

DAVID C. SHONKA
Acting General Counsel

VICTOR F. DEFRANCIS
KAREN JAGIELSKI
Federal Trade Commission
600 Pennsylvania Avenue, NJ-3212
Washington, DC 20580
202-326-3495, vdefrancis@ftc.gov
202-326-3259 (facsimile)

SUSAN J. STEELE
Chief, Civil Division
United States Attorney's Office
970 Broad Street, Suite 700
Newark, NJ 07102
(973) 645-2920, susan.steele@usdoj.gov
(973) 645-2702 (facsimile)

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DAVID J. ROMEO, individually, and in his capacity as an officer of Stella Labs, LLC, and Nutraceuticals International, LLC; **STELLA LABS, LLC**, a limited liability company; **NUTRACEUTICALS INTERNATIONAL, LLC**, a limited liability company; **DEBORAH B. VICKERY**, individually, and as an employee of Stella Labs, LLC and Nutraceuticals International, LLC; **V. CRAIG PAYTON**, individually, and in his capacity as an officer of Stella Labs, LLC; and **ZOLTAN KLIVINYI**, individually, and in his capacity as an officer of Nutraceuticals International, LLC,

Defendants.

CASE NO. 09-1262 (WJM)

(proposed) **ORDER FOR PRELIMINARY INJUNCTION**

The Court having entered an Order to show Cause Why a Preliminary Injunction Should Not Issue; and having considered the record and being fully advised in the premises, hereby finds:

1. This Court has jurisdiction over the subject matter of this case and jurisdiction over all parties.
2. Venue in the District of New Jersey is proper.
3. There is good cause to believe that Defendants David J. Romeo, Stella Labs, LLC, Nutraceuticals International, LLC, Deborah B. Vickery, V. Craig Payton, and Zoltan Klivinyi have violated Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, and that the Commission is likely to prevail on the merits of this action.
4. There is good cause to believe that immediate and irreparable harm will result from Defendants' violation of Sections 5(a) and 12 of the FTC Act unless Defendants are restrained and enjoined by order of this Court.
5. Weighing the equities and considering the Commission's likelihood of ultimate success on the merits, entry of this preliminary injunction is in the public interest.

6. No security is required of any agency of the United States for issuance of a preliminary injunction. Fed. R. Civ. P. 65(c).

ORDER

DEFINITIONS

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

1. Unless otherwise specified, “Defendants” shall mean:
 - a. Stella Labs, LLC, a limited liability company;
 - b. Nutraceuticals International, LLC, a limited liability company;
 - c. David J. Romeo, individually, and in his capacity as an officer of Stella Labs, LLC, and Nutraceuticals International, LLC;
 - d. Deborah B. Vickery, individually, and in her capacity as Director of Marketing of Stella Labs, LLC and Nutraceuticals International, LLC;
 - e. V. Craig Payton, individually, and in his capacity as an officer of Stella Labs, LLC; and
 - f. Zoltan Klivinyi, individually, and in his capacity as an officer of Nutraceuticals International, LLC.
2. “Commerce” shall mean “commerce” as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

3. “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 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.
4. “Hoodia” shall mean “*Hoodia gordonii*,” or any substantially similar product.
5. “Weight-loss product” shall mean any product designed, used, or purported to produce weight loss, reduction or elimination of fat, slimming, or caloric deficit in the user of the product, and shall include, but not be limited to, hoodia.
6. “Endorsement” shall mean as defined in 16 C.F.R. § 255.0(b).
7. The term “including” shall mean “without limitation.”
8. “Document(s)” or “record(s)” means:
 - a. The complete original, true copy, and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, taped, recorded, filmed,

punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, facsimile transmission, report, record, handwritten note, working paper, routing slip, chart, graph, photograph, paper, index, map, tabulation, marketing plan, research paper, preliminary drafts or versions of all of the above, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book, electronic communication, including e-mail, and computer material (including print-outs, cards, magnetic or electronic tapes, discs and such codes or instructions as will transform such computer materials into easily understandable form); and

- b. Any information stored electronically including, but not limited to:
 - i. information stored on any desktop personal computer (“PC”) or workstation, laptop, notebook, or other

portable computer, whether assigned to individuals or in pools of computers available for shared use, home computer used for work-related purposes; or

- ii. information stored on any electronic storage device, including, but not limited to, thumb drives, flash drives, backup disks and tapes, archive disks and tapes, any form of offline storage, whether stored onsite, stored offsite in another company facility, or stored offsite by a third-party, which may include persons who are not employees of the company or who do not work on company premises.

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

I.

**PROHIBITED REPRESENTATIONS FOR HOODIA OR ANY
OTHER WEIGHT-LOSS PRODUCT**

IT IS ORDERED that Defendants, directly or through any corporation, partnership, limited liability company, subsidiary, trade name, or other device, and any of their officers, directors, managers, agents, servants, employees,

salespersons, distributors, corporations, subsidiaries, affiliates, successors, assigns, and those persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service, facsimile, or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of hoodia, or any other weight-loss product, in or affecting commerce, are hereby enjoined from making, or assisting others in making, directly or by implication, including through the use of a product name or endorsement, any representation that hoodia, or any other weight-loss product:

- A. causes weight loss;
- B. causes users to reduce daily caloric intake;
- C. reduces or curbs appetite; or
- D. treats obesity;

unless the representation is true, not misleading, and, at the time it is made, Defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II.

MISREPRESENTATION OF TESTS OR STUDIES

IT IS FURTHER ORDERED that Defendants, directly or through any corporation, partnership, limited liability company, subsidiary, trade name, or other

device, and any of their officers, directors, managers, agents, servants, employees, salespersons, distributors, corporations, subsidiaries, affiliates, successors, assigns, and those persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service, facsimile, or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of hoodia, or any other weight-loss product, in or affecting commerce, are hereby restrained and enjoined from misrepresenting, in any manner, expressly or by implication, including through the use of any product name or endorsement, the existence, contents, validity, results, conclusions, or interpretations or any test or study.

III.

FALSE PRODUCT CONTENT CLAIMS

IT IS FURTHER ORDERED that Defendants, directly or through any corporation, partnership, limited liability company, subsidiary, trade name, or other device, and any of their officers, directors, managers, agents, servants, employees, salespersons, distributors, corporations, subsidiaries, affiliates, successors, assigns, and those persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service, facsimile, or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for

sale, sale, or distribution of hoodia, or any other weight-loss product, are hereby enjoined from making, or assisting others in making, directly or by implication, including through the use of a product name or endorsement, any misrepresentation:

- A. Regarding the identity or authenticity of hoodia, or any other weight-loss product; or
- B. Regarding whether the United States Food and Drug Administration has reviewed and/or approved such hoodia, or any other weight-loss product.

IV.

RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that Defendants, directly or through any corporation, partnership, limited liability company, subsidiary, trade name, or other device, and any of their officers, directors, managers, agents, servants, employees, salespersons, distributors, corporations, subsidiaries, affiliates, successors, assigns, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, are hereby enjoined from:

- A. Destroying, erasing, mutilating, concealing, altering, transferring, or

otherwise disposing of, in any manner, directly or indirectly, any documents or records that relate to the business practices, or business or personal finances, of Defendants, or other entity directly or indirectly under the control of Defendants; and

B. Failing to create and maintain books, records, and accounts which, in reasonable detail, accurately, fairly, and completely reflect the incomes, assets, disbursements, transactions and use of monies by any Defendant or other entity directly or indirectly under the control of any Defendants.

V.

NOTICE TO EMPLOYEES

IT IS FURTHER ORDERED that Defendants shall provide immediately a copy of this Order to each of their employees, corporations, limited liability companies, subsidiaries, affiliates, and all persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise. Within ten (10) calendar days following service of this Order by the FTC, Defendants shall provide the FTC with an affidavit identifying the names, titles, addresses, and telephone numbers of the persons and entities that Defendants have served with a copy of this Order in compliance with this provision.

VI.

CORRESPONDENCE WITH PLAINTIFF

For the purposes of this Order, all service on and correspondence to the FTC shall sent via U.S. Express Mail or Federal Express and be addressed to: Victor F. DeFrancis, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room NJ-3122, Washington, DC 20580. Telephone: (202) 326-3495; Facsimile: (202) 326-3259.

VII.

SERVICE OF THIS ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by facsimile transmission, personal or overnight delivery, or U.S. Express Mail, by agents and employees of the FTC or any state or federal law enforcement agency or by private process server, on Defendants or any other person or entity that may be subject to any provision of this Order.

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VIII.

RETENTION OF JURISDICTION

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

IT IS SO ORDERED.

Dated: _____, 2009

UNITED STATES DISTRICT JUDGE