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15
16
17 **UNITED STATES DISTRICT COURT**
18 **DISTRICT OF NEVADA**

19 **FEDERAL TRADE COMMISSION,**

20 **Plaintiff,**

21 **v.**

22 **SEASILVER USA, INC.,**
23 **AMERICALOE, INC., BELA BERKES,**
24 **JASON BERKES, BRETT**
25 **RADEMACHER, individually, and d/b/a**
Netmark International and NetmarkPro,
26 **and DAVID R. FRIEDMAN, D.C.,**

26 **Defendants.**

**COMPLAINT FOR
INJUNCTIVE AND OTHER
EQUITABLE RELIEF**

27 Plaintiff, the Federal Trade Commission ("FTC"), through its undersigned
28 attorneys, alleges as follows:

CV-S-03-0676-RLH-LRL

FILED RECEIVED
ENTERED SERVED ON
COUNSEL/PARTIES OF RECORD
2003 JUN 12 A 9 13
CLERK US DISTRICT COURT
DISTRICT OF NEVADA
BY _____ DEPUTY

1 6. Defendant Americaloe, Inc. (“Americaloe”) is a closely held Nevada
2 corporation located at 2045 Corte del Nogal, Carlsbad, California 92009. At all times
3 relevant to this Complaint, acting alone or in concert with others, Americaloe has
4 manufactured, marketed, distributed, and sold Seasilver to consumers throughout the
5 United States. Americaloe is incorporated in and resides in the District of Nevada.

6 7. Defendant Jason Berkes is president, chief executive officer, and owner of
7 Seasilver USA and president and owner of Americaloe. At all times relevant to this
8 Complaint, acting alone or in concert with others, J. Berkes has formulated, directed,
9 controlled or participated in the acts and practices of Seasilver USA and Americaloe,
10 including the various acts and practices set forth herein.

11 8. Defendant Bela Berkes is the founder of Seasilver USA and the formulator
12 of, and spokesperson for, Seasilver. At all times relevant to this Complaint, acting alone
13 or in concert with others, B. Berkes has formulated, directed, controlled or participated in
14 the acts and practices of Seasilver USA, including the various acts and practices set forth
15 herein.

16 9. Defendant Brett Rademacher is a principal distributor of the Seasilver
17 product and the founder of NetmarkPro. Through NetmarkPro and Netmark
18 International (collectively, “Netmark”), he distributes personalized websites, brochures,
19 and other marketing tools to Seasilver USA’s downline distributors. Netmark is a d/b/a
20 of Rademacher. At all times relevant to this Complaint, acting alone or in concert with
21 others, Rademacher has participated in the acts and practices of Seasilver USA,
22 including the various acts and practices set forth herein. His business address is 501
23 Donna Drive, Anchorage, Alaska 99504.

24 10. Defendant David R. Friedman., D.C., is co-chairman of the Seasilver USA
25 medical advisory board. He is a doctor of chiropractic licensed to practice in the State of
26 North Carolina. Friedman’s business address is 1033-A S. Kerr Avenue, Wilmington,
27 North Carolina 28403. Friedman has promoted Seasilver in advertisements and
28 promotional materials, including an infomercial and websites. At all times relevant to

1 this Complaint, acting alone or in concert with others, Friedman has formulated, directed,
2 controlled or participated in the acts and practices of Seasilver USA.

3 11. The foregoing Defendants have operated as a common enterprise to
4 advertise, promote, offer for sale, sell, or distribute Seasilver.

5 COMMERCE

6 12. The acts and practices of the Defendants, as alleged herein, have been in or
7 affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. §
8 44.

9 DEFENDANTS' COURSE OF CONDUCT

10 13. Since at least 1996, Defendants have manufactured, advertised, distributed,
11 and sold Seasilver, a purported cure-all product, nationwide through, but not necessarily
12 limited to, a 30-minute television infomercial, a 30-minute radio infomercial, Internet
13 websites, including but not necessarily limited to www.seasilver.com, and
14 www.myseasilver.com/main, recorded interviews, brochures, a toll-free telephone
15 number, and unsolicited commercial e-mail. Defendants distribute brochures, interviews,
16 and other marketing tools to downline distributors.

17 **Seasilver**

18 14. Seasilver is a liquid dietary supplement that purports to contain, among
19 other ingredients, aloe vera, phyto-silver (purportedly a plant-based, non-metallic silver),
20 sea vegetables, the herb Pau D'Arco, and cranberry extract. The Defendants offer one
21 bottle of Seasilver (a one-month supply) for \$39.95, three bottles for \$100, and a twelve-
22 bottle *Power-Pak* for \$300 directly to consumers primarily through a toll-free telephone
23 number and the Defendants' Internet websites. The *Power Pak* also includes twelve
24 bottles of the Seasilver product and twenty copies of the brochures *Seasilver Success*
25 *System*, and *Journey Into the World of Foundational Health*. Seasilver also is available
26 from numerous online distributors. Defendant B. Berkes publicly stated on March 3,
27 2003 that Defendant Seasilver USA earned \$15 million per month and \$180 million
28 annually from selling Seasilver.

1 - Exhibit A, portions of Web site
2 [www.seasilver.com](http://www.seasilver.com/prdtctstmnl.htm) at /prdtctstmnl.htm

3 Exhibit B, portions of Web site
4 [www.myseasilver.com/main](http://www.myseasilver.com/main/testimonials.html) at
5 /testimonials.html

6 Exhibit C, portions of *Journey Into the World*
7 of *Foundational Health* brochure

8 [bolded language appears in the
9 www.myseasilver.com/main site only]

10 b. [ADDITIONAL EXCERPTS FROM BROCHURE]

11 **Pau D'Arco**... Clinical studies show this herb has no contraindications or
12 incompatibilities with any medications, and has been proven to be non-toxic. . . .

13 * * *

14 Scientific studies on Silver began in the late 1880's. It was used successfully to
15 treat typhoid and anthrax...

16 Exhibit C, portions of *Journey Into the World*
17 of *Foundational Health* brochure

18 c. [EXCERPTS FROM RADIO INFOMERCIAL]

19 DAVID FRIEDMAN: One of the main things that also helps with the
20 immune system is the colloidal silver involved in the product.

21 JOY DONIGAN: Right.

22 DAVID FRIEDMAN: Thousands of clinical studies have shown that colloidal
23 silver boosts the immune system and destroys viruses, bacteria and fungus.
24 Antibiotics prescribed by your doctor only kill about half a dozen different disease
25 organisms. Well, research on colloidal silver has shown that it has been
26 successful in the treatment of over 650 diseases, including cancer, AIDS
27 .There's a physician named Dr. Beckard (phonetic), he's with the Upstate Medical
28 Center at Syracuse. He concluded that presenting silver into the body causes the
elimination of cancerous and other disease-forming cells.

JOY DONIGAN: Hmm.

* * *

BARRY NEVINS: Well, I'm using it with my mother, as a matter of fact, that has
diabetes and what are your thoughts about that, the diabetes?

DAVID FRIEDMAN: Oh, with diabetes, I'll tell you, of all the ailments Seasilver
has helped, I would have to put diabetes in the top five. . . . I'll tell you about my
father-in-law who was the first diabetic we got on Seasilver. He's been a juvenile
diabetic since he was

five years old. He's now in his mid-fifties. He has diabetic retinopathy, diabetic
neuropathy. . . . Anyway, we got him on Seasilver. Three months later he calls my
wife in a panic. . . . He said I tried to give myself an insulin shot and I'm going
into insulin shock. He says, I'm off my insulin shots by 80 percent. He says, I've

1 lost 46 pounds in three months. He says, I'm scared. My wife says, sounds to me
2 like you're getting normal.

3 (Laughter.)

4 BARRY NEVINS: Dr. Friedman, you know I've been working with my mother
5 with the diabetes for quite a while and I've been using the Seasilver product.

6 DAVID FRIEDMAN: Right.

7 BARRY NEVINS: And this will be a surprise to you. We started about six weeks
8 ago, I think. As of today, my mother is no longer on insulin. . . .

9 * * *

10 DAVID FRIEDMAN: The first person I ever got on the product was a man with
11 metastatic lung cancer. . . . He was given six months to live. That was a year
12 ago. And thanks to Seasilver, he's in perfect health.

13 * * *

14 DAVID FRIEDMAN: ... She said she's tried dieting in the past before and she'll
15 lose 10 pounds here, 15 pounds there, but in the last six weeks she's lost 27
16 pounds and it scared her to death. She said she's not dieting, she's just losing for
17 no reason.

18 * * *

19 DAVID FRIEDMAN: ...[I]t was a female patient that had metastatic breast cancer
20 her prognosis had dropped to poor. . . . We got her on six ounces of
21 Seasilver for eight days Eight days later, she got a new blood work-up.
22 White blood cell, red blood cell, hematocrit and platelet count had normalized and
23 her prognosis was changed to good. She did not get sick after chemo that time
24 which was the first since she started chemotherapy. . . . Usually the day after
25 chemo she slept the whole day and was sick and throwing up. It's remarkable. It
26 just helped the bad side effects of chemo just disappear.

27 Exhibit D, portions of transcript of radio
28 infomercial, "The Donigan Nutrition Hour"
with Dr. David Friedman

d. [EXCERPTS FROM BELA BERKES INTERVIEW]

29 BELA BERKES: [I]n every ounce of Seasilver, you're getting the equivalent
30 of two cups of Pau D'Arco juice. In South America where the Indians have it,
31 they drink it there like Americans drink coffee here. Traditionally, two cups a day
32 for maintenance. If you have a chronic condition, four cups a day. If you have a
33 life-threatening, [sic] like AIDS, cancer, inoperable tumors...they drink six cups a
34 day. So, that kind of gives you an idea of what you're getting every time you drink
35 an ounce of Seasilver. . . . Quecha...in Pau D'Arco...has the unique ability to
36 disengage the oxygen molecule in cancer cells. That's why we see so much
37 success with cancers and tumors being reduced.

38 * * *

39 BELA BERKES: ...anywhere from AIDS to cancer to fibromyalgia to Epstein
40 Barr to chronic fatigue, to any of those things, inoperable brain tumors, cysts,

1 psoriasis...arthritic conditions, high blood pressure...overweight...I have seen
2 Seasilver correct.

3 * * *

4 BELA BERKES: ...I know of no product by itself that has a track record of
5 success that diabetes and Seasilver have. And let me tell you what it
6 is. If you'll take one ounce four times a day, for 90 days, nine out of ten people go
7 100 percent off their medication. And I don't care if you've been on your
8 medication one day, one year, 20 years or 40 years, I have seen all those years of
9 being on insulin and different medication 100 percent gone off of because of
10 Seasilver.

11 * * *

12 BELA BERKES: ...[t]his gentleman lost 37 pounds in one month on Seasilver. . .
13 .[t]his is permanent weight loss. This is not a fad diet. . . . So, this is permanent
14 weight loss because you're reorganizing and balancing your body chemistry,
15 you're balancing your metabolism, your thyroid starts to function properly, you're
16 being able to utilize and burn the calories more efficient from the food that you
17 eat. This is the key to all weight loss and permanent weight loss.

18 * * *

19 BELA BERKES: ...the Seasilver offsets a majority of the negative side effects [of
20 radiation and chemotherapy], and at the same time helps to build and strengthen
21 your immune system so that you won't have those negative side effects. . . .

22 Exhibit E, portions of transcript of Bela Berkes
23 Interview by Brett Rademacher

24 e. **[EXCERPTS FROM TELEVISION INFOMERCIAL]**

25 MALE ANNOUNCER: Have you heard of Seasilver? Seasilver, not just another
26 supplement, but a whole food foundational health program that balances, cleanses,
27 purifies, nourishes, oxygenates, protects and strengthens. How many products do
28 you need to do all this?

**ON SCREEN: SEASILVER Does it all! Complete Multi-Vitamin, Mineral,
Enzyme, Whole Food Product**

MALE ANNOUNCER: Just one, Seasilver. . . .

BELA BERKES: Okay. Well, have a seat, Neil. But before you go, I want
to give you a bottle of Seasilver and thank you for coming up and helping me,
okay?

**ON SCREEN: We do not make any claims: Our purpose is to educate on
supplementation.**

BELA BERKES: These are all things that are found in God's creation,
designed to nourish and strengthen our body. When you combine them with the

1 body that has the ability to succeed, not to fail, you have an unlimited potential.
2 The only boundaries that you have are those you allow the medical community to
3 put in your head. It's truly just that simple. I have seen everything from cancer to
4 AIDS to pneumonia... cured with the power of nature, with the power of nature.

5
6 Exhibit F, portions of transcript of TV
7 Infomercial

8
9 **DEFENDANTS' VIOLATIONS OF THE FTC ACT**

10 16. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or
11 deceptive acts or practices in or affecting commerce. Section 12(a) of the FTC Act, 15
12 U.S.C. § 52(a), prohibits the dissemination of any false advertisement in or affecting
13 commerce for the purpose of inducing, or which is likely to induce, the purchase of food,
14 drugs, devices, services, or cosmetics. For the purposes of Section 12 of the FTC Act, 15
15 U.S.C. § 52, Seasilver is a "food" or "drug" pursuant to Section 15(d) of the FTC Act, 15
16 U.S.C. § 55(d). As set forth below, the Defendants have engaged and are continuing to
17 engage in such unlawful practices in connection with the marketing and sale of Seasilver.

18
19 **COUNT I**

20
21 **False Cancer and Diabetes Claims for Seasilver**

22 17. Through the means described in Paragraph 15, including through the
23 statements contained in the advertisements attached as Exhibits A through E, Defendants
24 have represented, expressly or by implication, that:

- 25 a. Seasilver treats, causes remission in, or cures cancer, including but
26 not limited to, multiple myeloma, non-Hodgkin's lymphoma, lung,
27 breast, and prostate cancer, and inoperable brain tumors; and
28 b. Seasilver enables nine out of ten diabetes patients to completely stop
their insulin medication.

18. In truth and in fact:

- 1 a. Seasilver does not treat, cause remission in, or cure cancer,
2 including but not limited to, multiple myeloma, non-Hodgkin's
3 lymphoma, lung, breast, or prostate cancer, or inoperable brain
4 tumors; and
5 b. Seasilver does not enable nine out of ten diabetes patients to
6 completely stop their insulin medication.

7 Therefore, Defendants' representation as set forth in Paragraph 17 are false or misleading
8 and constitute a deceptive act or practice, and the making of false advertisements, in or
9 affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§
10 45(a) and 52.

11 **COUNT II**

12 **False Weight Loss Claims for Seasilver**

13
14 19. Through the means described in Paragraph 15, including through the
15 statements contained in the advertisements attached as Exhibits A through E, Defendants
16 have represented, expressly or by implication, that:

- 17 a. Seasilver causes rapid and substantial weight loss, without the need
18 to reduce caloric intake;
19 b. Seasilver enables users to lose as much as 37 pounds in one month,
20 or 27 pounds in six weeks, or 46 pounds in three months; and
21 c. Seasilver causes permanent weight loss.

22
23 20. In truth and in fact,

- 24 a. Seasilver does not cause rapid and substantial weight loss, without
25 the need to reduce caloric intake;
26 b. Seasilver does not enable users to lose as much as 37 pounds in one
27 month, or 27 pounds in six weeks, or 46 pounds in three months;
28

1 and

2 c. Seasilver does not cause permanent weight loss.

3 Therefore, Defendants' representations as set forth in Paragraph 19 are false or
4 misleading and constitute a deceptive act or practice, and the making of false
5 advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC
6 Act, 15 U.S.C. §§ 45(a) and 52.

7
8 **COUNT III**

9 **False Clinical Studies Claims for Seasilver**

10 21. Through the means described in Paragraph 15, including through the
11 statements contained in the advertisements attached as Exhibits A through E, Defendants
12 have represented, expressly or by implication, that:

- 13 a. Clinical studies prove that Seasilver successfully treats over 650
14 diseases, including cancer and AIDS;
15 b. Clinical studies prove that Seasilver is non-toxic; and
16 c. Scientific studies prove that Seasilver treats or cures typhoid and
17 anthrax.
18

19 22. In truth and in fact,

- 20 a. Clinical studies do not prove that Seasilver successfully treats over
21 650 diseases, including cancer and AIDS;
22 b. Clinical studies do not prove that Seasilver is non-toxic; and
23 c. Scientific studies do not show that Seasilver treats or cures typhoid
24 and anthrax.
25

26 Therefore, Defendants' representations as set forth in Paragraph 21 are false or
27 misleading and constitute a deceptive act or practice, and the making of false
28 advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC

1 Act, 15 U.S.C. §§ 45(a) and 52.

2 **COUNT IV**

3 **Unsubstantiated Disease and Safety Claims for Seasilver**

4
5 23. Through the means described in Paragraph 15, Defendants have
6 represented, expressly or by implication, that Seasilver:

- 7 a. Treats or cures AIDS;
- 8 b. Cures chronic obstructive pulmonary disease;
- 9 c. Treats or cures lyme disease;
- 10 d. Enables post-heart attack patients to reduce their heart medication;
- 11 e. Eliminates high blood pressure;
- 12 f. Is 100% safe for pregnant and lactating women, senior citizens,
- 13 children, and infants;
- 14 g. Treats, causes remission in, or cures cancer, including but not
- 15 limited to, multiple myeloma, non-Hodgkin's lymphoma, lung,
- 16 breast, and prostate cancer, and inoperable brain tumors;
- 17 h. Treats or cures diabetes;
- 18 i. Causes rapid and substantial weight loss, without the need to reduce
- 19 caloric intake; and
- 20 j. Causes permanent weight loss.
- 21
- 22

23 24. Defendants did not possess and rely upon a reasonable basis that
24 substantiated the representations set forth in Paragraph 23 at the time the representations
25 were made. Therefore, the making of the representations set forth in Paragraph 23
26 constitutes a deceptive practice, and the making of false advertisements, in or affecting
27 commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a), 52.
28

1 and 12 of the FTC Act in connection with the advertising or sale of food, drugs, dietary
2 supplements, devices, cosmetics, or other products, services, or programs.

3 2. Award Plaintiff such temporary and preliminary injunctive and ancillary
4 relief as may be necessary to avert the likelihood of consumer injury during the pendency
5 of this action, and to preserve the possibility of effective and final relief, including, but
6 not limited to, temporary and preliminary injunctions and an asset freeze;

7 3. Award such equitable relief as the Court finds necessary to redress injury to
8 consumers resulting from Defendants' violations of Sections 5(a) and 12 of the FTC Act,
9 including, but not limited to, rescission of contracts and restitution, other forms of
10 redress, and the disgorgement of unlawfully obtained monies; and

11 4. Award the Plaintiff the costs of bringing this action, and such other
12 equitable relief as the Court may determine to be just and proper.

13 Dated:

June 12, 2003

14
15 Respectfully Submitted,

16 David M. Newman

17 DAVID M. NEWMAN

18 JANICE L. CHARTER

19 CHRISTA VECCHI

20 MATTHEW DAYNARD

21 KAREN MUOIO

22 EDWARD B. GLENNON

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24 Assistant United States Attorney

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