

over all parties. Venue in the District of Columbia is proper under 28 U.S.C. § 1391 and 15 U.S.C. § 53(b).

2. The Complaint states a claim upon which relief can be granted, and the Commission has the authority to seek the relief it has requested.

3. The activities of Defendants as alleged in the complaint were, or are, in or affecting commerce, as defined in 15 U.S.C. § 44.

4. Defendants admit personal jurisdiction and waive any objection to venue in the District of Columbia for the purposes of entry, construction, modification, or enforcement of this Order.

5. 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.

6. The Commission and Defendants stipulate and agree to this Order, without trial or final adjudication of any issue of fact or law to settle and resolve all matters in dispute arising from the Complaint up to the date of entry of this Order. By entering into this stipulation, Defendants do not admit any of the allegations set forth in the Complaint, other than jurisdictional facts and venue.

7. Each party bears its own costs and attorneys' fees.

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

DEFINITIONS

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

1. "Commerce" means as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
2. "Competent and reliable scientific evidence" means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has 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. "Covered product or service" means any health-related service, product, or program, including, but not limited to, any dietary supplement, food, drug, cosmetic, or device.
4. Unless otherwise specified, "Defendants" mean:
 - a. VisionTel Communications, LLC ("VisionTel"), and its successors and assigns;
 - b. Michael McNaboe ("McNaboe");
 - c. David Amato ("Amato");
 - d. Robert Dall ("Dall");
 - e. MJ Management, Inc. ("MJ Mgmt") and its successors and assigns;
 - f. MAD Marketing Marketing, Inc. ("MAD Marketing") and its successors and assigns; and
 - g. LLAD Management, Inc. ("LLAD Mgmt.") and its successors and assigns.
5. "Endorsement" means as defined in 16 C.F.R. § 255.0(b).
6. "Food," "drug," "device," and "cosmetic," have the meanings defined in Section 15 of the FTC Act, 15 U.S.C. § 55.

7. "Impulse" means the Impulse Female Herbal Blend and any substantially similar product containing androstenediol that is promoted as a treatment for female sexual dysfunction.

8. "Maximus" means the Maximus Male Herbal Blend and any substantially similar product containing yohimbine, yohimbe bark extract, or yohimbe bark, from any source, that is promoted as a male performance stimulant or treatment for male sexual dysfunction.

9. "Order" means this Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief.

10. "Weight loss product" means any product or program designed or used to prevent weight gain or to produce weight loss, reduction or elimination of fat, slimming, or caloric deficit in a user of the product or program, including, but not limited to, "Chito-Trim," "TurboTone," or any other substantially similar product.

11. The terms "and" and "or" in this Order is to be construed both conjunctively and disjunctively.

12. The term "including" in this Order means "including, without limitation."

CONDUCT PROHIBITIONS

I. PROHIBITED FALSE REPRESENTATIONS FOR CHITO-TRIM, TURBOTONE, AND OTHER WEIGHT LOSS PRODUCTS.

IT IS ORDERED that Defendants, their successors and assigns, and their officers, agents, servants, employees, and attorneys, 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, trade name, or other entity, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or

distribution of Chito-Trim, TurboTone, or any other weight loss product containing one or more of the following ingredients: chitosan, chromium, vanadium, glucosol, gymnema sylvestre leaf, garcinia cambogia, phaseolamin, citrus aurantium, Korean ginseng, or caffeine, are hereby permanently enjoined from making any representation, expressly or by implication, including through the use of endorsements, that:

- A. The product causes users to lose a substantial amount of weight without reducing their caloric intake and/or increasing their physical activity; or
- B. The product causes users to lose a substantial amount of weight by blocking the absorption of fat or calories.

II. PROHIBITED UNSUBSTANTIATED REPRESENTATIONS FOR WEIGHT LOSS PRODUCTS

IT IS FURTHER ORDERED that Defendants, their successors and assigns, and their officers, agents, servants, employees, and attorneys, 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, trade name, or other entity, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Chito-Trim, TurboTone, or any other weight loss product, in or affecting commerce, are hereby permanently enjoined from making any representation, expressly or by implication, including through the use of endorsements, that such product or service:

- A. Causes users to lose a substantial amount of weight; or
- B. Is safe for human consumption or has no harmful side effects;

unless, at the time the representation is made, Defendants possess and rely upon competent and

reliable scientific evidence that substantiates the representation.

III. PROHIBITED UNSUBSTANTIATED REPRESENTATIONS FOR SEXUAL DYSFUNCTION PRODUCTS

IT IS FURTHER ORDERED that Defendants, their successors and assigns, and their officers, agents, servants, employees, and attorneys, 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, trade name, or other entity, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Impulse, Maximus, or any other 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, that such product or service:

- A. Is effective in treating female sexual dysfunction, including, but not limited to, representations that any such product or service:
 - 1. Increases libido or sexual arousal;
 - 2. Increases vaginal sensitivity or lubrication; or
 - 3. Maintains correct hormonal balance;
- B. Is effective in treating male sexual dysfunction, including, but not limited to, representations that any such product or service:
 - 1. Increases libido;
 - 2. Increases testosterone levels; or
 - 3. Helps achieve or maintain an erection; or
- C. Is safe for human consumption or has no harmful side effects;

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

IV. PROHIBITED REPRESENTATIONS FOR COVERED PRODUCTS OR SERVICES

IT IS FURTHER ORDERED that Defendants, their successors and assigns, and their officers, agents, servants, employees, and attorneys, 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, trade name, 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, about the benefits, performance, efficacy, safety, or side effects, of such product or service, unless the representation is true, and at the time of making such representation, defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation.

V. PROHIBITED REPRESENTATIONS ABOUT TESTS, STUDIES, AND RESEARCH

IT IS FURTHER ORDERED that Defendants, their successors and assigns, officers, agents, servants, employees, and attorneys, 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, trade name, 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 misrepresentations, expressly or by implication, including through the use of endorsements, about the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

VI. FOOD AND DRUG REGULATIONS

IT IS FURTHER ORDERED that:

- A. Nothing in this Order prohibits 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 new drug application approved by the Food and Drug Administration; and
- B. Nothing in this Order prohibits 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.

VII. MONETARY RELIEF

IT IS FURTHER ORDERED that judgment is hereby entered, jointly and severally, against Defendants, in favor of the FTC, in the sum of Seven Hundred and Fifty Thousand Dollars (\$750,000), under the following terms and conditions:

- A. Within five (5) days of the date of entry of this Order, Defendants must pay the full amount of the judgment to the Commission by wire transfer or certified cashier's check made payable to the Federal Trade Commission, Division of Finance, 600 Pennsylvania Ave., NW, Washington, DC 20580, Reference Information FTC v. VisionTel Communications, LLC, Matter No. 0223009, or by

wire transfer in accord with directions provided by the FTC.

- B. All funds paid pursuant to this Order must 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 such equitable relief. 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 United States Treasury as disgorgement. Defendants have no right to challenge the Commission's choice of remedies under this subparagraph. Defendants have no right to contest the manner of distribution chosen by the Commission.
- C. Defendants relinquish all dominion, control, and title to the funds paid to the Commission, and all legal and equitable title to the funds. Defendants shall make no claim to or demand for the return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of any Defendant, Defendants acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.
- D. In accordance with 31 U.S.C. § 7701, Defendants are hereby required, unless they have done so already, to furnish to the FTC their taxpayer identifying numbers and/or social security numbers, which shall be used for purposes of collecting and

reporting on any delinquent amount arising out of Defendants' relationship with the government.

- E. Proceedings instituted under this Paragraph are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

VIII. RIGHT TO REOPEN

IT IS FURTHER ORDERED that:

- A. The Commission's agreement to this Order, requiring that the Defendants be liable for less than the full amount of consumer injury, is expressly premised on the truthfulness, accuracy, and completeness of their sworn financial statements and supporting documents submitted to the Commission, including:
1. The Financial Statement of VisionTel Communications, LLC dated May 9, 2003, and the balance sheets, financial disclosures, U.S. Income Tax Returns, Maine Tax Returns, and other attachments thereto;
 2. The Financial Statement of Michael McNaboe dated July 10, 2003, and the financial disclosures, U.S. Income Tax Returns, Maine Tax Returns, income statement for MJ Mgmt., and other attachments thereto;
 3. The Financial Statement of David Amato dated July 10, 2003 and the financial disclosures, U.S. Income Tax Returns, Maine Tax Returns, income statement for MAD Marketing, and other attachments thereto; and
 4. The Financial Statement of Robert Dall dated July 10, 2003 and the financial disclosures, U.S. Income Tax Returns, Maine Tax Returns,

income statement for LLAD Mgmt., and other attachments thereto.

Such financial statements and supporting documents contain material information upon which the Commission relied in negotiating and agreeing to this Order.

B. If, upon motion by the Commission, a Court finds that any Defendant has failed to disclose any material asset, or made any other material misrepresentation or omission in the financial statements and related documents described in Paragraph VIII (A) above, the Court shall enter judgment against the Defendants, jointly and severally, in the amount of Thirty-Five Million Dollars (\$35,000,000) in U.S. currency, minus any payments previously made under Paragraph VII, which amount would be rendered immediately due and payable. Interest computed at the rate prescribed in 28 U.S.C. § 1961 shall immediately begin to accrue on the balance. For the purposes of this Paragraph and any subsequent proceedings to enforce payment, the Defendants waive any right to contest any of the allegations in the Complaint filed in this action. *Provided however*, that in all other respects this Stipulated Final Order remains in full force and effect unless otherwise ordered by the Court; and *provided further*, that proceedings instituted under this Paragraph VIII are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

IX. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

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.

X. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order:

- A. Defendants VisionTel, MJ Mgmt., MAD Marketing, and LLAD Mgmt. must 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 must secure from each such person a signed and dated statement acknowledging receipt of the Order. Defendants VisionTel, MJ Mgmt., MAD Marketing, and LLAD Mgmt. 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. Defendants McNaboe, Amato, and Dall must each deliver a copy of this Order to the principals, officers, directors, managers and employees under his control for any business that (a) hires him as an employee, consultant or independent contractor and (b) has responsibilities with respect to the subject matter of this Order. Defendants McNaboe, Amato, and Dall 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.

XI. 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 each must 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, Defendants' employees, or any other entity managed or controlled in whole or in part by Defendants, without the necessity of identification or prior notice;

Provided that nothing in this Order limits 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 must 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.

XII. COMPLIANCE REPORTING BY DEFENDANTS

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this

Order may be monitored:

- A. For a period of three (3) years from the date of entry of this Order,
 1. Defendants McNaboe, Amato, and Dall each must notify the Commission of the following:
 - a. Any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
 - b. Any changes in his employment status (including self-employment) within ten (10) days of the date of such change. Such notice must include the name and address of each business with which he is, in any manner affiliated or employed; a statement of the nature of the business; and a statement of his duties and responsibilities in connection with the business; and
 - c. Any changes in his name or use of any aliases or fictitious names; and
 2. Defendants VisionTel, MJ Mgmt., MAD Marketing, and LLAD Mgmt. each must notify the Commission of any change in its 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 a Defendant learns less than thirty (30) days prior to the date such action is to take place, such Defendant 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 each must 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. Any changes required to be reported pursuant to subparagraph (A) above; and
 2. A copy of each acknowledgment of receipt of this Order obtained by Defendants pursuant to Paragraph X.
- C. For the purposes of this Order, each Defendant must, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to: Associate Director for Enforcement, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. Attn: FTC v. VisionTel Communications, LLC, (D. D.C.).

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

XIII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of this Order, Defendants VisionTel, MJ Mgmt., MAD Marketing, and LLAD Mgmt., and any business where (1) Defendant McNaboe, Amato, or Dall is the majority owner, an 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 advertising, marketing, 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 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:

- 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 items or services purchased, and description of items 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; and
- E. Copies of all non-identical advertisements, promotional materials, sales scripts, training materials, or other marketing materials utilized in the advertising, marketing, 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 evidencing or referring to the accuracy of any claim therein or to the 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 such covered product or service; and
- 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, marketing, promoting, offering for sale, distributing, or selling any covered product or service.

XIV. RETENTION OF JURISDICTION

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

JUDGMENT IS THEREFORE ENTERED in favor of Plaintiff and against Defendants,

pursuant to all the terms and conditions recited above.

SO STIPULATED:

Laura Koss

LAURA KOSS
MELISSA D. HART
Federal Trade Commission
600 Pennsylvania Ave.
Washington, D.C. 20580
(202) 326-2890
(202) 326-2559 (facsimile)

Michael McNaboe

VISIONTEL COMMUNICATIONS, LLC
By: Michael McNaboe, President

Michael McNaboe

MJ MANAGEMENT, INC.
By: Michael McNaboe, President

David Amato

MAD MARKETING, INC.
By: David Amato, President

Robert Dall

LLAD MANAGEMENT, INC.
By: Robert Dall, President

Michael McNaboe

MICHAEL MCNABOE

David Amato

DAVID AMATO

Robert Dall

ROBERT DALL

Debra Valentine

DEBRA VALENTINE, ESQ.
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LAURA KAM, ESQ.
O'Melveny and Myers, LLP
Attorneys for Defendants

SO ORDERED

DATED: _____

UNITED STATES DISTRICT JUDGE