

REE

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

THOU LEE, individually and also doing business  
as TL ADVERTISING, an unincorporated assumed  
business name,

Defendant.

Case No. 11-cv-2486

Judge Joan B. Gottschall

Magistrate Judge Michael T. Mason

**STIPULATED PRELIMINARY INJUNCTION**

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

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 (the “TRO”) pursuant to Rule 65 of the Federal Rules of Civil Procedure,

WHEREAS, Defendant, Thou Lee, individually and also doing business as TL Advertising, an incorporated assumed business name, received service of the Complaint, Summons, and the papers filed in support of the FTC’s motion for a TRO; and

WHEREAS, the Court granted the FTC’s motion for a TRO on April 18, 2011, ordering, *inter alia*, Defendant to show cause why a preliminary injunction should not issue,

The Court having considered the materials filed in this case, including the Complaint, and the declarations, exhibits, and memorandum of law filed in support of the FTC's motion for a TRO, and now being advised in the premises, finds that:

**FINDINGS**

1. This Court has jurisdiction over the subject matter of this case and over the parties hereto.
2. Venue lies properly with this Court.
3. The Court has found that there is good cause to believe that Defendant Thou Lee, individually and also doing business as TL Advertising, an unincorporated assumed business name, 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. The Court has found that 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, the Court also has found that there is good cause for the entry of the ancillary relief contained in this Order, including an order preserving Defendant's assets and prohibiting Defendant from destroying records.
5. Entry of this Order with asset preservation and other equitable relief is in the public interest.
6. The Commission and the Defendant agree that this Order is binding in form and scope pursuant to Fed. R. Civ. P. 65(d).

7. 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 Thou Lee, and by whatever other names he may be known, including TL Advertising.

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 (“Commission” or “FTC”).

**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;
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; 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, Defendant may withdraw, transfer, encumber, or otherwise dissipate assets in excess of two thousand dollars (\$2,000) per calendar month only with prior written agreement by counsel for the Commission, or prior approval by the Court. The \$2,000 per month permitted by this Order shall not include retainers that the Commission has already authorized to be paid to Defendant's counsel.

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 his expenses to counsel for the Commission for each calendar month.

#### IV.

#### FINANCIAL REPORTS AND ACCOUNTING

**IT IS FURTHER ORDERED** that, no later than ten (10) calendar days after entry of this Order, and except to the extent that Defendant has done so already pursuant to the TRO previously issued in this matter, Defendant shall provide to counsel for the Commission:

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. The financial statements 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 these completed financial statements 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.

**POSTING NOTICE OF LAWSUITS ON 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 *acaiberrycolon.com*, *consumer6health-report.com*, *consumer6report.com*, *consumer6-report.com*, *consumer6-reports.com*, *consumeracaiberrycleanse.com*, *consumeracaicleanse.com*, *consumerhealth6-report.com*, *consumerhealth6-reports.com*, *consumerhealthnews6.com*, *consumers6-report.com*, *consumers6-reports.com*, *consumershealth6-report.com*, *consumershealth6-reports.com*, *health6-report.com*, *health6-reports.com*, and *news-4-report.com*, shall prominently display the following statement:

The Federal Trade Commission ("FTC") has filed a lawsuit against Thou Lee, also doing business as TL Advertising, alleging that he has engaged in deceptive practices relating to the advertising, marketing, promotion, offering for sale, or

sale of acai berry products. The United States District Court for the Northern District of Illinois issued a temporary restraining order, followed by a preliminary injunction, prohibiting the alleged practices. You may obtain additional information directly from the FTC at <http://www.ftc.gov/os/caselist/1123085/index.shtm>.

Each website carrying this message shall also provide a hypertext link to the FTC's website at <http://www.ftc.gov/os/caselist/1123085/index.shtm>, or another website designated by counsel for the Commission.

## 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 PLAINTIFF**

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

Staff Attorney Matthew H. Wernz  
Federal Trade Commission  
55 West Monroe Street, Suite 1825  
Chicago, IL 60603  
[mwernz@ftc.gov](mailto:mwernz@ftc.gov) [email]  
(312) 960-5596 [telephone]

**XII.**

**RETENTION OF JURISDICTION**

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

**SO STIPULATED:**

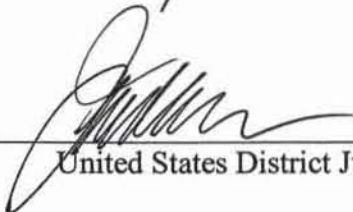
**FOR PLAINTIFF:**

/s/ Matthew H. Wernz Apr. 28, 2011  
Matthew H. Wernz Dated  
55 West Monroe Street, Suite 1825  
Chicago, Illinois 60603  
(312) 960-5634 (telephone)  
(312) 960-5596 (direct)  
mwernz@ftc.gov (email)  
Attorney for Plaintiff  
Federal Trade Commission

**FOR DEFENDANT:**

/Rakesh M. Amin/ Apr. 28, 2011  
Rakesh M. Amin Dated  
225 N. Michigan Ave.  
Suite 700  
Chicago, IL 60601  
(312) 327-3385 (direct)  
rakesh@amintelati.com  
Attorney for Defendant

**IT IS SO ORDERED**, this 21 day of April, 2011, at 10:00<sup>a.</sup>.m.

  
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United States District Judge Joan B. Gottschall