UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 17-cv-20848-GAYLES

FEDERAL TRADE COMMISSION,
Plaintiff,

v.

WORLD PATENT MARKETING, INC., et al.,
Defendants.
______________________________________/

PRELIMINARY INJUNCTION

THIS CAUSE comes before the Court on Plaintiff Federal Trade Commission's ("FTC") Emergency *Ex Parte* Motion for a Temporary Restraining Order [ECF No. 4]. The Court has reviewed the Motion and the record and is otherwise fully advised.

I. PROCEDURAL BACKGROUND

On March 6, 2017, the FTC filed its Complaint for Permanent Injunction and Other Equitable Relief [ECF No. 1], against Defendants World Patent Marketing, Inc. ("WPM"), Desa Industries, Inc. ("Desa Industries"), and Scott Cooper ("Cooper"), alleging thainooping t 8[(,)2(a)6(1 0

On April 6 and April 20, 2017, the Court held an evidentiary show cause hearing on the FTC's request for preliminary injunctive relief.[1] The FTC relied on approximately 59 exhibits, the Receiver's First Interim Report ("RR") [ECF No. 46], and the testimony of five witnesses: Ryan Masti, a WPM customer; Steven Harris, a WPM customer; Christopher Seaver, a WPM customer; Reeve Tyndall, an FTC investigator; and Jonathan Perlman, the Receiver. Defendants cross-examined all of the witnesses and relied on approximately 24 exhibits.

On May 25, 2017, the FTC filed an Amended Complaint for Preliminary Injunction and Other Equitable Relief [ECF No. 84]. On June 15, 2017, Defendants moved to dismiss the Amended Complaint [ECF No. 92].

II. BACKGROUND

A. The Parties

The FTC is an independent agency of the U.S. Government, which is authorized to initiate federal district court proceedings to enjoin unfair or deceptive acts or practices in or affecting commerce. 15 U.S.C. §§ 41, 45(a), 53(b).

Since 2014, Defendants have marketed and sold research, patenting, and invention-promotion services to consumers. *See* RR ¶¶ 97–98, 100–01, 103. Cooper's financial disclosures show that WPM's gross revenue from November 1, 2014, through January 31, 2017, totaled $25,987,192. RR ¶ 87.

B. Defendants'Business Model

Defendants operated under their first business model from March or June 2014 to October 2016. RR ¶ 97. Under this model, potential customers learned about WPM after seeing WPM's television or internet advertisements. *See* Hearing Transcript ("HT") at 24, 87

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> protect it and bring it to the commercial marketplace. So, first of all congratulations! . . . First of all, let me tell you that, the company loved your idea! They think it has a lot of potential. Especially the Sr. Product Director, who is in charge of which ideas are considered for the upcoming trade show. He sees some good opportunities ahead.

PX 53, Att. B, p. 3740. As detailed below, there is no evidence WPM ever had a review team or rejected a large number of ideas.

After informing potential customers that WPM's review team had approved their ideas, WPM salespeople would pitch the potential customers to spend up to $2,000 to purchase WPM's first service, which they called the Global Invention Royalty Analysis ("GIRA"). *See* PX 4, ¶ 4; PX 9, ¶¶ 8, 10; PX 29, Att. A, ¶ 14. The GIRA included a preliminary patent drawing, a patent search report that searched for prior art, a market demographic psychographic report that highlighted industry challenges, and a "score" that signified the extent to which a customer's idea was patentable and marketable. WPM salespeople told customers that the GIRA contained a marketability study created by their "Harvard University & MIT Research Team," which assessed business risk factors, market demand, acceptance for the product, and competition. PX 1, Att. A, pp. 58–62.[3] While waiting for their GIRA reports, customers received calls from WPM salespeople who told them that the "University" had given WPM "the green light to continue with [their] invention[s]." PX 53, Att. B, p. 3746. As detailed below, there is no evidence WPM had any relationships with Harvard, MIT, or any other universities.

After customers received their GIRA reports, WPM salespeople encouraged customers to purchase one of WPM's patent application packages, which were detailed in a "10 Point Patent Protection & Publicity Commitment" ("PPPC") brochure and ranged from $8,995 to $64,995. *See* HT at 38, 94–95; PX 8, ¶¶ 6–7; PX 16, ¶ 15, Att. C, pp. 1800–01. In addition to detailing different types of patent applications, the PPPC brochure listed promotional services for

[3] Defendants later changed the marketability study to InventBoost and similarly claimed that a business team from Ivy League institutions developed InventBoost's methodology. PX 4, Att. E, p. 432.

customer products including 3D models, press releases, webpages, and other marketing materials. *See* PX 1, pp. 63–79. WPM salespeople encouraged customers to purchase one of their pricier packages—the "Global Patent Application"—which they claimed would enable customers to obtain a "global patent" that would be valid in the United States and in hundreds of other countries without paying any additional fees. *See* PX 1, ¶¶ 6–7; PX 2, ¶ 7; PX 4, ¶ 9; PX 16, ¶¶ 15–16, 22; PX 53, App. B, pp. 3748–49. As detailed below, a global patent does not exist.

Once customers purchased patent application packages, Defendants referred the customers' ideas to Marina Mikhailova—a contract patent agent—who submitted applications to the U.S. Patent and Trademark Office ("PTO") on behalf of the customers. *See* PX 19, ¶¶ 5–6. The customers provided their powers of attorney to Mikhailova who communicated directly with the PTO. *Id.* at 6. Defendants directed Mikhailova not to speak with, or write to, her clients, and Defendants' general practice was to withhold Mikhailova's contact information from customers. PX 19, ¶ 6. As a result, Mikhailova typically submitted deficient applications or applications for which she did not receive prior customer consent. *See* PX 6, ¶ 14; PX 7, ¶ 10; PX 11, ¶ 14; PX 23, ¶ 12. When the PTO rejected the applications, Defendants failed to make changes or made changes that did not alter the deficiency of the applications, and the PTO either rejected the applications or considered them abandoned. *See* PX 9, ¶¶ 76, 78; PX 17, ¶¶ 73, 81–82, 95, 98; PX 19, Att. B, pp. 2111–12; PX 23, ¶¶ 18–19. When WPM customers asked for updates on the status of their patent applications, they were often given optimistic news or marketing materials to string them along. *See* PX 4, ¶ 44; PX 5, ¶¶ 57–59; PX 6, ¶¶ 17, 25–26, 32; PX 7, ¶¶ 14–16, 18–40; PX 10, ¶¶ 19–26; PX 16, ¶¶ 35, 37, 40.

1. Misrepresentations regarding Major Retailers

WPM was started between February 2014 and June 2014, yet WPM's homepage from April 2014 displayed logos of Target, Walmart, and Home Depot, and represented that these retailers sold WPM's customers' products. HT at 261–62; RR ¶ 97; PX 53, Att. J, p. 4726. At the show cause hearing, Defendants' counsel conceded that the representation was false but argued that the April 2014 version of WPM's website was taken down nearly two years ago. HT at 317–18. However, a more recent version of the homepage that was live until at least February 2017 also displayed the logos of Target, Walmart, Home Depot, Walgreens, Best Buy, and others and represented that "[s]ome of the world's most respected brands trust World Patent Marketing." *See* PX 27, Att. B, pp. 2269–71. A lead paralegal for Target Corporate Services, Inc., stated that neither WPM nor Desa Industries has had a relationship with Target and she was unable to locate any information about either entity in Target's database. PX 51, ¶ 3.

2. Misrepresentations regarding the History Channel

WPM salespeople sent marketing emails to customers, which stated that the History Channel did a special episode on WPM. *See* PX 9, ¶¶ 38, 48–49; PX 11, Att. E, p. 1150. When Reeve Tyndall, the undercover FTC investigator, contacted WPM in January 2017, a WPM salesperson told him that the History Channel did a "whole segment" on WPM and invited him to watch the video. PX 30, ¶ 15. In reality, however, Defendants paid $17,170 to air their own commercial on the History Channel, and it aired only once—at 6:00 a.m. on January 29, 2015. PX 18, ¶¶ 2–5. Defendants' counsel conceded at the hearing that the History Channel did not do a special episode on WPM. HT at 319.

3. Misrepresentations regarding WPM's Relationship with the Snuggie

From August 2016 to February 2017, WPM salespeople disseminated a press release, which stated that WPM had "[j]oin[ed] [f]orces" and "partner[ed] up with" the developer of the

Snuggie. *See* PX 30, ¶ 60(b), Att. P, p. 2874. However, Allstar Marketing Group, LLC, the developer of the "Snuggie," stated in a sworn declaration th also relayed success stories to customers through telephonic communications. *See* PX 3, ¶¶ 6–7; PX 8, ¶ 4; PX 10, ¶ 7. However, many inventors listed as “success stories”—including the inventors of Supreme Diva Jeans, Live Expert Chat, Teddy’s Ballie Bumpers, the Bimini Top Push Mower, Smart Net, and Green Leaf—did not receive patents, bring their products to market, or realize financial gain as a result of working with Defendants. *See* PX 5, ¶ 60; PX 7, ¶¶ 38–40, 43; PX 9, ¶¶ 84–86; PX 10, ¶¶ 27, 30; PX 31, ¶ 31; PX 38, ¶¶ 24–27.

For example, Teddy’s Ballie Bumpers’ success story represented that “World Patent Marketing secured a US Utility Patent for [Steven Harris’s] pet patent,” and that “online sales [had] started” for the product. *See* PX 27, Att. P, p. 2516. In another article, Defendants stated that “[t]hey helped [Harris] refine the idea and arranged for a licensing deal to provide [Harris] with the capital r r r rapde Hahp(F)2(o)-4(r)-]Hu4(D)-8(iu]TJ -h0.04(])-11/3F([(t)-65hr)-21615394e.-2(t the success story was published, the Supreme Diva Jeans inventor learned that the PTO contacted WPM because there was information missing in her utility ideas before customers were told their idea had been approved. *See* PX 43, ¶ 9; PX 44, ¶ 6; RR ¶ 26. For example, Johnny Graham ("Graham"), who heads WPM's Chicago office, revealed that salespeople were trained to tell prospective customers that their ideas must first be approved by a nonexistent "board" of experts at WPM.

Defendants also claimed that they submitted every customer idea to TGK & Associates—a customer service company—for "concept review" and that there was a "cursory" review as to whether ideas had "some level of potential." *See* HT at 22, 315. Although the evidence indicates that TGK & Associates prepared GIRAs, there is no evidence that TGK & Associates reviewed ideas when customers first contacted WPM. *See* RR ¶ 99. Furthermore, Defendants did not start paying TGK & Associates for services until October 21, 2015, long after WPM's salespeople started telling customers that its review team approved their ideas. *See* PX 26, Att. A, p. 2249. Defendants fail to account for the company's review of customer ideas prior to retaining TGK & Associates.

7. Misrepresentations regarding the Invention Team Advisory Board

Until at least February 2017, WPM's website, marketing materials, and telephonic communications represented that WPM had an advisory board. *See* PX 32, ¶ 6; PX 33, ¶ 5; PX 27, Att. D, pp. 2285–93; PX 42, Att. A, p. 3498; PX 53, Att. B, pp. 3721–22. For example, one sales script instructed WPM salespeople to tell consumers about the advisory board in order to "[b]uild credibility":

> Have you had an opportunity to see who is on our advisory board? Build credibility take them to the website if you can send them an email with links. VERY IMPORTANT…Oh by the way I'm sending you a link to our World Patent Marketing Advisory Board. You will quickly see we are head and shoulder above our competition [omitted link to youtube video].

PX 53, Att. B, pp. 3721–22. Customers relied on this information in deciding whether to purchase WPM services. For example, one WPM customer indicated in a sworn declaration that he "looked at [the list of WPM's Board of Directors] and thought this is legitimate; otherwise why would these people allow [Cooper] to list them if he was not actually doing things for people." PX 32, ¶ 6; *see also* PX 33, ¶ 5 ("I thought, these famous [board members] wouldn't recommend the company if the company was not legitimate."). However, at least six Advisory Board members did not advise the company and were not asked to review consumers' inventions. *See* PX 31, ¶ 25; PX 41, ¶¶ 7–9; PX 48, ¶¶ 6–8; PX 50, ¶¶ 8–9; PX 56, ¶¶ 2–5; RR ¶ 135.

8. Misrepresentations regarding Trade Shows

WPM salespeople represented to consumers that they would showcase their inventions at trade shows. *See* PX 15, ¶ 13; PX 16, ¶ 18. One sales script, for example, states that WPM would "attend[ ] between 6 and 8 tradeshows every 12 months representing [the customer's] product" and that the tradeshows would be both domestic and international. PX 53, Att. B, p. 3747. Another script states that the WPM salesperson and the "marketing team are 95 percent of the time traveling worldwide to different trade shows." PX 53, Att. C, p. 3758; *see also* PX 53, Att. C, p. 3757 ("My team also attends tradeshows every three weeks to make connections and start relationships with manufacturers."). However, Graham stated that a division manager at WPM told him that "WPM didn't actually go to trade shows." PX 55, ¶ B6. The record reflects that at least one customer indicated that WPM's commitment to market his product at trade shows was one of the reasons he decided to work with WPM. PX 14 ¶ 3 ("I chose to work with World Patent Marketing due to their commitments to me, saying they would run a study with two major colleges to tell whether my invention was feasible, their commitment to fulfill my patent, and

theirpeckl1(Swm)-2(t)-2th nt a08]cceTJ 0.s( )Tj -0.004 Tc consumers that the success rate of receiving a patent filed by WPM "will be higher than 80%." PX 53, A1d than 80%."

> The purpose of the Global Invention Royalty Analysis is to enable the inventor to professionally prepare and present their invention so it will get the exposure and support that it needs. You never get a second chance to make a first impression. Prematurely presenting an invention will lower your chance of success. No clients have received a net financial profit or licensing agreement solely as a direct result of this Global Invention Royalty Analysis through World Patent Marketing. This is only one piece of the puzzle. Inventors who intend to proceed with a patent application must also present a convincing case for their idea.

PX 17 at 1866. However, as set forth below, Defendants' disclaimers were insufficient and did not correct the misrepresentations made by Defendants.

Further, it is undisputed, and Cooper agrees, that no WPM inventor has ever realized a profit from his or her invention using WPM's services. *Id.* ¶ 141. Nor has any customer, through WPM, sold a meaningful number of units or entered into a significant licensing agreement with a third party to do so. *Id.*

10. Misrepresentations regarding Licensing and Manufacturing Agreements

In telephonic communications and in marketing materials, Cooper and WPM salespeople told consumers that they had negotiated licensing and manufacturing agreements that resulted in the manufacture and sale of their customers' inventions. *See* PX 2, ¶ 18; PX 3, ¶¶ 6–7, Att. D, pp. 183–86; PX 31, ¶ 6; PX 32, ¶ 10. WPM salespeople also told consumers they would receive third-party licensing or manufacturing deals. *See* PX 6, ¶ 6; PX 16, ¶ 27. For example, one sales script states: "Now, regarding manufacturers, as per the USPTO, 2 out of 5 ideas eventually see the marketplace. That is why we take your product to multiple manufacturers so that if one doesn't like your idea there are still hundreds and thousands of other manufacturers that might have an interest in your product." PX 53, Att. C, p. 3762.

However, in sworn declarations, WPM customers indicate that they did not receive lucrative licensing deals or any returns on their investments. *See* PX 1, ¶ 23; PX 2, ¶ 29; PX 4, ¶ 42; PX 31, ¶ 31; PX 32, ¶¶ 31, 34. Indeed, it is undisputed, and Cooper agrees, that no WPM inventor, through WPM, entered into a significant licensing agreement with a third party. RR ¶ 141.

11. Misrepresentations regarding a Global Patent

Defendants represented to consumers that WPM's "Global Patent Application" would entitle customers to a global patent for a one-time fee. *See* PX 1, ¶¶ 6–7; PX 16, ¶¶ 15–16, 22; PX 32, ¶ 10; PX 49, ¶¶ 13–16. However, a global patent does not exist. The PTO offers a Patent Cooperation Treaty ("PCT") application, which was part of Defendants' Global Patent Application package. *See* PX 20, ¶ 14; PX 4, Att. C, p. 336. The PCT Application allows inventors to file one application as a placeholder for separate applications in each PCT signatory country; however, inventors then have thirty months to directly request patents from the national patent offices of each country, and they must pay national filing fees and translation fees. PX 20, ¶¶ 14–17. Defendants did not tell customers that the PCT application was only a temporary placeholder, and that customers would need to file separate applications in each country or risk having their applications abandoned. *See* PX 32, ¶¶ 10, 24; PX 46, ¶ 8. Defendants also did not tell customers about any additional fees associated with the PCT application, and neither the

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with consumers. *See* PX 25, Att. I, p. 2236. Defendants created marketing materials touting licensing deals between "WPM China" and inventors. *See* PX 10, ¶ 30, Att. D, p. 1060; PX 17, Att. B, pp. 1871–73, 1875–77, 1884–87. For example, in one press release regarding the Bimini Top Push Mower, Defendants stated: "The manufacturer is none other than World Patent

PX17, ¶¶ However, che record indicaces chac chere were inscances in which.8]TJ ,..004 Tw[(D)-2(ef)-1(en)-4(

PX 6, ¶¶ 22, 26, Att. L, pp. 632–82; PX 8, ¶ 15; PX 9, ¶¶ 35–36, 40–43; PX 10, ¶ 27; PX 15, ¶¶ 28, 30, 32; PX 16, ¶ 34. For example, when a brother and sister who had each ordered GIRAs for separate inventions noticed that the "Unique Aspects" sections of their GIRAs were identical, the sister contacted Graham about the form language. RR ¶¶ 108–09. Alarmed that the GIRAs appeared fraudulent, Graham emailed Cooper, who responded by calling him a "f--king idiot." *Id.* ¶ 115.

And when Defendants did provide tangible products, they were markedly different from their customers' contracted ideas. For example, Ryan Masti testified that Defendants sent him a "splash page" Def for a website, w at

Defendants also sent emails to WPM customers with links to Cooper's blog, which featured posts about his security detail comprised of ex-Israeli soldiers who "knockout first and ask questions later," his role in having an ex-employee arrested on extortion charges, and a warning to "say a bad word about him and watch his legal team take action"—"[h]e takes it all personally and keeps grudges filed away." PX 27, ¶¶ 41–42, Atts. EE–FF, pp. 2752–79; PX 5, Att. M, pp. 527–29. In response to these and other communications, many customers have reported that they were fearful of Cooper and repercussions if they complained. *See* PX 3, ¶ 33; PX 4, ¶ 39; PX 6, ¶ 19; PX 7, ¶ 37; PX 9, ¶ 79.

F. Ongoing Misrepresentations

Defendants contend that because they switched from their first business model to their second business model, a preliminary injunction enjoining them from committing deceptive acts or practices under their first business model is moot. [ECF No. 37 at 4]. However, the record reveals that although Defendants may have changed the names of their services, they continue to provide similar services—and similar misrepresentations—under their second business model. In January 2017, the FTC conducted an undercover investigation, which was led by Investigator Tyndall. Tyndall's undercover call revealed that as of February 2017, consumers still paid for an analysis, which Defendants called a PIIR instead of a GIRA. PX 30, ¶¶ 34, 36.

WPM's records also indicate that Defendants sent approximately 100 emails between February 8, 2017, and March 9, 2017, showing that WPM and TGK & Associates have continued to prepare provisional patent applications for customers. RR ¶¶ 116, 118. The email states that WPM's preparation of the provisional patent applications are free, and it then instructs customers to print and sign the provisional patent applications, pay the PTO's filing fee, and mail the applications to the PTO. RX S. The applications appear to be poorly completed and contain rudimentary drawings, if any. *Id.* ¶ 119. Although marketed as a free service in the email, it is unknown whether some or all of these customers paid WPM for this or other services that WPM provided. *Id.*

And as of March 2017, the PTO was continuing to receive new patent applications from WPM. PX 46, ¶ 4; PX 47, ¶ 5. The Receiver also located a

1991)). Unlike private litigants, the FTC is not required to demonstrate irreparable injury to obtain injunctive relief. *IAB Mktg.*, 746 F.3d at 1232.

B. Likelihood of Success on the Merits

The FTC alleges that Defendants violated Section 5(a) of the FTC Act by making a series of material misrepresentations that misled consumers and by unfairly suppressing consumer complaints. Section 5(a) of the FTC Act prohibits "unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45(a)(1).

1. Deception

To establish that an act or practice is deceptive under Section 5(a) of the FTC Act, "the FTC must establish that (1) there was a representation, (2) the representation was likely to mislead customers acting reasonably under the circumstances, and (3) the representation was material." *FTC v. T /TFw -8 -2.39rv. TBTc 0 Tf -0.00[t4(mTc 0.02Tw 0.C)-14 r [((t)-11)-10(c)4(t)4(um* (quoting RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 3, cmt. b (1995)). "Express claims, or deliberately made implied claims, used to induce the purchase of a particular product or service are presumed to be material." *Transnet Wireless Corp.*, 506 F. Supp. 2d at 1267 (citation omitted). "Express claims directly represent the fact at issue while implied claims do so in an oblique or indirect way." *Kraft, Inc. v. FTC*, 970 F.2d 311, 318 n.4 (7th Cir. 1992). Implied claims are material if there is evidence that the seller intended to make the claims or if the claims address the central characteristics of the product or service offered. *See Novartis Corp. v. FTC*, 223 F.3d 783, 786–87 (D.C. Cir. 2000); *Kraft*, 970 F.2d at 322; *see also FTC v. Figgie Int'l, Inc.*, 994 F.2d 595, 604 (9th Cir. 1993) ("[N]othing in statute or case law [ ] protects from liability those who merely imply their deceptive claims; there is no such loophole.").

As detailed above, the

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would receive patents and enter into lucrative licensing and manufacturing deals shield them from liability and that they should trump the FTC's consumer declarations because the declarations are based on alleged oral statements. [ECF No. 37 at 27–28]. However, there are several problems with Defendants' arguments.

First, "[*c*]*aveat emptor* is not the law in this circuit."

because the invention industry is so difficult, retaining WPM's services would decrease the probability of failure and increase the likelihood of success. It is therefore not surprising that Masti testified that Cooper's statement and article on WPM's website about the invention industry's high failure rate made him "feel more comfortable about joining World Patent Marketing and their team and, you know, making my invention a success." HT at 58.

Finally, the Court rejects Defendants' argument that their disclaimers should trump the FTC's consumer declarations because the declarations are premised on uncorroborated oral statements. "At the preliminary injunction stage, a district court may rely on affidavits and hearsay materials which would not be admissible evidence for a permanent injunction, if the evidence is 'appropriate given the character and objectives of the injunctive proceeding.'" *Levi Strauss*, 51 F.3d at 985 (quoting *Asseo v. Pan Am. Grain Co.*, 805 F.2d 23, 26 (1st Cir. 1986)). "The dispositive question is not their classification as hearsay but whether, weighing all the attendant factors, including the need for expedition, this type of evidence was appropriate given supported by *any* evidence in the record." *FTC v. Consumer Collection Advocates Corp.*, No. 14-62491, 2015 WL 12533013, at *5 (S.D. Fla. Sept. 9, 2015).

The record supports the conclusion that the FTC is likely to succeed on the merits on its deception claim. Defendants' misrepresentations were deceptive under the FTC Act; they were likely to mislead consumers acting reasonably under the circumstances, and they were material to consumers' decision to purchase Defendants' services. The misrepresentations have induced customers to pay millions of dollars for useless and largely nonexistent services. It is especially troubling that in a little over two years, WPM had nearly $26,000,000 in gross revenue, yet no identifiable customers realized a profit, sold a meaningful number of units, or entered into significant licensing agreements as a result of using WPM's services. That Defendants' services may have provided some value to customers is of no consequence. Even assuming this were true, "liability for deceptive sales practices does not require that the underlying product be worthless." *IAB Mktg.*, 746 F.3d at 1233; *see also Figgie Int'l*, 994 F.2d at 606 ("The fraud in the selling, not the value of the thing sold, is what entitles consumers in this case to full refunds or to refunds for each [product] that is not useful to them."). As the record demonstrates, Defendants' misrepresentations misled WPM customers, and unless Defendants are enjoined, their misrepresentations will continue mislead outweighed by countervailing benefits to consumers or to competition." 15 U.S.C. § 45(n). Congress designed the term "unfair" as a "flexible concept with evolving content," *FTC v. Bunte Bros.*, 312 U.S. 349, 353 (1941), and it "intentionally left [its] development . . . to the Commission rather than attempting to define the many and variable unfair practices which prevail in commerce." *Atl. Ref. Co. v. FTC*, 381 U.S. 357, 367 (1965) (citation and internal quotation marks omitted); *see also Am. Fin. Servs. Ass'n v. FTC*, 767 F.2d 957, 966 (D.C. Cir. 1985) (noting the FTC may exercise its discretion to ascertain which "acts or practices [ ] injuriously affect the general public" and "to prevent" such acts) (quoting H.R. REP. NO. 75-1613, at 3 (1937)).

In analyzing whether Defendants' consumer complaint suppression practices are unfair, this Court will consider facts relevant to the FTC's deceptive practices claim, as the FTC's theories of deception and unfairness are inextricably linked. *See Orkin Exterminating Co. v. FTC*, 849 F.2d 1354, 1367 (11th Cir. 1988) ("[A] practice may be both deceptive and unfair . . ."); *FTC v. Wyndham Worldwide, Inc.*, 799 F.3d 236, 245 (3d Cir. 2015) ("[F]acts relevant to unfairness and deception claims frequently overlap."). Positive customer reviews are a valuable asset for companies seeking new customers because they have the potential to inspire trust in consumers otherwise apprehensive about purchasing an unfamiliar company's products and services. It is therefore not surprising that in marketing materials and on their website Defendants touted that they are an "A Rated Member of the Better Business Bureau" and that they are "the only patent services company in history to be awarded a five star review rating from Consumer Affairs, Google, Trustpilot, Shopper Approved, Customer Lobby and ResellerRatings.com." *See, e.g.*, PX 27, p. 2476. Indeed, Defendants treasured their ratings and resorted to threats and intimidation to preserve their reputable façade. These complaint suppression tactics, in turn, have not only caused—but will likely continue to cause—substantial consumer injury because they serve to limit the flow of truthful information about the quality of Defendants' services to prospective consumers. This is especially salient in light of the manner in which the consumer complaint suppression practices worked to propagate the injurious effects of Defendants' misrepresentations. By depriving consumers of truthful, critical customer reviews and testimonials, Defendants' complaint suppression practices enabled them to deceive more consumers with their misrepresentations and sell more invention-promotion services than they might have otherwise. In essence, Defendants have institu (explaining how sellers who withhold or fail to generate critical price or performance data . . . leav[e] buyers with insufficient information for informed comparisons”).

Finally, countervailing benefits to competition or consumers do not outweigh the economic injury resulting from Defendants’ complaint suppression practices. Indeed, no countervailing benefits exist: existing customers do not benefit from having their complaints suppressed and prospective consumers do not benefit from being denied access to material information. Moreover, by intimidating, threatening, and coercing consumers from reporting

E. Continued Appointment of a Receiver

The Court has authority to appoint a receiver for the Corporate Defendants pursuant to the Court's equitable powers under Section 13(b) of the FTC Act. *U.S. Oil & Gas*, 748 F.2d at 1432. The appointment of a receiver is appropriate where, as here, there is "imminent danger of property being lost, injured, diminished in value or squandered, and where legal remedies are inadequate." *Leone Indus. v. Assoc. Packaging*, 795 F. Supp. 117, 120 (D.N.J. 1992). When a defendant has used deception to obtain money from consumers, "it is likely that, in the absence of the appointment of a receiver to maintain the status quo, the corporate assets will be subject to diversion and waste," to the detriment of victims. *SEC v. First Fin. Group of Tex.*, 645 F.2d 429, 438 (5th Cir. 1981); *see also IAB Mktg.*, 746 F.3d at 1232, 1236 (affirming preliminary injunction with the appointment of a receiver).

As noted above, the Receiver has determined that it is unlikely WPM can be run lawfully and profitably. RR ¶ 145. Nonetheless, Defendants ask that the Court discharge the Receiver or convert his role into that of a monitor. Neither is appropriate. The record clearly reflects a continued need for the Receiver in this action to preserve assets and maintain the status quo, and because legal remedies are inadequate. The Receiver is also necessary to determine the full extent of Defendants' deceptive and unfair practices, identify the victims of Defendants' scheme, and prevent further fraudulent practices during the pendency of the preliminary injunction.

IV. CONCLUSION

The record supports a preliminary finding that Defendants devised a fraudulent scheme to use consumer funds to enrich themselves. Accordingly, the Court finds a preliminary injunction is necessary to maintain the status quo pending a trial on the merits.

It is therefore **ORDERED AND ADJUDGED** as follows:

A. Prohibition on Misrepresentations

Defendants and Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any Defendant, who receive actual notice of this Order, whether acting directly or indirectly in connection with the advertising, marketing, promotion, offering for sale, or sale of any products or services, are **hereby preliminarily restrained and enjoined** from making any false or unsubstantiated representations, expressly or by implication, regarding any material fact, including, but not limited to:

precious metals dealer, or other financial institution or depository institution of any kind;

(2) Opening or causing to be opened any safe deposit boxes titled in the name of, or subject to access by, any Defendant;

(3) Incurring charges or cash advances on any credit card issued in the name, singly or jointly, of any Corporate Defendant;

(4) Obtaining a loan encumbering the assets of any Defendant, or any corporation,

(1) Provide the FTC and the Receiver with a full accounting of all funds, documents, and assets outside of the United States which are: (1) titled in the name, individually or jointly, of any Defendant; or (2) held by any person or entity for the benefit of any Defendant; or (3) under the direct or indirect control, whether jointly or singly, of any Defendant;

(2) Transfer to the territory of the United States and deliver to the Receiver all funds, documents, and assets located in foreign countries which are: (1) titled in the name

spouse of a Defendant to the FTC. The Commission may also directly access any Defendant's consumer credit report.

number of the business entity; (3) the names of the business entity's officers, directors, principals, managers, members, and employees; and (4) a detailed description of the business entity's intended activities.

K. Prohibition on Release of Consumer Information

IT IS FURTHER ORDERED that Defendants and Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any Defendant, are **hereby preliminarily restrained and enjoined** from selling, renting, leasing, transferring, using, disclosing, or otherwise benefitting from the name, address, telephone number, credit card number, bank account number, email address, or other identifying information of any person who: (1) paid money to any Defendant; (2) was previously contacted by Defendants in connection with invention promotion services, including, but not limited to research, patenting, invention licensing, manufacturing, or marketing; or (3) was on a list to be contacted by Defendants.

Provided, however, that Defendants may disclose such identifying information to a law

M. Receiver's Duties and Authority

IT IS FURTHER ORDERED that the Receiver is authorized and directed to accomplish the following:

(1)

(4) Suspend business operations of the Corporate Defendants if in the judgment of the Receiver such operations cannot be continued legally and profitably;

(5) Conserve, hold, and manage all assets of the Corporate Defendants, and perform all acts necessary or advisable to preserve the value of those assets in order to prevent any irreparable loss, damage, or injury to consumers or creditors of the Corporate Defendants, including, but not limited to, obtaining an accounting of the assets and preventing the unauthorized transfer, withdrawal, or misapplication of assets;

(6) Enter into contracts and purchase insurance as advisable or necessary;

(7) Prevent the inequitable distribution of assets and determine, adjust, and protect the interests of consumers and creditors who have transacted business with the Corporate Defendants;

(8) Prevent the destruction or erasure of any web page or website registered to and operated, in whole or in part, by the Corporate Defendants, directly or indirectly;

(9) Prevent the destruction or erasure of any of the Corporate Defendants' marketing materials, sales scripts, training materials, customer information, call logs, and any other documents or records that reflect marketing, advertising, promotion, distribution, and offers for sale or sale of services;

(10) Prevent the destruction or erasure of any of the Corporate Defendants' corporate records, business records, financial records, and financial transactions as they relate to the practices charged in the FTC's Compliant and ensure that all such documents

(14) Institute, compromise, adjust, appear in, intervene in, or become party to such actions or proceedings in state, federal or foreign court or pti(14)

ledgers and payroll records, and any other document or record that relates to the business practices or finances of the Receivership Defendants, including electronically stored information (such as electronic mail).

N. Transfer of Receivership Property to the Receiver

IT IS FURTHER ORDERED that:

(1) Immediately upon service of this Order upon them, or within a period permitted by the Receiver, if they have not done so already in compliance with the Temporary Restraining Order previously issued in this matter, Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any Defendant, who receive actual notice of this Order, and any other person with possession, custody or control of property or of records relating to the Corporate Defendants, shall transfer or deliver possession, custody, and control of the following to the Receiver:

(a) All assets of the Corporate Defendants;

(b) All documents of the Corporate Defendants, including, but not limited to, books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers;

(c) All assets belonging to other persons or entities whose interests are now under the direction, possession, custody, or control of the Corporate Defendants;

(d) All computers and data in whatever form used to conduct the business of the Corporate Defendants; and

(e) All keys, codes, and passwords necessary to gain or to secure access to any assets or documents of the Corporate Defendants, including, but not limited to, access to their business premises, means of communication, accounts, computer systems, or other property.

(2) In the event any person or entity fails to deliver or transfer any asset or otherwise fails to comply with any provision of this Section, the Receiver may file *ex parte* an Affidavit of Non-Compliance regarding the failure. Upon filing of the affidavit, the Court may authorize, without additional process or demand, Writs of Possession or Sequestration or other equitable writs requested by the Receiver. The writs shall authorize and direct the United States Marshals Service or any sheriff or deputy sheriff of any county to seize the asset, document, or other item and to deliver it to the Receiver.

commodity trading companies, precious metals dealers and any financial institutions and

or control of or which may be received by the Corporate Defendants. The Receiver shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation, with the first such request filed no more than sixty (60) days after the date of entry of this Order. The Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

T. Service on Financial Institutions, Entities, or Persons

IT IS FURTHER ORDERED that copies of this Order and the initial pleadings filed in this case may be served 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, by FTC employees, by employees of any of the Order as required by this paragraph; and (2) lists the names and addresses of each entity or person to whom Defendants provided a copy of the Order. Furthermore, Defendants shall not take any action that would encourage officers, agents, directors, employees, salespersons, independent contractors, attorneys, subsidiaries, affiliates, successors, assigns or other persons or entities in active concert or participation with them to disregard this Order or believe that they are not bound by its provisions.

V. Retention of Jurisdiction

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