



Plaintiff Federal Trade Commission (Commission) having filed its Complaint for a permanent injunction and other relief in this matter pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101 *et seq.*, and having applied *ex parte* for a temporary restraining order pursuant to Rule 65 of the Federal Rules of Civil Procedure, and the Court having considered the Complaint, Plaintiff’s brief, exhibits and other materials filed in support thereof, and now being advised in the premises, finds as follows:

1. This Court has jurisdiction of the subject matter of this case and there is good cause to believe that it will have jurisdiction of all parties hereto. The Complaint states a claim upon which relief may be granted under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. § 45 and 53(b). Venue properly lies with this Court.

2. Good cause exists to believe that the Commission ultimately will succeed in establishing that the above-named Defendants have engaged in, and are likely to engage in, acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Commission’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, and that the Commission is likely to prevail on the merits.

3. Good cause exists to believe that immediate and irreparable damage will occur to the Court’s ability to grant effective final relief for Consumers in the form of monetary redress from the sale, transfer, destruction, concealment or other disposition of Defendants’ Assets or Records unless Defendants are immediately restrained and enjoined.

4. Weighing the equities and considering the Commission’s likelihood of ultimate success, a temporary restraining order with Asset freeze, expedited discovery and other equitable relief is in the public interest.

5. As contemplated by Federal Rule of Civil Procedure 65(b) and as detailed in the affidavit of Plaintiff's counsel, there is good cause to believe that immediate and irreparable damage will result to Consumers protected by the Commission if Defendants receive notice of this action. There is a good cause to believe that such damage would include the concealment or transfer of Defendants' Assets. Accordingly, there is good cause to believe that any notice to Defendants would render ineffective any ultimate relief to Consumers. It is in the interest of justice that this order issue *ex parte*.

6. Good cause also exists to expedite discovery pursuant to Rule 26(d) of the Federal Rules of Civil Procedure.

7. No security is required of any agency of the United States for issuance of a restraining order. Fed. R. Civ. P. 65(c).

## DEFINITIONS

For purposes of this Order, the following definitions shall apply

1. **"Assets"** means any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, contracts, mail or other deliveries, shares of stock, lists of Consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.

2. **"Consumer"** means any Person any Defendant has contacted, intended to contact, or intends to contact concerning Defendants' product or services, whether or not a sale or contract is actually consummated. It includes the term "customer" as used in the TSR.

3. **“Corporate Defendant”** means 9107-4021 Québec, Inc. (also doing business as Med Provisions, Pronto Meds, and others), as well as its successors, assigns, officers, directors, agents, servants, employees, salespersons, attorneys and those Persons or entities in active concert or participation with it who receive actual notice of this Order by personal service, facsimile, e-mail, publication, or otherwise, whether acting directly or through any corporation, subsidiary, division or other device.

4. **“Defendants”** means 9107-4021 Québec, Inc.(also doing business as Med Provisions, Pronto Meds, and others), Sameer Malhotra, and Pooja Malhotra, and each of them, as well as their successors, assigns, officers, directors, agents, servants, employees, salespersons, attorneys and those Persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, e-mail, publication, or otherwise, whether acting directly or through any corporation, subsidiary, division or other device.

5. **“Document”** is synonymous in meaning and equal in scope to the usage of the term 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, through detection devices into reasonably usable form. A draft or non-identical copy is a separate Document within the meaning of the term.

6. **“Individual Defendants”** means Sameer Malhotra and Pooja Malhotra, and each of them, as well as their successors, assigns, agents, servants, attorneys and those Persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, e-mail, publication, or otherwise, whether acting directly or through any corporation, subsidiary, division or other device.

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

8. **“Person”** means a natural person, organization or other legal entity, including a corporation, limited or general partnership, proprietorship, unincorporated association, cooperative, government or governmental subdivision or agency, business entity, or any other group or combination acting as an entity.

9. **“Plaintiff”** means the Federal Trade Commission (Commission)

10. **“Record”** means any Document, as Document is defined in paragraph 6, above, relating to the business or business practices of any Defendant.

11. The terms **“and”** and **“or”** shall be construed conjunctively or disjunctively as necessary, and to make the applicable phrase or sentence inclusive rather than exclusive.

## **PROHIBITED BUSINESS ACTIVITIES**

### **I.**

**IT IS THEREFORE ORDERED** that, in connection with the marketing of any good or service, Defendants are hereby temporarily restrained and enjoined from making, or assisting other Persons in making, expressly or by implication, any false or misleading representation of Material fact including, but not limited to, any misrepresentation:

- A. That Defendants’ discount prescription drug package will save Consumers 30 to 50 percent compared to the retail price of prescription drugs;
- B. That Consumers will lose their Medicare benefits if they do not purchase Defendants’ discount prescription drug package;

- C. That Defendants provide a 30-day money back guarantee with the discount prescription drug package; or
- D. That Defendants will not charge Consumers' bank accounts if the Consumers cancel their participation in the discount prescription drug package within 30 days.

## II.

**IT IS THEREFORE ORDERED** that Defendants are hereby temporarily restrained and enjoined from violating any provision of the TSR, 16 C.F.R. Part 310, including, but not limited to, the following violations:

- A. Misrepresenting, directly or by implication, Material aspects of the performance, efficacy, nature, or central characteristics of the goods or services Defendants sell, including that Consumers will obtain substantial discounts on prescription drugs by purchasing Defendants' package, thereby violating 16 C.F.R. § 310.3(a)(2)(iii);
- B. Making false or misleading statements to induce Consumers to pay for goods or services, including by misrepresenting that Consumers will lose their Medicare benefits if they do not purchase Defendants' discount prescription drug package, thereby violating 16 C.F.R. § 310.3(a)(4).
- C. Misrepresenting, directly or by implication, a Material aspect of the nature or terms of Defendants' refund or cancellation policies, including that:
  - 1. Defendants provide a 30-day money back guarantee; and
  - 2. Defendants will not charge Consumers bank accounts if the Consumers cancel their participation within 30 days,thereby violating 16 C.F.R. § 310.3(a)(2)(iv).

- D. Engaging in, or causing others to engage in, initiating an outbound telephone call to a Person's telephone number on the National Do Not Call Registry, thereby violating 16 C.F.R. § 310.4(b)(1)(iii)(B).
- E. Initiating, or causing others to initiate, an outbound telephone call to a telephone number within a given area code without Defendants, either directly or through another Person, first paying the required annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry, thereby violating 16 C.F.R. § 310.8.

### **ASSET FREEZE**

### **III**

**IT IS FURTHER ORDERED** that Defendants, their agents, employees, officers, independent contractors, attorneys, successors and all other Persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and Persons or entities directly or indirectly under the control of any Defendant or under common control with any Defendant, are hereby restrained and enjoined, until further order of this Court, from:

- A. Transferring, encumbering, concealing, removing, selling, or otherwise disposing of any funds, property, contracts, shares of stock or other Assets of any kind, wherever located, that are:
  - 1. Owned or controlled, in whole or in part, by any Defendant;
  - 2. In the actual or constructive possession of any Defendant;
  - 3. Held by an agent of any Defendant as a retainer for the agent's provision of services to any Defendant; or

4. Owned by, controlled by or in the actual or constructive possession of, or otherwise held for the benefit of, any entity directly or indirectly owned, managed or controlled by any Defendant; these Assets shall also include, but are not limited to, any Assets held by, for or under the name of any Defendant at any bank, broker, dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution of any kind.
- B. Opening or causing to be opened any new or existing safe deposit boxes, post office box or commercial mail box titled in the name of any Defendant or subject to access by any Defendant without providing Plaintiff prior notice and opportunity to inspect the contents in order to determine that they contain no Assets covered by this section.
- C. Obtaining personal or secured loans in a total aggregate amount greater than \$5000 without prior notice to Plaintiff.
- D. Incurring liens or other encumbrances on real property, personal property or other Assets in the name, singly or jointly, of any Defendant.
- E. Transferring any funds or other Assets subject to this Order for attorney's fees, living expenses, business expenses or any other purpose, except by Court order upon a showing of good cause.
- F. This Paragraph shall be construed to apply to both existing Assets and Assets that Defendants acquire after the date of this Order, if such Assets are derived from the marketing of any good or service or from any activity prohibited by this Order.



**PROVIDED, HOWEVER,** that nothing in this Order shall prohibit any reversals of bank charges that occur in the ordinary course of business as required by any applicable banking laws or regulations.

## **FINANCIAL REPORTING**

### **IV**

**IT IS FURTHER ORDERED** that, within three (3) days of receiving service of this Order, each Defendant shall prepare and deliver to the Court and counsel for the Commission a completed financial statement on the forms attached to this Order, verified under oath and accurate as of the date of service of this Order upon them, for each such Defendant and for each corporation of which a Defendant is an officer or owner. Said financial statement shall include Assets held outside the United States.

## **FINANCIAL INSTITUTIONS AND DUTIES OF ASSET HOLDERS**

### **V**

**IT IS FURTHER ORDERED** that any financial institution or brokerage institution, escrow agent, money market or mutual fund, title company, storage facility, fulfillment house, ACH Network or other payment processor, commodity trading company, common carrier, storage company, trustee, commercial mail receiving agency, merchant account processor, mail holding or forwarding company, creditor or credit card issuer, or any other Person or entity having possession, custody or control of any Assets or Records of any Defendant or any Defendant's d/b/a, either individually or jointly, of record or beneficially, including accounts or other Assets that any of the Defendants may control by virtue of being signatories on said accounts, and including accounts or other Assets held in the name of any ACH Network or other payment processor that provides or

provided services to any Defendant, or that has maintained any such Record, account, safe deposit box, or other Asset at any time since January 1, 2006, shall:

- A. Hold and retain within its control and prohibit the transfer, encumbrance, pledge, assignment, removal, withdrawal, dissipation, sale, gift, disbursal, conversion, destruction, or other disposal of any such Record, account, or other Asset, except for transfers or withdrawals directed by further order of this Court;
- B. Deny any Person or entity access to any safe deposit box titled individually or jointly in the name of any Defendant or otherwise held for the benefit of or subject to access by any Defendant;
- C. Provide to counsel for the Commission, within three (3) business days of notice of this Order, a sworn statement setting forth:
  1. The identification number of each account, Asset or Record covered by this **Part V**, including the identify or identities and address(es) of the owner(s) of each such account;
  2. The balance of each such account or a description of the nature and value of each such account as of the close of business on the date this Order is served, and, if the account or Asset has been closed or moved, the date closed or removed, the total funds removed in order to close the account, and the name of the Person or entity to whom such account or other Asset was remitted; and
  3. The identification of any safe deposit box subject to access by any Defendant and, if the safe deposit box has been closed or moved, the balance or value removed, the date it was removed, and the Person or entity who removed it.

- D. Allow Commission representatives immediate access to inspect and copy all Records of any Defendant and all Documents relating to any account, safe deposit box, or other Asset of any Defendant. Alternatively, any Person covered by this Part V may arrange to deliver to the Commission copies of any Records it seeks for a charge not to exceed fifteen cents (15¢) per page copied.

**IT IS FURTHER ORDERED** that the Assets and funds affected by this Part V shall include both existing Assets and Assets acquired after issuance of this Order.

**PROVIDED, HOWEVER,** that nothing in this Order shall prohibit any reversals of bank charges that occur in the ordinary course of business as required by any applicable banking laws or regulations.

## **FOREIGN ASSETS**

### **VI**

**IT IS FURTHER ORDERED** that withing five (5) business days following service of this Order, Defendants shall:

- A. Take such steps as are necessary to repatriate to the territory of the United States of America all Assets and Records held by or for the benefit of any Defendant, or under the direct or indirect control of any Defendant, jointly or singly, that were transferred outside of the territory of the United States from within the territory of the United States;
- B. Thereafter hold and retain any such Assets and Records within their control and otherwise prevent any transfer, disposition, destruction, or dissipation whatsoever of any such Assets and Records; and

- C. Provide the Commission with access to all Records of accounts or Assets held by or for the benefit of any Defendant, or under the direct or indirect control of any Defendant, jointly or singly, that are held by financial institutions located outside the territorial United States of America. Access shall be provided by signing the Consent to Release Financial Records attached as Appendix A to this Order. At the discretion of the Plaintiff, notarization of the Consent may also be required.

## **EXPEDITED DISCOVERY**

### **VII**

**IT IS FURTHER ORDERED** that in anticipation of a preliminary injunction hearing in this matter, and pursuant to Fed. R. Civ. P. 26(d) and 30(a), the parties are granted leave to conduct discovery at any time after service of this Order. The parties may depose witnesses upon notice of three (3) business days. The Commission may require that all responses to subpoenas *duces tecum* shall be served within five (5) calendar days of the service of such discovery. In addition, pursuant to Fed. R. Civ. P. 33, 34, and 36, the parties shall respond to any interrogatories, requests for production of Documents, or requests for admissions within five (5) calendar days after service of the interrogatories or requests.

**IT IS FURTHER ORDERED** that the limitations and conditions set forth in Rules 30(a)(2)(B) and 31(a)(2)(B) of the Federal Rules of Civil Procedure regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Part VII. Any such depositions 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 Ohio, including those set forth in Rules 30(a)(2)(A) and 31(a)(2)(A) of

the Federal Rules of Civil Procedure. Any interrogatories served pursuant to this **Part VII** shall not be counted toward any limit on the number of interrogatories 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 Ohio, including that set forth in Rule 33(a) of the Federal Rules of Civil Procedure.

**IT IS FURTHER ORDERED** that service of discovery pursuant to this **Part VII** may be accomplished by any means, including by facsimile transmission, United States mail, international courier service, electronic mail, or by hand.

## **RECORD KEEPING**

### **VIII**

**IT IS FURTHER ORDERED** that Defendants are hereby temporarily restrained and enjoined from:

- A. Failing to create and maintain books, Records, accounts, Documents, and data that, in reasonable detail, accurately, fairly and completely reflect their incomes, disbursements, transactions and use of monies; and
- B. Destroying, erasing, mutilating, concealing, altering, transferring or otherwise disposing of, in any manner, directly or indirectly, any contracts, accounting data, correspondence, advertisements, audio recordings kept on any medium, computer tapes, discs or other computerized Records, books, written or printed Records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books kept in any medium, copies of federal, state or local business or personal income or property tax returns and other Documents or Records of any kind that

relate to Defendants' business practices or business or personal finances from January 1, 2006, forward.

## NOTICE

### IX

**IT IS FURTHER ORDERED** that Defendants shall immediately provide a copy of this Order to each of the Corporate Defendant's affiliates, franchises, subsidiaries, divisions, successors, assigns, directors, officers, managing agents, employees, representatives and independent contractors and shall, within three (3) business days from the date of service of this Order, serve on the Commission affidavits identifying the names, titles, addresses and telephone numbers of the Persons and entities whom they have served pursuant to this provision.

**IT IS FURTHER ORDERED** that the Individual Defendants shall notify the Commission at least seven (7) days prior to any discontinuance of a present business or employment and of any new or previously inactive affiliation, whether in an ownership, employment, or independent contractor capacity. Each notice shall include the name, business address, and telephone number of the Individual Defendant's new business, employment, or other affiliation, a statement of the nature of the new business, employment, or affiliation, a statement of his or her duties and responsibilities, and the name, address and telephone number of each officer or owner of the corporation or business entity with which the Individual Defendant is affiliated.

## **CREDIT REPORTS**

### **X**

**IT IS FURTHER ORDERED**, that the Commission may obtain credit reports concerning Individual Defendants pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), and that upon written request, any credit reporting agency from which such report is requested shall provide it to the Commission.

## **MONITORING**

### **XI**

**IT IS FURTHER ORDERED** that agents or representatives of the Commission may contact Defendants or their agents or representatives directly and anonymously for the purpose of monitoring compliance with **Parts I and II** of this order, and may tape record any oral communications that occur in the course of such contacts.

## **PROHIBITIONS AGAINST DISTRIBUTION OF CONSUMER LISTS**

### **XII**

**IT IS FURTHER ORDERED** that Defendants are hereby temporarily restrained and enjoined from selling, renting, leasing, transferring or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any Person who is or may be a Consumer, as that term is defined;

**PROVIDED, HOWEVER**, that Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation or court order, and may disclose such identifying information to the Plaintiff.

## **PROHIBITION ON TRANSFERRING BUSINESS INFORMATION**

### **XIII**

**IT IS FURTHER ORDERED** that Defendants are hereby temporarily restrained and enjoined from transferring or in any other way providing to any Person (other than Plaintiff, a law enforcement agency, or as required by any law, regulation, or court order), directly or indirectly, any trade secrets or knowledge, whether recorded or otherwise, or any books, Records, tapes, disks, accounting data, manuals, electronically stored data, banking Records, invoices, telephone Records, ledgers, payroll Records, or other Documents of any kind, including information stored in computer-maintained form, in the possession, custody, or control of a Defendant that are in any way related to the Corporate Defendant.

### **EXPIRATION**

#### **XIV**

**IT IS FURTHER ORDERED** that this Order shall expire ten (10) days after entry unless, within such time, for good cause shown, it is extended for a like period, or unless Defendants consent that it may be extended for a longer period and the reasons therefore are entered of record.



## **CORRESPONDENCE**

### **XV**

For purpose of this Order, all correspondence and service of pleadings on Plaintiff shall be addressed to:

**MICHAEL MILGROM, ESQ.**  
Federal Trade Commission  
East Central Region  
1111 Superior Avenue, Suite 200  
Cleveland, Ohio 44114-2507  
Phone (216) 263-3419 / Fax (216) 263-3426  
mmilgrom@ftc.gov

## **SERVICE OF THIS ORDER**

### **XVI**

**IT IS FURTHER ORDERED** that, pursuant to Federal Rule of Civil Procedure 4(c)(2), this Order and other initial pleadings and papers filed in this matter may be served by employees of the Commission, by employees of any other law enforcement agency, and by agents of any process servers retained by the Commission, upon any Defendant, upon the business premises of any Defendant, and upon any financial institution or any Person or entity that may be in possession of any Assets, Records, property, or property rights of any Defendant. Service may be accomplished by any means, including facsimile transmission, United States mail, international courier service, electronic mail, or by hand. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution.

**PRELIMINARY INJUNCTION SHOW-CAUSE HEARING**

**XVII**

**IT IS FURTHER ORDERED** that Defendants shall appear before this Court at the United States courthouse located at 801 W. Superior Ave Cleveland Ohio Room 15-A, on the 5th day of May, 2008, at 11:00 AM o'clock a.m./p.m., to show cause, if any there be, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint, against Defendants, enjoining them from further violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the TSR, 16 C.F.R. Part 310, continuing the freeze of their Assets, and imposing such additional relief as may be appropriate.

**IT IS FURTHER ORDERED** that Defendants shall prepare and deliver to the Court and to the Commission, not later than 4:30 p.m. of the fourth (4<sup>th</sup>) day prior to the show-cause hearing, any opposition to issuance of a preliminary injunction, including any declarations, exhibits, memoranda or other evidence on which they intend to rely.

**IT IS FURTHER ORDERED** that the Commission shall file with the Court and serve on Defendants any supplemental declarations, exhibits, other evidence, and memoranda not later than 4:00 p.m. on the day prior to the show-cause hearing.

**IT IS FURTHER ORDERED** that the question of whether this Court should enter an order pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining the Defendants during the pendency of this action, shall be resolved on the pleadings, declarations, exhibits, and memoranda filed by and oral argument of the parties. Any arguments concerning the admissibility of the evidence presented shall to go the weight the Court shall give the evidence. Live testimony shall be heard only on further order of this Court, on motion filed with the Court and served on counsel for the other parties not later than 4:30 p.m. of the third (3<sup>rd</sup>) day prior to the show-cause hearing.

Such motion shall set forth the name, address, and telephone number of each proposed witness, a detailed summary or affidavit revealing the substance of each proposed witness' expected testimony, and any explanation of why the taking of live testimony would be helpful to this Court. Any papers opposing a timely motion to present live testimony or to present live testimony in response to live testimony to be presented by another party shall be filed with this Court and served on the other parties not later than 4:30 p.m. of the second (2<sup>nd</sup>) day prior to the show-cause hearing.

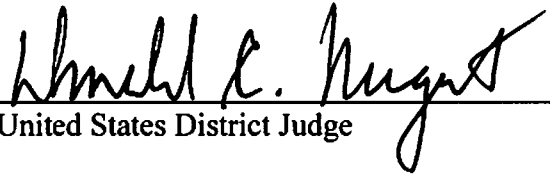
**IT IS FURTHER ORDERED** that all Documents served pursuant to this **Part XVII** shall be served on counsel for the Commission or on Defendants by hand, by facsimile transmission receipt of which has been verified by the party making service, or by overnight delivery service provided that delivery has been received by counsel within the time allotted in this **Part XVII**.

### JURISDICTION

### XVIII

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

SO ORDERED, this 25<sup>th</sup> day of APRIL, 2008, at 9:30 (a.m.) p.m.

  
United States District Judge