UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of	)	FILE NO. 0023312
ROBERT C. SPENCER individually and d/b/a Aaron Company, and	)	
LISA M. SPENCER individually and d/b/a Aaron Company .	)	AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission has conducted an investigation of certain acts and practices of proposed respondents, Robert C. Spencer and Lisa M. Spencer, individually and doing business as Aaron Company. The Spencers are willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore:

IT IS HEREBY AGREED by and between Robert C. Spencer and Lisa M. Spencer ("proposed respondents"), individually and d/b/a Aaron Company, and counsel for the Federal Trade Commission that:

1. Proposed respondents Robert C. Spencer and Lisa M. Spencer are residents of Florida. Their principal office or place of business is 1580 Masters Road, N.W., Palm Bay, FL 32907. Together, individually, or in concert with others, they formulate, direct, or control the policies, acts, or practices of the business operating under the trade name "Aaron Company."

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint.

3. Proposed respondents waive:

   a. Any further procedural steps;

   b. The requirement that the Commission's decision contain a statement of findings of

fact and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true. Provided, however, that in the event of any subsequent litigation to collect amounts due pursuant to this order, including but not limited to a nondischargeability complaint in any bankruptcy proceeding, proposed respondents agree that the facts as alleged in the Commission's complaint in this action shall be taken as true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondents' address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the draft complaint and consent order. Proposed respondents understand that they may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

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

1. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

2. "Clearly and prominently" 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. Provided, further, that in any advertisement communicated through interactive media which is presented predominantly through visual or audio means, the disclosure may be made through the same means in which the ad is predominantly 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.

   c. On a product label, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it and in print that contrasts with the background against which it appears. ***Provided, however,*** if a disclosure on a bottle label or package label is made in a location other than the principal display panel, the bottle label or package label shall (i) include the statement, "**See important safety warning(s) on [insert disclosure location]**,"

in a type size and location on the principal display panel sufficiently noticeable for an ordinary consumer to read and comprehend it and in print that contrasts with the background against which it appears; ***and*** (ii) place the disclosure on the bottle label and, if applicable, the package label, within a border that is a color or shade that contrasts with the background against which it appears. ***Provided further***, that in a multi-page insert, the disclosure shall appear on the cover page or first page.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

3. In the case of advertisements disseminated by means of an interactive electronic medium, such as software, the Internet, or online services, "in close proximity" shall mean on the same Web page, online service page, or other electronic page, and proximate to the triggering representation, and shall not include disclosures accessed or displayed through hyperlinks, pop-ups, interstitials or other means.

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

5. A requirement that respondents "notify the Commission," "file with the Commission" or "deliver to the Commission" shall mean that the respondents shall send the necessary information via first-class mail, costs prepaid, to the Associate Director for Division of Enforcement, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Attention: In the Matter Robert C. Spencer et al.

6. "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.

7. Unless otherwise specified, "respondents" shall mean Robert C. Spencer and Lisa M. Spencer, individually and d/b/a Aaron Company, their agents, representatives, and employees.

8. "Metatags" shall mean any word or words embedded in the source code of an Internet Web site that may be used by an Internet search engine in indexing Web sites for the purpose of selecting sites in response to an Internet user's search request.

9. "Colloidal Silver product" shall mean any product containing or purporting to contain

colloidal silver or silver salts, including but not limited to Aaron's *Colloidal Silver*.

10. "Chitosan with vitamin C product" shall mean any product containing or purporting to contain chitosan, chitin, or any other substance derived, directly or indirectly, from the exoskeletons of crustaceans, including but not limited to Aaron's *Chitosan with vitamin C*.

11. "Ultimate Energizer product" shall mean any product containing or purporting to contain ephedra, ephedra extract or ephedrine, including but not limited to Aaron's *Ultimate Energizer"* or any other product containing Mahuang.

12. "Food," "drug," and "device" shall mean as "food," "drug," and "device" are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.

13. "Covered product or service" shall mean any service, program, dietary supplement, food, drug, or device.

14. "Ephedra, ephedra extract or ephedrine" shall mean a source of ephedrine alkaloid, including, but not limited to, ephedrine, pseudoephedrine, norephedrine, norpseudoephedrine, N-methyephedrine, and N-methylpseudoephedrine, either derived from natural sources such as the herb Ephedra sinica (also called Ma-Huang or Chinese Ephedra) or synthetically produced.

15. "Product label" shall mean any label or other written, printed or graphic matter upon any product or accompanying any product, including package labels, bottle labels, and package inserts.

I.

IT IS HEREBY ORDERED that respondents, directly or through any partnership, corporation, subsidiary, division, trade name, or other device, including franchisees, licensees, or distributors, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any *Colloidal Silver* product or any covered product or service in or affecting commerce, shall not misrepresent, in any manner, including by means of metatags, expressly or by implication, that such product or service has been medically proven to kill any disease-causing organisms, or any number of disease-causing organisms, in the body or that colloidal silver successfully treats any infections, or any number of infections, caused by disease-causing organisms, including germs, viruses, algae and fungus.

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II.

IT IS HEREBY ORDERED that respondents, directly or through any partnership, corporation, subsidiary, division, trade name, or other device, including franchisees, licensees, or distributors, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any *Colloidal Silver* product, *Chitosan with vitamin C* product, *Ultimate Energizer* product, or any covered product or service in or affecting commerce, shall not make any representation, in any manner, including by means of metatags, expressly or by implication:

A. That any such product or service is effective in treating or curing cancer, multiple sclerosis, HIV/AIDS, flu, candida, Lyme's disease, psoriasis, the common cold, stomach ulcers, burns, arthritis, streptococcus infections, tuberculosis, tonsillitis, herpes virus, virus warts, athlete's foot, shingles, allergies or infections associated with diabetes;

B. That any such product or service promotes healing or cures infections;

C. That any such product or service is superior to antibiotics in killing disease-causing organisms;

D. That any such product or service is safe for human consumption or has no side effects;

E. That any such product or service is effective in treating various medical or health conditions in animals, including serious eye infection, prostate infection, and swollen intestine; or

F. That any such product or service enables consumers to lose substantial weight without the need for a restricted calorie diet;

G. That any such product or service is effective in the mitigation, treatment, prevention, or cure of any disease, illness or health conditions; or

H. About the health benefits, performance, safety, or efficacy of any such product or service;

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

III.

IT IS FURTHER ORDERED that respondents, directly or through any partnership, corporation, subsidiary, division, trade name, or other device, including franchisees, licensees or distributors, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service in or affecting commerce, shall not misrepresent, in any manner, including by means of metatags, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

IV.

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in labeling for such product under any tentative final or final standard promulgated by the Food and Drug Administration. Nor shall it prohibit respondents from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

V.

IT IS FURTHER ORDERED that:

A. In any advertisement (other than a television or radio advertisement), promotional material, or product label for any covered product or service containing ephedra or ephedrine, and during any discussion relating to the use of such product or service communicated via electronic mail or any telephone line, respondents, their officers, agents, servants, and employees shall make clearly and prominently, the following disclosure:

WARNING: This product contains ephedra or ephedrine alkaloids, which can have dangerous effects on the central nervous system and heart and can result in serious injury. Risk of injury can increase with dose, and may even include heart attack, stroke, seizure or death. Consult a health care provider prior to use if you have high blood pressure, heart or thyroid disease, diabetes, difficulty urinating, prostate enlargement, or glaucoma, or are using any prescription drug. Do not use if you are taking a MAO inhibitor or any allergy, asthma, or cold medication containing ephedrine, pseudoephedrine or phenylpropanolamine. Discontinue use if you experience rapid heart beat, chest pain, severe headache, shortness of breath, dizziness, sleeplessness or nausea. This product is not recommended for use if you are or could be pregnant unless a qualified health care provider tells you to use it. The product may not be safe for your developing baby.

unless respondents possess competent and reliable scientific evidence that such product is safe and produces no adverse side effects.

Provided, however, that the product label requirements of this Subpart shall not apply to products that are shipped to consumers or purchasers for resale less than thirty (30) days after the date of service of this order; and, *provided further*, that with regard to products shipped after thirty (30) days of the date

of service of this order, respondents may affix the disclosure clearly and prominently by sticker or other device on the labels of products manufactured prior to thirty (30) days after the service of this order.

A. In any television or radio advertisement for any covered product or service containing ephedra or ephedrine, respondents, their officers, agents, servants, and employees shall make, clearly and prominently, the following disclosure:

WARNING: This product contains [insert name of ephedrine alkaloids contained in product, *e.g.*, Mahuang] which can have dangerous effects on the central nervous system and heart and can result in serious injury. Risk of injury increases with increased dosage,

unless respondents possess competent and reliable scientific evidence that such product is safe and produces no adverse side effects.

Provided, however, that in the event that the Food and Drug Administration issues a final rule requiring a warning on the labeling of products containing ephedrine alkaloids, respondents may substitute that warning for the disclosures required under Parts A and B above.

VI.

IT IS FURTHER ORDERED that respondents, for ten (10) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

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

VII.

IT IS FURTHER ORDERED that respondents shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities as stated above. Respondents shall maintain and upon request make available to the Commission for inspection and copying each such signed and dated statement.

VIII.

IT IS FURTHER ORDERED that respondents shall notify the Commission at least thirty (30) days prior to any change with regard to Aaron Company that may affect compliance obligations arising under this order, including but not limited to its incorporation; and if incorporated, its creation, dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the business or corporate name or address. Provided, however, that, with respect to any proposed change about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge.

IX.

IT IS FURTHER ORDERED that respondents, within five (5) days of entry of this order, shall notify the Commission of (1) their residence address and mailing address; (2) their telephone number(s); (3) if applicable, the names of their employer(s) and supervisor(s); and (4) their duties and responsibilities.

X.

IT IS FURTHER ORDERED that respondents, for a period of ten (10) years after the date of entry of this order, shall notify the Commission of (1) any changes in their residence address, mailing address, or business address; (2) the discontinuance of their current business or employment; and (3) their affiliation with any new business or employment. Notice of changes in employment status shall include: (1) the new employer's name, address and telephone number; (2)

the full names of the employer's principals; (3) if applicable, the names of respondents' supervisors; and (4) a description of the employer's activities, and respondents' duties and responsibilities.

XI.

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

XII.

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

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

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

Signed this _____ day of _____, 2001.

Respondents

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ROBERT C. SPENCER

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LISA M. SPENCER

For the Commission

_____
JAMES T. ROHRER
Counsel for the Federal Trade Commission

APPROVED:

_____
ANDREA L. FOSTER
Director
Southeast Region

APPROVED:

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JOAN Z. BERNSTEIN
Director
Bureau of Consumer Protection