

STATE OF TEXAS,
Plaintiff

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IN THE DISTRICT COURT OF

VS.

DALLAS COUNTY, T E X A S

MEDIA DIME MARKETING LLC.,
WENDY DIAZ and HILDA A. MEJIA,
Defendants

_____ **JUDICIAL DISTRICT**

**PLAINTIFF'S ORIGINAL PETITION
FOR INJUNCTIVE RELIEF INCLUDING TEMPORARY RESTRAINING ORDER
AND FOR CIVIL PENALTIES**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, THE STATE OF TEXAS, Plaintiff, acting by and through its Attorney General GREG ABBOTT (“State”), and files this Original Petition against MEDIA DIME MARKETING, LLC., WENDY DIAZ, individually, and HILDA A. MEJIA, individually, Defendants (“Defendants”), under the authority of the Texas Deceptive Trade Practices Act (TEX. BUS. & COMMERCE CODE Chapter 17) and in support thereof would respectfully show the Court as follows:

I. PARTY PLAINTIFF

1.1 This suit is brought in the name of the STATE OF TEXAS by and through its Attorney General, Greg Abbott, through his Consumer Protection & Public Health Division under the authority of the Constitution, statutes and laws of the State of Texas.

II. PARTY DEFENDANTS

2.1 Defendant MEDIA DIME MARKETING, LLC is a California domestic limited liability company engaged in business in Texas. Defendant MEDIA DIME MARKETING LLC is

a foreign corporation, organized and existing under the laws of the State of California. Defendant MEDIA DIME MARKETING LLC's home office is located at 12921 Ramona Blvd., Suite 1, Irwindale, CA 91706. Defendant MEDIA DIME MARKETING LLC's registered agent for service is **HILDA A. MEJIA, whose address as registered agent is 11315 Gonsalves St. Cerritos, CA 90703. Defendant, MEDIA DIME MARKETING, LLC may be served with process by serving the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701**, as its agent for service of process because: Defendant MEDIA DIME MARKETING LLC engages in business in Texas; this matter arises out of defendants' business activities in the State of Texas; and defendant MEDIA DIME MARKETING LLC has not designated or maintained a resident agent for service of process in Texas. *See* TEX. CIV. PRAC. & REM. CODE §§17.044(a) (1), 17.044(b), 17.045.

2.2 Defendant WENDY DIAZ, Individually, n individual who is a nonresident of the State of Texas, whose **home address is 721 North Soldano Avenue, Azusa, CA 910702. Defendant WENDY DIAZ may be served with process by serving the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701**, as her agent for service of process because: Defendant WENDY DIAZ engages in business in Texas; this matter arises out of Defendant WENDY DIAZ's business activities in the State of Texas; and Defendant WENDY DIAZ has not designated or maintained a resident agent for service of process in Texas. *See* TEX. CIV. PRAC. & REM. CODE §§17.044(a) (1), 17.044(b), 17.045.

2.3 Defendant HILDA A. MEJIA, Individually, is an individual who is a nonresident of the State of Texas, whose **home address is 12921 Ramona Blvd., Suite 1, Irwindale, CA 91706. Defendant HILDA A MEJIA may be served with process by serving the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701**, as her agent for service of process because:

Defendant HILDA A. MEJIA engages in business in Texas; this matter arises out of Defendant HILDA A. MEJIA's business activities in the State of Texas; and Defendant HILDA A. MEJIA has not designated or maintained a resident agent for service of process in Texas. *See* TEX. CIV. PRAC. & REM. CODE §§17.044(a) (1), 17.044(b), 17.045.

III. DISCOVERY CONTROL PLAN

3.1 Pursuant to Texas Rule of Civil Procedure 190.1, discovery is intended to be conducted under Discovery Level 2.

IV. AUTHORITY AND JURISDICTION

4.1 This action is brought by Attorney General GREG ABBOTT, through his Consumer Protection & Public Health Division, in the name of the STATE OF TEXAS and in the public interest under the authority granted him by §17.47 of the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §17.41 *et seq.* ("DTPA"), upon the grounds that Defendants have engaged in false, misleading or deceptive acts or practices in the course of trade and commerce as defined in, and declared unlawful by §§17.46(a) and (b) of the DTPA.

4.2 This action is also brought by Plaintiff in the public interest under the authority granted by TEX. BUS. CORP. ACT ART. 8.01(A) *et seq.*, upon the grounds that no foreign corporation shall have the right to transact business in this State until it shall have procured a certificate of authority so to do from the Secretary of State.

4.3 This Court has jurisdiction of the subject matter and the parties in this cause, pursuant to Texas Civil Practice and Remedies Code, Section 17.042 (the Texas "long-arm" statute) because defendants engaged in business in this State maintaining at least minimum contacts and also because

Defendants committed torts and deceptive trade practices in whole or part in this State, by contracting for television advertising infomercials to be specifically broadcast in the Dallas, Texas and Houston, Texas media markets, causing false, misleading or deceptive representations in television advertising infomercials targeting Spanish language consumers in Texas, by maintaining and receiving telephone calls to a toll free telephone number from Texas consumers, by returning telephone calls to Texas consumers, by selling products to Texas consumers, by receiving payments from Texas consumers, and by delivering products to consumers in Texas.¹ TEX. CIV. PRAC. & REM. CODE § 17.042.

V. VENUE

5.1. Venue of this suit is proper in Dallas County pursuant to Section 15.002(a)(1) and (3) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this cause of action occurred in Dallas County. TEX. CIV. PRAC. & REM. CODE § 15.002(a).

5.2. Venue of this action is also proper in Dallas County on the basis of Sections 17.47(b) and 17.56 of the DTPA because Defendants have conducted business in Dallas County and because violations of the DTPA occurred and are likely to occur in Dallas County. TEX. BUS. & COM. CODE §17.47(b) and §17.56.

VI. PUBLIC INTEREST PURPOSE OF SUIT

¹ See, *Moki Mac River Expeditions*, 221 SW3d 569, 575 (Tex. 2007), *Siskind v. Villa Foundation*, 642 SW2d 434, (Tex. 1982), and, *SITQ E.U. v. Reata Restaurants, Inc.*, 111 SW3d 638, (Tex. App.- Ft. Worth, 2003) for the proposition that the State of Texas acquires personal jurisdiction over a nonresident defendant when: 1) The nonresident defendant has purposefully done some act or consummated some transaction in the forum state such as soliciting business by means of advertising consisting of representations to a Texas resident; 2) The cause of action arises from or is connected with such an act or transaction including torts such as fraud or misrepresentations which if proven would support a judgment under the Deceptive Trade Practices Act; and, 3) The assumption of jurisdiction by Texas does not offend the traditional notions of fair play and substantial justice in that the defendants activity outside the state had a reasonably foreseeable consequence occurring in Texas, especially since by enacting the Deceptive Trade Practices Act, Texas has demonstrated a special interest in protecting its citizens from the sort of activity alleged.

6.1 By reason of the institution and operation of the unlawful practices set forth herein, Defendants have and will cause irreparable injury, loss and damage to the STATE OF TEXAS, and its citizens, and will also cause adverse effects to legitimate business enterprises which conduct trade and commerce in a lawful manner in this State. Therefore, the Attorney General of the STATE OF TEXAS believes and is of the opinion that these proceedings are in the public interest.

6.2 Defendants, at all times relevant hereto have engaged in conduct which constitutes “trade” and “commerce” as those terms are defined by section 17.45(6) of the DTPA, in that they were and are engaged in the business of marketing a device, known as “Cheap Gas”, directly to consumers which was represented as a means of substantially increasing the gas milage of the consumers vehicles.

6.3 The Consumer Protection & Public Health Division informed Defendants in general of the alleged unlawful conduct described herein, at least seven days before filing suit, as may be required by section 17.47 of the DTPA. TEX. BUS. & COM. CODE §17.47(a).

VII. PARTICULARLY APPLICABLE LAW

7.1 The Texas Business and Commerce Code provides that no foreign corporation shall have the right to transact business in this State until it shall have procured a certificate of authority so to do from the Secretary of State. Additionally, the Code provides that no foreign corporation shall be entitled to procure a certificate of authority under this Act to transact in this State any business which a corporation organized under this Act is not permitted to transact. Also, a foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the State or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this State, and nothing in this Act contained shall be construed to

authorize this State to regulate the organization of such corporation or its internal affairs. TEX. BUS. CORP. ACT ART. 8.01(A).

7.2. The Texas Business and Commerce Code also provides a foreign corporation which transacts business in this State without a certificate of authority shall be liable to this State, for the years or parts thereof during which it transacted business in this State without a certificate of authority, in an amount equal to all fees and franchise taxes which would have been imposed by law upon such corporation had it duly applied for and received a certificate of authority to transact business in this State as required by law and thereafter filed all reports required by law, plus all penalties imposed by law for failure to pay such fees and franchise taxes. In addition to the penalties and payments thus prescribed, such corporation shall forfeit to this State an amount not less than One Hundred Dollars (\$ 100) nor more than Five Thousand Dollars (\$ 5,000) for each month or fraction thereof it shall have transacted business in this State without a certificate. The Attorney General shall bring suit to recover all amounts due this State under the provisions of this section. TEX. BUS. CORP. ACT ART. 8.18(C).

7.3 The Texas Deceptive Trade Practices Act provides that false, misleading, or deceptive acts or practices in the conduct of any trade or commerce are subject to action by the Consumer Protection Division under the DTPA. TEX. BUS. & COM. CODE ANN. § 17.46(a); *see also* DTPA, TEX. BUS. & COM. CODE ANN. §§ 17.41-17.63. The DTPA prohibits:

- “engaging in “false, misleading, or deceptive acts or practices in the conduct of any trade or commerce.” TEX. BUS. & COM. CODE ANN. § 17.46(a).
- “causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another.” TEX. BUS. & COM. CODE ANN. § 17.46(b)(3).

- “representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not.” TEX. BUS. & COM. CODE ANN. § 17.46(b)(5).
- “knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service.” TEX. BUS. & COM. CODE ANN. § 17.46(b)(13).
- “failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.” TEX. BUS. & COM. CODE ANN. § 17.46(b)(24).

7.4 The Deceptive Trade Practices Act further provides that in addition to injunctive relief, upon request by the Consumer Protection Division, a civil penalty may also be awarded to be paid to the State in an amount of not more than \$20,000 per violation. TEX. BUS. & COM. CODE §17.47(c). In determining the amount of such civil penalty, the following factors are required to be considered:

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- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act or practice;
 - (2) the history of previous violations;
 - (3) the amount necessary to deter future violations;
 - (4) the economic effect on the person against whom the penalty is to be assessed;
 - (5) knowledge of the illegality of the act or practice;
 - (6) any other matter that justice may require. ”

TEX. BUS. & COM. CODE §17.47(g).

VIII. ACTS OF AGENTS AND OFFICERS

8.1 Whenever in this petition it is alleged that Defendants did any act or thing, it is meant that Defendants performed or participated in such act or thing or that such act was performed by the officers, agents or employees of said Defendants, and in each instance, the officers, agents or employees of said Defendants that were then authorized to and did in fact act on behalf of Defendants or otherwise acted under the guidance and direction of the Defendants.

8.2 Defendants WENDY DIAZ and HILDA A. MEJIA are sole co-owners and operate MEDIA DIME MARKETING LLC and serve as its Chief Executive Officer and President.² As such, Defendants WENDY DIAZ and HILDA A. MEJIA are controlling persons and have the responsibility for the overall management and oversight of the company, including compliance with all state and federal statutes regulating sales and marketing of products. Each of the individual Defendants also have the responsibility of supervising other officers, directors, and employees of the corporation. As a result, Defendants WENDY DIAZ and HILDA A. MEJIA direct and have personal knowledge of the day-to-day activities of the company.

IX. NATURE OF DEFENDANTS' CONDUCT

9.1 The product sold by Defendants as "Cheap Gas" consists merely of one or more magnets encased in soft foam plastic measuring approximately 2 inches by 2 inches by 4 inches designed to enclose a portion of a vehicles gas line tube and secured by a single plastic secure tie. A photograph of the "Cheap Gas" device or system is attached hereto as **Exhibit A**, and

² Texas law is well settled that corporate agents may be held personally responsible and individually liable for wrongful acts. It is not necessary to pierce the corporate veil in order to impose personal liability. *Leyendecker v. Wechter*, 683 SW2d 369 (Tex. 1984). Liability of such a corporate officer is based on his own actions not his status as an agent. It is not necessary for such an employee to act knowingly or intentionally in order to be personally liable. *Miller v. Keyser*, 90 SW3d 712 (Tex. 2002). DTPA § 17.46(c)(1) authorizes Texas courts to be guided, to the extent possible, by the interpretations given by the Federal Trade Commission and federal courts to the Federal Trade Commission Act. [15 U.S.C.A. §45(a)(1)]. Many federal courts have held principals or controlling persons of corporations individually liable. *See: FTC v. Amy Travel*, 875 F.2d 564 (7th Cir. 1988), and *FTC v. Publishing Clearing House*, 104 F.3d 1168 (9th Cir. 1997).

incorporated herein for all purposes. The Spanish language infomercial advertisement claims that fuel will go through a “magnet resonance” process as it flows through the line near or between the attached magnets, making the gasoline use more efficient and thus reducing the amount of money a consumer has to spend on fuel³

9.2 The Defendants’ “Cheap Gas” infomercial advertisement is presented in Spanish on the nationwide TV Azteca network riddled with large confusing words describing the alleged process of “magnet resonance”. Consumers interested in saving money on fuel by using the “Cheap Gas” device are asked to call the toll free telephone number, 800-845-0602, to order the product. That number has been traced to WENDY DIAZ, HILDA A. MEJIA and MEDIA DIME MARKETING LLC. A photograph (video still indicating the advertised telephone number) of the television advertising infomercial is attached hereto a **Exhibit B**, and incorporated herein for all purposes.

9.3 Defendants make a false, misleading and deceptive claim that merely passing gasoline near or between magnets somehow results in an “magnetic resonance” of the gasoline which increases gas milage⁴. Such claims are brazenly false and designed to prey on the naivete of

³ “After years of investigations, scientists in the United States have found the power of neodymium, a superconductive magnetic element patented and manufactured in this country. With it they manufactured Cheap Gas which functions under the principle of magnet resonance according to which when it is installed over the fuel line it factors the hydrocarbon chains.

The explanation is very simple. When a fluid, like in this case gasoline, passes through an extreme magnetic field, it produces a reorganization of its electrons . What Cheap Gas achieves is a more efficient combustion taking advantage of every drop of fuel.

So you can save up to 27 percent of the gasoline that you use every day in your vehicle. But the laboratory benefits of this product do not end there. Laboratory analyses made in different parts of the world have shown that Cheap Gas is an excellent protector of the environment because it reduces 90 percent of the toxic gas emissions, and it gives more power to your vehicle’s motor and extends the useful life of your engine by 30 percent.

So that all people understand easily and in a more simple way, what Cheap Gas achieves, you can go further with the same tank of gas. If before, for each gallon you got 30 miles, now you can easily get 40, which is a great savings and even more so when thinking in terms of money.” Cheap Gas Infomercial #1, April 1, 2008 transcript p 4

4 There is no scientific basis for a claim that gasoline passing by magnets or through any magnetic field increases combustion efficiency or milage in vehicles powered by an internal combustion engine, nor that magnets, as are subject of this suit, are even capable of “reorganizing electrons” or “factoring hydrocarbon chains” in such gasoline - whatever that means. Such a

targeted consumers. Cheap Gas” is a “fictitious product” inherently incapable of functioning as represented.

9.4 The sales representative of MEDIA DIME MARKETING LLC referred to the “Cheap Gas” device as a “chip” and called it an “MPG device”. The representative explained the magnetic chip is installed on the vehicle to regulate how much gas goes into the tank. The device is being sold for \$169.00 for one or \$229.00 for two. Acceptable forms of payment are credit card and money order only. The representative also falsely claimed that this “chip” or “MPG device” currently is or was being installed on all 2007 and 2008 Kia Spectra and Ford Focus vehicles.

9.5 In July, 2008, following an inquiry pursuant to a consumer complaint, the Defendants were notified that the Electronic Retailing Self-Regulation Program (ERSP) of the Council of Better Business Bureaus (CBBB) and National Advertising Review Council, had recommended that the Defendants “discontinue performance and establishment claims for the Cheap Gas Automobile Device” because “the marketer did not provide any substantive evidence to support the performance and establishment claims disseminated in its advertising” *See* ESRP Report, Case #187, NARC, Council of Better Business Bureaus, Inc., 2008.

X. VIOLATIONS OF THE TEXAS BUSINESS CORPORATION ACT

10.1 Based on the conduct alleged above, Defendants MEDIA DIME MARKETING, LLC., WENDY DIAZ individually and HILDA A. MEJIA, individually, have engaged in the operation of a business of a foreign corporation in Texas in violation of the TEX. BUS. CORP. ACT

magnet attachment is deemed a “fictitious product” with no capability of functioning as represented. *See Executive Order D-174*, State of California Air Resources Board, April 11, 1988 relating to The Magnetizer group, Inc. “Fuel-Energizer” Device; *See also*, *EPA Evaluation of the Super-Mag Fuel Extender*, U.S Environmental Protection Agency, H..Anthony Ashy, January 1982; *And see*, *Test of “Cheap Gas” device*, OAG Video, R.D. Matthews, January 14, 2009, accessible and downloadable at: https://www.yousendit.com/transfer.php?action=batch_download&send_id=642362030&email=d75e6a4666c24cbf02f041b5c2c2fcd7

ART. 8.01(A), by transacting business in the State of Texas without authority to do so from the Secretary of State. Such false, misleading and deceptive infomercial advertisements were run on Telemundo Network, TV Azteca, and Fox Sports en Espanol, television networks specifically designed and intended to target Spanish language consumers from approximately July 2007 through July 2008.

10.2. For unlawfully transacting business in the State of Texas, Defendant MEDIA DIME MARKETING, LLC is liable to the State for the years 2007 to 2008 in an amount equal to all fees and franchise taxes, which would have been imposed by law upon Defendant had it duly applied and received a certificate of authority to transact business in this State and thereafter filed all reports required by law. *See* TEX. BUS. CORP. ACT ART. 8.01(C). In addition, Defendant MEDIA DIME MARKETING, LLC should be assessed all penalties imposed by law for failure to pay such fees and franchise taxes from 2007 through 2008. *See id.* Furthermore, the Defendant MEDIA DIME MARKETING, LLC should forfeit to this State an amount not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000) for each month or fraction thereof Defendant transacted business in this State without such a certificate of authority. *See id.*

XI. VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT

11.1 Based upon the conduct alleged above, Defendant MEDIA DIME MARKETING, LLC., WENDY DIAZ, individually and HILDA A. MEJIA, individually, have engaged in false, misleading, or deceptive acts or practices in the conduct of trade or commerce in violation of TEX. BUS. & COM. CODE ANN. §17.46(a) and (b), to wit:

A. Engaging in false, misleading, or deceptive acts or practices in the conduct of trade or commerce by making false, misleading or deceptive representations in advertising and

selling directly to Texas consumers in violation of TEX. BUS. & COM. CODE ANN. § 17.46(a).

- B. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another by making false, misleading or deceptive representations in advertising and selling directly to Texas consumers in violation of TEX. BUS. & COM. CODE §§17.46(a), 17.46(b)(3).
- C. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not by making false, misleading or deceptive representations in advertising and selling directly to Texas consumers in violation of TEX. BUS. & COM. CODE §§17.46(a), 17.46(b)(5).
- D. Knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service by making false, misleading or deceptive representations in advertizing and directly to Texas consumers in violation of TEX. BUS. & COM. CODE ANN. § 17.46(b)(13).
- E. Failing to disclose information concerning goods or services which was known at the time of the transaction when failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed by making false, misleading or deceptive representations and failing to disclose true facts in advertizing and directly to Texas consumers in violation of TEX. BUS. & COM. CODE §§17.46(a), 17.46(b)(24).

XII. DISGORGEMENT

12.1 All of the assets of Defendants MEDIA DIME MARKETING, LLC., WENDY DIAZ, individually and HILDA A. MEJIA, individually, are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for said Defendants to retain, including all ill-gotten gains and benefits. Defendants should be ordered to disgorge all monies secured through deception, together with all of the proceeds, profits, income, interest and accessions thereto. Such disgorgement should be for the benefit of the victimized consumers and the State of Texas.

XIII. CONSTRUCTIVE TRUST

13.1 A constructive trust should be placed upon all non-exempt assets of Defendants MEDIA DIME MARKETING, LLC., WENDY DIAZ, individually and HILDA A. MEJIA, individually, including all assets kept under the names “Cheap Gas”, if any, in favor of all consumers victimized by Defendants and in favor of the State of Texas until this Court determines the appropriate amount of restitution and disgorgement.

XIV. APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION

14.1 The State of Texas alleges that Defendants MEDIA DIME MARKETING, LLC., WENDY DIAZ, individually and HILDA A. MEJIA, individually, are in violation of the laws of the State of Texas and that Defendants’ history of continued advertising, offering for sale, selling and delivering products which are fictitious, ineffective, false, misleading and deceptive, threatens immediate and irreparable injury to consumers and the general public. By reason of the institution and continued operation of the acts and practices described hereinabove, Defendants have violated and will continue to violate the laws as alleged above. Defendants, unless restrained by this Honorable Court, will continue violating the laws of the State of Texas and injury, loss and damage

will result to the State of Texas and to the general public.

14.2 In addition, the records of Defendants relating to manufacturing or otherwise obtaining and offering for sale, marketing, advertising, and selling fictitious products should be conserved and preserved during the pendency of these legal proceedings. Unless the injunctive relief is granted, the manufacturing, marketing, advertising, offering for sale, selling and distributing of said “Cheap Gas” fictitious products will continue by Defendants and said records of Defendants may be dissipated, spoiled, lost, altered, removed or materially injured. The interests of the State of Texas require a temporary restraining order, temporary and permanent injunction in light of the harmful activities of Defendants MEDIA DIME MARKETING, LLC., WENDY DIAZ, individually and HILDA A. MEJIA, individually.⁵

14.3. The State alleges that by reason of the foregoing, Defendants MEDIA DIME MARKETING, LLC., WENDY DIAZ, individually and HILDA A. MEJIA, individually, should not continue to manufacture, purchase, market, advertise, sell or distribute any fictitious “Cheap Gas” products in Texas which are inherently incapable of functioning as represented. Pursuant to Section 431.047 of the Texas Health & Safety Code and Section 17.47(a) of the DTPA, the interests of the State of Texas require a temporary restraining order, after notice and hearing a temporary injunction and upon final hearing a permanent injunction to prohibit Defendants from manufacturing, purchasing, marketing, advertising, selling or distributing any fictitious products

⁵ When the State seeks injunctive relief pursuant to an authorized statute [e.g. DTPA §17.47(a)], the Texas Supreme Court has held that the State does not have to prove immediate and irreparable injury. Nor does the Court have to balance equities when the State litigates in the public’s interest. When a statute is being violated, it is within the province and duty of the trial court to restrain it. *State v. Texas Pet Foods*, 591 SW2d 800 (Tex. 1979). The statute’s express language supercedes the common law injunctive relief elements such as imminent harm or irreparable injury and lack of an adequate remedy at law ... [The State] need only demonstrate to the court its reason to believe that (1) any person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by the DTPA, and (2) that the proceedings would be in the public interest. *West v. State*, 212 SW3d 513 (Tex.App.- Austin, 2006, no pet.).

which are inherently incapable of functioning as represented.

14.4. Plaintiff, The State of Texas is exempt from the payment of filing fees imposed by Section 51.701, Government Code and the requirement of bond for costs. CIV. PRAC & REM. CODE § 6.001 and § 8.01.

XV. REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING

15.1 The STATE OF TEXAS requests leave of this Court to conduct telephone, oral, written, and other depositions of witnesses prior to any scheduled Temporary Injunction Hearing and prior to Defendants' answer date. There are a number of witnesses who may need to be deposed prior to any scheduled Temporary Injunction Hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable shortened notice to Defendant and her attorneys if known.

XVI. INJURY TO CONSUMERS

16.1 By means of the foregoing unlawful acts and practices, Defendants have acquired money or other property from identifiable persons to whom such money or property should be restored, or who in the alternative are entitled to an award of damages.

XVII. DISCOVERY REQUEST FOR DISCLOSURE

17.1 Pursuant to TEXAS RULE OF CIVIL PROCEDURE 194, Defendant(s) are requested to disclose to Plaintiff, the State of Texas, within fifty (50) days of service of this request, the information described in TEX. R. OF CIV. P. 194.2(a)-(l). You must respond to the Consumer Protection Division, Office of the Attorney General, 1412 Main Street, Suite 810, Dallas, Texas 75202.

XVIII. PRAYER

18.1 WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants MEDIA DIME MARKETING, LLC., WENDY DIAZ, individually and HILDA A. MEJIA, individually, be cited according to law to appear and answer herein; that before notice and hearing an *Ex Parte* TEMPORARY RESTRAINING ORDER be issued; that after due notice and hearing a TEMPORARY INJUNCTION be issued; that this matter be set for trial; and upon final hearing a PERMANENT INJUNCTION be issued restraining and enjoining Defendants, their successors, assigns, officers, agents, servants, employees, and representatives from making representations, doing the acts, and engaging in the unlawful practices set out in the preceding paragraphs as well as from making the following representations and doing the following acts and engaging in the following practices and conduct of trade or commerce within the State of Texas as follows:

- A. Manufacturing, marketing, advertising, promoting, selling, distributing or delivering the “Cheap Gas” device or system to Texas consumers;
- B. Manufacturing, marketing, advertising, promoting, selling, distributing or delivering any device or system that purports to treat gasoline used in internal combustion engine powered vehicles with “magnetic resonance” , and thereby increase its fuel efficiency and thereby lower the over all cost of fuel to consumers;
- C. Making any false, misleading and/ or deceptive representations to consumers in their marketing, advertising, promoting, or selling of any product through TV Azteca, Telemundo, Univision, Fox Sports en Espanol, or any other television medium;
- D. Failing to disclose information concerning any goods or services, which they market, advertise, promote or sell, which is intended to induce the consumer into a transaction, which if known, the consumer would not enter into the transaction; and,

- E. Transacting business in the State of Texas without registering with the Secretary of State of Texas.
- F. Falsely representing that Defendants or its employees or agents will void transactions and reimburse consumers for those charges for purchase of the “Cheap Gas” product, when such remedial action is not intended or performed;
- G. Falsely representing that Defendants or its employees or agents cannot reimburse consumers credit card, debit card, or check card accounts or issue reimbursement checks for charges or payments made by consumers for purchase of the “Cheap Gas” product, when such remedial action is not intended or performed;
- H. Falsely representing to consumers that they will be contacted in efforts to resolve the consumers’ complaints about “Cheap Gas” product purchases, when such remedial action is not intended or performed;
- I. Failing to reimburse any consumer, in full, for their cost of purchase of the “Cheap Gas” product;
- J. Failing to provide to any of Defendants’ agents, servants, employees or representatives, written notice of the existence and terms of any injunction entered in this case, and of their duty to comply with its terms.

18.2 Plaintiff further prays that, upon final hearing, that this Court grant judgment in favor of the State against Defendants, jointly and severally, and order Defendants MEDIA DIME MARKETING, LLC., WENDY DIAZ, individually and HILDA A. MEJIA, individually, to pay civil penalties in favor of the State of Texas in an amount of up to \$20,000.00 per violation of the DTPA.

18.3 Plaintiff further prays, that upon final hearing, this Court grant judgment in favor of the State against Defendants, jointly and severally, and order Defendants MEDIA DIME MARKETING, LLC., WENDY DIAZ, individually and HILDA A. MEJIA, individually, to disgorge and make full restitution for the full purchase price to all such Texas consumers who purchased the “Cheap Gas” device or product from April 2006 to the present.

18.4 Plaintiff further prays that upon final hearing this Court order Defendants’ to restore all money or other property taken from identifiable persons by means of Defendants’ unlawful acts or practices, or, in the alternative, award judgment for damages to compensate identifiable persons for such losses as provided in §17.47(d) of the DTPA

18.5 Plaintiff further prays that upon final hearing that this Court grant judgment in favor of the State against Defendants, jointly and severally, and order Defendants to pay to the State of Texas attorney fees and costs of court pursuant to TEX. GOVT. CODE § 402.006(c).

18.6 Plaintiff further prays that this Court grant leave to conduct telephone, oral, written, and other depositions of witnesses prior to any scheduled Temporary Injunction Hearing and prior to Defendant’s answer date, with reasonable shortened notice to Defendants and their attorneys if known.

18.7 Plaintiff further prays that upon final hearing that this Court deny any and all relief to Defendants and grant all other relief to which the State of Texas may be justly entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBBER
First Assistant Attorney General

JEFF L. ROSE
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THE STATE OF TEXAS

ATTACHED EXHIBITS:

- Exhibit A Photograph of the “Cheap Gas” device or system.
- Exhibit B Photograph (still video) of a scene of the false advertising infomercial.

STATE OF TEXAS

COUNTY OF DALLAS

VERIFICATION

ON THIS DAY personally appeared KELLE SLAUGHTER, a person known to me who upon her oath deposed and said:

“My name is Kelle Slaughter. I am employed by the Office of the Attorney General of Texas as an Investigator. I am over the age of 18 years and competent to make this verified statement upon my personal knowledge.

In the course of my employment duties, I have conducted an investigation of the “Cheap Gas” product marketed by the named Defendants, MEDIA DIME MARKETING, LLC., WENDY DIAZ, individually and HILDA A. MEJIA, individually. I have knowledge of the forgoing Plaintiff’s Original Petition, and assert that the facts stated therein are true and correct to my own personal knowledge.”

Affiant

SWORN to and SUBSCRIBED before me the undersigned authority by KELLE SLAUGHTER on this the ____ day of _____, 2009

Notary Public in and for the
State of Texas