

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

THE FOUNTAIN OF YOUTH GROUP,
LLC,
a limited liability company, and

EDITA KAYE,
individually and as founding member and
manager of The Fountain of Youth Group,
LLC.

Defendants.

Civ. No. 3:04-CV-47-J-99HTS

**STIPULATED FINAL ORDER
FOR PERMANENT INJUNCTION**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), commenced this action by filing its Complaint for a permanent injunction and other relief against The Fountain of Youth Group, LLC, a limited liability company, and Edita Kaye, individually and as founding member and manager of The Fountain of Youth Group, LLC, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), alleging violations of Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45 and 52.

The Commission, by and through its counsel, and defendants, by and through their counsel, have agreed to the entry of this Stipulated Final Order For Permanent Injunction (“Order”) and have requested that the Court enter the same to resolve all matters of dispute

between them in this action without trial and adjudication of any issue of law or fact herein.

NOW, THEREFORE, the Commission and defendants having requested this Court to enter this Order, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter of this case and of the parties consenting hereto. Venue in the Middle District of Florida is proper.

2. The Complaint states a claim upon which relief can be granted, and the Commission has authority to seek the relief it has requested under Sections 5, 12, and 13(b) of the FTC Act, 15 U.S.C. §§ 45, 52, and 53(b).

3. The acts and practices of the defendants were or are in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

4. Defendants waive all rights to seek judicial review, or otherwise challenge or contest the validity, of this Order. Defendants also waive any claim 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.

5. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law.

6. Each party shall bear its own costs and attorneys’ fees.

7. Defendants, without admitting or denying the allegations of wrongdoing set forth in the Commission’s Complaint, stipulate and agree to entry of this Order under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). This Order does not constitute and shall not be

interpreted to constitute either an admission by defendants, or a finding by the Court, of any liability or wrongdoing by any of the defendants or any violation of any law, rule, or regulation.

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

DEFINITIONS

1. “Defendants” shall mean The Fountain of Youth Group, LLC and Edita Kaye.
2. “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.
3. “Food,” “drug,” and “device” shall have the same meaning as “food,” “drug,” and “device” as defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.
4. “Covered product or service” shall mean: (a) any dietary supplement, food, drug, or device; or (b) any program that involves the offering for sale or sale of any product or service in which defendants have, directly or indirectly, a financial interest, that purports to promote weight loss, the reduction or elimination of fat, slimming, or caloric deficit; or that purports to prevent weight gain, in a user of such product or service.

5. “Person” shall mean a natural person, organization, or other legal entity, including a partnership, corporation, limited liability company, proprietorship, association, cooperative, or any other group acting together as an entity.

CONDUCT PROHIBITIONS

I.

IT IS HEREBY ORDERED that defendants, and their agents, servants, employees, attorneys, corporations, subsidiaries, successors, assigns, and all other persons or entities in active concert or participation with any of the defendants who receive actual notice of this Order by personal service, facsimile, or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Skinny Pill AM, Skinny Sleep PM, or any substantially similar product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of the names “Skinny Pill” or “Skinny Sleep,” that:

- A. use of such product causes weight loss;
- B. use of such product causes increased fat burning;
- C. use of such product normalizes insulin and blood sugar levels; or
- D. use of such product causes dietary fat to be passed out of the body before it can be digested;

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

II.

IT IS FURTHER ORDERED that defendants, and their agents, servants, employees, attorneys, corporations, subsidiaries, successors, assigns, and all other persons or entities in active concert or participation with any of the defendants who receive actual notice of this Order by personal service, facsimile, or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Skinny Pill AM, Skinny Sleep PM, or any substantially similar product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that use of such product causes dietary fat to be passed out of the body before it can be digested, thereby causing substantial weight loss.

III.

IT IS FURTHER ORDERED that defendants, and their agents, servants, employees, attorneys, corporations, subsidiaries, successors, assigns, and all other persons or entities in active concert or participation with any of the defendants who receive actual notice of this Order by personal service, facsimile, or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Skinny Carbs or any substantially similar product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of the name “Skinny Carbs,” that:

- A. use of such product blocks the absorption of carbohydrates, preventing them from being converted into fat and thereby causing weight loss; or

B. use of such product normalizes insulin and blood sugar levels;
unless, at the time the representation is made, defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation.

IV.

IT IS FURTHER ORDERED that defendants, and their agents, servants, employees, attorneys, corporations, subsidiaries, successors, assigns, and all other persons or entities in active concert or participation with any of the defendants who receive actual notice of this Order by personal service, facsimile, or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Skinny Pill for Kids or any substantially similar product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of the name “Skinny Pill,” that:

- A. use of such product causes weight loss in children 6 to 12 years old;
- B. use of such product causes children 6 to 12 years old to burn increased fat;
- C. use of such product blocks new fat deposits in children 6 to 12 years old;
- D. use of such product normalizes insulin and blood sugar levels in children 6 to 12 years old;
- E. use of such product reduces the risk of obesity related disease, including heart disease, high blood pressure, and diabetes, in children 6 to 12 years old;
- F. use of such product helps control diabetes and digestive disorders in children 6 to 12 years old; or

G. use of such product is safe for children 6 to 12 years old;
unless, at the time the representation is made, defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation.

V.

IT IS FURTHER ORDERED that defendants, and their agents, servants, employees, attorneys, corporations, subsidiaries, successors, assigns, and all other persons or entities in active concert or participation with any of them, directly or through any corporation, subsidiary, division, or other device, and all other persons or entities in active concert or participation with any of them who receive notice of this Order by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of trade names or endorsements, about the absolute or comparative weight loss or other health benefits, performance, efficacy, safety, or side effects, of any covered product or service, including, but not limited to the following:

- A. use of such product causes weight loss;
- B. use of such product increases fat burning;
- C. use of such product causes dietary fat or starch to be passed out of the body before it can be digested;
- D. use of such product enables users to lose weight at any specified rate or to lose any specified amount of weight in total;

- E. use of such product enables users to lose weight or fat without dieting or exercising;
- F. use of such product enables users to maintain permanent or persistent weight loss;
- G. use of such product normalizes insulin or blood sugar levels;
- H. use of such product reduces the risk of obesity related disease, including heart disease, high blood pressure, and diabetes, or otherwise improves health;
- I. use of such product is safe or has no side effects; or
- J. scientific research establishes any of the claims in Subparagraphs A through I hereof;

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

VI.

IT IS FURTHER ORDERED that defendants, and their agents, servants, employees, attorneys, corporations, subsidiaries, successors, assigns, and all other persons or entities in active concert or participation with any of them, directly or through any corporation, subsidiary, division, or other device, and all other persons or entities in active concert or participation with any of them who receive notice of this Order by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service in or affecting

commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

FOOD AND DRUG REGULATIONS

VII.

Nothing in this Order shall prohibit defendants from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any drug application approved by the Food and Drug Administration. Nor shall it prohibit defendants from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

SUSPENDED JUDGMENT

VIII.

IT IS FURTHER ORDERED that judgment is entered against defendants, jointly and severally, in the amount of six million dollars (\$6,000,000), *provided, however*, that this judgment shall be suspended subject to the conditions set forth in Section IX of this Order.

RIGHT TO REOPEN

IX.

IT IS FURTHER ORDERED that the Commission's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of defendants' financial conditions as represented in the Financial Statements and information provided to

the Commission, including the financial records provided to the Commission on June 9, 2003, July 22, 2003, July 23, 2003, and August 26, 2003 and defendants' financial statements executed on May 29, 2003 and revised and re-executed on August 22, 2003, which contain material information and documents upon which the Commission relied in negotiating and agreeing to the terms of this Order.

A. If, upon motion by the Commission, this Court finds that defendants' financial statements failed to disclose any material asset, or materially misrepresented the value of any asset, or made any other material misrepresentation in or omission from any financial statement, the Court shall enter judgment against defendants, jointly and severally, and in favor of the Commission, in the amount of six million dollars (\$6,000,000), which will become immediately due and payable less any amounts previously paid. For purposes of this Section and any subsequent proceedings to enforce payment, including but not limited to a non-dischargeability complaint filed in a bankruptcy case, defendants waive any right to contest any of the allegations in the Commission's complaint.

B. All funds paid pursuant to this Section shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief

(including consumer information remedies) as it determines to be reasonably related to the defendants' practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Section. No portion of this Judgment for equitable monetary relief shall be deemed a fine, penalty or punitive assessment, or forfeiture. The Commission shall have full and sole discretion to:

1. Determine the criteria for participation by individual claimants in any consumer redress program implemented pursuant to this Order;
2. Determine the manner and timing of any notices to be given to consumers regarding the existence and terms of such programs; and
3. Delegate any and all tasks connected with such redress program to any individuals, partnerships, or corporations; and pay reasonable fees, salaries, and expenses incurred thereby from the payments made pursuant to this Order;

C. Defendants expressly waive their rights to litigate the issue of disgorgement.

Defendants acknowledge and agree that all money paid pursuant to this Order is irrevocably paid to the Commission for purposes of settlement between plaintiff and defendants;

D. Defendants shall also furnish to the Commission, in accordance with

31 U.S.C. § 7701, their taxpayer identification numbers (social security number, social insurance number, or employer identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of defendants' relationship with the government.

COMPLIANCE MONITORING

X.

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, any defendant receiving such notice 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 defendant's 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: defendants or employees of The

Fountain of Youth Group, LLC or Edita Kaye, or any other entity managed or controlled in whole or in part by defendants The Fountain of Youth Group, LLC or Edita Kaye, without the necessity of identification or prior notice;

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)).

C. Defendants The Fountain of Youth Group, LLC and Edita Kaye 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.

COMPLIANCE REPORTING BY DEFENDANT

XI.

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. Defendant Edita Kaye shall notify the Commission of the following:
 - a. Any changes in her own residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;

b. Any changes in her employment status (including self-employment) within ten (10) days of the date of such change. Such notice shall include the name and address of each business that she is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of her duties and responsibilities in connection with the business;

c. Any changes in her name or use of any aliases or fictitious names; and

2. Defendants The Fountain of Youth Group, LLC and Edita Kaye shall notify the Commission of any changes in corporate structure 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 corporation; 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 defendants learn less than thirty (30) days prior to the date such action is to take place, defendants shall 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 The Fountain of Youth Group, LLC and Edita Kaye 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 shall include, but not be limited to:

1. Any changes required to be reported pursuant to Subparagraph A above;
2. A copy of each acknowledgment of receipt of this Order obtained by defendant pursuant to Section XIII;

C. For the purposes of this Order, defendant shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Regional Director for Northeast Region
Federal Trade Commission
One Bowling Green, Suite 318
New York, NY 10004

Re: FTC v. The Fountain of Youth Group, LLC et al.,
Civil Action No. _____.

D. For purposes of the compliance reporting required by this Section, the Commission is authorized to communicate directly with defendants The Fountain of Youth Group, LLC and Edita Kaye

RECORD KEEPING PROVISIONS

XII.

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, defendants The Fountain of Youth Group, LLC and Edita Kaye, and their

agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or 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 applicable to defendant The Fountain of Youth Group, LLC and any business where: (1) defendant Edita Kaye is the majority owner of the business or directly or indirectly manages or controls the business; and (2) the business is engaged in the manufacturing, labeling, advertising, promotion, offering for sale, or distribution, in or affecting commerce, of any covered product:

- A. all advertisements and promotional materials containing representation(s) relating to a covered product;
- B. all materials that were relied upon in disseminating representation(s) relating to a covered product;
- C. all tests, reports, studies, surveys, demonstrations, and other evidence in their possession, custody, or control that contradict, qualify, or call into question the representation(s) relating to a covered product, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental entities or consumer protection organizations;
- D. accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- E. 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;

F. customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

G. complaint and refund requests (whether received directly, indirectly, or through any third party) and any responses to those complaints or requests; and

H. copies of all sales scripts, training materials, advertisements, and other marketing materials.

DISTRIBUTION OF ORDER BY DEFENDANTS

XIII.

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order,

A. Defendant The Fountain of Youth Group, LLC shall deliver a copy of this Order to all principals, officers, directors, managers, employees, agents, and representatives having responsibilities with respect to the subject matter of this Order, and shall secure from each such person a signed and dated statement acknowledging receipt of

the Order. The Fountain of Youth Group, LLC shall 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. Defendant Edita Kaye shall deliver a copy of this Order to the principals, officers, directors, managers and employees under Edita Kaye's control, of The Fountain of Youth Group, LLC and any business that (1) employs or contracts for personal services from Edita Kaye and (2) has responsibilities with respect to the subject matter of this Order. Edita Kaye shall 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.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

XIV.

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

RETENTION OF JURISDICTION

XV.

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

SO STIPULATED:

PLAINTIFF:

BARBARA ANTHONY (BA 02000)
Regional Director, Northeast Region
Federal Trade Commission

MICHAEL BLOOM (MB 7732)
Senior Counsel to the Northeast Region
Federal Trade Commission

DONALD D'AMATO (DD 3008)
Assistant Regional Director, Northeast Region
Federal Trade Commission
One Bowling Green, Suite 318
New York, NY 10004
(212) 607-2829
(212) 607-2822 (facsimile)

DEFENDANTS:

THE FOUNTAIN OF
YOUTH GROUP, LLC
Edita Kaye, as Founding Member and Manager

EDITA KAYE, Individually and
as Founding Member and Manager of
The Fountain of Youth Group, LLC

STUART FRIEDEL
Attorney for Defendants
Davis & Gilbert LLP

ADAM SOLOMON
Attorney for Defendants
Davis & Gilbert LLP
1740 Broadway
New York, NY 10019
(212) 468-4800
(212) 468-4888 (facsimile)

JOHN BALL
(Fl. Bar No.)
Attorney for Defendants

SO ORDERED, this _____ day of _____, 2004, at _____.

UNITED STATES DISTRICT JUDGE