

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL NO. SA02CA1151 EP
)	
MARK NUTRITIONALS, INC.,)	
)	
HARRY SISKIND, and)	
)	
EDWARD G. D’ALESSANDRO, JR.,)	
)	
Defendants.)	

**STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION AND
SETTLEMENT OF CLAIMS FOR MONETARY RELIEF BETWEEN
EDWARD G. D’ALESSANDRO, JR. AND FEDERAL TRADE COMMISSION**

Plaintiff, the Federal Trade Commission (“FTC,” “Commission” or “Plaintiff”), filed a Complaint against defendants Mark Nutritionals, Inc., Harry Siskind, and Edward G. D’Alessandro, Jr., pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b). Plaintiff filed its Complaint to secure a permanent injunction and other equitable relief against defendants for their alleged deceptive acts or practices and false advertisements for foods, drugs, devices, services or cosmetics in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

Defendant Edward G. D’Alessandro, Jr. denies all liability as alleged by the Commission

and denies that he violated any law or regulation with respect to the advertising, promotion, sale, or distribution of his products. Nonetheless, the Commission and Edward G. D'Alessandro, Jr., without Edward G. D'Alessandro, Jr. admitting liability for any of the alleged violations referred to in the Complaint, have stipulated to the entry of the following Stipulated Final Order for Permanent Injunction and Settlement of Claims for Monetary Relief ("Order") in settlement of the Commission's Complaint against Edward G. D'Alessandro, Jr. The Court being advised in the premises, finds:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and jurisdiction over all parties. Venue in the Western District of Texas is proper.
2. The Complaint states a claim upon which relief can be granted, and the Commission has authority to seek the relief it has requested.
3. The activities of Edward G. D'Alessandro, Jr., are in or affecting commerce, as defined in 15 U.S.C. § 44.
4. On September 17, 2002, defendant Mark Nutritionals, Inc. filed a voluntary petition for relief under the reorganization provisions of Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, in the United States Bankruptcy Court for the Western District of Texas, Case No. 02-54469-LMC (the "Corporate Bankruptcy Case"). On April 2, 2003, the Bankruptcy Court converted Mark Nutritionals, Inc.'s bankruptcy case to a Chapter 7 liquidation case. The Commission's action against Mark Nutritionals, Inc., *et al.* is not stayed by 11 U.S.C. § 362(a) because it is an exercise of the Commission's police or regulatory power as a governmental unit pursuant to 11 U.S.C. § 362(b)(4) and thus falls within an exemption to the automatic stay.

5. In conjunction with the Corporate Bankruptcy Case, the Bankruptcy Court has approved the appointment of a Chief Executive Officer of Mark Nutritionals, Inc. Edward G. D'Alessandro, Jr. currently has no active role in the day-to-day management of Mark Nutritionals, Inc.

6. Edward G. D'Alessandro, Jr. has entered into this Order freely and without coercion. Edward G. D'Alessandro, Jr. further acknowledges that he has read the provisions of this Order and is prepared to abide by them.

7. The Commission and Edward G. D'Alessandro, Jr. 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 between them arising from the Complaint up to the date of entry of this Order.

8. Edward G. D'Alessandro, Jr., waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Edward G. D'Alessandro, Jr., also waives any claim that he 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.

9. Each settling party shall bear their own costs and attorneys' fees.

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

DEFINITIONS

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

1. "Defendant" shall mean Edward G. D'Alessandro, Jr.
2. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based upon 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.

3. "Food" and "drug" shall mean "food" and "drug" as defined in Section 15 of the FTC Act, 15 U.S.C. § 55(b)-(c).

4. "Weight loss product" shall mean any food, drug, dietary supplement, product, program, or service designed or used to prevent weight gain or to produce weight loss, reduction or elimination of fat, slimming, change in body composition, or caloric deficit in a user of such food, drug, dietary supplement, product, program, or service.

5. "Evening Weight Loss Formula" is a liquid product sold by Defendant, the active ingredients of which have changed over time. The product's active ingredients currently include stevia, conjugated linoleic acid, and "proprietary blends" of chromium (as chromium picolinate, chromium polynicotinate, and chromium cruciferate), aloe vera gel, hydrolyzed collagen, chicory, plant teas, and amino acids (L-lysine, L-ornithine, L-arginine, L-carnitine, L-glycine and trimethylglycine).

6. The terms "endorsement" and "endorser" shall mean as defined in 16 C.F.R. § 255.0(b).

7. "Person" shall mean a natural person, organization, or other legal entity, including a partnership, corporation, proprietorship, association, cooperative, or any other group acting together as an entity.

8. The term "including" in this Order shall mean "without limitation."

9. "Asset" shall mean any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes" (as these terms are defined in

the Uniform Commercial Code), and all chattel, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and cash, wherever located.

ORDER

I. CONDUCT PROHIBITIONS

IT IS THEREFORE ORDERED that:

A. In connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of Body Solutions Evening Weight Loss Formula, or any other weight loss product, in or affecting commerce, Defendant and his assigns, agents, servants, and 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, whether acting directly or through any affiliate, corporation, partnership, subsidiary, division, or other device, are hereby permanently restrained and enjoined from making any representation, in any manner, expressly or by implication, including through the use of endorsements, that is false or misleading, including, but not limited to:

1. Such product will cause substantial weight loss without reducing caloric intake or increasing exercise;
2. Such product will cause substantial weight loss even if users eat substantial amounts of high calorie foods; and
3. Such product will cause substantial long-term or permanent weight loss.

B. In connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any weight loss product, in or affecting commerce, Defendant and

his assigns, agents, servants, and 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, whether acting directly or through any affiliate, corporation, partnership, subsidiary, division, or other device, are hereby permanently restrained and enjoined from employing the term “weight loss” in the name of such product or on the packaging for such product, or employing any other term that communicates the same or similar meaning, unless, at the time such term is used, Defendant possesses and relies upon competent and reliable scientific evidence that substantiates that such product will cause, or will assist in causing, clinically significant weight loss.

C. In connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any food, drug, dietary supplement, or other health-related product or service, in or affecting commerce, Defendant Edward G. D’Alessandro, Jr. and his assigns, agents, servants, and 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, whether acting directly or through any affiliate, corporation, partnership, subsidiary, division, or other device, are hereby permanently restrained and enjoined from making any representation, in any manner, expressly or by implication, including through the use of endorsements, about the safety, health benefits, performance, or efficacy of such product or service, unless, at the time the representation is made, Defendant possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

D. In connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any food, drug, dietary supplement, or other health-related product or service, in or affecting commerce, Defendant and his assigns, agents, servants, and 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, whether acting directly or through any affiliate, corporation, partnership, subsidiary, division, or other device, are hereby permanently restrained and enjoined from misrepresenting in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

E. In connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any goods or services, in or affecting commerce, Defendant and his assigns, agents, servants, and 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, whether acting directly or through any affiliate, corporation, partnership, subsidiary, division, or other device, are hereby permanently restrained and enjoined from misrepresenting, expressly or by implication, any fact material to a consumer's decision to purchase Defendants' products or services.

II. FOOD AND DRUG REGULATIONS

IT IS FURTHER ORDERED that:

A. Nothing in this Order shall prohibit Defendant from making any representation for any product that is specifically permitted in the labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

B. Nothing in this Order shall prohibit Defendant from making any representation for any drug that is permitted in the 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.

III. NOTIFICATION AND MONITORING OF ENDORSERS

IT IS FURTHER ORDERED that:

A. In connection with advertising, marketing, promotion, offering for sale, distribution or sale of any product or service covered by this Order, Defendant and his assigns, agents, servants, and 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, whether acting directly or through any affiliate, corporation, partnership, subsidiary, division, or other device, shall not authorize any endorser to make any representation prohibited by this Order.

B. Within thirty (30) days after entry of this Order, Defendant shall send by first class mail a notice, in the form shown on Appendix A, to each current endorser of his products or services covered by this Order, as of the date of entry of this Order. The mailing shall not include any other documents. Defendant shall require each endorser to execute and return the original of the letter as a condition of remaining an endorser for Defendant.

C. For a period of five (5) years following entry of this Order, Defendant shall also send by first class mail a notice, in the form shown on Appendix A, to each prospective endorser of any product or service covered by this Order who has not previously received the notice. Such notice shall be sent to the prospective endorser before said person makes any public endorsement of Defendant's products or services. Defendant shall require each prospective endorser to execute and return the original of the letter as a condition of becoming an endorser.

D. Defendant shall maintain, and upon request, make available to the Commission for inspection and copying, all letters executed by endorsers and returned to Defendant.

E. Defendant shall apprise authorized endorsers of claims that are authorized by Defendant for weight loss products manufactured, labeled, advertised, promoted, offered for sale, sold, or distributed by Defendant, and shall require such endorsers to provide Defendant with true and correct copies or transcriptions of any representation that the endorsers make about such products, not later than seven business days after such representations are made. On the basis of such copies or transcriptions, or on reliable information otherwise made known to him, Defendant shall terminate any authorized endorser who has knowingly made any representation about any weight loss product that is prohibited by Part I of this Order. Defendant may take 30 days after receipt to review and evaluate information concerning representations made by the Defendant's authorized endorsers, but nothing herein shall preclude the Defendant from terminating such endorsers before or after the conclusion of such thirty day review, nor shall any provision of this Order otherwise condition the right of Defendant to terminate a relationship with any of Defendant's authorized endorsers, including termination for other than knowingly making representations prohibited by Part I of this Order.

IV. MONITORING OF ADVERTISING AND MARKETING

IT IS FURTHER ORDERED that, in connection with advertising, marketing, promotion, offering for sale, distribution or sale of any product or service covered by this Order, Defendant and his assigns, agents, servants, and 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, whether acting directly or through any affiliate, corporation, partnership, subsidiary, division, or other device, shall in accordance with applicable laws:

A. Take reasonable steps sufficient to monitor and ensure that all employees and

agents engaged in advertising, promotion, sales, order verification, or customer service functions comply with this Order. Such steps shall include adequate monitoring of all advertisements, promotions, sales presentations, and other oral and written communication with customers.

Defendant, at a minimum, shall:

1. Conduct periodic monitoring of representations concerning any weight loss product, and any other covered product or service, made by persons engaged in sales or other customer service functions, including representations made orally or through electronic communications on behalf of Defendant; and
2. Conduct periodic monitoring of representations made about any weight loss product, and any other covered product or service, on all Internet websites operated and maintained by Defendant or the agents of Defendant.

B. Terminate any employee or agent who knowingly engages in any conduct prohibited by this Order; provided, nothing herein shall limit the right of Defendant to take disciplinary action against any of Defendant's employees or agents, including but not limited to, termination for other than knowing violations of conduct prohibited by this Order.

V. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment is entered in favor of the Commission and against Defendant Edward G. D'Alessandro, Jr. in the amount of ONE HUNDRED AND FIFTY-FIVE MILLION DOLLARS (\$155,000,000) (the "Judgment"); provided, however, that upon fulfillment of the payment obligations under Part V B and V C of this Order, and subject to the conditions set forth in Part VI of this Order, the Judgment against Defendant Edward G. D'Alessandro, Jr. shall be

suspended until further order of the Court.

B. Defendant Edward G. D'Alessandro, Jr. shall be liable for payment of equitable monetary relief, including, but not limited to, consumer redress and/or disgorgement, and for paying any attendant expenses of administration of any redress fund, in the amount of ONE HUNDRED AND FORTY THOUSAND DOLLARS (\$140,000) (the "Settlement Amount").

C. Within ten (10) days of the date of entry of this Order, Defendant Edward G. D'Alessandro, Jr. shall pay the Settlement Amount to the Commission in the form of a wire transfer or certified or cashier's check made payable to the Commission, or such agent as the Commission may direct.

D. Time is of the essence for the payment specified above. In the event that Defendant Edward G. D'Alessandro, Jr. does not fulfill, or only partially fulfills, the payment obligation set forth in this Part, he shall be immediately liable for payment of the entire amount due plus interest, less any payments already made. Notwithstanding any other provision of this Order, Defendant agrees that, if he fails to meet the payment obligation set forth in this Part, the facts as alleged in the Complaint filed with this Order shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Order, including, but not limited to, a non-dischargeability complaint in any subsequent bankruptcy proceeding.

E. 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 any redress fund. 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 Defendant's practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. Defendant shall have no right to challenge the Commission's choice of remedies under this Part.

F. Defendant shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payments under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.

VI. FINANCIAL STATEMENTS

IT IS FURTHER ORDERED that:

A. The Commission's agreement to and the Court's approval of this Order are expressly premised upon the truthfulness, accuracy, and completeness of: (1) the financial statement and information provided to the Commission by Defendant Edward G. D'Alessandro, Jr., dated December 5, 2002; (2) supplemental financial information and documents thereafter provided to the Commission by Defendant Edward G. D'Alessandro, Jr. in letters dated December 16, 2002, January 24, 2003, February 14, 2003, and April 11, 2003; and (3) the sworn statement given by Defendant Edward G. D'Alessandro, Jr. on June 5, 2003. These financial disclosures contain material information relied upon by the Commission in negotiating and agreeing to the terms of this Order.

B. If the Commission should have evidence that the above-referenced financial statements and information failed to disclose any material asset the value of which exceeds \$1,000, materially misrepresented the value of any asset, or made any other material misrepresentation or omission, the Commission may move that the Court reopen this Order for

the sole purpose of allowing the Commission to modify the monetary liability of Defendant Edward G. D'Alessandro, Jr. If the Court finds that Defendant Edward G. D'Alessandro, Jr. failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission in the above-referenced financial statements and information, the Court shall reinstate the suspended judgment against the Defendant Edward G. D'Alessandro, Jr., in favor of the Commission, in the amount of ONE HUNDRED AND FIFTY-FIVE MILLION DOLLARS (\$155,000,000), which Defendant Edward G. D'Alessandro, Jr. and the Commission stipulate is the amount of consumer injury caused by the Defendant Edward G. D'Alessandro, Jr., as set forth in Part V of this Order. Provided, however, that Defendant Edward G. D'Alessandro, Jr. shall be entitled to offset this amount by any sums already paid under this Order. Provided, further, that in all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court. Any proceedings instituted under this Part shall be in addition to and not in lieu of any other proceedings the Commission may initiate to enforce this Order. For the purposes of reopening or enforcing this Part VI B, Defendant Edward G. D'Alessandro, Jr. waives any right to contest any of the allegations set forth in the Complaint filed in this matter.

VII. COLLECTING PAST DUE AMOUNTS

IT IS FURTHER ORDERED that Defendant shall:

A. Furnish the Commission, in accordance with 31 U.S.C. § 7701, social security numbers and/or employer identification numbers, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of his relationship with the government.

B. Cooperate fully with the Commission and its agents in all attempts to collect the

amount due pursuant to Part V if the Defendant fails to pay fully the amounts due at the times specified by this Order. In such event, Defendant agrees to provide the Commission with his respective federal and state tax returns for the preceding three (3) years, and with fully updated financial disclosures within ten (10) days of receiving a request from the Commission to do so. Defendant further authorizes the Commission to verify all information provided on these disclosure forms with all appropriate third parties, including, but not limited to, financial institutions.

VIII. COMPLIANCE REPORTING BY DEFENDANT

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, Defendant shall notify the Commission of the following:

1. Any changes in Defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
2. Any changes in Defendant's employment status (including self-employment) within ten (10) days of the date of such change. Such notice shall include the name and address of each business that Defendant is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of Defendant's duties and responsibilities in connection with the business; and
3. Any changes in Defendant's name or use of any aliases or fictitious names.

B. One hundred eighty (180) days after the date of entry of this Order, Defendant shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail

the manner and form in which he has complied and is complying with this Order. This report shall include, but not be limited to:

1. Any changes required to be reported pursuant to Subpart A above;
2. A copy of each acknowledgment of receipt of this Order obtained by Defendant pursuant to Part XI; and
3. A list of the names and addresses of each person and entity that received a copy of the letter sent by Defendant to each endorser pursuant to Part III.

C. For the purposes of this Order, Defendant shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Regional Director
Federal Trade Commission, Southwest Region
1999 Bryan Street, Suite 2150
Dallas, TX 75201
Re: FTC v. Mark Nutritionals, Inc., et al. (W.D. Texas).

IX. 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, Defendant 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 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; and
2. posing as consumers and suppliers to Defendant's employees, or any other entity managed or controlled in whole or in part by Defendant, 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(a)(1)).

C. Defendant 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.

X. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, if Defendant engages in advertising, marketing, promotion, offering for sale, distribution or sale of any product or service covered by this Order, then he is 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, phone 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;

E. 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 covered by this Order;

F. Copies of all materials that were relied upon in making any representation contained in the materials identified in Subpart E, 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, surveys, demonstrations, as well as all evidence that confirms, contradicts, or calls into question the accuracy of such claims regarding the efficacy of such product or service; and

G. 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.

XI. DISTRIBUTION OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry

of this Order, Defendant shall deliver a copy of this Order to the principals, officers, directors, managers and employees under Defendant's control for any business that (a) employs or contracts for personal services from Defendant and (b) has responsibilities with respect to the subject matter of this Order. Defendant shall 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.

XII. COOPERATION WITH THE COMMISSION

IT IS FURTHER ORDERED, that the Defendant shall cooperate with the Commission in the prosecution of any further proceedings in this case.

XIII. LIFT OF ASSET FREEZE

IT IS FURTHER ORDERED, that the freeze of Defendant's assets, imposed in the Preliminary Injunctions entered in this proceeding, shall be lifted upon the entry of this Order.

XIV. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that 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.

XV. RETENTION OF JURISDICTION

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 Defendant pursuant to all the terms and conditions above.

SO ORDERED:

DATED: _____

EDWARD C. PRADO,
UNITED STATES DISTRICT JUDGE

SO STIPULATED:

THOMAS B. CARTER

Texas State Bar No. 03932300

DEBORAH W. DAWSON

New York State Bar No.1658889

FREDERIC DUNSKY

Texas State Bar No. 06262950

1999 Bryan St., Suite 2150

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(214) 979-9372 (Carter)

(214) 979-9395 (Dawson)

(214) 979-9362 (Dunsky)

(214) 953-3079 (facsimile)

Attorneys for Plaintiff

FEDERAL TRADE COMMISSION

Edward G. D'Alessandro, Jr., Individually

APPENDIX A

FIRST CLASS MAIL

[To be printed on Defendant's or his company's letterhead]

[date]

[endorser's address]

Dear [endorser's name]:

This letter is to inform you that I recently settled a civil dispute with the Federal Trade Commission and that a Stipulated Final Order for Permanent Injunction and Settlement of Claims for Monetary Relief ("Order") was entered against me by the United States District Court for the Western District of Texas on _____[date]. This Order was entered in a civil case brought by the Federal Trade Commission regarding my advertising of Body Solutions Evening Weight Loss Formula.

The Order specifically prohibits me, directly or through any endorser of my products, from making a claim for a food, drug, dietary supplement, or health-related product or service unless there is competent and reliable scientific evidence to support the claim.

I will apprise you of authorized claims for my products or services. **If you make false or unsubstantiated claims, I am required by the Order to stop using you as an endorser.**

To continue to serve as an endorser of my products or services, you must sign, date, and return this letter to the above address, acknowledging your agreement to the terms set forth herein.

Thank you very much for your assistance.

[Defendant's signature]

ACKNOWLEDGMENT AND AGREEMENT

The undersigned acknowledges receipt of this letter and hereby agrees to its terms and conditions.

Print Name

Print Name of Employer

Signature

Date