

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: Timothy J. Muris, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

_____)	
In the Matter of)	DOCKET NO. C-4022
)	
VALUEVISION INTERNATIONAL, INC.,)	DECISION & ORDER
a corporation.)	
)	
_____)	

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent ValueVision International, Inc. is a Minnesota corporation with its principal office or place of business at 6740 Shady Oak Road, Eden Prairie, Minnesota, 55344.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

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

1. "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 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.

2. Unless otherwise specified, "respondent" shall mean ValueVision International, Inc., its successors and assigns, and its officers, agents, representatives, and employees.

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

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of WeightPerfect Fat Loss Accelerator Daytime and WeightPerfect Fat Loss Accelerator Nighttime (collectively "WeightPerfect Fat Loss Accelerators"), Fight the Fat, NutriFirm Perfect Body Solution or any other food, drug, dietary supplement or cosmetic, as "food," "drug," and "cosmetic" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such product:

- A. Causes substantial weight loss or fat loss;
- B. Causes substantial loss in body weight or body fat without exercise or restrictions on caloric intake;
- C. Prevents weight gain, regardless of exercise or caloric intake;
- D. Increases metabolic rate or burns calories;

- E. Reduces or eliminates cellulite;
- F. Suppresses the appetite;
- G. Causes substantial loss in body weight or body fat while sleeping;
- H. Prevents the human body from absorbing fat; or
- I. Enables consumers to lose weight even if consumers eat foods that are high in fat, including steaks, pizza, hamburgers, butter, fried chicken or chocolate,

unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of NutriFirm Internal Cleanser, or any other food, drug, or dietary supplement, as “food” and “drug” are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such product:

- A. Alleviates back aches, muscle aches or headaches;
- B. Alleviates colds, influenza or allergies; or
- C. Improves impaired memory,

unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of NutriFirm Vitamin H Serum, or any other food, drug, dietary supplement or cosmetic, as “food,” “drug” and “cosmetic” are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such product prevents or slows the rate of hair-loss, including hair-loss in women after pregnancy, unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

IV.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any food, drug, dietary supplement, cellulite-treatment product or weight-loss program in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such product can or will cure, treat, or prevent any disease, or have any effect on the structure or function of the human body unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

V.

IT IS FURTHER ORDERED that respondent, or its successors and assigns, shall offer Refunds to Eligible Purchasers of WeightPerfect Fat Loss Accelerator Daytime, WeightPerfect Fat Loss Accelerator Nighttime, Fight the Fat, NutriFirm Perfect Body Solution, NutriFirm Internal Cleanser, and/or NutriFirm Vitamin H Serum (hereafter, "covered products"), who purchased such products through ValueVision, in accordance with the provisions of this Part. For purposes of this Part, "Eligible Purchaser" shall mean any person who purchased any of the covered products through respondent between February 1, 2000 and the date respondent executed this order, who is dissatisfied with such product(s), and who has not previously received a Refund. "Refund" shall mean either: (i) a cash refund for the full purchase price of the covered product(s), including applicable shipping and handling charges, *or* (ii) if respondent elects in its sole discretion, a rebate certificate equal in value to, or of a specified value greater than, the full purchase price of such product(s), including applicable shipping and handling charges, and redeemable toward any product or service offered through respondent. Provided, however, each Eligible Purchaser shall have the right to elect a cash refund. With regard to Eligible Purchasers who purchased multiple products as part of a single order, "applicable shipping and handling charges" shall mean the lesser of: (a) the amount of shipping and handling charges actually paid by the Eligible Purchaser attributable to the individual covered product(s) or, to the extent applicable, the multiple-product units containing the covered product(s) in the order; or (b) the amount of shipping and handling charges that would have been charged had the Eligible Purchaser obtained only the individual covered product(s) as a separate order.

- A. Within fifteen (15) business days from the date of service of this order, respondent shall compile a mailing list identifying each Eligible Purchaser by name, last known address, and the covered product(s) and quantity of covered product(s) purchased, to the extent known by respondent through a diligent search of its records. Within twenty (20) business days from the date of service of this order, respondent shall provide Commission staff with a computer print-out copy of the mailing list, as well as provide the list in computer readable form.

- B. Within forty-five (45) days from the date of service of this order, respondent shall send via first-class mail, postage prepaid, a Notice of Refund Offer in the form set forth in Appendix 1 or Appendix 2 to this order, to all Eligible Purchasers listed on the mailing list required by subpart A of this Part.
- C. Respondent shall also send via first-class mail, postage prepaid, a Notice of Refund Offer, in the form set forth in Appendix 1 or 2 to this order, to all Eligible Purchasers who contact respondent or the Commission in any manner within one hundred twenty (120) days from the date of service of this order. Each mailing shall be made within fifteen (15) business days after respondent receives the Eligible Purchaser's name and address.
- D. No information other than that contained in Appendix 1 or 2 shall be included in or added to the Notice of Refund Offer, nor shall any other material be transmitted therewith. The envelope containing the Notice of Refund Offer shall be in the form set forth in Appendix 3 to this order. For each mailing returned by the U.S. Postal Service as undeliverable for which respondents thereafter obtain a corrected address within one hundred twenty (120) days from the date of service of this order, respondent shall, within fifteen (15) business days after receiving the corrected address, send a Notice of Refund Offer to the corrected address.
- E. Respondent shall provide a Refund to each Eligible Purchaser who returns the completed application form appended to the Notice of Refund Offer to respondent or who otherwise requests a Refund in writing to respondent within one hundred and sixty (160) days of the service of this order if respondent's diligent inquiry and examination of its corporate books and records and of any documents submitted by an Eligible Purchaser reasonably substantiates the claim of purchase. Provided, however, that if any request for a Refund from a single Eligible Purchaser is for greater than three units (*e.g.* bottles) of a product covered by this Part, and the request is reasonably substantiated, respondent shall be required to provide a Refund for only three units. Respondent shall send a Refund in the form requested by the Eligible Purchaser (either a refund check or a rebate certificate) by first-class mail, postage prepaid within fifteen (15) business days after respondent receives the completed application from the Eligible Purchaser. The envelope containing the Refund shall be in the form set forth in Appendix 4 to this order.
- F. Respondent shall make reasonable efforts to notify any Eligible Purchaser who applies for a Refund but fails to apply properly of any error in the Eligible Purchaser's Refund application, and shall provide a reasonable opportunity for the Eligible Purchaser to rectify any such error.
- G. Within two hundred forty (240) days from the date of service of this order, respondent shall furnish to Commission staff the following:

1. in computer readable form and in computer print-out form, a list of the names and addresses of all consumers who were sent Refunds pursuant to this Part, and for each name included on the list, the amount, check number or rebate certificate number, and mailing date of every Refund sent;
2. in computer readable form and in computer print-out form, a list of the names and addresses of all consumers who contacted respondents or were referred to respondents by the Commission in accordance with sub-part C of this Part;
3. copies of all correspondence and other communications to, from, or concerning all consumers who requested a Refund but were refused, and the reason(s) for denying the Refund;
4. all Notices of Refund Offer returned to respondent as undeliverable; and
5. all other documents and records evidencing efforts made and actions taken by respondent to identify, locate, contact, and provide Refunds to consumers requesting a Refund.

VI.

Nothing in this order shall prohibit respondent 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.

VII.

Nothing in this order shall prohibit respondent 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.

VIII.

IT IS FURTHER ORDERED that respondent ValueVision International, Inc., and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation including videotape recordings of all such broadcast advertisements;

- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

IX.

IT IS FURTHER ORDERED that respondent ValueVision International, Inc., and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future 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. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

X.

IT IS FURTHER ORDERED that respondent ValueVision International, Inc. and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation 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 proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

XI.

IT IS FURTHER ORDERED that respondent ValueVision International, Inc. and its successors and assigns shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XII.

This order will terminate on August 22, 2021, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Chairman Muris not participating.

Donald S. Clark
Secretary

ISSUED: August 22, 2001
SEAL

APPENDIX 1
NOTICE OF REFUND (CASH OR REBATE)

[To be printed on letterhead of ValueVision International, Inc.]

[Date]

[Name and Address of Recipient]

Dear [Recipient]:

You may be eligible for a refund. The Federal Trade Commission (the "FTC") has been reviewing advertising claims regarding the benefits and effectiveness of the following products offered by various manufacturers through ValueVision:

- Weight Perfect Fat Loss Accelerator (Daytime and Nighttime)
- Fight the Fat
- NutriFirm Vitamin H Serum
- NutriFirm Perfect Body Solution
- NutriFirm Internal Cleanser.

To settle its differences with the FTC, ValueVision has agreed to provide refunds to customers who

- purchased any of these products between February 1, 2000, and [specify date respondent executed this order],
- are dissatisfied with the product(s) **and**
- have not previously received a refund for the product(s).

If you are one of these customers, you are eligible for a refund of the purchase price of the product(s), together with shipping and handling charges. You also have the choice of receiving your refund as a rebate certificate redeemable toward the purchase of any product offered through ValueVision.

To claim your refund, simply complete the attached form and return it to ValueVision by [specify return date 160 days from service of order]. You may send us, along with the enclosed form, copies of any receipts, credit card statements or other documents showing your purchases of any of the products listed above. You do not have to send us any proof of purchase; however, if you do not, the amount of your refund will be based upon information in our computer system.

Our customers are very important to us, and we take your satisfaction with products purchased through ValueVision very seriously.

Please note: If you bought more than three bottles of any one product, the amount of your refund will be limited to three bottles.

Sincerely,

[Specify ValueVision Officer]

Request for Refund
(Please print or type)

Name: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Telephone Number: () _____

I purchased the following products through ValueVision between February 1, 2000 and [execution date]. (circle all that apply)	I was NOT satisfied with the following product(s). (check all that apply)	Number of bottles purchased. (write in number, if you know)
Weight Perfect Fat Loss Accelerator (Daytime and Nighttime)		
Fight the Fat		
NutriFirm Vitamin H Serum		
NutriFirm Perfect Body Solution		
NutriFirm Internal Cleanser		

I would like my refund in the form of (check one):

- G** A check for the full purchase price, plus shipping and handling; **OR**
- G** A rebate certificate for the full purchase price, plus shipping and handling, redeemable toward the purchase of **any** product offered through ValueVision.

To get your refund, you must sign below and return this form to ValueVision at the following address by [specify return date 160 days from service of order]:

ValueVision International, Inc.
[address]

I declare under the laws of the United States of America that the information in my request for refund is true and correct to the best of my knowledge, that I was not satisfied with the product(s) circled above, and that I have not previously received a refund for these product(s).

Signature

Date

APPENDIX 2
NOTICE OF REFUND (CASH ONLY)

[To be printed on letterhead of ValueVision International, Inc.]

[Date]

[Name and Address of Recipient]

Dear [Recipient]:

You may be eligible for a refund. The Federal Trade Commission (the "FTC") has been reviewing advertising claims regarding the benefits and effectiveness of the following products offered by various manufacturers through ValueVision:

- Weight Perfect Fat Loss Accelerator (Daytime and Nighttime)
- Fight the Fat
- NutriFirm Vitamin H Serum
- NutriFirm Perfect Body Solution
- NutriFirm Internal Cleanser.

To settle its differences with the FTC, ValueVision has agreed to provide refunds to customers who

- purchased any of these products between February 1, 2000, and [specify date respondent executed this order],
- are dissatisfied with the product(s) **and**
- have not previously received a refund for the product(s).

If you are one of these customers, you are eligible for a refund of the purchase price of the product(s), together with shipping and handling charges.

To claim your refund, simply complete the attached form and return it to ValueVision by [specify return date 160 days from service of order]. You may send us, along with the enclosed form, copies of any receipts, credit card statements or other documents showing your purchases of any of the products listed above. You do not have to send us any proof of purchase; however, if you do not, the amount of your refund will be based upon information in our computer system.

Our customers are very important to us, and we take your satisfaction with products purchased through ValueVision very seriously.

Please note: If you bought more than three bottles of any one product, the amount of your refund will be limited to three bottles.

Sincerely,

[Specify ValueVision Officer]

Request for Refund
(Please print or type)

Name: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Telephone Number: ()

I purchased the following products through ValueVision between February 1, 2000 and [execution date]. (circle all that apply)	I was NOT satisfied with the following product(s). (check all that apply)	Number of bottles purchased. (write in number, if you know)
Weight Perfect Fat Loss Accelerator (Daytime and Nighttime)		
Fight the Fat		
NutriFirm Vitamin H Serum		
NutriFirm Perfect Body Solution		
NutriFirm Internal Cleanser		

To get your refund, you must sign below and return this form to ValueVision at the following address by [specify return date 160 days from service of order]:

ValueVision International, Inc.
[address]

I declare under the laws of the United States of America that the information in my request for refund is true and correct to the best of my knowledge, that I was not satisfied with the product(s) circled above, and that I have not previously received a refund for those product(s).

Signature

Date

APPENDIX 3
REFUND NOTICE LETTER ENVELOPE

FORWARDING AND RETURN POSTAGE GUARANTEED

ValueVision International, Inc.
[address]

Window Envelope

[The following statement is to appear in a box, on the left hand side of the envelope in red, in extra large, bold type face]

**Attention: Important
Refund Information
Inside**

APPENDIX 4
REFUND CHECK ENVELOPE

FORWARDING AND RETURN POSTAGE GUARANTEED

ValueVision International, Inc.
[address]

Window Envelope

(indicates a check is enclosed)