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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION,  
Plaintiff,  
v.  
SMART INVENTIONS, INC.; JON D.  
NOKES; AND DARRELL STODDARD,  
Defendants.

Hon. Stephen G. Larson  
CV 04-4431-SGL (Ex)

~~Proposed~~  
**ORDER AND JUDGMENT  
FOR PERMANENT  
INJUNCTION AND OTHER  
EQUITABLE RELIEF  
AGAINST DEFENDANT  
DARRELL STODDARD**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), filed a Complaint for permanent injunction and other relief against Defendants Smart Inventions, Inc., Jon D. Nokes, and Darrell Stoddard, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), alleging unfair or deceptive acts or practices and false advertisements in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

The FTC filed a motion for summary judgment against all three Defendants on April 16, 2007. Subsequent to the motion's filing, the Court entered a stipulated final order resolving the FTC's case against defendants Smart Inventions, Inc. and Jon D. Nokes. The FTC's motion for summary judgment against Darrell Stoddard remained pending. Darrell Stoddard did not file an opposition to the FTC's motion

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1 for summary judgment.

2 The Court, having considered the FTC's motion and evidence, **hereby**  
3 **GRANTS** the FTC's motion for summary judgment.

4  
5 **FINDINGS**

6 1. This Court has jurisdiction over the subject matter of this case and  
7 over all parties. Venue in the Central District of California is proper.

8 2. The Commission has the authority to seek the relief it has requested.

9 3. The acts and practices of Darrell Stoddard are in or affecting  
10 commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

11 4. The Complaint states a claim upon which relief may be granted against  
12 Darrell Stoddard under Sections 5(a), 12, and 13(b) of the FTC Act, 15 U.S.C.  
13 §§ 45(a), 52, and 53(b).

14 5. There is no genuine issue as to any material fact concerning the  
15 liability of Darrell Stoddard for the illegal acts or practices charged in the Amended  
16 Complaint.

17 6. Darrell Stoddard has violated Sections 5(a) and 12 of the FTC Act by  
18 making false or misleading representations to induce the purchase of a purported  
19 pain-relief product known as Biotape, including but not limited to the following  
20 representations that Biotape:

21 A. Provides significant and/or permanent relief from severe pain,  
22 including, but not limited to, debilitating back pain, and pain  
23 from arthritis, frozen shoulder, surgical procedures, sciatica,  
24 migraines, and other conditions; and

25 B. Is more effective than other products or treatments, such as  
26 over-the-counter analgesics and topical creams and ointments,  
27 in relieving or eliminating severe pain.

1           7.     Uncontroverted evidence establishes that Darrell Stoddard violated  
2 Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

3           8.     There is a reasonable likelihood that Darrell Stoddard would continue  
4 to engage in the activities alleged in the Complaint unless permanently enjoined  
5 from such acts and practices.

6           9.     Plaintiff is entitled to judgment as a matter of law pursuant to Rule 56  
7 of the Federal Rules of Civil Procedure.

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

9           11.    Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of  
10 this Order are binding upon Darrell Stoddard, and his officers, agents, servants,  
11 representatives, employees and all other persons or entities in active concern or  
12 participation with him, who receive actual notice of this Order by personal service  
13 or otherwise.

14          12.    This action and the relief awarded herein are in addition to, and not in  
15 lieu of, any other remedies, civil or criminal, that may be provided by law,  
16 including any proceedings the Commission may initiate to enforce this judgment.

17  
18 **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED AS**  
19 **FOLLOWS:**

20  
21 **DEFINITIONS**

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

23           1.     “Darrell Stoddard” or “Stoddard” means Darrell Stoddard,  
24 individually.

25           2.     “Advertising” means any written or verbal statement, illustration or  
26 depiction that is designed to effect a sale or create interest in the purchasing of  
27 goods or services, whether it appears in a brochure, newspaper, magazine,  
28

1 pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter,  
2 catalogue, poster, chart, billboard, public transit card, point of purchase display,  
3 packaging, package insert, label, film, slide, radio, television or cable television,  
4 audio program transmitted over a telephone system, program-length commercial  
5 (“infomercial”), the Internet, email, or in any other medium.

6 3. “Asset” means any legal or equitable interest in, right to, or claim to,  
7 any real, personal, or intellectual property, including, but not limited to, chattel,  
8 goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds,  
9 mail or other deliveries, inventory, checks, notes, accounts, credits, receivables (as  
10 those terms are defined in the Uniform Commercial Code), shares of stock, and all  
11 cash, wherever located.

12 4. “Assisting others” means knowingly providing any of the following  
13 services to any person or entity: (a) performing customer service functions for any  
14 person or entity, including, but not limited to, receiving or responding to consumer  
15 complaints; (b) formulating or providing, or arranging for the formulation or  
16 provision of, any telephone sales script or any other advertising or marketing  
17 material for any person or entity; or (c) performing advertising, marketing or  
18 consulting services of any kind for any person or entity.

19 5. “Commerce” means as defined in Section 4 of the FTC Act, 15 U.S.C.  
20 § 44.

21 6. “Competent and reliable scientific evidence” means tests, analyses,  
22 research, studies, or other evidence based on the expertise of professionals in the  
23 relevant area, that has been conducted and evaluated in an objective manner by  
24 persons qualified to do so, using procedures generally accepted in the profession to  
25 yield accurate and reliable results.

26 7. “Covered product” means any dietary supplement, food, drug, device,  
27 or health product, including but not limited to Biotape or any substantially similar  
28

1 purported pain-relief product.

2 8. "Endorsement" means as defined in 16 C.F.R. § 255.0(b).

3 9. "Food," "drug," and "device" mean as defined in Section 15 of the  
4 FTC Act, 15 U.S.C. § 55.

5 10. "FTC" or "Commission" means the Federal Trade Commission.

6 11. "Target product" means Biotape or any substantially similar purported  
7 pain-relief product, including but not limited to conductive silver headache bands,  
8 conductive silver socks, conductive silver gloves, conductive knee supports,  
9 conductive elbow supports, conductive back supports, and conductive wrist  
10 supports.

11 12. "Distributor, Reseller, or Sales Agent" means any person other than  
12 Stoddard who: (a) sells Biotape or any substantially similar purported pain-relief  
13 product through, in accordance with, by permission of, or with the endorsement of,  
14 Stoddard; or (b) refers the names of prospective customers to Stoddard and  
15 receives compensation as a result of Stoddard's sale of Biotape or any substantially  
16 similar purported pain-relief product to such customers.

17 13. "Person" or "persons" means all natural persons, corporations,  
18 partnerships, or other business associations and all other legal entities, including all  
19 members, officers, predecessors, assigns, divisions, affiliates and subsidiaries.

20 14. "Promotion" means any written or verbal statement, illustration, or  
21 depiction that is designed to effect a sale or create interest in the purchasing of  
22 goods or services that is not "advertising," including but not limited to video news  
23 releases and press releases.

24 15. A requirement that any defendant "notify," "furnish," "provide," or  
25 "submit" to the Commission means that the defendant shall send the necessary  
26 information via overnight courier, costs prepaid, to:

27

28

1 Associate Director for Enforcement  
2 Federal Trade Commission  
3 600 Pennsylvania Avenue, N.W.  
4 Washington D.C. 20580  
5 Facsimile: (202) 326-2559  
6 Attn: *FTC v. Smart Inventions, Inc., et al.*, (C.D. Cal.)

7 16. The terms “and” and “or” in this Order shall be construed  
8 conjunctively or disjunctively as necessary, to make the applicable sentence or  
9 phrase inclusive rather than exclusive.

10 17. The term “including” in this Order means “including without  
11 limitation.”

## 12 PROHIBITED BUSINESS ACTIVITIES

### 13 I.

14 **IT IS HEREBY ORDERED** that Stoddard, directly or through any  
15 corporation, partnership, subsidiary, division, trade name, or other entity, and his  
16 officers, agents, servants, employees, and all persons and entities in active concert  
17 or participation with him who receive actual notice of this Order by personal  
18 service or otherwise, including by facsimile, in connection with the manufacturing,  
19 labeling, advertising, promotion, offering for sale, sale, or distribution of any target  
20 product, in or affecting commerce, are hereby permanently enjoined from making,  
21 or assisting others in making, in any manner, directly or by implication, including  
22 through the use of endorsements or the product name, any representation that such  
23 product:

24 A. Provides significant and/or permanent relief from severe pain,  
25 including, but not limited to, debilitating back pain, and pain from arthritis,  
26 frozen shoulder, surgical procedures, sciatica, migraines, and other  
27 conditions; or

28 B. Is more effective than other products or treatments, such as over-

1 the-counter analgesics and topical creams and ointments, in relieving  
2 or eliminating severe pain.

3  
4 **II.**

5 **IT IS FURTHER ORDERED** that Stoddard, directly or through any  
6 corporation, partnership, subsidiary, division, trade name, or other entity, and his  
7 officers, agents, servants, employees, and all persons and entities in active concert  
8 or participation with him who receive actual notice of this Order by personal  
9 service or otherwise, including by facsimile, in connection with the manufacturing,  
10 labeling, advertising, promotion, offering for sale, sale, or distribution of any  
11 product advertised or promoted for the purpose of relieving pain, in or affecting  
12 commerce, are hereby permanently enjoined from making, or assisting others in  
13 making, in any manner, directly or by implication, including through the use of  
14 endorsements or the product name, any representation that such product can relieve  
15 pain or that such product is more effective in relieving pain than competing  
16 products or treatments, unless the representation is true, non-misleading, and, at the  
17 time the representation is made, they possess and rely upon competent and reliable  
18 scientific evidence that substantiates the representation.

19  
20 **III.**

21 **IT IS FURTHER ORDERED** that Stoddard, directly or through any  
22 corporation, partnership, subsidiary, division, trade name, or other entity, and his  
23 officers, agents, servants, employees, and all persons and entities in active concert  
24 or participation with him who receive actual notice of this Order by personal  
25 service or otherwise, including by facsimile, in connection with the manufacturing,  
26 labeling, advertising, promotion, offering for sale, sale, or distribution of any  
27 covered product, in or affecting commerce, are hereby permanently enjoined from  
28

1 making, or assisting others in making, in any manner, directly or by implication,  
2 including through the use of endorsements or the product name, any representation  
3 about the health benefits, performance, efficacy, or safety of that product unless the  
4 representation is true, non-misleading, and, at the time the representation is made,  
5 they possess and rely upon competent and reliable scientific evidence that  
6 substantiates the representation.

7  
8 **IV.**

9 **IT IS FURTHER ORDERED** that Stoddard, directly or through any  
10 corporation, partnership, subsidiary, division, trade name, or other entity, and his  
11 officers, agents, servants, employees, and all persons and entities in active concert  
12 or participation with him who receive actual notice of this Order by personal  
13 service or otherwise, including by facsimile, in connection with the manufacturing,  
14 labeling, advertising, promotion, offering for sale, sale, or distribution of any  
15 covered product, in or affecting commerce, are hereby permanently enjoined from  
16 making, or assisting others in making, in any manner, directly or by implication,  
17 including through the use of endorsements or the product name, any representation  
18 that the issuance of a patent proves the efficacy or safety of such product; *provided*  
19 *that* the foregoing shall not be construed to preclude Stoddard from making a  
20 truthful statement that a U.S. Patent has been issued for a product, so long as no  
21 additional express or implied representation is made concerning the meaning or  
22 import of the existence or grant of such Patent.

23  
24 **FDA APPROVED CLAIMS**

25 **V.**

26 **IT IS FURTHER ORDERED** that nothing in this Order shall prohibit  
27 Stoddard from making any representation:  
28

1 A. For any product that is specifically permitted in labeling for such  
2 product by regulations promulgated by the Food and Drug  
3 Administration pursuant to the Nutrition Labeling and Education Act  
4 of 1990; or

5 B. For any drug that is permitted in the labeling for such drug under any  
6 tentative final or final standard promulgated by the Food and Drug  
7 Administration, or under any new drug application approved by the  
8 Food and Drug Administration.

9  
10 **PACKAGING AND LABELING RECALL**

11 **VI.**

12 **IT IS FURTHER ORDERED** that Stoddard, within five (5) days of the  
13 date of service of this Order, shall recall from any Distributor, Reseller, or Sales  
14 Agent that is offering for sale, selling, or distributing to consumers any target  
15 product, all packaging, package inserts, and labeling for any target product  
16 received from Stoddard containing, expressly or by implication, any of the  
17 representations set forth in Part I above, *provided, however*, that in lieu of a recall,  
18 Stoddard may immediately repackage and relabel all offending packages and labels  
19 of such target product in such a manner as to ensure that no representations  
20 prohibited by this Order are disseminated.

21  
22 **MONETARY JUDGMENT**

23 **VII.**

24 **IT IS FURTHER ORDERED** that:

25 A. Judgment in the amount of \$86,000 is hereby entered in favor of the  
26 Commission and against Stoddard, with post-judgment interest at the legal rate, for  
27 disgorgement to the United States Treasury.



