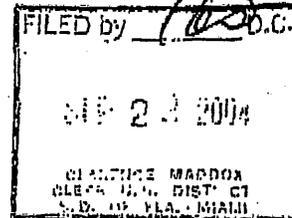


UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 04-20904-CIV-Highsmith/Turnoff

FEDERAL TRADE COMMISSION,  
  
Plaintiff,  
  
v.  
  
AMERICAN DREAM ENTERPRISES, LLC, and  
ANDRES FERNANDEZ SALVADOR,  
  
Defendants.



**STIPULATED FINAL JUDGMENT AND ORDER FOR  
PERMANENT INJUNCTION, MONETARY REDRESS, AND OTHER EQUITABLE  
RELIEF**

WHEREAS Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), has commenced this action by filing the Complaint herein; defendants American Dream Enterprises, LLC, and Andres Fernandez Salvador have been served with the Summons and Complaint and have filed an Answer thereto; the parties have been represented by the attorneys whose names appear hereafter; and the parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law and without defendants admitting liability for any of the matters alleged in the Complaint;

THEREFORE, on stipulation of plaintiff and defendants, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

A large, stylized handwritten signature in black ink, located in the bottom right corner of the page.

1. This Court has jurisdiction over the subject matter of this case and jurisdiction over all parties. Venue in the Southern District of Florida is proper under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b).

2. The Complaint states a claim upon which relief can be granted against the defendants under Sections 5(a), 12, and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 52, and 53(b).

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

4. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendants also waive any claims that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order.

5. Each party shall bear its or his own costs and attorneys' fees.

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

#### **DEFINITIONS**

For purposes of this Order, the following definitions apply:

1. "Commerce" means as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

2. "Competent and reliable scientific evidence" means 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.

3. "Covered product or service" means any product, service, or program that purportedly provides health benefits, including weight loss, inch loss, fat loss, or exercise or fitness benefits.
4. Unless otherwise specified, "defendants" mean American Dream Enterprises, LLC, and its successors and assigns ("American Dream") and Andres Fernandez Salvador ("Fernandez Salvador").
5. "Drug" and "cosmetic" mean as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.
6. "Endorsement" means as defined in 16 C.F.R. § 255.0(b).
7. The term "including" in this Order means "including, without limitation."
8. "Person" means a natural person, organization or other legal entity, including a partnership, corporation, proprietorship, association, cooperative, or any other group acting together as an entity.

**I.**

**PROHIBITED REPRESENTATIONS**

**IT IS ORDERED** that defendants, and their officers, agents, servants, employees, and attorneys, and all persons and entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other entity, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the following products, in or affecting commerce, are hereby permanently enjoined from representing, in any manner, expressly or by implication, including through the use of endorsements or trade name, that:

- A. Fat Seltzer, any dietary supplement, over-the-counter drug, or cosmetic, causes substantial weight loss without the need to increase exercise or reduce caloric intake;
- B. Fat Seltzer, any dietary supplement, over-the-counter drug, or cosmetic, causes permanent weight loss; or
- C. Fat Seltzer, or any substantially similar product, causes substantial weight loss in a short period of time.

## II.

### **REPRESENTATIONS PROHIBITED UNLESS TRUE AND SUBSTANTIATED**

**IT IS FURTHER ORDERED** that defendants, and their officers, agents, servants, employees, and attorneys, and all persons and entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other entity, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, in or affecting commerce, are hereby permanently enjoined from making any representation, expressly or by implication, including through the use of endorsements or trade name:

- A. That any such covered product or service:
  - 1. Causes weight loss;
  - 2. Causes substantial weight loss in a short period of time;
  - 3. Detaches and eliminates existing body fat; or

- B. About the benefits, performance, efficacy, safety, or side effects of any such covered product or service;

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

### III.

#### FOOD AND DRUG ADMINISTRATION

**IT IS FURTHER ORDERED** that nothing in this Order prohibits defendants from:

- A. Making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration; and
- B. 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.

### IV.

#### CONSUMER REDRESS

**IT IS FURTHER ORDERED** that judgment is hereby entered, jointly and severally, against defendants, in favor of the FTC, in the sum of \$185,000 (One Hundred Eighty-five Thousand Dollars), under the following terms and conditions:

- A. Within ten (10) days of the entry of this Order, defendants shall pay the full amount of the judgment to the Commission by certified cashier's check made payable to the Federal Trade Commission, Division of Finance, 600 Pennsylvania

Ave., NW, Washington, DC 20580, Reference Information FTC v. American Dream Enterprises, LLC, Matter No. 0323193, or by wire transfer in accord with directions provided by the FTC.

- B. All funds paid pursuant to this Order must be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of such equitable relief. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants have no right to challenge the Commission's choice of remedies under this Paragraph. Defendants have no right to contest the manner of distribution chosen by the Commission.
- C. Defendants relinquish all dominion, control, and title to the funds paid to the Commission, and all legal and equitable title to the funds. Defendants shall make no claim to or demand for the return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of any defendant, defendants acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

- D. In accordance with 31 U.S.C. § 7701, defendants are hereby required, unless they have done so already, to furnish to the FTC their taxpayer identifying numbers and/or social security numbers, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of defendants' relationship with the government.

V.

**RIGHT TO REOPEN**

**IT IS FURTHER ORDERED** that:

- A. The Commission's agreement to this Order is expressly premised on the truthfulness, accuracy, and completeness of defendants' sworn financial statements and supporting documents submitted to the Commission, including:
1. The Financial Statement of American Dream Enterprises, LLC, dated January 21, 2004;
  2. The Financial Statement of Andres Fernandez Salvador, dated March 12, 2004; and
  3. Exhibits 1, 3, 4, 5, 6, 7, 9, 10, and 11, attached to the Certificate of Compliance and Affidavit signed by Andres Ricardo Fernandez-Salvador Servant, a/k/a Andres Fernandez Salvador, and Jorge Mendoza, manager of defendant American Dream Enterprises, dated June 23, 2004, which certifies the truth of the additional information and addenda contained in those Exhibits.

Such financial statements and supporting documents contain material information upon which the Commission relied in negotiating and agreeing to this Order.

- B. If, upon motion by the Commission, a Court finds that any defendant has failed to disclose any material asset, or made any other material misrepresentation or omission in the financial statements and related documents described in Paragraph V.A. above, the Court shall enter judgment against defendants, jointly and severally, in favor of the Commission, in the amount of \$1,482,690 (One Million Four Hundred Eighty-two Thousand Six Hundred Ninety Dollars) in U.S. currency, which defendants agree is the total revenues defendant American Dream Enterprises received from the sale of Fat Seltzer, less any amounts defendants already paid to the FTC pursuant to Paragraph IV of this Order. Such amount would be rendered immediately due and payable. Interest computed at the rate prescribed in 28 U.S.C. § 1961 shall immediately begin to accrue on the balance. For the purposes of this Paragraph and any subsequent proceedings to enforce payment, defendants waive any right to contest any of the allegations in the Complaint filed in this action. *Provided however*, that in all other respects this Stipulated Final Order remains in full force and effect unless otherwise ordered by the Court; and *provided further*, that proceedings instituted under this Paragraph V are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

**VI.**

**ACKNOWLEDGMENT OF RECEIPT OF ORDER**

**IT IS FURTHER ORDERED** that defendants, within five (5) business days of receipt of this Order as entered by the Court, must each execute and submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

**VII.**

**DISTRIBUTION OF ORDER**

**IT IS FURTHER ORDERED** that:

- A. For a period of three (3) years from the date of entry of this Order, defendant American Dream, and its successors and assigns, must deliver a copy of this Order to all principals, officers, directors, managers, employees, agents, and representatives, including distributors, having responsibilities with respect to the subject matter of this Order, and must secure from each such person a signed and dated statement acknowledging receipt of the Order. Defendant American Dream, and its successors and assigns, must deliver this Order to current personnel within thirty (30) days after the date of service of this Order, and to new personnel within thirty (30) days after the person assumes such position or responsibilities.
- B. For a period of three (3) years from the date of entry of this Order, defendant Fernandez Salvador must deliver a copy of this Order to the principals, officers, directors, managers and employees under defendant Fernandez Salvador's control for any business that (a) hires defendant Fernandez Salvador as an employee, consultant or independent contractor and (b) has responsibilities with respect to

the subject matter of this Order. Defendant Fernandez Salvador must secure from each such person a signed and dated statement acknowledging receipt of the Order within thirty (30) days after the date of service of the Order or the commencement of the employment relationship.

- C. Defendants must, within thirty (30) days after the date of service of this Order, send by first class certified mail, return receipt requested, to each purchaser for resale of Fat Seltzer, with which defendants have done business since January 1, 2003, the form attached as Appendix A and a copy of this Order. The mailing must not include any other documents.

#### VIII.

#### COMPLIANCE MONITORING

**IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating compliance with any provision of this Order:

- A. Within ten (10) days of receipt of written notice from a representative of the Commission, defendants each must submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such defendant's possession or direct or indirect control to inspect the business operation;
- B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
2. Posing as consumers and suppliers to defendants, defendants' employees, or any other entity managed or controlled in whole or in part by defendants, without the necessity of identification or prior notice;

*Provided* that nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

- C. Defendants must permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

## IX.

### COMPLIANCE REPORTING

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Order may be monitored:

- A. For a period of three (3) years from the date of entry of this Order,
  1. Defendant Fernandez Salvador must notify the Commission of the following:

- a. Any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
  - b. Any changes in his employment status (including self-employment) within ten (10) days of the date of such change. Such notice must include the name and address of each business that he is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of his duties and responsibilities in connection with the business;
  - c. Any changes in his name or use of any aliases or fictitious names; and
2. Defendant American Dream, and its successors and assigns, must notify the Commission of any changes in corporate structure that may affect compliance obligations arising under this Order, including but not limited to a 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 filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which defendant American Dream learns less than thirty (30) days prior to the date such action is to take place, defendant American Dream

must notify the Commission, as soon as is practicable after obtaining such knowledge.

- B. One hundred eighty (180) days after the date of entry of this Order, defendants each must provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report must include, but not be limited to:
1. Any changes required to be reported pursuant to Subparagraph A above; and
  2. A copy of each acknowledgment of receipt of this Order obtained by defendants pursuant to Paragraph VII.
- C. For the purposes of this Order, defendants must, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to: Associate Director for Enforcement, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. Attn: FTC v. American Dream Enterprises, LLC, Case No. 04-20904-CIV-Highsmith/Turnoff (S.D. Fla. 2004).
- D. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with defendants.

**X.**

**RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of six (6) years from the date of entry of this Order, defendant American Dream, and its successors and assigns, and any business where

(1) defendant Fernandez Salvador is the majority owner, an officer, or director of the business, or directly or indirectly manages or controls the business and where (2) the business engages, or assists others engaged in the manufacturing, advertising, promotion, offering for sale, distribution or sale of any covered product or service must maintain, and upon request, make available to the Commission, copies of all business records demonstrating compliance with the terms and provisions of this Order, including, but not limited to the following:

- A. Accounting records that reflect the cost of products or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, telephone numbers, dollar amounts paid, quantity of products or services purchased, and description of products or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly, indirectly, or through any third party) and any responses to those complaints or requests;
- E. Copies of all advertisements, promotional materials, sales scripts, training materials, or other materials utilized in the advertising, labeling, promotion, offering for sale, distribution or sale of any product or service;

- F. All materials that were relied upon in making any representations contained in the materials identified in Subparagraph E;
- G. All other documents evidencing or referring to the accuracy of any claim therein or to the safety or efficacy of any product or service, including, but not limited to, all tests, reports, studies, demonstrations, or other evidence that confirm, contradict, qualify, or call into question the safety or efficacy of any such product or service; and
- H. Records accurately reflecting the name, address, and telephone number of each manufacturer or laboratory engaged in the development or creation of any testing obtained for the purpose of advertising, labeling, promoting, offering for sale, distributing, or selling any product or service.

#### **XI.**

#### **RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

#### **XII.**

#### **SCOPE OF ORDER**

**IT IS FURTHER ORDERED** that this Order resolves only claims against the named defendants and does not preclude the Commission from initiating further action or seeking any remedy against any other persons or entities, including without limitation persons or entities who may be subject to portions of this Order by virtue of actions taken in concert or participation with

defendants, and persons or entities in any type of indemnification or contractual relationship with defendants.

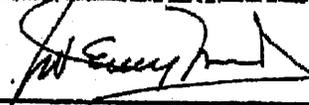
SO STIPULATED:

FOR THE FEDERAL TRADE COMMISSION: FOR THE DEFENDANTS:

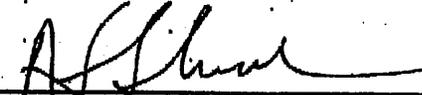
ELAINE D. KOLISH  
Associate Director for Enforcement

JONI LUPOVIEZ  
Assistant Director for Enforcement

AMERICAN DREAM ENTERPRISES, LLC

By:   
JORGE MENDOZA  
Operating Manager

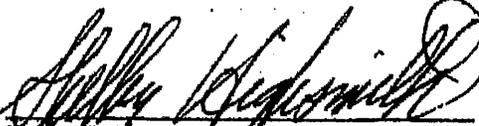
  
EDWIN RODRIGUEZ  
Attorney  
Federal Trade Commission  
600 Pennsylvania Ave.  
Washington, D.C. 20580  
(202) 326-3147  
(202) 326-2559 (facsimile)

  
ANDRES FERNANDEZ SALVADOR  
Individually and as Sole Owner and Member  
of American Dream Enterprises, LLC

  
JAMES R. PROCHNOW  
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Attorneys for Defendants  
Greenberg Traurig LLC  
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1200 17th Street, Suite 2400  
Denver, CO 80202  
(303) 572-6500  
(303) 572-6540 (facsimile)

JUDGMENT IS THEREFORE ENTERED pursuant to all the terms and conditions recited above.

SO ORDERED, this 22 day of September, 2004

  
Judge Shelby Highsmith  
Sr. United States District Judge

**APPENDIX A**

[To be printed on defendants' letterhead]

BY CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED  
[date]

Dear [purchaser for resale]:

This letter is to inform you that American Dream Enterprises, LLC, and Andres Fernandez Salvador have settled a civil dispute with the Federal Trade Commission ("FTC") regarding advertising claims for Fat Seltzer.

As part of that settlement, the United States District Court for the Southern District of Florida issued a Stipulated Final Order for Permanent Injunction and Other Equitable Relief ("Order"). This Order prohibits certain advertising claims altogether, and prohibits other claims unless, at the time they are made, the claims are true and we possess and rely upon competent and reliable scientific evidence supporting the claims. A copy of the Order is attached.

We consented to the issuance of the Order without admitting any of the FTC's allegations. The Order requires us to request that our distributors and wholesalers stop using or distributing advertisements or promotional materials containing claims challenged by the FTC. As one of our distributors or wholesalers, we are required to send you this letter as part of this settlement.

Specifically, the Order prohibits any claim that:

1. Fat Seltzer or any other dietary supplement, drug, or cosmetic causes substantial weight loss without the need to increase exercise or reduce caloric intake;
2. Fat Seltzer or any other dietary supplement, drug, or cosmetic causes permanent weight loss; or
3. Fat Seltzer or any substantially similar product causes substantial weight loss in a short period of time.

The Order also prohibits any claim about the benefits, performance, efficacy, safety, or side effects of any product, service, or program that purportedly provides health benefits (including weight loss, inch loss, fat loss, or exercise or fitness benefits) unless the claim is true and we have competent and reliable scientific evidence that substantiates the claim.

We request that you discontinue using, distributing, or relying on any advertising or promotional material that make any prohibited claims. Please also notify any of your customers who resell our products and who may have such materials to discontinue using those promotional materials.

Thank you very much for your assistance.

Sincerely,

Andres Fernandez Salvador  
Individually and as Sole-owner of American Dream Enterprises, LLC

Jorge Mendoza  
Operating Manager of American Dream Enterprises, LLC

Enclosure