

JOSHUA S. MILLARD  
MALINI MITHAL  
KIMBERLY L. NELSON  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W., Suite NJ-2122  
Washington, DC 20580  
(202) 326-2454, jmillard@ftc.gov  
(202) 326-2972, mmithal@ftc.gov  
(202) 326-3304, knelson@ftc.gov  
(202) 326-2558 (fax)

SUSAN J. STEELE  
Chief, Civil Division  
United States Attorney's Office  
970 Broad Street, Suite 700  
Newark, NJ 07102  
(973) 645-2920, susan.steele@usdoj.gov  
(973) 645-2702 (fax)

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

**FEDERAL TRADE COMMISSION,**

**Plaintiff,**

**v.**

**DUTCHMAN ENTERPRISES, LLC;  
UNITED COMMUNITY SERVICES  
OF AMERICA, INC., also doing  
business as UCSA DEALERS GROUP,  
LLC; and DENNIS LEE;**

**Defendants.**

**Civ. No. 2:09-141 (FSH-MAS)**

**STIPULATED PRELIMINARY INJUNCTION ORDER**

Plaintiff Federal Trade Commission (“FTC” or “Commission”), having filed a Complaint for Injunctive and Other Equitable Relief pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b), and having moved for the issuance of a Temporary Restraining Order with Other Equitable Relief and an Order to Show Cause Why a Preliminary Injunction Should Not Issue (“Motion”), and this Court having considered the Complaint, the Motion, and the declarations, exhibits, and memorandum of law filed in support thereof, and now being advised of the premises, finds that:

1. The Court has jurisdiction over the subject matter of the case, and there is good cause to believe it will have jurisdiction of all parties hereto;
2. There is good and probable cause to believe that Defendants Dutchman Enterprises, LLC; United Community Services of America, Inc.; and Dennis Lee have engaged in and are likely to engage in acts or practices that violate Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), and that Plaintiff is therefore likely to prevail on the merits of this action;
3. There is good cause to believe that Defendants will sell, transfer, or otherwise dispose or conceal their assets or records, thereby frustrating the Court’s ability to grant effective final relief for consumers unless Defendants are restrained by Order of this Court. The FTC’s memorandum in support of its Motion, and the accompanying declarations and exhibits, demonstrates that Defendants have engaged in a concerted course of illegal activity by deceptively marketing a purported fuel-saving product in violation of Section 5 of the FTC Act. There is

good cause to believe that unless they are restrained from doing so by Order of this Court, Defendants will continue with these illegal actions, and they will attempt to conceal the scope of their illegal actions through the secreting of assets or disposal of property, records, or evidence;

4. Weighing the equities and considering Plaintiff's likelihood of success on the merits, this Order is in the public interest; and

5. No security is required of any agency of the United States for the issuance of a TRO. FED. R. CIV. P. 65(c).

#### DEFINITIONS

For the purpose of this Order, the following definitions shall apply:

1. "Asset" means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, goods, instruments, equipment, fixtures, general intangibles, inventory, checks, and notes (as defined in the Uniform Commercial Code), and all chattels, leaseholds, contracts, shares of stock, lists of consumer names, mail or other deliveries, premises, accounts, funds, credits, receivables, checks, money orders, and cash, wherever located.
2. "Assisting others" means knowingly providing any of the following goods or services to another entity: (1) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any promotional material; (3) providing names of, or assisting in the generation of, potential customers; or (4) performing promotional or marketing services of any kind.

3. "Competent and reliable scientific evidence" means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have 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.
4. "Corporate Defendants" means Dutchman Enterprises, LLC; United Community Services of America, Inc., also doing business as UCSA Dealers Group, LLC; and their successors and assigns.
5. "Covered product" means any product or device that is, or has been, purported to provide benefits relating to gas mileage or fuel economy.
6. "Dealers" means any and all distributors, purchasers, or other transferees of a covered product who acquire such product from any Defendant for sale or resale.
7. "Defendants" means the Corporate Defendants and the Individual Defendant, individually, collectively, or in any combination.
8. "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, email, electronic communications, webpages, websites, 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.
9. "Individual Defendant" means Dennis Lee.

10. "Plaintiff" means the Federal Trade Commission.

ORDER

I.  
PROHIBITION AGAINST  
FALSE OR UNSUBSTANTIATED CLAIMS

IT IS HEREBY ORDERED that Defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, are hereby preliminarily restrained and enjoined from making, or assisting others in making, expressly or by implication, any false or misleading oral or written statement or representation of material fact in connection with the advertising, marketing, promotion, offering for sale, or sale of any product, including, but not limited to:

A. Representing that the Hydro Assist Fuel Cell ("HAFC"), or any other substantially similar product, causes a substantial increase in gas mileage;

B. Representing that scientific tests prove that the HAFC, or any other substantially similar product, causes a substantial increase in gas mileage; and

C. Making any representation about the performance, efficacy, benefits, or safety of any product, or the contents, validity, results, interpretations, or conclusions of any test or study, unless, at the time of making such representation, Defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II.  
ASSET PRESERVATION

IT IS FURTHER ORDERED that Defendants are hereby preliminarily restrained and enjoined from directly or indirectly:

A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or securing interest in, or otherwise disposing of any assets, wherever located, including outside the United States, that are (1) owned or controlled, directly or indirectly, by any Defendant, in whole or in part, or held, in whole or in part, for the benefit of any Defendant; (2) in the actual or constructive possession of any Defendant; or (3) owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by, or under common control with any Defendant, including, but not limited to, any assets held by, or under the name of any Defendant at any financial institution, bank, savings and loan, brokerage, title company, commodity trading company, precious metal dealer, broker-dealer, escrow agent, or any other agent or depository of any kind, wherever located, including outside the United States;

B. Opening or causing to be opened any safe deposit boxes, commercial mail boxes, or storage facilities titled in the name of any Defendant, or subject to access by any Defendant or under any Defendant's control, without providing the Commission prior notice and an opportunity to inspect the contents in order to determine that they contain no assets covered by this Paragraph;

C. Incurring charges or cash advances on any credit card, debit card, or checking card issued in the name, singly or jointly, of any Defendant;

D. Obtaining a personal or secured loan;

E. Incurring liens or encumbrances on real property, personal property, or other assets in the name, singly or jointly, of any Defendant;

F. Cashing any checks from customers of any Defendant.

The assets affected by this Paragraph shall include both the Defendants' existing assets and any assets acquired after the effective date of this Order from conduct that violates this Order.

III.  
RETENTION OF ASSETS BY FINANCIAL INSTITUTIONS  
AND OTHER THIRD PARTIES

IT IS FURTHER ORDERED that any financial institution, bank, savings and loan, brokerage, title company, commodity trading company, precious metal dealer, broker-dealer, escrow agent, or any other depository, agent, trust, person, or entity, or depository of any kind, that holds, controls, or maintains any asset owned or controlled by any Defendant, in whole or in part, or has held, controlled, or maintained any such asset of, or on behalf of, any Defendant at any time since January 1, 2006, that has received notice of this Order, shall:

A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, encumbrance, disbursement, dissipation, conversion, gifting, sale, or other disposal of any such assets except as directed by further Order of the Court;

B. Deny Defendants access to any safe deposit box titled in the name of any Defendant or otherwise subject to access by any Defendant;

C. If not already produced to the Commission pursuant to a TRO, immediately provide to counsel for the Commission a sworn statement setting forth:

1. The identification number of each such account or asset:  
(1) titled in the name of any Defendant; (2) held on behalf of, or for the benefit of, any Defendant; (3) owned or controlled by any Defendant; or (4) otherwise subject to access by any Defendant, directly or indirectly;

2. The balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order was served, and, if the account or other asset has been closed or removed, 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;

3. The identification of any safe deposit box that is (1) titled in the name of any Defendant; (2) held on behalf of, or for the benefit of, any Defendant; (3) owned or controlled by any Defendant; or (4) otherwise subject to access by any Defendant, directly or indirectly;

4. If an account, safe deposit box, or other asset has been closed or removed, the date closed or removed, the balance on such date, and the manner in which such account or asset was closed or removed.

D. If not already produced to the Commission pursuant to a TRO, immediately provide to counsel for the Commission copies of all documents pertaining to such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

IV.  
PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that Defendants and their successors, assigns, officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, directly or through any corporation or other device, are preliminarily restrained and enjoined from destroying, erasing, mutilating, failing to preserve, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any documents that relate to the business practices, or business or personal finances, of any Defendant.

V.  
FINANCIAL REPORTS

IT IS FURTHER ORDERED that, on June 10, 2009, by 5:00 p.m., each Defendant shall provide to counsel for the Commission:

A. Completed financial statements fully disclosing their finances on the forms attached to this Order as Attachments A and B, for themselves individually and for each business entity under which they conduct business, or of which they

are an officer, and for each trust of which they are a trustee. The financial statements shall be accurate as of the date of their completion.

B. A completed Consent to Release of Financial Records form, attached to this Order as Attachment C, which provides access to records and documents held by financial institutions outside the territorial United States.

C. Copies of signed and completed federal and state income tax forms, including all schedules and attachments, for the three most recent filing years.

Defendants shall provide copies of such other financial statements as the Commission may, from time to time, request in order to monitor Defendants' compliance with the provisions of this Order.

#### VI. CONSUMER CREDIT REPORTS

IT IS FURTHER ORDERED that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer report concerning any Defendant to the Commission.

#### VII. IDENTIFICATION OF DEALERS

IT IS FURTHER ORDERED that, if not already produced to the Commission pursuant to a prior Order, Defendants shall immediately provide to counsel for the Commission a truthful sworn statement identifying all Dealers, as that term is defined in this Order. The statement shall be accurate as of the date of its completion.

VIII.  
ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that each Defendant, within three (3) business days of receipt of this Order, shall submit to counsel for the Commission a truthful sworn statement acknowledging receipt of this Order.

IX.  
PROOF OF DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that each Defendant shall immediately provide a copy of this Order to: (1) their agents, servants, employees, consultants, and any other persons and entities subject in any part to their direct or indirect control; and (2) all Dealers, as that term is defined in this Order. Within five (5) business days of receipt of this Order, Defendants shall submit to the Commission's counsel a truthful sworn statement identifying those persons and entities to whom this Order has been distributed.

X.  
SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission or email, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of any Defendant, or that may otherwise be subject to any provision of this Order. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution.

XI.  
SERVICE UPON THE COMMISSION

IT IS FURTHER ORDERED, with regard to any correspondence or pleadings related to this Order, that service on the Commission's counsel shall be performed by overnight mail delivery, facsimile, or email to the attention of:

Joshua S. Millard  
Attorney, Division of Enforcement  
Federal Trade Commission  
601 New Jersey Ave., Suite NJ-2122  
Washington, D.C. 20001  
[jmillard@ftc.gov](mailto:jmillard@ftc.gov) (email)/(202) 336-2454 (fax)

*Provided, however,* that parties to this action utilizing the Court's Electronic Case Filing ("ECF") system shall effect service of pleadings related to this Order via the ECF system.

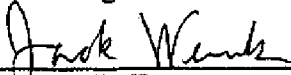
XII.  
EFFECTIVE DATE

IT IS FURTHER ORDERED that this Order shall take effect on June 8, 2009, at 11:59 p.m.

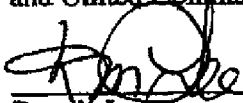
XIII.  
RETENTION OF JURISDICTION

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

The undersigned consent to entry of this Stipulated Preliminary Injunction:

  
Date: 5/29/09  
Jack Wenik, Esq.  
Sills Cummis & Gross P.C.  
One Riverfront Plaza  
Newark, NJ 07102  
973.643.5268 (phone)  
973.643.6500 (fax)  
jwenik@sillscummis.com


Attorney for Corporate Defendants Dutchman Enterprises, LLC,  
and United Community Services of America, Inc.

  
Date: May 29, 2009  
Dennis Lee

As Director of Corporate Defendant Dutchman Enterprises, LLC,  
and President of Corporate Defendant United Community Services  
of America, Inc.

  
Date: May 29, 2009  
Dennis Lee

Defendant Pro Se

  
Date: May 29, 2009  
Joshua S. Millard  
Malini Mithal  
Kimberly L. Nelson  
Federal Trade Commission  
600 Pennsylvania Avenue, Suite NJ-2122  
Washington, DC 20580  
(202) 326-2454, jmillard@ftc.gov (Millard)  
(202) 326-2972, mmithal1@ftc.gov (Mithal)  
(202) 326-3304, knelson@ftc.gov (Nelson)  
(202) 326-2558 (fax)

Attorneys for Plaintiff Federal Trade Commission

