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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

APR 26 1999

JAMES R. LARSEN, CLERK
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11
12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF WASHINGTON
14 AT SPOKANE

15 FEDERAL TRADE COMMISSION,
16 Plaintiff,
17 v.
18 ROSE CREEK HEALTH PRODUCTS,
INC., THE STAFF OF LIFE, INC., and
19 DONALD L. SMYTH,
20 Defendants.

Civ. No. CS-99-0063-EFS

STIPULATED
PRELIMINARY
INJUNCTION

21 IT IS HEREBY STIPULATED AND AGREED BY THE PARTIES WITHOUT
22 ANY ADMISSION OF LIABILITY OR WRONGDOING BY THE
23 DEFENDANTS:

24 Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), filed a
25 complaint on March 11, 1999 for permanent injunction and other relief, pursuant to
26 Section 13(b) of the Federal Trade Commission Act ("FTC Act"); 15 U.S.C.

28 RECEIVED

APR 21 1999

1 § 53(b). This Court has jurisdiction of the subject matter of this case and there is
2 good cause to believe it will have jurisdiction over all parties hereto.

3 I. DEFINITIONS

4 For purposes of this Order, the following definitions shall apply, unless
5 otherwise indicated:

6 1. "Defendants" means Rose Creek Health Products, Staff of Life, and
7 Donald L. Smyth, directors, officers, agents, and the employees of any of them,
8 directly or indirectly under their control or in active concert or participation with
9 them who receive actual notice of this Order by personal service, facsimile or
10 otherwise, whether acting directly or through any corporation, subsidiary, division
11 or other device.

12 2. "Competent and reliable scientific evidence" means tests, analyses,
13 research, studies, or other evidence based on the expertise of professionals in the
14 relevant area, that have been conducted and evaluated in an objective manner by
15 persons qualified to do so, using procedures generally accepted in the professions
16 to yield accurate and reliable results.

17 II. INJUNCTION

18 A. Defendants are restrained and enjoined until further order of this Court
19 from representing, in any manner, expressly or by implication, directly or
20 indirectly, or through any corporation, entity, or person under their control, in
21 connection with the manufacturing, labeling, advertising, promotion, offering for
22 sale, sale, or distribution of "Vitamin O," or any other substantially similar
23 product, that:

24 1. The product prevents or is an effective treatment for life-threatening
25 diseases, including, but not limited to, cancer, cardiovascular disease,
26 and pulmonary disease, joint degeneration, infections, colds and flu,
27 or hypertension; and
28

1 2. Any academic, scientific, or government organization, or any
2 individual with medical or scientific training, including, but not
3 limited to the National Aeronautics and Space Administration
4 ("NASA") or its astronauts, uses, is affiliated with, or otherwise
5 endorses or supports, defendants or any such substance sold by
6 defendants, unless such is the case.

7 B. Making any representation of a nature as to which scientific
8 substantiation is required under law, expressly or by implication, directly or
9 indirectly, or through any corporation entity, or person under their control, in
10 connection with the manufacturing, labeling, advertising, promotion, offering for
11 sale, sale, or distribution of Vitamin O, about any benefit, performance, efficacy, or
12 safety of such product, unless, at the time the representation is made, defendants
13 possess and rely upon competent and reliable scientific evidence that substantiates
14 the representation.

15 C. Defendants are restrained and enjoined until further order of this Court
16 from using consumer testimonials, in connection with the manufacturing, labeling,
17 advertising, promotion, offering for sale, sale, or distribution of "Vitamin O," or
18 any other substantially similar product unless:

- 19 1. The testimonial represents the honest opinions, findings, beliefs, and
20 experiences of the testimonialist;
- 21 2. The testimonial represents the testimonialist's experience with the
22 "Vitamin O" product advertised by the defendants;
- 23 3. At the time it is made, defendants possess and rely upon competent
24 and reliable scientific evidence that substantiates the representation
25 made by the testimonialist of what the product did for him or her; or
26 defendants disclose clearly and prominently, and in close proximity to
27 the testimonial:

- 1 a. The limited applicability of the testimonialists's experience to
2 what consumers may generally expect to achieve, that is, that
3 consumers should not expect to experience similar results; and
4 b. That there is no competent or reliable scientific evidence to
5 suggest that the testimonialists's experience is due to use of the
6 product.

7 4. Defendants provide the plaintiff, within three (3) days of the first
8 dissemination of the testimonial, information sufficient to identify the
9 testimonialist, including, but not limited to, the testimonialist's:

- 10 a. Full name;
11 b. Home address and telephone number; or
12 c. Business address and telephone number, if any; and
13 d. Relationship to the defendants, including, but not limited to, the
14 amount of compensation paid by the defendants to the
15 testimonialist

16 D. Using expert endorsements, in connection with the manufacturing,
17 labeling, advertising, promotion, offering for sale, sale, or distribution of "Vitamin
18 O" or any substantially similar product unless:

- 19 1. The endorsement reflects the honest opinions, findings, beliefs or
20 experience of the endorser;
21 2. The endorser's qualifications give him or her the expertise he or she is
22 represented as possessing with respect to the endorsement;
23 3. The endorser based his endorsement on an actual exercise of his
24 represented expertise, in the form of an examination or testing of the
25 "Vitamin O" product advertised and sold by the defendants; and that
26 examination or testing was at least as extensive as an expert in the
27 field would normally conduct in order to support the conclusions
28 presented in the endorsement; and

- 1 4. Defendants provide the plaintiff, within three (3) days of the first
2 dissemination of the endorsement, information sufficient to identify
3 the endorser, including, but not limited to, the endorser's:
- 4 a. Full name;
 - 5 b. Home address and telephone number; or
 - 6 c. Business address, if any;
 - 7 d. Business telephone number, if any;
 - 8 e. Relationship to the defendants, including, but not limited to, the
9 amount of compensation paid by the defendants to the endorser.

10 E. Defendants are restrained and enjoined until further order of this Court
11 from disseminating or causing to be disseminated *BIO2 International Technical*
12 *White Paper and Bio/Tech News* in any medium, including, but not limited to,
13 the Internet.

14 PROVIDED that nothing in this Order shall prohibit defendants from
15 making any representation for any drug that is permitted in labeling for such drug
16 under any tentative final or final standard promulgated by the Food and Drug
17 Administration ("FDA"), or under any new drug application approved by the FDA;
18 and that nothing in this Order shall prohibit defendants from making any
19 representation for any product that is specifically permitted in labeling for such
20 product by regulations promulgated by the FDA pursuant to the Nutrition Labeling
21 and Education Act of 1990.

22 III. DISCOVERY

23 IT IS FURTHER ORDERED that thirty (30) days after the date of entry of
24 this Order, with the exception of those documents described in Section III.C, which
25 shall be produced within seven (7) days of entry of this Order, Rose Creek, Staff of
26 Life and Donald Smyth shall serve on the Commission:

1 A. The name, address, telephone number, and contact person of each and
2 every advertising agency used by such defendants to create, edit, or place
3 advertisements for "Vitamin O" or any substantially similar product.

4 B. A statement of:

- 5 1. the gross revenues obtained from the sale of "Vitamin O" from
6 inception of sales through the date of the entry of this Order;
- 7 2. the price per unit paid by defendants for "Vitamin O (it being
8 understood that defendant's overhead and other expenses must
9 be taken into account to determine profit);" and
- 10 3. the number of units of "Vitamin O" sold to consumers, and the
11 number of consumers who purchased those units; and

12 C. Federal tax returns or other IRS filings for Rose Creek Health
13 Products, Staff of Life, and Donald L. Smyth, as made to date of production, for
14 the years 1996, 1997 and 1998.

15 D. Balance sheets and Profit and Loss Statements for Rose Creek and
16 Staff of Life for the fiscal year 1998 (*i.e.* as of March 31, 1999 in the case of
17 balance sheets and for the period from April 1, 1998, to March 31, 1999, in the
18 case of profit and loss statements).

19 E. The FTC agrees to keep this information provided in B, C, and D
20 above confidential and will not disclose such information to any third party or any
21 government agency without the express consent of the defendants or by order of
22 this Court.

23 IV. PRESERVATION OF RECORDS

24 IT IS FURTHER ORDERED that Rose Creek, Staff of Life, and Donald
25 Smyth are restrained and enjoined until further Order of this Court from:

26 A. Destroying, erasing, mutilating, concealing, altering, transferring or
27 otherwise disposing of, in any manner, directly or indirectly, any contracts,
28 agreements, customer files, customer lists, correspondence, advertisements,

1 brochures, sales material, training material, sales presentations, accounting data,
2 computer tapes, disks, or other computerized records, books, written or printed
3 records, handwritten notes, telephone logs, audio or video tape recordings, receipt
4 books, invoices, postal receipts, ledgers, personal and business canceled checks
5 and check registers, bank statements, appointment books, copies of federal, state or
6 local business or personal income or property tax returns, and other documents or
7 records of any kind, that relate to the business practices or business or personal
8 finances of any such party or other entity directly or indirectly under the control of
9 any such party; and

10 B. Failing to create and maintain books, records, and accounts which are
11 kept in the normal course of business by such parties.

12 V. SERVICE OF ORDER ON DISTRIBUTORS

13 IT IS FURTHER ORDERED that Rose Creek and Staff of Life will deliver
14 a copy of this Order to each of their distributors who receive commission checks
15 on a regular basis and will provide the FTC with a list of the names and addresses
16 of each such distributor to whom the Order was served and a description of the
17 means of service.

18 VI. ANSWER TO COMPLAINT

19 IT IS FURTHER ORDERED that the defendants will have thirty (30) days
20 from the effective date of this Order in which to file its answer in this case.

21 VII. TRIAL

22 IT IS FURTHER ORDERED that the FTC will not take any action to obtain
23 a date for trial sooner than one (1) year from the entry of this Order.

24 VIII. EFFECT

25 IT IS FURTHER ORDERED that this Stipulated Preliminary Injunction
26 supercedes and replaces the Stipulated Order entered on April 8, 1999. This Order
27 resolves all pending motions for preliminary injunctive relief filed by the FTC.
28

IX. RETENTION OF JURISDICTION

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


STIPULATED
BY THE PARTIES:

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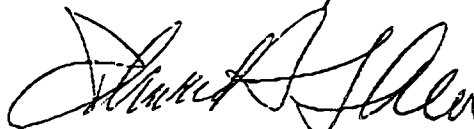
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IT IS SO ORDERED:

Dated this 26 day of April, 1999.



HONORABLE EDWARD F. SHEA
UNITED STATES DISTRICT JUDGE