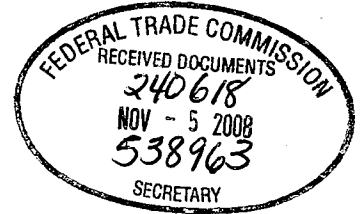


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****PUBLIC****

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**



DOCKET NO. 9331

In the Matter of

**MARY T. SPOHN,
individually and doing business
as Herbs for Cancer,
Respondent.**

**ORDER ON DEFAULT JUDGMENT
AND INITIAL DECISION**

**D. Michael Chappell
Administrative Law Judge**

Date: November 5, 2008

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

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In the Matter of)

MARY T. SPOHN,)
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 Respondent.)
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AND INITIAL DECISION**

I. PROCEDURAL HISTORY

The Complaint in this matter was signed on September 16, 2008 and issued on September 18, 2008. Following the issuance of the Complaint, no notice of appearance, answer, or any other pleading had been filed as of October 29, 2008. Due to the lack of any activity in this case for almost six weeks, by Order dated October 29, 2008, Complaint Counsel was directed to provide a status of the case, including an affidavit or declaration indicating whether Respondent had been properly served pursuant to Commission Rule 4.4 and whether there have been any communications between the parties since the issuance of the Complaint.

On October 31, 2008, Complaint Counsel filed the ordered status report. As part of that report, Complaint Counsel provided a declaration under penalty of perjury from Raymond McKown, an attorney for Complaint Counsel, who averred that Respondent was properly served with the Complaint pursuant to Commission Rule 4.4 on September 23, 2008. McKown further declared that Complaint Counsel and Respondent have been engaged in communications since September 23, 2008. Respondent has, to date, filed nothing before the Office of Administrative Law Judges.

II. DEFAULT JUDGMENT IS APPROPRIATE UNDER RULE 3.12(c)

Pursuant to Commission Rule § 3.12(a), a “respondent shall file an answer within twenty (20) days after being served with the complaint” unless a motion is filed or a different time is

fixed by the Administrative Law Judge. 16 C.F.R. § 3.12(a). When a respondent fails to file an answer, entry of default judgment is appropriate. Rule 3.12(c) states:

Default. Failure of the respondent to file an answer within the time provided shall be deemed to constitute a waiver of the respondent's right to appear and contest the allegations of the complaint and to authorize the Administrative Law Judge, without further notice to the respondent, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions, and order.

16 C.F.R. § 3.12(c); *In re Automotive Breakthrough Sciences, Inc.*, 1996 FTC LEXIS 763, at *6-10 (Oct. 16, 1996). See also *Am. Tractor Trailer Training, Inc.*, 86 F.T.C. 654, 1975 FTC LEXIS 84, at *19 (Sept. 17, 1975); *TV Stereo City Freight Liquidators, Inc.*, 86 F.T.C. 590, 1975 FTC LEXIS 96, at *14 (Sept. 3, 1975).

Commission Rule 3.12(c) is similar to Rule 55 of the Federal Rules of Civil Procedure. Under Rule 55(a), judgment by default may be entered “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend” the lawsuit. Fed. R. Civ. Pro. 55(a); see also *Automotive Breakthrough*, 1996 FTC LEXIS 763, at *8. If the court determines that a defendant is in default, the factual allegations of the complaint will be taken as true. *Thomson v. Wooster*, 114 U.S. 104 (1885); *Klapprott v. United States*, 335 U.S. 601, 603 (1949) (district court necessarily accepts the undenied allegations of the complaint as true). This rule applies to cases seeking equitable as well as legal relief. *Thomson*, 114 U.S. at 110; *FTC v. Kitco of Nevada, Inc.*, 612 F. Supp. 1282, 1297 (D.C. Minn. 1985).

“A defendant cannot be permitted to ‘avoid or delay a plaintiff’s right to judicial resolution of a dispute by ignoring the proceeding.’” *Frank Keevan & Son, Inc. v. Callier Steel Pipe & Tube, Inc.*, 107 F.R.D. 665, 670 (S.D. Fla. 1985) (citation omitted); *In re Automotive Breakthrough Sciences, Inc.*, 1996 FTC LEXIS 763, at *12, *aff’d*, *In re BST Enter., Inc.*, 123 F.T.C. 1394 (May 30, 1997). According to the declaration filed by Raymond McKown in this case, Respondent was properly served with the Complaint under Rule 4.4. Respondent was required to file its Answer on or before October 14, 2008, pursuant to Rule 3.12(a). Although, according to McKown’s declaration, Respondent has communicated with Complaint Counsel, this is not sufficient to constitute an answer and prevent entry of default judgment. “Parties engaged in litigation frequently discuss the possible settlement of their disputes, but the mere existence of such negotiations, without more, does not excuse the parties from attending court appearances and otherwise complying with the Court’s orders.” *Simon v. Pay Tel Mgmt., Inc.*, 782 F. Supp. 1219, 1226 (N.D. Ill. 1991); *United States v. Topeka Livestock Auction, Inc.*, 392 F. Supp. 944, 950-51 (N.D. Ind. 1975) (ongoing settlement negotiations are not a sufficient reason for a failure to file an answer). Respondent failed to file an answer, motion, or any other response, request, or pleading. Accordingly, Respondent is found to be in default.

It is ORDERED that, pursuant to Commission Rule 3.12(c), the following Initial Decision is hereby entered.

III. INITIAL DECISION

Rule 3.12(c) of the Commission's Rules of Practice sets forth that when a respondent fails to file an Answer, the Administrative Law Judge is authorized "to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions, and order." 16 C.F.R. § 3.12(c). Accordingly, pursuant to Rule 3.12(c), this section sets forth the facts alleged in the Complaint, appropriate conclusions, and the order proposed in the Complaint.

A. Findings of Fact

1. Respondent Mary T. Spohn dba Herbs For Cancer ("Respondent") maintains her principal place of business in Surprise, Arizona 85374. At all times relevant to this Complaint, acting alone or in concert with others, Spohn has formulated, directed, controlled, or participated in various acts and practices set forth herein. (Complaint ¶ 1).

2. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act. (Complaint ¶ 2).

3. Respondent has advertised, offered for sale, sold, and distributed numerous tea formulas that are represented to fight and cure different types of cancers. According to Respondent, the cancer fighting tea formulas consist of, in different combinations, twelve or more "Chinese Herbs." The purported cancer fighting herbs are: Dong ling cao; Tian men dong; Ban zhi lian; Ban hua she she cao; Huang qin; Bai zhu; Yi yi ren; Tu fu ling; Ling zhi; Ren Shen; Huang qi; and Lu gen. The purported cancer remedies are marketed and sold under the following names: Bladder Cancer Tea Formula; Bone Cancer Tea Formula; Breast Cancer Tea Formula; Colon Cancer Tea Formula; Esophageal Cancer Tea Formula; Leukemia Tea Formula; Liver Cancer Tea Formula; Lung Cancer Tea Formula; Malignant Lymphoma Tea Formula; Nasal Cancer Tea Formula; Nose and Throat Cancer Tea Formula; Prostate Cancer Tea Formula; Skin Cancer Tea Formula; Special Tea Formula; Stomach Cancer Tea Formula; Tongue Cancer and Oral Cancer Tea Formula; and Uterus and Cervical Cancer Tea Formula. Respondent has advertised and offered the products for sale through the Internet site www.HerbsForCancer.com. (Complaint ¶ 3).

4. For the purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, the following Tea Formulas are "drugs" as defined in Section 15(c) of the FTC Act, 15 U.S.C. § 55(c): Bladder Cancer Tea Formula; Bone Cancer Tea Formula; Breast Cancer Tea Formula; Colon Cancer Tea Formula; Esophageal Cancer Tea Formula; Leukemia Tea Formula; Liver Cancer Tea Formula; Lung Cancer Tea Formula; Malignant Lymphoma Tea Formula; Nasal Cancer Tea Formula; Nose and Throat Cancer Tea Formula; Prostate Cancer Tea Formula; Skin Cancer Tea Formula; Special Tea Formula; Stomach Cancer Tea Formula; Tongue Cancer and Oral Cancer Tea Formula; and Uterus and Cervical Cancer Tea Formula (collectively "Cancer Tea Formulas"). (Complaint ¶ 4).

5. To induce consumers to purchase the Cancer Tea Formulas, Respondent has disseminated, or caused to be disseminated, advertisements, including but not limited to the following statements and depictions, among others, on Respondent's website, the pertinent parts of which are attached hereto as Exhibit A:

- a. [H]elp the body fight the cancer . . . [these] Chinese herbs have been used for thousands of years to strengthen the body and fight disease and are very safe. Our formulas are created to target the organ or area where the cancer is, and help bring it back to a balanced state and to make the body strong so it can fight and destroy the cancer cells. Over the years there have been hundreds of documentations on these herbs. We have studied over 15 years to find the best formula to treat the different types of cancer. (Exhibit A at 15).
- b. I want to thank you for helping me save my mother in law [sic] life. We took her to three doctors and they all said the same thing[,] that she has cancer. So I got the tea from Herbs for Cancer[.] [S]he drinks it every chance she gets, 4 to 5 times a day. Then we took her to Sloan Kettering, they said the same thing, [“]cancer”. [sic] But I told her to keep drinking the tea. Believe it or not we took her to a follow up at Sloan Kettering. They gave her [a] second scan and she came out cancer free[.] [T]he only thing she was taking was the tea. We can't explain it but thank God for his never forget full [sic] hand and the tea. Thank you herbs for life!! E. Rosado, New York. (Exhibit A at 16.).
- c. Bladder Cancer Tea Formula. This herbal formula goes directly to the bladder to destroy cancer cells. . . . This formula should be taken even after surgery to insure the whole body has the benefits of the anti-cancer herbs. . . . This formula is used at Chi-Ling Hospital with great success. (Exhibit A at 22-23).
- d. Bone Cancer Tea Formula. The herbal formula used for cancer of the bone tissue is very complex and used to treat . . . bone cells, cartilage and the nuclear cells of the cancer. Along with the cancer fighting herbs. . . . It is also highly recommended to use the external formula . . . directly on the cancer site to increase the anticancer properties. (Exhibit A at 19-20).
- e. Breast Cancer Tea Formula. This is a wonderful formula to fight breast cancer. The herbs in this formula dissipate nodules, tumors, and masses in the breast. It is full of anti-cancer fighting herbs to help destroy cancer cells and regulate hormones to stop cancer growth. . . . This formula is being used in China to treat breast cancer and has a very high rate of success. . . . This formula is very safe and can and should be used for a long period of time to assure the destruction of all cancer cells. (Exhibit A at 17).
- f. Colon Cancer Tea Formula. The herbs in this herbal formula are specific to treat colon cancer. . . . [The herbs remove heat and stop bleeding, which stimulates

healing and] prevents the spread of cancer cells through out the body. This herbal formula is very strong in destroying the cancer cells. The herbs in this formula are known for their Anti-cancer fighting properties. . . . These herbs are very safe and have been used for many years in treating colon cancer with a strong success rate. (Exhibit A at 18).

- g. Esophageal [sic] Cancer Tea Formula. The herbs in this formula are very strong Anti-cancer fighting herbs that start to destroy the cancer cells immediately. . . . [I]n the raw form [the tea] has an immediate effect on the cancer cells and starts to destroy them thus decreasing the chance of spreading. . . . These herbs are widely used in China to treat esophageal cancer with great success. (Exhibit A at 21).
- h. Leukemia Tea Formula. These herbs are to raise the immune system and to fight cancer cells. They aid in increasing the level of killer cells and to bring the immune system into a healthy state to destroy cancer cells. (Exhibit A at 22).
- i. Liver Cancer Tea Formula. This herbal formula is the best for treating liver cancer. The herbs in this formula start to regenerate healthy liver cells immediately, destroy cancer cells and detoxify the liver and body. . . . These herbs are very strong anti-cancer fighters. If you have liver cancer you need this formula to fight the cancer and prevent it from spreading. [T]hese herbs have been used for years [in China] to treat liver cancer and many are used in modern medicine today for their anti-cancer properties. (Exhibit A at 18-19).
- j. Lung Cancer Tea Formula. The herbs in this formula for lung cancer are specifically for lung cancer. [The herbs] increase the oxygen exchange Increasing the oxygen in the body aids in the destruction of the cancer cells, thus decreasing the spread of cancer. These herbs also dissipate nodules and tumors. . . . Studies have been done on each and every one of these herbs to prove they have anti-cancer properties Remember, Chinese herbs have been around for thousands of years and have been tested over and over unlike new medicines.... These herbs in this formula will assist in the fight against cancer and will do no harm to the body. (Exhibit A at 17).
- k. Malignant Lymphoma Tea Formula. Taking this herbal formula is one of the best ways in the course of treatments for destroying the cancer cells. . . . Along with the cancer fighting herbs. . . . This herbal formula is safe and highly recommended to be used for 6-9 months to aid in destroying all the cancer cells and to keep the patient's immune system high. (Exhibit A at 23).
- l. Nasal Cancer Tea Formula. This herbal formula has strong anticancer agents to destroy cancer cells in the body, while treating the nasal area for cancer. . . . It is important to start treating this cancer immediately with this formula to suppress the cancer. (Exhibit A at 24).

- m. Nose and Throat Cancer Tea Formula. This is a cancer that should be treated both topically and orally. . . . [with this formula] to help destroy the cancer cells. . . . [The herbs] are also ingested into the blood stream to fight the cancer cell[s]. [The herbs] start the healing process. . . . [which causes the body] to fight off the cancer and regenerate new cells. (Exhibit A at 23).
- n. Prostate Cancer Tea Formula. This formula is designed to fight the [prostate] cancer, decrease the urinary frequency, hesitancy and urgency. Although a diagnosis of [prostate] cancer is frightening, it's far from being a death sentence. However, many people seem to die from fear of cancer rather than from the cancer itself. (Exhibit A at 25).
- o. Skin Cancer Tea Formula. This formula has herbs to treat all types of skin cancers, and should be taken orally using the herbal formula. (Exhibit A at 22).
- p. Special Tea Formula. Please use special formulas to order tea and capsule formulas for cancers not on our regular list. Upon checkout of your order, please specify the details of your cancer using the "Message To Sender" field on our Paypal shopping cart. The herbal formula is: Depends on the cancer ailment you are requesting the special formula for. (Exhibit A at 25).
- q. Stomach Cancer Tea Formula. The herbs [in this formula] are very strong in anti-cancer properties. . . . The herbs are number one in China for treating stomach cancer. These herbs heal the stomach and stop bleeding, [and] aid in digestion. . . . Along with being very strong anti-cancer fighting herbs they also help with acid reflex, nausea, indigestion, vomiting, abdominal distention and pain. If you have stomach cancer you need to be taking this formula. Patients start to see improvements in just a few days. This herbal formula is very safe and can be used long term. (Exhibit A at 19).
- r. Tongue Cancer and Oral Cancer Tea Formula. Taking the herbal formula in raw form and holding [it] in the mouth will coat the tongue and oral cavity with strong anti-cancer herbs that will start healing from the outside while drinking the herbal formula will help destroy the cancer cells from within. After using this herbal formula for 14 days there was 78% success rate in seeing a decrease in tumor cells and oral healing. (Exhibit A at 24).
- s. Uterus and Cervical Cancer Tea Formula. This is a great herbal formula that has strong anti-cancer fighting herbs. They are formulated to destroy cancer cells in the uterus and cervix and decrease tumors and masses. . . . These herbs have been used in China for hundreds of years to treat women and now have been tested in modern medicine to show positive results in the treatment of uterus and cervical cancer. (Exhibit A at 20).

(Complaint ¶ 5).

6. Through the means described in Paragraph 5, including the statements and depictions contained in the advertisements attached as Exhibit A, among others, Respondent has represented, expressly or by implication, that:

- a. The Bladder Cancer Tea Formula treats and cures bladder cancer;
- b. The Bone Cancer Tea Formula treats and cures bone cancer;
- c. The Breast Cancer Tea Formula treats and cures breast cancer;
- d. The Colon Cancer Tea Formula treats and cures colon cancer;
- e. The Esophageal Cancer Tea Formula treats and cures esophageal cancer;
- f. The Leukemia Tea Formula treats and cures leukemia;
- g. The Liver Cancer Tea Formula treats and cures liver cancer;
- h. The Lung Cancer Tea Formula treats and cures lung cancer;
- i. The Malignant Lymphoma Tea Formula treats and cures malignant lymphoma;
- j. The Nasal Cancer Tea Formula treats and cures nasal cancer;
- k. The Nose and Throat Cancer Tea Formula treats and cures nose and throat cancer;
- l. The Prostate Cancer Tea Formula treats and cures prostate cancer;
- m. The Skin Cancer Tea Formula treats and cures skin cancer;
- n. The Special Tea Formula treats and cures cancers not treated by the other tea formulas;
- o. The Stomach Cancer Tea Formula treats and cures stomach cancer;
- p. The Tongue Cancer and Oral Cancer Tea Formula treats and cures tongue cancer and oral cancer; and
- q. The Uterus and Cervical Cancer Tea Formula treats and cures uterine and cervical cancer.

(Complaint ¶ 6).

7. Through the means described in Paragraph 5, including the statements and depictions contained in the advertisements attached as Exhibit A, among others, Respondent has represented, expressly or by implication, that she possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 6 at the time the representations were made. (Complaint ¶ 7).

8. In truth and in fact, Respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 6 at the time the representations were made. Therefore, the representation set forth in Paragraph 7 was, and is, false and misleading. (Complaint ¶ 8).

9. Through the means described in Paragraph 5, including the statements and depictions contained in the advertisements attached as Exhibit A, among others, Respondent has represented, expressly or by implication, that:

- a. The Lung Cancer Tea Formula has been scientifically proven to treat and cure lung cancer;
- b. The Tongue Cancer and Oral Cancer Tea Formula has been scientifically proven to treat and cure tongue cancer and oral cancer; and

