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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

<p>FEDERAL TRADE COMMISSION, Plaintiff, v. WESTERN DIETARY PRODUCTS CO. (SKOOKUM), a corporation, d/b/a WESTERN HERB & DIETARY PRODUCTS, INC., and MARVIN BECKWITH, and MIGUELINA BECKWITH, individually and as officers of the corporation, Defendants.</p>	<p>CIVIL ACTION NO. C01-0818R STIPULATED FINAL JUDGMENT AND ORDER</p>
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Plaintiff Federal Trade Commission (“Commission”) commenced this action by filing a Complaint pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), charging defendants **Western Dietary Products Co. (Skookum), d/b/a Western Herb & Dietary Products, Inc., and Marvin Beckwith and Miguelina Beckwith** with engaging in unfair

1 or deceptive acts or practices in connection with the sale, offering for sale or distribution of certain
2 herbal products and the “Zapper” electrical unit, in violation of Sections 5 and 12 of the FTC Act,
3 15 U.S.C. §§ 45 and 52.

4 Now the Commission and defendants **Western Dietary Products Co. (Skookum), d/b/a**
5 **Western Herb & Dietary Products, Inc.**, and **Marvin Beckwith** and **Miguelina Beckwith** agree
6 to a settlement of this action without trial or adjudication of any issue of law or fact herein and
7 without defendants **Western Dietary Products Co. (Skookum), d/b/a Western Herb & Dietary**
8 **Products, Inc.**, and **Marvin Beckwith** and **Miguelina Beckwith** admitting liability for any of the
9 violations alleged in the Complaint. The Commission and defendants **Western Dietary Products**
10 **Co. (Skookum), d/b/a Western Herb & Dietary Products, Inc.**, and **Marvin Beckwith** and
11 **Miguelina Beckwith** consent to entry of this STIPULATED FINAL JUDGMENT AND ORDER (“Order”)
12 without trial or adjudication of any issue of law or fact herein.

14 FINDINGS

15 1. This is an action by the Commission instituted under Section 13(b) of the Federal
16 Trade Commission Act, 15 U.S.C. § 53(b). The Complaint seeks permanent injunctive relief against
17 defendants **Western Dietary Products Co. (Skookum), d/b/a Western Herb & Dietary Products,**
18 **Inc.**, and **Marvin Beckwith** and **Miguelina Beckwith** in connection with the sale of herbal products
19 and the Zapper electrical unit.

20 2. This Court has jurisdiction over the subject matter of this case and over defendants
21 **Western Dietary Products Co. (Skookum), d/b/a Western Herb & Dietary Products, Inc.**, and
22

1 **Marvin Beckwith** and **Miguelina Beckwith**. Venue in the Western District of Washington is
2 proper.

3 3. The Complaint states a claim upon which relief may be granted against defendants
4 **Western Dietary Products Co. (Skookum), d/b/a Western Herb & Dietary Products, Inc.**, and
5 **Marvin Beckwith** and **Miguelina Beckwith** under Sections 5(a), 12 and 13(b) of the FTC Act,
6 15 U.S.C. §§ 45(a), 52 and 53(b).

7 4. The Commission has the authority under Section 13(b) of the FTC Act, 15 U.S.C.
8 § 53(b), to seek the relief it has requested.

9 5. The activities of defendants **Western Dietary Products Co. (Skookum), d/b/a**
10 **Western Herb & Dietary Products, Inc.**, and **Marvin Beckwith** and **Miguelina Beckwith** charged
11 in the Complaint are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C.
12 § 44.

13 6. By stipulating and consenting to the entry of this Order, defendants **Western Dietary**
14 **Products Co. (Skookum), d/b/a Western Herb & Dietary Products, Inc.**, and **Marvin Beckwith**
15 and **Miguelina Beckwith** do not admit any of the allegations in the Complaint, except those
16 contained in Paragraphs 1 through 5 herein. Likewise, by executing this Order, the FTC does not
17 admit that any defense to the Complaint is valid.

18 7. This action and the relief awarded herein is in addition to, and not in lieu of, other
19 remedies as may be provided by law, including both civil and criminal remedies.

20 8. Defendants **Western Dietary Products Co. (Skookum), d/b/a Western Herb &**
21 **Dietary Products, Inc.**, and **Marvin Beckwith** and **Miguelina Beckwith** enter into this Order freely
22

1 and without coercion, and acknowledge that they understand the provisions of this Order and are
2 prepared to abide by its terms. At all times, the defendants have been represented by counsel,
3 including the negotiations that led to this Order.

4 9. Any voluntary bankruptcy petition filed by defendant **Western Dietary Products Co.**
5 **(Skookum)**, d/b/a **Western Herb & Dietary Products, Inc.**, or by defendant **Marvin Beckwith**,
6 or by defendant **Miguelina Beckwith** does not automatically stay this action, which the Court finds
7 is the “commencement or continuation of any action or proceeding by a governmental unit to enforce
8 such governmental unit’s police or regulatory power,” as set forth in 11 U.S.C. § 362(b)(4).

9 10. Any voluntary bankruptcy petition filed by any defendant does not divest this Court
10 of jurisdiction to enter this final judgment against defendants.

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

13 O R D E R

14 D E F I N I T I O N S

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

16 1. “*Defendants*” means corporate defendant **Western Dietary Products Co.**
17 **(Skookum)**, a corporation, d/b/a **Western Herb & Dietary Products, Inc.**, and individual
18 defendants **Marvin Beckwith** and **Miguelina Beckwith**.

19 2. “*Person*” means a natural person, organization or other legal entity, including a
20 corporation, partnership, proprietorship, association, cooperative, government or governmental
21 subdivision or agency, or any other group or combination acting as an entity.

1 3. “*Consumer*” and “*customer*” include any individual, group, unincorporated
2 association, limited or general partnership, corporation or other business entity.

3 4. The terms “*and*” and “*or*” shall be construed conjunctively or disjunctively as
4 necessary, and to make the applicable phrase or sentence inclusive rather than exclusive.

5 5. “*Covered product or service*” shall mean any service, program, dietary supplement,
6 food, drug, or device.

7 6. “*Food*,” “*drug*,” and “*device*” shall mean as as “food,” “drug,” and “device” are
8 defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.

9
10 **I.**

11 **PROHIBITED REPRESENTATIONS**

12 **IT IS HEREBY ORDERED**, in connection with the advertising, offering for sale or sale
13 of the Zapper electrical unit or any other covered product or service, that defendants and their
14 successors, assigns, officers, agents, servants, employees, attorneys and those persons or entities in
15 active concert or participation with them who receive actual notice of this Order by personal service
16 or otherwise—whether acting directly or through any corporation, subsidiary, division or other
17 device—are hereby permanently restrained and enjoined from misrepresenting that use of any such
18 product in the treatment of cancer makes surgery or chemotherapy unnecessary.
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1 **II.**

2 **IT IS FURTHER ORDERED**, in connection with the advertising, offering for sale or sale
3 of the Zapper electrical unit or any other covered product or service, that defendants and their
4 officers, agents, directors, employees, salespersons, independent contractors, attorneys, subsidiaries,
5 affiliates, successors, assigns and all other persons or entities in active concert or participation with
6 them who receive actual notice of this Order by personal service or otherwise, whether acting
7 directly or through any corporation, subsidiary, division or other device, are hereby permanently
8 restrained and enjoined from making any express or implied representation concerning the health
9 benefits, performance, safety, or efficacy of any such product or service, unless, at the time the
10 representation is first made, defendants possess and rely upon *competent and reliable scientific*
11 *evidence*. “*Competent and reliable scientific evidence*” shall mean tests, analyses, research, studies
12 or other evidence based on the expertise of professionals in the relevant area, that have been
13 conducted and evaluated in an objective manner by persons qualified to do so, using procedures
14 generally accepted in the profession to yield accurate and reliable results.

15 **III.**

16 **SUSPENDED JUDGMENT**

17 **IT IS FURTHER ORDERED** that:

18 A. Judgment is hereby entered against defendants Western Dietary Products Co.
19 (Skookum), d/b/a Western Herb & Dietary Products, Inc., and Marvin Beckwith and Miguelina
20 Beckwith, jointly and individually, in the amount of FIFTY THOUSAND DOLLARS (\$50,000);
21 *provided, however*, that this judgment shall be suspended until further order of the Court, *and*

1 *provided further* that this judgment shall be subject to the conditions set forth in Section V of this
2 Order.

3 B. All funds paid pursuant to this Order shall be deposited into a fund administered by
4 the Commission or its agent to be used for equitable relief, including but not limited to consumer
5 redress and any attendant expenses for the administration of any redress fund. In the event that direct
6 redress to consumers is wholly or partially impracticable or funds remain after redress is completed,
7 the Commission may apply any remaining funds for such other equitable relief (including consumer
8 information remedies) as it determines to be reasonably related to the Defendants' practices alleged
9 in the Complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as
10 disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies
11 under this Section.

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13 **IV.**

14 **RIGHT TO REOPEN AND TERMINATE SUSPENSION**

15 **IT IS FURTHER ORDERED** that the Commission's agreement to this Order is expressly
16 premised upon the truthfulness, accuracy and completeness of the sworn financial statement of
17 defendants **Marvin Beckwith** and **Miguelina Beckwith**. Said financial statement contains material
18 information upon which the FTC has relied in negotiating and agreeing to the terms of this Order.
19 If, upon motion by the Commission to the Court, the Court finds that an individual defendant failed
20 to submit to the Commission the sworn statement required by Section V of this Order, or failed to
21 disclose any material asset with a value exceeding One Thousand Dollars (\$1,000), or materially
22 misrepresented the value of any asset, or made any other material misrepresentation in or omission

1 from their financial statement, the suspension of the monetary judgment will be terminated and the
2 entire judgment amount of **FIFTY THOUSAND DOLLARS (\$50,000)**, less any amounts paid to the
3 Commission by defendants pursuant to Section III of this Order, will be immediately due and
4 payable. For purposes of this Section, and any subsequent proceedings to enforce
5 payment—including, but not limited to, a non-dischargeability complaint filed in a bankruptcy
6 proceeding—each individual defendant stipulates to all of the allegations in the Commission’s
7 Complaint.

8
9 **V.**

10 **ACKNOWLEDGMENT OF RECEIPT OF ORDER**

11 **IT IS FURTHER ORDERED** that, within five (5) business days after entry of this Order,
12 defendants **Marvin Beckwith** and **Miguelina Beckwith**, individually and as officers of corporate
13 defendant **Western Dietary Products Co. (Skookum), d/b/a/ Western Herb & Dietary Products,**
14 **Inc.**, shall each submit to the Commission a truthful sworn and notarized statement, in the form
15 shown on Appendix 1, *infra*, that shall acknowledge receipt of this Order as entered.

16
17 **VI.**

18 **RECORD KEEPING**

19 **IT IS FURTHER ORDERED** that defendants are hereby restrained and enjoined from
20 failing to maintain for a period of three (3) years, and upon request make available to plaintiff
21 Federal Trade Commission for inspection and copying:

1 C. any proposed change in the structure of any business entity owned or controlled by
2 him, such as creation, incorporation, dissolution, assignment, sale, creation or dissolution of
3 subsidiaries, or any other changes that may affect compliance obligations arising out of this Order,
4 within thirty (30) days prior to the effective date of any proposed change; *provided, however*, that
5 with respect to any proposed change in structure of such business about which a defendant learns,
6 less than thirty (30) days prior to the date such action is to take place, he shall notify the Commission
7 as soon as practicable after learning of such proposed change.

8
9 **VIII.**

10 **FTC'S AUTHORITY TO MONITOR COMPLIANCE**

11 **IT IS FURTHER ORDERED** that the Commission is authorized to monitor defendants'
12 compliance with this Order by all lawful means, including, but not limited to, the following:

13 A. the Commission is authorized, without further leave of this Court, but on notice to
14 counsel for defendants as required by the Federal Rules of Civil Procedure, to obtain discovery from
15 any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R.
16 Civ. P. 26–37, including the use of compulsory process pursuant to Federal R. Civ. P. 45, for the
17 purpose of investigating compliance with any provision of this Order;

18 B. the Commission is authorized, without the necessity of prior notice, to use
19 representatives posing as consumers to the individual defendants, and each of their employees, or
20 any other entity managed or controlled in whole or in part by an individual defendant;

1 C. nothing in this Order shall limit the Commission's lawful use of compulsory process,
2 pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, for the purpose of
3 investigation compliance with this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

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5 **IX.**

6 **ORDER DISTRIBUTION**

7 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of
8 this Order, the individual defendants, and each of them, shall:

9 A. immediately provide a copy of this Order to, and obtain a signed and dated
10 acknowledgment of receipt of the same from, each officer, director and managing agent in any
11 company or other business entity directly or indirectly owned, operated or controlled by such
12 individual defendant; and

13 B. maintain, and upon reasonable notice make available to the FTC's representatives,
14 the original and dated acknowledgments of the receipts required by this Section of this Order.

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16 **X.**

17 **NOTICES**

18 **IT IS FURTHER ORDERED** that for purposes of this Order, the individual defendants
19 shall, unless otherwise directed by the Commission's authorized representatives, mail all written
20 notifications to the Commission to:

1 REGIONAL DIRECTOR
Federal Trade Commission
2 Re: *FTC v. Western Dietary Products Co., et al.*
East Central Region
3 Eaton Center—Suite 200
1111 Superior Avenue
4 Cleveland, Ohio 44114–2507

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6 **XI.**

7 **WAIVER OF CLAIMS**

8 **IT IS FURTHER ORDERED** that defendants waive all claims under the Equal Access to
9 Justice Act, 28 U.S.C. § 2412, *as amended by* Pub. L. 104–121, 110 Stat. 847, 863–64 (1996), and
10 all rights to seek appellate review or otherwise challenge or contest the validity of this Order, or the
11 temporary or preliminary orders entered in this proceeding, and further waive and release any claim
12 they may have against the FTC or its employees, agents or representatives.

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14 **XII.**

15 **INDEPENDENCE OF OBLIGATIONS**

16 **IT IS FURTHER ORDERED** that the expiration of any requirements imposed by this Order
17 shall not affect any other obligation arising under this Order.

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19 **XIII.**

20 **COSTS AND ATTORNEYS FEES**

21 **IT IS FURTHER ORDERED** that each party to this Order bear its own costs and attorneys
22 fees incurred in connection with this action.

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XIV.

CONTINUED JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

XV.

ENTRY BY CLERK

THERE BEING NO JUST REASON FOR DELAY, the Clerk of Court is hereby directed to enter this Order.

SO ORDERED, this _____ day of _____.

Barbara Jacobs Rothstein
United States District Judge

STIPULATED TO

By Plaintiff Federal Trade Commission:

DATE: _____, 2001

MICHAEL MILGROM Ohio Bar No. 0012959
Federal Trade Commission—East Central Region
1111 Superior Avenue — Suite 200
Cleveland, Ohio 44114-2507
Phone 216-263-3419 / Fax 216-263-3426

DATE: _____, 2001

BRINLEY H. WILLIAMS Ohio Bar No. 0011793

1 Federal Trade Commission—East
Central Region
2 1111 Superior Avenue — Suite 200
Cleveland, Ohio 44114-2507
3 Phone 216-263-3414 / Fax
216-263-3426

4 **Trial Counsel**

5
6 **NADINE S. SAMTER**, Washington Bar No. 23881
Federal Trade Commission — Northwest
Region
7 915 Second Avenue, Suite 2896
Seattle, Washington 98174
8 Phone 206-220-4479 / Fax
206-220-6366

9 **Local Counsel**

10 **STIPULATED TO**

11 **By Corporate Defendant Western Dietary Products Co. (Skookum),**
12 **d/b/a Western Herb & Dietary Products, Inc.**

13 **DATE:** _____, 2001

14 **BY: MARVIN BECKWITH**
15 *Owner and Officer of Defendant Corporation*
16 *Western Dietary Products Co. (Skookum),*
d/b/a Western Herb & Dietary Products, Inc.

17 **By the Individual Defendants:**

18
19 **DATE:** _____, 2001

20 **MARVIN BECKWITH**
individually and as an owner
and officer of defendant corporation.

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DATE: _____, 2001

MIGUELINA BECKWITH
*individually and as an owner
and officer of defendant corporation.*

**By Counsel for Defendants
Western Dietary Products Co. (Skookum), d/b/a
Western Herb & Dietary Products, Inc., and
Marvin Beckwith and Miguelina Beckwith**

DATE: _____, 2001

MICHAEL TARIO, ESQ.
Tario & Associates
119 N. Commercial St., Suite 1000
Bellingham, WA 98225
Phone 360-671-8500 / Fax 360-733-7092

1 [APPENDIX 1]
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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

<p>11 FEDERAL TRADE COMMISSION, 12 13 v. 14 WESTERN DIETARY PRODUCTS CO. (SKOOKUM), 15 a corporation, d/b/a 16 WESTERN HERB & DIETARY PRODUCTS, INC., 17 and 18 MARVIN BECKWITH, and 19 MIGUELINA BECKWITH, 20 individually and as officers of the corporation, 21 22 Defendants.</p>	<p>23 CIVIL ACTION NO. C01-0818R 24 25 DEFENDANT _____[NAME]_____’S AFFIDAVIT REGARDING ACKNOWLEDGEMENT OF SERVICE OF STIPULATED FINAL JUDGMENT AND ORDER</p>
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18 I, _____[NAME]_____, hereby declare as follows:

19 1. I am a defendant in the action, *Federal Trade Commission v. Western Dietary*
20 *Products Co. (Skookum), a corporation, d/b/a Western Herb & Dietary Products, Inc., and*
21 *Marvin Beckwith, and Miguelina Beckwith, individually and as officers of the corporation*
22 (United States District Court, Western District of Washington at Seattle, Civil Action

[APPENDIX 1]

No. C01-0818R. My current residence address is current residence address. I am a citizen of the United States and over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I agreed to entry of a Stipulated Final Judgment and Order (“Stipulated Order”) against me to settle the charges in the Commission’s Complaint. I read the provisions of the Stipulated Order before signing it. I understand all the provisions of the Stipulated Order. By signing the Stipulated Order, I agreed to be bound by those provisions.

3. On Date, I received a copy of the Stipulated Order, which had been signed by a United States District Judge and was entered on Date. A true and correct copy of the Stipulated Order I received is appended to this affidavit. After receiving the entered Stipulated Order I reviewed it and confirmed it was the document I had previously signed.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on Date, at City, State.

Individual Defendant’s Name

State of _____, City of _____

Subscribed and sworn to before me this ____ day of _____, ____.

My Commission Expires: _____

Notary Public