

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 04-61467-CIV-ALTONAGA
	)	
FEMINA, INC.,	)	
	)	
HUSNAIN MIRZA, and	)	
	)	
INES CINTHYA KARINA ARROYO,	)	
	)	
Defendants.	)	
	)	

**STIPULATED FINAL JUDGMENT AND ORDER  
FOR PERMANENT INJUNCTION AND OTHER RELIEF**

This matter comes before the Court on stipulation of Plaintiff, Federal Trade Commission (“FTC” or “Commission”), and Defendants Femina, Inc., Husnain Mirza, and Ines Arroyo. On November 8, 2004, the Commission filed a Complaint for a permanent injunction and other equitable relief in this matter pursuant to Section 13 (b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and subsequently amended the complaint on February 16, 2005. The FTC complaint alleges that Defendants Femina, Inc., Husnain Mirza, and Ines Arroyo engaged in deceptive acts or practices in connection with the marketing and sale of weight-loss products in violation of Section 5 of the FTC Act, 15 U.S.C. § 45. The parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law and without defendants admitting liability for any of the matters alleged in the Complaint;

THEREFORE, upon stipulation of Plaintiff and Defendants, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

### **FINDINGS**

A. This Court has jurisdiction over the subject matter of this case and jurisdiction over all parties.

B. Venue in the Southern District of Florida is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

C. The activities of Defendants are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.

D. The Complaint states a claim upon which relief can be granted against the Defendants under Sections 5(a), 12, and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 52, and 53(b).

E. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendants also waive any claims that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order.

F. Each party shall bear its own costs and attorneys' fees.

G. Entry of this Order is in the public interest.

### **DEFINITIONS**

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

A. Unless otherwise specified, "Defendants" shall mean (1) Femina, Inc.; (2) Husnain Mirza, individually and in his capacity as an officer of Femina; (3) Ines Arroyo,

individually and in her capacity as an officer of Femina; and (4) each of the above.

B. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

C. "Competent and reliable scientific evidence" shall mean 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.

D. "Covered product or service" shall mean any weight loss product, dietary supplement, food, drug, or device.

E. "Endorsement" means as defined in 16 C.F.R. § 255.0(b).

F. "Food," "drug," and "device" shall mean as "food," "drug," and "device," are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.

G. "FTC" or "Commission" shall mean the Federal Trade Commission.

H. A requirement that Defendants "notify the Commission" shall mean that the Defendants shall send the necessary information via first class mail, costs prepaid, to the Regional Director, Southeast Region, Federal Trade Commission, 225 Peachtree Street, Suite 1500, Atlanta, Georgia 30303. Attn: FTC v. Femina (S.D.Fla.).

I. "Weight loss product" shall mean any product, program, or service designed, used, or purported to produce weight loss, reduction or elimination of fat, slimming, or caloric deficit; or to prevent weight gain, in a user of the product, program, or service.

J. The term "including" in this Order shall mean "including, without limitation."

K. The terms "and" and "or" in this Order shall be construed conjunctively or

disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

**I.**

**PROHIBITED REPRESENTATIONS**

**IT IS THEREFORE ORDERED** that Defendants, and their officers, agents, servants, employees, and representatives, and all persons and entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other entity, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any weight loss product, in or affecting commerce, are hereby permanently enjoined from representing, in any manner, expressly or by implication, including through the use of endorsements or trade name, that such product:

- A. Causes rapid and substantial weight loss without the need to increase exercise or reduce caloric intake; or
- B. Causes rapid and substantial weight loss in all users.

**II.**

**PROHIBITED UNLESS TRUE AND SUBSTANTIATED REPRESENTATIONS**

**IT IS FURTHER ORDERED** that Defendants, and their officers, agents, servants, employees, and representatives, and all persons and entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other entity, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of

any covered product or service, in or affecting commerce, are hereby permanently enjoined from making any representation, expressly or by implication, including through the use of endorsements or trade name:

- A. That any such covered product or service:
  - 1. Causes weight loss;
  - 2. Causes rapid and substantial weight loss;
  - 3. Reduces or eliminates body fat;
  - 4. Reduces or eliminates cellulite;
  - 5. Controls metabolism; or
- B. About the health benefits, performance, efficacy, safety or side effects of such product or service;

unless, at the time the representation is made, the representation is true, and Defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation.

### **III.**

#### **FOOD AND DRUG ADMINISTRATION**

**IT IS FURTHER ORDERED** that:

- A. Nothing in this Order shall prohibit Defendants from making any representation for any drug that is permitted in the labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration (“FDA”), or under any new drug application approved by FDA; and
- B. Nothing in this Order shall prohibit Defendants from making any representation for any product that is specifically permitted in labeling for such product by

regulations promulgated by the FDA pursuant to the Nutrition Labeling and Education Act of 1990.

**IV.**

**MONETARY JUDGMENT**

**IT IS FURTHER ORDERED** that judgment in the amount of forty-three thousand dollars (\$43,000) is hereby entered in favor of the Commission against Defendants, for equitable monetary relief; *provided*, however, that the judgment shall be suspended subject to the conditions set forth in Paragraph V of this Order.

**V.**

**TERMINATION OF SUSPENSION**

**IT IS FURTHER ORDERED** that the Commission's agreement to, and the Court's approval of, this Order is expressly premised upon the truthfulness, accuracy, and completeness of Defendants' financial conditions, as represented in their financial statements dated November 8 and 11, 2004, and February 25, 2005, including attachments, in any other documents submitted by Defendants, and in the February 28, 2005, financial depositions of Defendants, upon which the Commission relied in negotiating and agreeing to the terms of this Order. If, upon motion by the Commission to the Court, the Court finds the Defendants, in the above-referenced financial statements and information, failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission, the suspension of the monetary judgment will be terminated and the entire judgment amount of forty-three thousand dollars (\$43,000), representing the approximate amount of consumer injury, will become immediately due and payable, less any payments already made. For purposes of this

Paragraph, and any subsequent proceedings to enforce payment, including but not limited to a non-dischargeability complaint filed in bankruptcy proceedings, Defendants waive any right to contest any of the allegations set forth in the Complaint filed in this matter or the forty-three thousand dollar (\$43,000) judgment referenced above.

## **VI.**

### **DISTRIBUTION OF ORDER**

**IT IS FURTHER ORDERED** that:

- A. For a period of five (5) years from the date of entry of this Order, Defendant Femina, Inc., and its successors and assigns, must deliver a copy of this Order to all principals, officers, directors, managers, employees, agents, and representatives, including distributors, having responsibilities with respect to the subject matter of Paragraphs I and II of this Order, and must secure from each such person a signed and dated statement acknowledging receipt of the Order. Defendant Femina, and its successors and assigns, must deliver this Order to current personnel within thirty (30) days after the date of service of this Order, and
- to new personnel within thirty (30) days after the person assumes such position or responsibilities.
- B. For a period of five (5) years from the date of entry of this Order, Defendants Husnain Mirza and Ines Arroyo must deliver a copy of this Order to the principals, officers, directors, managers, and employees under their control for any

business that (a) hires Defendants Husnain Mirza and Ines Arroyo as an employee, consultant or independent contractor and (b) has responsibilities with respect to the subject matter of Paragraphs I and II of this Order. Defendants Husnain Mirza and Ines Arroyo must secure from each such person a signed and dated statement acknowledging receipt of the Order within thirty (30) days after the date of service of the Order or the commencement of the employment relationship. *Provided, however,* that a Defendant is not required to distribute a copy of the Order under this Paragraph if that Defendant is employed by a publicly-traded company and that Defendant is not involved in any way with the advertising, marketing, or promotion of any covered product or service.

## **VII.**

### **COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating compliance with any provision of this Order:

- A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendants Femina, Inc., Husnain Mirza, and Ines Arroyo each shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry



during normal business hours to any business location in such Defendants' possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
2. Posing as consumers and suppliers to Femina, Inc., Husnain Mirza, and Ines Arroyo, or any other entity managed or controlled in whole or in part by Femina, Inc., Husnain Mirza, and Ines Arroyo, without the necessity of identification or prior notice; and

C. Femina, Inc., Husnain Mirza, and Ines Arroyo shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

*Provided* that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

## **VIII.**

### **COMPLIANCE REPORTING**

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Order:
  - 1. Defendants Husnain Mirza and Ines Arroyo shall notify the Commission of the following:
    - a. Any changes in his or her residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
    - b. Any changes in employment status (including self-employment), and any change in the ownership in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that the reporting Defendant is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of the reporting Defendant's duties and responsibilities in connection with the business or employment;
    - c. Any name changes or use of any aliases or fictitious names; and
  - 2. Defendants Femina, Inc., Husnain Mirza, and Ines Arroyo shall notify the Commission of any changes in corporate structure of Femina, Inc., or any business entity that Husnain Mirza or Ines Arroyo directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to a

dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which the Defendant(s) learns less than thirty (30) days prior to the date such action is to take place, Defendant(s) must notify the

Commission

as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order, Defendants Femina, Inc., Husnain Mirza, and Ines Arroyo each shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report must include, but not be limited to:

1. For each Individual Defendant:
  - a. The then-current residence address, mailing addresses, and telephone numbers of the Individual Defendant;
  - b. The then-current employment and business addresses and telephone numbers of each such employer or business, and the title and responsibilities of the Individual Defendant, for each such employer or business; and

c. Any other changes required to be reported under subparagraph A of this Section.

2. For all Defendants:

a. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Paragraph VI; and

b. Any other changes required to be reported under subparagraph A of this Section.

C. For the purposes of this Order, Defendants must, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to: Regional Director, Southeast Region, Federal Trade Commission, 225 Peachtree Street, Suite 1500, Atlanta, Georgia 30303.

Re: FTC v. Femina, Inc. Case No. 04-61467-Civ-Altonaga (S.D.Fla.).

D. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Defendants.

## **IX.**

### **RECORDKEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry of this Order, Defendants Femina, Inc., Husnain Mirza, and Ines Arroyo, and any business where (1) a Defendant is the majority owner, officer, or director of the business, or directly or indirectly manages or controls the business and where (2) the business engages, or assists others engaged in the manufacturing, advertising, promotion, offering for sale, distribution or sale of any

covered product or service, and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert of participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, telephone numbers, dollar amounts paid, quantity of goods or services purchased, and description of goods or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly, indirectly, or through any third party) and any responses to those complaints or requests;
- E. Copies of all advertisements, promotional materials, sales scripts, training materials, or other materials utilized in the advertising, labeling, promotion, offering for sale, distribution or sale of any covered product or service;
- F. All materials that were relied upon in making any representations contained in the materials identified in Subparagraph E;

- G. All other documents or records evidencing or referring to the accuracy of any claim therein or to the safety or efficacy of any covered product or service, including, but not limited to, all tests, reports, studies, demonstrations, or other evidence that confirm, contradict, qualify, or call into question the safety or efficacy of any such product or service;
- H. Records accurately reflecting the name, address, and telephone number of each manufacturer or laboratory engaged in the development or creation of any testing obtained for the purpose of advertising, labeling, promoting, offering for sale, distributing, or selling any covered product or service; and
- I. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to copies of acknowledgments or receipt of this Order, required by Paragraph VI, and all reports submitted to the FTC pursuant to Paragraphs VII and VIII.

**X.**

**ACKNOWLEDGMENT OF RECEIPT OF ORDER**

**IT IS FURTHER ORDERED** that each Defendant, within five (5) business days of receipt of this Order as entered by the Court, submit to the Commission a truthful sworn statement, acknowledging receipt of this Order.

**XI.**

**RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

There being no just cause for delay, this Stipulated Final Judgment and Order for Permanent Injunction and Other Relief is hereby entered.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
CECILIA M. ALTONAGA  
United States District Court Judge

The parties hereby stipulate and agree to the terms and conditions set forth and consent to the entry of this Stipulated Final Judgement and Order for Permanent Injunction.

**FOR THE PLAINTIFF, FEDERAL TRADE COMMISSION:**

By: \_\_\_\_\_  
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Attorney for Plaintiff  
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(404) 656-1379 (facsimile)  
[hkirtz@ftc.gov](mailto:hkirtz@ftc.gov)

\_\_\_\_\_  
Date

**FOR THE DEFENDANTS:**

\_\_\_\_\_  
HUSNAIN MIRZA

\_\_\_\_\_  
Date

\_\_\_\_\_  
INES CINTHYA KARINA ARROYO

\_\_\_\_\_  
Date

FEMINA, INC.

By: \_\_\_\_\_  
HUSNAIN MIRZA, President  
332 NW 107<sup>th</sup> Avenue  
Pembroke Pines, Florida 33026

\_\_\_\_\_  
Date

\_\_\_\_\_  
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