have not already done so, immediately upon service of the Preliminary Injunction upon them, Defendants, and their officers, agents, servants, employeaprocudants have ni6 to Defendant'(5 TD.0 ug0006 he Preliminareh TD.0 uocue exA3(

Each website carrying this message shall also provide a hypertext link to the FTC's home page at www.ftc.gov, or another website designated by counsel for the Commission.

VI.

PRESERVATION OF RECORDS AND REPORT OF NEW BUSINESS ACTIVITY

IT IS FURTHER ORDERED that Defendants and their 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 Preliminary Injunction 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 any other records or documents that are required to be maintained by state or federal law, and the disbursement

of any of the funds of the Company, or any of the Company's assets, or any of the Company's income, or any of the Company's profits, or any of the Company's property, or any of the Company's intangible assets, or any of the Company's other assets, or any of the Company's other property, or any of the Company's other income, or any of the Company's other profits, or any of the Company's other property, or any of the Company's other assets, or any of the Company's other income, or any of the Company's other profits, or any of the Company's other property, or any of the Company's other assets.

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.

LIMITED 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)

Defendant's affiliates and subsidiaries; the nature and location of documents reflecting the business transactions of either Defendant, and either Defendant's affiliates and subsidiaries; the location of any premises where either Defendant, directly or through any third party, conduct business operations; the Defendant's whereabouts; and/or the applicability of any evidentiary privileges to this action.

For any such discovery on either Defendant, fourteen (14) days notice shall be deemed sufficient for any such deposition, seven (7) days notice shall be deemed sufficient for the production of any such documents, and seventy-two (72) hours notice shall be deemed sufficient for the production of any such documents that are maintained or stored only as electronic data.¹

¹ Plaintiff shall consider in good faith any reasonable request by a non-party for an extension of a period of notice set forth in this paragraph.

VIII.

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 either Defendant to the Commission.

XI.

CORRESPONDENCE WITH AND NOTICE TO PLAINTIFF

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

Steven W. Balster
Federal Trade Commission
1111 Superior Avenue, Suite 200
Cleveland, Ohio 44114
216-263-3401 (phone) / 216-263-3426 (fax)
sbalster@ftc.gov

XII.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that, within five (5) business days of receipt of this Preliminary Injunction as entered by the Court, Defendants or their attorney must submit to counsel for the Commission a truthful sworn statement acknowledging receipt of this Preliminary Injunction.

XIV.

RETENTION OF JURISDICTION

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

STIPULATED AND AGREED TO ON JUNE 6, 2011:

s/Richard B. Newman
Richard B. Newman
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Local Counsel for Defendants Coulomb Media, Inc.,
and Cody Low

IT IS SO ORDERED,.

s/Robert H. Cleland

ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: June 9, 2011

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, June 9, 2011, by electronic and/or ordinary mail.

s/Lisa Wagner

Case Manager and Deputy Clerk
(313) 234-5522

CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following counsel of record:

Richard B. Newman — rnewman@hinchnewman.com

Eric A. Linden — elinden@jaffelaw.com

Dated: June 6, 2011

s/ Steven W. Balster
STEVEN W. BALSTER (IL 6189072)
Federal Trade Commission
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E-mail: sbalster@ftc.gov