FEDERAL TRADE COMMISSION

[File No. 032 3239]

Hi-Health Supermart Corporation, et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 16, 2005.

ADDRESSES: Comments should refer to ''Hi-Health Supermart Corporation, *et al.*, File No. 032 3239,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the **SUPPLEMENTARY INFORMATION** section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Heather Hippsley or Matthew Daynard, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3285 or 326–3291.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis To Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 15, 2005), on the World Wide Web, at *http://www.ftc.gov/os/2005/02/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before March 16, 2005. Comments should refer to ''Hi-Health Supermart Corporation, *et al.*, File No. 032 3239,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Hi-Health Supermart Corporation and Simon D. Chalpin (collectively, ''Hi-Health'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves alleged misleading representations about a dietary supplement, Premier Formula for Ocular Nutrition-Optim3 (''Ocular Nutrition''), marketed by Hi-Health for the treatment of age-related macular degeneration (''AMD''), cataracts, and floaters.

The complaint alleges that Hi-Health failed to substantiate claims that its Ocular Nutrition: (1) Restores vision lost from AMD; and (2) eliminates floaters. In addition, the complaint alleges that Hi-Health falsely claimed that: (1) Several nutritional studies in responsible medical journals confirm that the ingredients available in Ocular Nutrition may help individuals with cataracts and/or floaters; and (2) a study financed by Hi-Health shows that 83% of ophthalmologists recommend or prescribe Ocular Nutrition to treat age-related macular degeneration and cataracts. The complaint alleges that there are no nutritional studies in responsible medical journals that confirm that the ingredients available in Ocular Nutrition may help individuals with cataracts and/or floaters. In fact, the complaint further alleges that a seven-year study by the National Eye Institute that included all of the primary ingredients available in Ocular Nutrition except lutein found that the ingredients used did not prevent the development or progression of cataract and did not assess the effects of any ingredients on floaters. According to the complaint, a statement issued by the National Eye Institute with regard to lutein cautions that while a number of studies suggest a link between lutein and decreased risk of eye disease, there is little, if any, definitive scientific

evidence at this time to support claims that lutein can decrease the risk of developing cataract.

The proposed consent order contains provisions designed to prevent Hi-Health from engaging in similar acts and practices in the future. It also requires a monetary payment to the Commission.

Part I of the proposed order bans unsubstantiated claims that the Ocular Nutrition supplement, or any substantially similar product (1) restores vision lost from macular degeneration, or (2) eliminates floaters. ''Substantially similar product'' is defined as any product that is (1) substantially similar in ingredients to Ocular Nutrition and (2) promoted for the treatment of eye diseases and conditions, including age-related macular degeneration, cataract, or floaters.

Part II is a fencing-in provision that would prohibit unsubstantiated benefits, performance, efficacy, or safety claims for any covered product or service. The proposed order defines ''covered product or service'' as any health-related service or program, dietary supplement, food, drug, or device.

Part III prohibits misrepresentations of the existence, contents, validity, results, conclusions, or interpretations of any test or study in connection with the marketing of any covered product or service.

Part IV permits drug, food, or device claims approved by the Food and Drug Administration under any tentative final or final standard or any new drug application, pursuant to the Nutrition Labeling and Education Act of 1990, or under any new medical device application, respectively.

Part V requires Hi-Health to pay $450,000 to the Commission as consumer redress no later than ten days after the order becomes final.

Parts VI and VII require Hi-Health to keep copies of relevant advertisements and materials substantiating claims made in the advertisements, and provide copies of the order to certain of its personnel.

Part VIII requires the corporate respondent to notify the Commission of changes in corporate structure.

Part IX of the proposed order requires the individual respondent to notify the Commission of his employment status.

Part X of the order requires Hi-Health to file compliance reports with the Commission, and Part XI provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

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FEDERAL TRADE COMMISSION

[File No. 041 0099]

Preferred Health Services, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 30, 2005.

ADDRESSES: Comments should refer to ''Preferred Health Services, Inc., File No. 041 0099,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the **SUPPLEMENTARY INFORMATION** section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Steve Vieux, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2306.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 2, 2005), on the World Wide Web, at *http://www.ftc.gov/os/2005/03/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before March 30, 2005. Comments should refer to ''Preferred Health Services, Inc., File No. 041 0099,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.''[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).