

06-61429

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CIV-ALTONAGA

MAGISTRATE JUDGE

TURNOFF

Case No. _____ -Civ- _____

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

JUAN MATOS, individually and
doing business as QTX,
and BELINDA CURE,

Defendants.

FILED BY _____
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CLARENCE S. [unclear]
S.D. OF FLORIDA - MIAMI

**PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
ITS MOTION FOR TEMPORARY RESTRAINING ORDER AND OTHER EQUITABLE
RELIEF AND ORDER FOR DEFENDANT TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

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I. INTRODUCTION

Plaintiff, the Federal Trade Commission (“FTC”), brings this action pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. § 6105(b), to a halt a telemarketing scheme designed to defraud consumers seeking work-at-home business opportunities. Defendant Juan Matos, doing business under the name QTX, and Defendant Belinda Cure target Hispanic consumers by promoting their illicit work-at-home business opportunities through Spanish advertisements printed in various Spanish-language newspapers and magazines. QTX’s telemarketers lure consumers into paying a deposit fee by promising lucrative work assembling crafts at home for pay. QTX promises to provide all the materials to consumers for assembling decorative items – in this case, small houses made of beads (“bead houses”) – and to send a courier to consumers’ houses once a week to pick up these items. Defendants promise consumers \$25 cash for each bead house and state that consumers’ potential earnings will be \$500 a week.

In fact, consumers who pay the deposit fee – usually \$110 – do not receive the promised earnings. Indeed, QTX does not send the materials necessary to assemble the promised number of bead houses. Instead, consumers receive materials sufficient to assemble only one such item as a sample that must be sent back to QTX for “approval” before consumers are permitted to assemble more bead houses. Furthermore, the instructions accompanying the materials for the single sample are virtually unintelligible. In the few cases where consumers are actually able to assemble a sample bead house (only after many hours of work) and send it to QTX for approval, QTX rejects the sample, ignores their calls, or does not send them any further assembling work.

To put an immediate stop to Defendants’ illegal activities and preserve assets for redress, the FTC seeks a temporary restraining order enjoining Defendants from engaging in the fraudulent marketing and sale of work-at-home business opportunities and ordering ancillary equitable relief, including (1) an accounting; (2) preservation of documents; (3) expedited discovery; and (4) an order to show cause why a preliminary injunction should not issue. These measures are necessary to prevent further injury pending a preliminary injunction hearing.

II. THE FEDERAL TRADE COMMISSION

The **Federal Trade Commission** (“FTC”) is an independent agency of the United States created by the FTC Act, 15 U.S.C. § 41 et seq. The FTC enforces, among other statutory provisions, Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts and practices in or affecting commerce. The FTC also enforces the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310 as amended, promulgated pursuant to the Telemarketing Act, 15 U.S.C. § 6101 et seq. As described in detail below, Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b), 57b, authorize the FTC, through its own attorneys, to initiate United States District Court proceedings in proper cases to seek permanent relief to enjoin violations of the FTC Act and the TSR and to secure such equitable relief as may be appropriate in each case, including consumer redress. See, e.g., FTC v. Gem Merchandising Corp., 87 F.3d 466, 468 (11th Cir. 1996).

III. STATEMENT OF FACTS

A. The Defendants

Juan Matos (“Matos”) does business under the fictitious business name **QTX**, which purports to sell work-at-home opportunities.¹ (Tab A Exh. 1.) Records on file with the Florida Department of State indicate that Matos registered the QTX-assumed business name on September 19, 2005. (Tab A Exh. 1.) Although the registration lists 736 Don Quixote Ave, Apt. B, Orlando, Florida as both the business address and Matos’ home address (Tab A Exh. 1), QTX sends and receives its mail from a commercial mail receiving agency located at 1835 E. Hallandale Beach Boulevard, #657, Hallandale, Florida 33009.² (Tab A Exh. 3; Tab C Exh. 2.) Mail for QTX is also being delivered to 1408 Brickell Bay Drive, Apt. 610, Miami, FL 33131.

¹ The evidence supporting the FTC’s Motion for Temporary Restraining Order is contained in “Exhibits in Support of the FTC’s Motion for Temporary Restraining Order.” References to the evidence in this Memorandum will appear as “Tab [letter] at [exhibit, paragraph and/or page number]. Where applicable, the FTC cites to translations into English of declarations written in Spanish or transcriptions of conversations in Spanish (which precede the original declarations), rather than to the original Spanish-language document.

² According to consumer complaints, QTX has also used a private mailbox at 3936 South Semoran Blvd., Suite 380, Orlando, FL 32822. (Tab D Exh. 3.)

(Tab A ¶ 12.) **Belinda Cure** (“Cure”) filled out the Application for Delivery of Mail Through Agent for QTX for this private mailbox in March 2006.³ (Tab A Exh. 3.) She provided a driver’s license and other photo identification for this application. (Tab A Exh. 4.) When requesting this mailbox for QTX, she signed in the space designated for an officer of the company and listed both her home and QTX’s business address as 1770 79 Street Causeway #D212, Sunny Isles, Florida 33141. (Tab A, Exh. 3.) Cure sends packages and receives mail for QTX from the Hallandale mail drop. (Tab A ¶ 10.) Cure lives in a residential building at 1408 Brickell Bay Drive, Apt. 610, Miami, FL 33131, the other address where QTX is currently receiving mail. (Tab A ¶ 12.)

B. Defendants’ Deceptive Business Practices⁴

Since at least December 2005, Defendants have been selling work-at-home business opportunities to consumers nationwide, specifically targeting Hispanic consumers. (Tab A ¶ 6; Tab B ¶ 2.) The ads (translated into English) typically include the following:

WORK FROM YOUR HOME. Earn \$500 per week assembling products. No exp. necessary. 321-234-1508.⁵

(Tab C Exh. 1; Tab D Exh. 1.) These ads appear in local and national Spanish newspapers and provide a telephone number for consumers to call for further information. (Tab A Exh. 2; Tab C Exh. 1; Tab D Exh.1.)

When consumers call the numbers in the ads, they are directed to leave a message. (Tab A ¶ 21 Exh. 5.) Subsequently, they receive a return phone call from Spanish-speaking personnel who explain that QTX’s work-at-home opportunities involve home-assembly of crafts for special

³ Records also show that Cure also obtained two other private mailboxes at the same location. (Tab A ¶ 10.)

⁴ The facts described below were confirmed by the FTC’s undercover investigation of QTX, which included a lengthy call by an FTC investigator, posing as a consumer, with a QTX representative, and subsequent purchase of materials by the FTC’s investigator. The details of that undercover call, and of the FTC’s investigation, are set out in the Declaration of Ronald Lewis, which is filed herewith. Tab A.

⁵ The Spanish original reads: TRABAJE DESDE SU CASA. Gane 500 semanales ensamblando productos. No exp. necesario. 321-234-1508. (Tab C Exh. 1; Tab D Exh. 1.)

occasions, including weddings, quinciañeras (“sweet fifteens”), Mother’s Day, Father’s Day, Valentines’ Day, First Communion, and birthdays. (Tab A Exh. 6 at 2-3; Tab B ¶ 4; Tab C ¶ 4; Tab D ¶ 4.) In these calls, the company represents that consumers should be able to produce approximately five crafts per day, and that the company will pick up these products weekly (Tab A Exh. 6 at 3), at which time the company will pay the consumers \$25 for each such product, (Tab C ¶ 6; Tab D ¶ 4), or \$50 for every two such products. (Tab A Exh. 6 at 6.) QTX’s telemarketers assure consumers that normally workers will be able to earn \$500 per week assembling these products (Tab A Exh. 6 at 6; Tab B ¶ 7) and that dedicated workers will receive considerably more money. (Tab A Exh. 6 at 6.)

The defendants’ telemarketers state that QTX will provide them with all of the necessary materials and instructions to assemble the particular craft. (Tab A Exh. 6 at 3.) Moreover, both the advertisements and the telemarketers represent that no experience is necessary to perform the required work. (Tab A Exh. 2; Tab C Exh. 1; Tab D Exh. 1.)

Significantly, QTX tells consumers that in order to obtain the materials to begin work, they must first pay \$110. (Tab A Exh. 6 at 7; Tab B ¶ 5; Tab C ¶ 5; Tab D ¶ 5.) The telemarketers explain that QTX will ship the materials to the consumer, cash on delivery (“COD”). (Tab A Exh. 6 at 7.) In order to obtain the materials COD, consumers must first obtain a money order and contact QTX with the number for the money order. (Tab A Exh. 6 at 7.) Consumers are told that starting with the second week that they assemble their first ten units, their money will be returned to them. (Tab A Exh. 6 at 7.)

After being notified of the number for the money order, QTX sends a box of materials and instructions to consumers via United States Postal Service Priority Mail from the Hallandale mail receiving agency. (Tab A Exh. 8.) In addition to instructions, which are in all known cases for a bead house, the box contains a roll of plastic string, up to three small packages of beads, and glue. (Tab A Exh. 9; Tab B ¶ 9; Tab C ¶ 9; Tab D ¶ 12.)

QTX’s written instructions indicate that consumers must complete and obtain approval of assembled sample before they can work for the company. (Tab A Exh. 10.) Typically, this is the

