

Filed 5-26-05  
Clerk, U. S. District Court  
Western District of Texas  
By [Signature] Deputy

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS

CASE NO.

JUDGE FRANK MONTALVO

**RECEIVED**  
FEDERAL TRADE COMMISSION,  
  
MAY 1 2005  
Plaintiff,  
  
CLERK, U. S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY [Signature] DEPUTY CLERK  
  
DIRECT-PROM, INC., and  
RAMIRO MAILLAND,  
  
Defendants.

**EP05CA0186**

**STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION AND  
OTHER EQUITABLE RELIEF**

WHEREAS Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), has commenced this action by filing the Complaint herein; Defendant Direct-Prom, Inc., and Defendant Ramiro Mailland have waived service of the Summons and Complaint; the parties have been represented by the attorneys whose names appear hereafter; and the parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law and without Defendants admitting liability for any of the matters alleged in the Complaint;

NOW, THEREFORE, on the stipulation of Plaintiff, Defendant Direct-Prom, Inc., and Defendant Ramiro Mailland, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

~~[Signature]~~ 2

## FINDINGS

1. This Court has jurisdiction over the subject matter of this case and jurisdiction over all parties. Venue in the Western District of Texas is proper under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b) and (c).

2. The Complaint states a claim upon which relief can be granted against the Defendants under Sections 5(a), 12, and 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 52, and 53(b).

3. The acts and practices of Defendants were, and are, in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

4. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendants also waive any claims that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order.

5. Each party shall bear its own costs and attorneys’ fees.

6. Entry of this Order is in the public interest.

7. On November 15, 2004, Direct-Prom, Inc. filed a voluntary petition for relief under the liquidation provisions of Chapter 7 of the Bankruptcy Code, 11 U.S.C. § § 101 et seq., in the United States Bankruptcy Court for the Western District of Texas, Case No. 04-32857-lek. Also on November 15, 2004, Donald S. Leslie (“Bankruptcy Trustee”) was appointed the Chapter 7 trustee for Defendant Direct-Prom, Inc.

8. The Commission’s action against Direct-Prom, Inc., including the enforcement of a money judgment other than a money judgment obtained in this action, is not stayed by 11 U.S.C. § 362 (a) (1), (2), (3), or (6) because it is an exercise of the Commission’s police or

regulatory power as a governmental unit pursuant to 11 U.S.C. § 362 (b) (4) and thus falls within an exemption from the automatic stay.

### DEFINITIONS

For purposes of this Order, the following definitions apply:

1. "Commerce" means as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
2. "Competent and reliable scientific evidence" means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has 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.
3. Unless otherwise specified, "Defendants" mean Direct-Prom, Inc., and its successors and assigns ("Direct-Prom") and Ramiro Mailland ("Mailland").
4. "Direct-Prom Bankruptcy Case" means the case commenced upon the filing of the voluntary petition by Direct-Prom on November 15, 2004, for relief under the liquidation provisions of Chapter 7 of the Bankruptcy Code, 11 U.S.C. § § 101 et seq., in the United States Bankruptcy Court for the Western District of Texas, Case No. 04-32857-lek.
5. "Direct-Prom Bankruptcy Estate" means the bankruptcy estate that was created pursuant to 11 U.S.C. § 541(a) upon the commencement of the Direct-Prom Bankruptcy Case.
6. "Endorsement" means as defined in 16 C.F.R. § 255.0(b).
7. "Food" and "Drug" mean as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.
8. The term "including" in this Order means "including, without limitation."

**ORDER**

**I.**

**PROHIBITED REPRESENTATIONS**

**IT IS ORDERED** that Defendants, and their officers, agents, servants, employees, and attorneys, and all persons and entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other entity, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the following products, in or affecting commerce, are hereby permanently enjoined from representing, in any manner, expressly or by implication, including through the use of endorsements or trade name, that:

- A. ReduCarb, or any substantially similar product, causes substantial weight loss in a short period of time; or
- B. ReduCarb, or any food, dietary supplement, or over-the-counter drug, causes substantial weight loss without the need to increase exercise or reduce caloric intake.

**II.**

**REPRESENTATIONS PROHIBITED UNLESS TRUE AND SUBSTANTIATED**

**IT IS FURTHER ORDERED** that Defendants, and their officers, agents, servants, employees, and attorneys, and all persons and entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other entity, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, service, or program in or affecting commerce, are permanently enjoined from making

any representation, expressly or by implication, including through the use of endorsements or trade name:

- A. That any such product, service, or program:
  - 1. Causes weight loss; or
  - 2. Causes substantial weight loss by blocking or removing carbohydrates; or
- B. About the benefits, performance, efficacy, safety, or side effects of any such product, service, or program;

unless, at the time the representation is made, the representation is true, and they possess and rely upon competent and reliable scientific evidence that substantiates the representation.

### III.

#### FOOD AND DRUG ADMINISTRATION

**IT IS FURTHER ORDERED** that nothing in this Order prohibits Defendants from:

- A. Making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration; and
- B. Making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

IV.

MONETARY JUDGMENT

**IT IS FURTHER ORDERED** that:

- A. Judgment is entered in favor of the Commission and against Defendants, jointly and severally, in the amount of \$1,970,000.00 (one million nine hundred and seventy thousand dollars) in U.S. currency ("Judgment") for equitable monetary relief, provided however, that subject to the conditions of this Paragraph, the Judgment shall be suspended until further order of the Court, and provided further that this Judgment shall be subject to the rights and conditions set forth in Paragraph V of this Order.
- B. Pursuant to section 502 of the Bankruptcy Code, 11 U.S.C. § 502, the FTC shall hold an allowed general unsecured claim in the Direct-Prom Bankruptcy Case in the amount of \$1,970,000.00 (one million nine hundred and seventy thousand dollars). The FTC shall be entitled to participate in any payments in the Direct-Prom Bankruptcy Case paid on account of such general unsecured claim, pursuant to section 726 or 1129 of the Bankruptcy Code, 11 U.S.C. §§ 726 and 1129, and in accordance with the priorities of the Bankruptcy Code.
- C. Defendants agree that in the event they fail to meet the obligations set forth in this Order, the facts alleged in the Complaint filed in this matter shall be taken as true without further proof in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Order including, but not limited to a non-dischargeability complaint in any bankruptcy case.

D. All funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of such equitable relief. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants have no right to challenge the Commission's choice of remedies under this Paragraph. Defendants have no right to contest the manner of distribution chosen by the Commission.

V.

**TERMINATION OF SUSPENSION**

**IT IS FURTHER ORDERED** that:

- A. The Commission's agreement to and the Court's approval of this Order is expressly premised on the truthfulness, accuracy, and completeness of Defendants' sworn financial statements and supporting documents submitted to the Commission, including:
1. The Financial Statement of Corporate Defendant Direct-Prom, Inc., dated October 27, 2004;
  2. The Financial Statement of Individual Defendant Ramiro Mailland, dated October 27, 2004, and Attachments 1-9 thereto; and

3. The Declaration signed by Ramiro Mailland, individually and as President of Direct-Prom, Inc., dated February 15, 2005, which certifies the truth of the information identified in that Declaration.

Such financial statements and supporting documents contain material information upon which the Commission relied in negotiating and agreeing to this Order.

B. If, upon motion by the Commission, a Court finds that any Defendant has failed to disclose any material asset, or made any other material misrepresentation or omission in the financial statements and supporting documents described in Paragraph V.A. above, the suspension of the monetary Judgment will be terminated and the entire Judgment amount of \$1,970,000.00 (one million nine hundred and seventy thousand dollars) in U.S. currency, which amount Defendants stipulate is their gross sales of ReduCarb, will become immediately due and payable, less any payment already made, including but not limited to payments to the Commission from the Direct-Prom Bankruptcy Estate. Interest computed at the rate prescribed in 28 U.S.C. § 1961 shall immediately begin to accrue on the balance. For the purposes of this Paragraph and any subsequent proceedings to enforce the Commission's rights under this Order, including but not limited to a non-dischargeability complaint filed in a bankruptcy case, the Defendants waive any right to contest any of the allegations in the Complaint filed in this action or the \$1,970,000.00 Judgment referenced in Paragraph IV above. Provided however, that in all other respects this Stipulated Final Order remains in full force and effect unless otherwise ordered by the Court; and provided further, that proceedings instituted under this Paragraph V are in addition to, and not in



lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

**VI.**

**ACKNOWLEDGMENT OF RECEIPT OF ORDER**

**IT IS FURTHER ORDERED** that Defendant Direct-Prom, Inc., by and through the Bankruptcy Trustee, and Defendant Ramiro Mailland, within five (5) business days of receipt of this Order as entered by the Court, must each execute and submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

**VII.**

**CESSATION OF BUSINESS ACTIVITIES**

**IT IS ORDERED** that Defendant Direct-Prom, Inc. shall not engage in any business and Donald S. Leslie, as the Bankruptcy Trustee, shall not seek authority to operate the business of Defendant Direct-Prom, Inc., pursuant to Section 721 of the Bankruptcy Code, 11 U.S.C. § 721, or otherwise.

**VIII.**

**PROHIBITION ON SELLING OF CUSTOMER LISTS**

**IT IS FURTHER ORDERED** that Defendant Direct Prom, Inc., by and through the Bankruptcy Trustee, is permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit or debit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to Defendant Direct-Prom, Inc. at any time prior to entry of this Order in connection with Defendant Direct-Prom's marketing of ReduCarb, *provided, however,* that

Defendant Direct-Prom, Inc., by and through the Bankruptcy Trustee, may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order. *Provided further* that the Bankruptcy Trustee, upon notice to the FTC, shall immediately abandon or dispose of any such customer list by transferring such list, including all copies, to the FTC. If necessary, the Bankruptcy Trustee may retain a copy of such customer list for its records but the Bankruptcy Trustee agrees not to dispose of any such customer list as an asset.

**IX.**

**CORPORATE BOOKS AND RECORDS**

**IT IS FURTHER ORDERED** that the Bankruptcy Trustee shall provide notice to the FTC of the proposed abandonment or disposition of the corporate books and records of Defendant Direct-Prom, Inc., and, upon the FTC's request, the Bankruptcy Trustee shall transfer such books and records to the FTC.

**X.**

**DISTRIBUTION OF ORDER**

**IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of this Order, Defendant Mailland shall deliver copies of the Order as directed below:

- A. **Individual Defendant Mailland as control person:** For any business that Defendant Mailland controls, directly or indirectly, or in which Defendant Mailland has a majority ownership interest, Defendant Mailland must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Defendant Mailland must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct

related to the subject matter of the Order. For current personnel, delivery shall be within ten (10) days of date of entry of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

- B. **Defendant Mailland as employee or non-control person:** For any business where Defendant Mailland is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, Defendant Mailland must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.
- C. **Defendant Mailland** must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Paragraph.

## XI.

### COMPLIANCE MONITORING

**IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating compliance with any provision of this Order:

- A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendant Mailland must submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in Defendant Mailland's possession or direct or indirect control to inspect the business operation;
- B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
  2. Posing as consumers and suppliers to Defendant Mailland, his employees, or any other entity managed or controlled in whole or in part by him, without the necessity of identification or prior notice; and
- C. Defendant Mailland must permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

*Provided, however,* that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

## XII.

### COMPLIANCE REPORTING

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Order may be monitored:

- A. For a period of three (3) years from the date of entry of this Order, Defendant Mailland must notify the Commission of the following:
  1. Any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;

2. Any changes in his employment status (including self-employment), and any change in his ownership in any business entity, within ten (10) days of the date of such change. Such notice must include the name and address of each business that he is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of his duties and responsibilities in connection with the business or employment;
  3. Any changes in his name or use of any aliases or fictitious names; and
  4. Any changes in any business entity that he directly or indirectly control(s), or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant must notify the Commission as soon as is practicable after obtaining such knowledge.
- B. Ninety (90) days after the date of entry of this Order, Defendant Mailland shall provide a written report to the FTC, sworn to under penalty of perjury, setting

forth in detail the manner and form in which the Defendants have complied and are complying with this Order. This report shall include, but not be limited to:

1. Defendant Mailland's then-current residence address, mailing addresses, and telephone numbers;
2. Defendant Mailland's then-current employment and business addresses and telephone numbers, a description of the business activities of each such employer or business, and his title and responsibilities for each such employer or business;
3. Any other changes required to be reported under subparagraph A of this Section;
4. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Paragraph X; and
5. Any other changes required to be reported under subparagraph A of this Section.

- C. For the purposes of this Order, Defendant Mailland shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Enforcement  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Re: FTC v. Direct-Prom et al., Civil Action No. EP-05-CA-0186.

- D. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Defendants.

### XIII.

#### RECORD KEEPING PROVISIONS

**IT IS FURTHER ORDERED** that, for a period of six (6) years from the date of entry of this Order, Defendant Mailland, in connection with any business where (1) he is the majority owner, an officer, or director of the business, or directly or indirectly manages or controls the business and (2) the business engages in, or assists others engaged in, the manufacturing, advertising, promotion, offering for sale, sale, or distribution of any product, service, or program in or affecting commerce, and their agents, employees, officers, corporations, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, is hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods, services, or programs sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, telephone numbers, dollar amounts paid, quantity of goods, services, or programs purchased, and description of goods, services, or programs purchased, to the extent such information is obtained in the ordinary course of business;

- D. Complaints and refund requests (whether received directly, indirectly, or through any third party) and any responses to those complaints or requests;
- E. Copies of all sales scripts, training materials, advertisements, promotional materials, or other materials utilized in the advertising, labeling, promotion, offering for sale of any product, service, or program;
- F. All materials that were relied upon in making any representations contained in the materials identified in Part E of this Paragraph;
- G. All other documents evidencing or referring to the accuracy of any claim in the materials identified in Part E of this Paragraph or to the safety or efficacy of any product, service, or program including, but not limited to, all tests, reports, studies, demonstrations, or other evidence that confirm, contradict, qualify, or call into question the safety or efficacy of any such product, service, or program;
- H. Records accurately reflecting the name, address, and telephone number of each person or entity engaged in the development or creation of any testing obtained for the purpose of advertising, labeling, promoting, offering for sale, distributing, or selling any product, service or program; and
- I. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order, required by Paragraphs VI and X, and all reports submitted to the FTC pursuant to Paragraph XII.



**XIV.**

**RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

**XV.**

**SCOPE OF ORDER**

**IT IS FURTHER ORDERED** that this Order resolves only claims against the named Defendants and does not preclude the Commission from initiating further action or seeking any remedy against any other persons or entities, including without limitation persons or entities who may be subject to portions of this Order by virtue of actions taken in concert or participation with Defendants, and persons or entities in any type of indemnification or contractual relationship with Defendants.

**SO STIPULATED:**

ELAINE D. KOLISH  
Associate Director for Enforcement

JONI LUPOVITZ  
Assistant Director for Enforcement

---

LAURA D. KOSS  
EDWIN RODRIGUEZ  
Attorneys for Plaintiff  
Federal Trade Commission  
600 Pennsylvania Ave.  
Washington, D.C. 20580  
(202) 326-2890 (Koss telephone)  
(202) 326-3147 (Rodriguez telephone)  
(202) 326-2559 (facsimile)

DIRECT-PROM, INC.

By: 

RAMIRO MAILLAND, President

---

RAMIRO MAILLAND,  
Individually and as President of Direct-Prom,  
Inc.

---

DONALD S. LESLIE  
Chapter 7 Trustee for Debtor Direct-Prom, Inc.  
2731-A Montana Ave.  
El Paso, TX 79903-3799  
(915) 565-9000

XIV.

**RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

XV.

**SCOPE OF ORDER**

**IT IS FURTHER ORDERED** that this Order resolves only claims against the named Defendants and does not preclude the Commission from initiating further action or seeking any remedy against any other persons or entities, including without limitation persons or entities who may be subject to portions of this Order by virtue of actions taken in concert or participation with Defendants, and persons or entities in any type of indemnification or contractual relationship with Defendants.

**SO STIPULATED:**

ELAINE D. KOLISH  
Associate Director for Enforcement

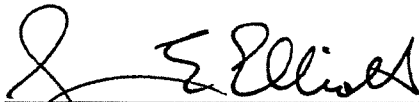
DIRECT-PROM, INC.

JONI LUPOVITZ  
Assistant Director for Enforcement


By: \_\_\_\_\_  
RAMIRO MAILLAND, President

\_\_\_\_\_  
LAURA D. KOSS  
EDWIN RODRIGUEZ  
Attorneys for Plaintiff  
Federal Trade Commission  
600 Pennsylvania Ave.  
Washington, D.C. 20580  
(202) 326-2890 (Koss telephone)  
(202) 326-3147 (Rodriguez telephone)  
(202) 326-2559 (facsimile)

\_\_\_\_\_  
RAMIRO MAILLAND,  
Individually and as President of Direct-Prom,  
Inc.  
\_\_\_\_\_  
DONALD S. LESLIE  
Chapter 7 Trustee for Debtor Direct-Prom, Inc.  
2731-A Montana Ave.  
El Paso, TX 79903-3799  
(915) 565-9000



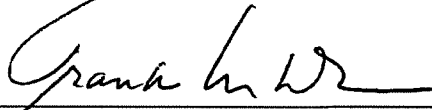
JAMES E. ELLIOTT (Texas Bar #: 06557100)  
Federal Trade Commission - Southwest Region  
1999 Bryan Street, Suite 2150  
Dallas, TX 75201  
(214) 979-9373 (tel.); (214) 953-3079 (fax)



RAY VELARDE  
Attorney for Defendants  
1216 Montana Ave.  
El Paso, TX 79902

**JUDGMENT IS THEREFORE ENTERED** pursuant to all the terms and conditions recited above.

SO ORDERED, this 26 day of May, 2005



United States District Judge  
Western District of Texas