

JAMES B. COMEY, JR.  
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Southern District of New York  
One St. Andrews Plaza  
New York, NY 10007

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA

Plaintiff,

v.

GOODTIMES ENTERTAINMENT  
LIMITED, and

GT MERCHANDISING & LICENSING  
CORP.,

Defendants.

CIVIL NO.

CONSENT DECREE AND ORDER  
FOR CIVIL PENALTIES,  
INJUNCTIVE, AND OTHER  
RELIEF

WHEREAS plaintiff, the United States of America, has commenced this action by filing the Complaint herein; defendants have waived service of the Summons and Complaint; the parties have been represented by the attorneys whose names appear hereafter; and the parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law and without defendants admitting liability for any of the matters alleged in the Complaint;

THEREFORE, upon stipulation of plaintiff and defendants, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

## **FINDINGS**

1. This Court has jurisdiction over the subject matter of this case and jurisdiction over all parties.  
Venue in the Southern District of New York is proper.
2. The complaint states a claim upon which relief can be granted against the defendants.
3. The activities of defendants are in or affecting commerce, as defined in 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 the 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. The 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. Entry of this Order is in the public interest.
8. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of this Order are binding upon defendants, and their officers, agents, servants, employees, and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise.
9. This Consent Decree resolves only claims against the named defendants and does not preclude the United States or the Federal Trade Commission from initiating further action or seeking any remedy against any other persons, including without limitation persons who may be subject to

portions of this Consent Decree by virtue of actions taken in concert or participation with defendants and persons in any type of indemnification or contractual relationship with defendants.

## **DEFINITIONS**

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

1. Unless otherwise specified, “defendants” shall mean:
  - A. GoodTimes Entertainment Limited, a corporation, (now known as GoodTimes Entertainment, LLC), its divisions and subsidiaries, its successors and assigns, its officers, agents, representatives, and employees, and GT Brands, LLC, as owner of GoodTimes Entertainment, LLC; and
  - B. GT Merchandising & Licensing Corp., a corporation, (now known as GT Merchandising & Licensing, LLC), its divisions and subsidiaries, its successors and assigns, its officers, agents, representatives, and employees, and GT Brands, LLC, as owner of GT Merchandising & Licensing, LLC.
2. “Copa Hair products” shall mean the “Copa Hair System,” and any other hair relaxing product containing sodium thiosulphate, and all products sold in conjunction with the Copa Hair System.
3. “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.
4. “Clearly and conspicuously” shall mean as follows:

- A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services and software), the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement. *Provided, however,* that in any advertisement presented solely through visual or audio means, the disclosure may be made through the same means in which the ad is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual disclosure shall be of a size and shade, with a degree of contrast to the background against which it appears, and shall appear on the screen for a duration and in a location, sufficiently noticeable for an ordinary consumer to read and comprehend it.
- B. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.
5. “Continuity Program” shall mean any plan, arrangement, or system pursuant to which a consumer receives periodic shipments of products without prior notification by the seller before each shipment or service period, regardless of any trial or approval period allowing the consumer to return or be reimbursed for the product.
6. “Cosmetic,” “food,” or “drug” shall mean as defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.
7. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15

U.S.C. § 44.

8. “FTC” or “Commission” shall mean the Federal Trade Commission.
9. The term “Mail Order Rule” means the Federal Trade Commission’s Trade Regulation Rule Concerning Mail or Telephone Order Merchandise, 16 C.F.R. part 435. A copy of the Mail Order Rule is attached hereto as “Appendix A” and incorporated herein as if fully set forth verbatim.
10. A requirement that any defendant “notify the Commission” or “file with the Commission” shall mean that the defendant shall send the necessary information via first class mail, costs prepaid, to the Associate Director for Advertising Practices, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Attn: *U.S. v. GoodTimes Entertainment Limited, et al.* (S.D.NY).
11. The term “including” in this Order shall mean “without limitation.”
12. The terms “and” and “or” in this Order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

## **MAIL ORDER RULE**

### **I.**

IT IS HEREBY ORDERED that defendants, their successors and assigns, and their officers, agents, servants, employees and attorneys, and all other persons in active concert or participation with any one of more of them who receive actual notice of this Order by personal service or otherwise, in connection with the manufacturing, labeling, promotion, offering for sale, sale, or distribution of any

product, in or affecting commerce, are hereby permanently restrained and enjoined from violating, directly or through any corporation, subsidiary, division, or other device, any provision of the Mail Order Rule, in any way, including, but not limited to:

- A. Failing to timely offer to the buyer, clearly and conspicuously and without prior demand, an option to either consent to a delay in shipping or to cancel the order and receive a prompt refund, as required by 16 C.F.R. § 435.1(b)(1);
- B. Failing to provide the buyer a definite revised shipping date, as required by 16 C.F.R. § 435.1(b)(1)(i);
- C. Failing to advise the buyer in an option notice, when the length of the delay will be 30 days or less, that their nonresponse will be treated as a consent to the delay, as required by 16 C.F.R. § 435.1(b)(1)(ii);
- D. Failing to deem an order canceled and by failing make a prompt refund to buyers who are entitled to such refund, as required by 16 C.F.R. § 435.1(c); and
- E. Failing to offer to the buyer a prepaid means of exercising the buyer's option to either consent to a delay in shipping or to cancel the order and receive a prompt refund, as required by 16 C.F.R. § 435.1(b)(3).

*Provided, however* that in the event the Mail Order Rule is hereafter amended or modified in a manner which would create a new or different standard applicable to defendants' obligations under this Order, defendants' compliance with the Mail Order Rule as so amended or modified shall not be deemed a violation of this injunction.

## CONTINUITY PROGRAMS

### II.

IT IS FURTHER ORDERED that:

A. Defendants, directly or through any corporation, subsidiary, division, trade name, or other device, and their officers, agents, servants, employees, and all persons and entities in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, promotion, offering for sale, sale, or distribution of any product, in or affecting commerce, are hereby permanently restrained and enjoined from:

1. Selling or distributing or causing to be sold or distributed products by means of a Continuity Program without first obtaining the express, informed consent of consumers to participate in that program before any shipment of products is made;

*Provided*, that the consumer's consent will be deemed to be informed for the purpose of this Part II only if the Defendants clearly and conspicuously disclose, before the consumer consents to any purchase, all material terms and conditions of the Continuity Program, including, but not limited to:

- i. the fact that periodic shipments of products will occur without further action by the consumers;
- ii. a description of each good or type of good to be included in each shipment;

- iii. the approximate interval between each shipment;
- iv. a description of the billing procedure to be employed, including the total cost to be charged to the subscriber's credit or debit card, or otherwise billed to the subscriber, for each shipment;
- v. the minimum number of purchases required under the program, if any;
- vi. all material terms and conditions of a guarantee, refund or return policy if any representation is made about such a policy, or, if the defendants have a policy of not making refunds or accepting returns, a statement that this is the defendants' policy; and
- vii. a description of the terms and conditions under which and the procedures by which a subscriber may cancel further shipments, as set forth in Part II.C herein.

*Provided further*, that the consumer's consent will be deemed to be express for the purpose of this Part II only if the Defendants obtain the informed consent in a manner which clearly evidences that the consumer is consenting to the terms of the Continuity Program.

- 2. Making any representation, in any manner, expressly or by implication, that consumers owe money for Continuity Program merchandise shipped to consumers, unless the defendants have obtained consumers' express, informed consent to receive and pay for merchandise.

- B. Defendants shall convey the terms and conditions of the Continuity Program to the



consumer in the following manner:

1. for any solicitation initiated or completed by telephone, the terms and conditions set forth in Part II.A shall be disclosed during that conversation in clear and understandable language;
  2. for any solicitation by a print advertisement, direct mail, electronic mail or by the Internet, the terms and conditions set forth in Part II.A shall be disclosed in a clear and prominent manner in close proximity to the ordering instructions, *provided that*, if the advertisement or mailing contains an order form or coupon on a separate page or document from the advertising material, the disclosure shall be made both in the advertising materials and on the order form or coupon;
- C. Defendants shall provide in conjunction with each shipment made pursuant to any Continuity Program a clear and conspicuous description of the terms and conditions under which and the procedures by which the subscriber may cancel further shipments. Such description shall include either a toll-free telephone number the subscriber may call or a postage-paid mailing the subscriber may return to notify defendants of the subscriber's cancellation of further shipments. *Provided, however*, that for purposes of this Part, if cancellation is by mail, defendants shall be deemed to be notified on the date the subscriber mails the postage-paid mailing or other communication canceling further shipments.
- D. Defendants shall not ship any product to, mail any bill or dunning communication to, or

bill the credit or debit card of any subscriber who, having once subscribed to a Continuity Program and having fulfilled any minimum purchaser requirement to which the subscriber has given expressed informed consent, notifies defendants by the means described in Part II.C herein, or by any other reasonable means, of the subscriber's cancellation of further shipments.

- E. With respect to consumers who are enrolled in the Copa Hair Continuity program as of the date that this Order becomes final, defendants shall not ship any additional products to such consumers pursuant to the terms of any Continuity Program, without first informing the consumer in writing that defendants have entered into an Order with the Commission, and setting forth the specific provisions that relate to the Copa Hair System and providing an opportunity to cancel further shipments.

### **CHARGING AND DEBITING PRACTICES III.**

IT IS FURTHER ORDERED that defendants, directly or through any corporation, subsidiary, division, trade name, or other device, and their officers, agents, servants, employees, and all persons and entities in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, are hereby permanently restrained and enjoined from billing any consumer or charging the credit card or bank account of any consumer who has not authorized or affirmatively agreed to purchase that specific product or service.

**REPRESENTATIONS REGARDING COPA HAIR PRODUCTS AND OTHER PRODUCTS**

**IV.**

IT IS FURTHER ORDERED that defendants, directly or through any corporation, subsidiary, division, trade name, or other device, and their officers, agents, servants, employees, and all persons and entities in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, promotion, offering for sale, sale, or distribution of any Copa Hair product, in or affecting commerce, are hereby permanently restrained and enjoined from making any representation, in any manner, expressly or by implication that:

- A. Copa Hair product treatments make hair, including fragile hair, stronger;
- B. Copa Hair product treatments will not cause hair injury or hair breakage; and
- C. Copa Hair product treatments can be applied to hair that has been previously treated with hair relaxers or permanent dyes without risk of hair injury or hair breakage,

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

**SUBSTANTIATION FOR PRODUCT CLAIMS**

**V.**

IT IS FURTHER ORDERED that defendants, directly or through any corporation, subsidiary, division, trade name, or other device, and their officers, agents, servants, employees, and all persons and entities in active concert or participation with them who receive actual 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 food, drug, cosmetic, or dietary supplement, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, regarding the performance, benefits, efficacy, or safety of such food, drug, cosmetic, or dietary supplement, unless, at the time the representation is made, defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation.

**DISCLOSURE REGARDING APPLICATIONS NEEDED  
VI.**

IT IS FURTHER ORDERED that defendants, directly or through any corporation, subsidiary, division, trade name, or other device, and their officers, agents, servants, employees, and all persons and entities in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, promotion, offering for sale, sale, or distribution of any Copa Hair product, in or affecting commerce, are hereby permanently restrained and enjoined from failing to disclose, clearly and conspicuously, and immediately adjacent to any representation purporting to demonstrate the “before” and “after” appearance of a consumer who used Copa Hair products, the actual number of applications needed to obtain the depicted result.

**CIVIL PENALTY  
VII.**

IT IS FURTHER ORDERED that defendants, jointly and severally, and their successors and assigns, shall pay to plaintiff a civil penalty, pursuant to section 5(m)(1)(A) of the Federal Trade Commission Act, 15 U.S.C. § 45(m)(1)(A), in the amount of \$100,000 (One Hundred Thousand

Dollars) as follows:

- A. Defendants shall make the payment required by this Part within five (5) business days of the date of entry of this Order by electronic fund transfer in accordance with the instructions provided by the Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, D.C. 20530, for appropriate disposition.
- B. In the event of any default in payment, which default continues for ten (10) business days beyond the due date of payment, the entire unpaid penalty, together with interest, as computed pursuant to 28 U.S.C. § 1961, from the date of default to the date of payment, shall immediately become due and payable.

**REDRESS  
VIII.**

IT IS FURTHER ORDERED that defendants, jointly and severally, shall pay to the Federal Trade Commission the sum of \$200,000 (Two Hundred Thousand Dollars) as follows:

- A. Not later than twenty (20) days after the date of entry of this Order, defendants shall pay the sum of \$200,000 (Two Hundred Thousand Dollars) by certified check or other guaranteed funds payable to and delivered to the Commission, or by wire transfer in accord with directions provided by the Commission.
- B. All funds paid pursuant to this Order 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 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 shall have no right to challenge the Commission's choice of remedies under this Paragraph. Defendants shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payments under the judgement herein shall be deemed a payment of any fine, penalty, or punitive assessment.

- C. Defendants relinquish all dominion, control and title to the funds paid into the escrow account, and all legal and equitable title to the funds shall vest in the Treasurer of the United States unless and until such funds are distributed by the Commission. 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 number and/or social security number, 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.

- F. Defendants shall, within 30 days of the date of entry of this Order, provide their complete customer lists, including most recently updated contact information and all prior purchase information, to the Commission. The customer lists shall include the names and addresses of all purchasers of the Copa Hair System and of all purchasers of products bearing the Richard Simmons name from January 1, 2001, until the date of entry of this Order, and shall include the name and cost of each product purchased, the date of purchase, and the number of times each consumer made a repeat purchase of any item.
- G. Defendants shall, within 30 days of the date of entry of this Order, provide to the Commission copies of all consumer complaints submitted to defendants or any of their affiliates, between January 1, 2000, and the date of entry of this Order, as well as any responses sent.

#### **ACKNOWLEDGMENT OF RECEIPT OF ORDER**

##### **IX.**

IT IS FURTHER ORDERED that, within five (5) business days after receipt by defendants of this Order as entered by the Court, defendants shall execute and submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

#### **DISTRIBUTION OF ORDER**

##### **X.**

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, defendants shall provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, all principals, officers, directors, managers, employees,

agents, and representatives having responsibilities with respect to the subject matter of this order.

Defendants shall deliver this Order to current personnel within thirty (30) days after the date of entry of this Order, and to new personnel within thirty (30) days after such person assumes such position or responsibilities.

**COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE  
XI.**

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 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 defendants' possession or direct or indirect control to inspect the business operation;
- B. In addition, the Commission is authorized to monitor defendants' compliance with this Order by all 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 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 (1)(1)).

- C. Defendants 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**

### **XII.**

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, each defendant 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 defendant learns 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 each shall provide a written report to the Commission, 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 any changes required to be reported pursuant to Subparagraph 'A' above; and a copy of each acknowledgment of receipt of this Order obtained by defendants pursuant to Paragraph IX.
- C. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with defendants.

**RECORD KEEPING PROVISIONS**  
**XIII.**

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, defendants 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, in connection with the manufacturing, labeling, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, are hereby restrained and enjoined from failing to create and retain, unless otherwise specified:

- A. Customer files containing the names, addresses, telephone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services

purchased;

- B. Complaint and refund requests (whether received directly, indirectly, or through any third party) and all records showing any responses to those complaints or requests;
- C. Copies of all 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 product or service, to the extent such information is prepared in the ordinary course of business;
- D. All materials that were relied upon in making any representations contained in the materials identified in Subparagraph 'C,' including all documents evidencing or referring to the accuracy of any claim therein or to the efficacy of any product or service, including, but not limited to, all tests, reports, studies, demonstrations, as well as all evidence that confirms, contradicts, qualifies, or calls into question the accuracy of such claims regarding the efficacy of such product or service;
- E. 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; and
- F. Records showing Mail Order Rule compliance as required by that Rule.

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**RETENTION OF JURISDICTION  
XIV.**

IT IS FURTHER ORDERED that this Court shall retain 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. **DONE AND ORDERED** in Chambers at New York, New York, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

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UNITED STATES DISTRICT JUDGE

**SO STIPULATED:**

FOR THE UNITED STATES OF AMERICA:

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Assistant Attorney General, Civil Division  
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JAMES B. COMEY, JR.  
United States Attorney  
Southern District of New York

by:

\_\_\_\_\_  
Assistant United States Attorney  
United States Attorney's Office  
Southern District of New York

FOR THE DEFENDANTS:

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and  
GT MERCHANDISING & LICENSING CORP.

\_\_\_\_\_  
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