

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

| | |
|--------------------------------------|----------------------|
| _____) | |
| In the Matter of) | |
| HOME SHOPPING NETWORK, INC.,) | DOCKET NO. 9272 |
| HOME SHOPPING CLUB, INC., and) | |
| HSN LIFEWAY HEALTH PRODUCTS, INC.,) | AGREEMENT CONTAINING |
|) | CONSENT ORDER TO |
| corporations.) | CEASE AND DESIST |
| _____) | |

This agreement herein, by and between Home Shopping Network, Inc., Home Shopping Club, Inc., and HSN Lifeway Health Products, Inc., corporations, hereinafter sometimes referred to as respondents, and their attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1.a. Respondent Home Shopping Network, Inc. is a Delaware corporation, with its principal office or place of business at 11831 30th Court North, St. Petersburg, Florida 34618-9090.

1.b. Respondent Home Shopping Club, Inc. is a Delaware corporation, with its principal office or place of business at 11831 30th Court North, St. Petersburg, Florida 34618-9090. Home Shopping Club, Inc. is a wholly-owned subsidiary of Home Shopping Network, Inc.

1.c. Respondent HSN Lifeway Health Products, Inc. is a Delaware corporation, with its principal office or place of business at 11831 30th Court North, St. Petersburg, Florida 34618-9090. HSN Lifeway Health Products, Inc. is a wholly-owned second tier subsidiary of Home Shopping Network, Inc.

2. Respondents have been served with a copy of the complaint issued by the Federal Trade Commission charging them with violations of Sections 5(a) and 12 of the Federal Trade Commission Act, and have filed an answer to the complaint denying said charges.

3. Respondents admit all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondents waive:
 - a. Any further procedural steps;
 - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
 - d. Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondents, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondents' address as stated in this agreement shall constitute service. Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

8. Respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

DEFINITIONS

For the purposes of this order, "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.

I.

IT IS ORDERED that respondents Home Shopping Network, Inc., Home Shopping Club, Inc., and HSN Lifeway Health Products, Inc., corporations, their successors and assigns, by and through their officers, agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of Life Way Vitamin C and Zinc Spray, Life Way Antioxidant Spray, Life Way Vitamin B-12 Spray, or any other food, food or dietary supplement, or drug, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication:

- A. That such product:
1. is more fully absorbed by the human body than any other product;
 2. heals lesions in the mouth, cold sores on the mouth, or cracking of the corners of the lips;
 3. prevents common colds;
 4. effectively treats symptoms related to hangovers;
 5. increases energy;
 6. ensures the proper functioning of the immune system;
 7. reduces the risk of contracting infectious diseases;
 8. prevents facial lines; or

- B. That use of the product can or will cure, treat, or prevent any disease, or have any effect on the structure or function of the human body,

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II.

IT IS FURTHER ORDERED that respondents Home Shopping Network, Inc., Home Shopping Club, Inc., and HSN Lifeway Health Products, Inc., corporations, their successors and assigns, by and through their officers, agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of Life Way Smoke-Less Nutrient Spray or any other smoking cessation product, program, or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication:

- A. That such product, program, or service enables smokers, regardless of how long they have smoked or how much they smoke, to stop smoking easily;
- B. That such product, program, or service satisfies the physiological urge to smoke a cigarette, or eliminates the quivering, anxiety and weight gain attendant with quitting smoking; or
- C. Regarding the performance, benefits or efficacy of any such product, program, or service,

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

Nothing in this order shall prohibit respondents from 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.

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in labeling for any 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.

V.

IT IS FURTHER ORDERED that, for three (3) years after the last date of dissemination of any representation covered by this order, respondents Home Shopping Network, Inc., Home Shopping Club, Inc., and HSN Lifeway Health Products, Inc., corporations, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying copies of all advertisements which contain any such representation, including videotape recordings of all such broadcast advertisements.

VI.

IT IS FURTHER ORDERED that, for five (5) years after the last date of dissemination of any representation covered by this order, respondents Home Shopping Network, Inc., Home Shopping Club, Inc., and HSN Lifeway Health Products, Inc., corporations, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All materials that were relied upon in disseminating such representation; and
- B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

VII.

IT IS FURTHER ORDERED that respondents Home Shopping Network, Inc., Home Shopping Club, Inc., and HSN Lifeway Health Products, Inc., corporations, shall, within thirty (30) days after service of this order, provide a copy of this order to each of respondents' current principals, officers, directors and managers, and to all personnel, agents and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order.

VIII.

IT IS FURTHER ORDERED that the respondents Home Shopping Network, Inc., Home Shopping Club, Inc., and HSN Lifeway Health Products, Inc., their successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporations 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 the acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which the respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

IX.

IT IS FURTHER ORDERED that respondents Home Shopping Network, Inc., Home Shopping Club, Inc., and HSN Lifeway Health Products, Inc., corporations, shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

X.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this _____ day of _____, 1996

HOME SHOPPING NETWORK, INC.

By: _____
James G. Held, President and
Chief Exective Officer

HOME SHOPPING CLUB, INC

By: _____
Kevin McKeon, Secretary and Treasurer

HSN LIFEWAY HEALTH PRODUCTS, INC.

By: _____
Kevin McKeon, President

BASIL J. MEZINES
GLENN A. MITCHELL
DAVID U. FIERST
STEIN, MITCHELL & MEZINES
1100 Connecticut Avenue, N.W.
Washington, D.C. 20036

Counsel for Respondents

LISA B. KOPCHIK

MAMIE KRESSES

ANN M. PLAZA

Counsel for the Federal Trade Commission

APPROVED:

C. LEE PEELER
Associate Director for Advertising Practices
Bureau of Consumer Protection

JOAN Z. BERNSTEIN
Director
Bureau of Consumer Protection

ANALYSIS OF PROPOSED CONSENT ORDER
TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from Home Shopping Network, Inc. ("HSN"), Home Shopping Club, Inc. ("HSC"), and HSN Lifeway Health Products, Inc. ("Lifeway").

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves alleged deceptive representations for three spray vitamin products and a spray smoking cessation product. The products at issue are Life Way Vitamin C and Zinc Spray, Life Way Antioxidant Spray, Life Way Vitamin B-12 Spray, and Life Way Smoke-Less Nutrient Spray. The Commission issued a complaint on March 2, 1995 charging that HSN, HSC and Lifeway created and disseminated a series of television advertisements called "Spotlight on Ruta Lee" on which the Life Way Spray Products were sold. These advertisements featured Ruta Lee as a celebrity show host and were seen on the Home Shopping Club, commercial programming shown on the Home Shopping Network's cable and broadcast channels.

The Commission's complaint against HSN, HSC, and Lifeway was withdrawn from adjudication on May 14, 1996, prior to commencement of the administrative hearing, so that the Commission can consider the proposed order. Previously, the Commission had issued a consent order against Ruta Lee and Live-Lee Productions, Inc. to settle charges against Ruta Lee for her role in making and disseminating these advertisements (Live-Lee Prods, Inc., Docket No. C-3620, Oct. 10, 1995).

HSN is a holding company for numerous subsidiaries which are engaged primarily in the marketing, advertising, sale and distribution of consumer products through broadcast and cable television. HSC, a wholly-owned subsidiary of HSN, produces commercial television programming. Lifeway is a wholly-owned "second tier" subsidiary of HSN which sells vitamins and other health-related products.

According to the FTC complaint, the respondents made claims 1) that the vitamins in the Life Way Spray Products are more fully absorbed by the human body than vitamins taken in pill form; 2) that the Vitamin C and Zinc Spray would heal mouth lesions, cold sores, and cracking of the corners of the lips, and prevent common colds; 3) that the Vitamin B-12 Spray would treat hangover symptoms and increase users' energy; and 4) that the Antioxidant Spray would ensure the proper functioning of the immune system, reduce the risk of contracting infectious diseases, and prevent facial lines. The complaint also alleges that the respondents made claims that the Smoke-Less Nutrient Spray would enable smokers, regardless of how long they have smoked or how much they smoke, to stop smoking easily; and would satisfy the physiological urge to smoke a cigarette and eliminate the quivering, anxiety and weight gain that go along with quitting smoking. The complaint alleges that the respondents did not have a reasonable basis for these representations at the time they were made.

The proposed consent order contains provisions designed to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits the respondents from representing that any food, food or dietary supplement, or drug can or will cure, treat, or prevent any disease or have any effect on the structure or function of the human body, unless, at the time they make the representation, they possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Part II of the proposed order prohibits respondents from making any representation about the performance, benefits or efficacy of any smoking cessation product, program, or service, unless, at the time they make the representation, they possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Part III allows the respondents to make representations for any product that are specifically permitted in labeling for that product by regulations issued by the Food and Drug Administration ("FDA") under the Nutrition Labeling and Education Act of 1990. Part IV allows the respondents to make representations for any drug that are permitted in labeling for that drug under any tentative final or final FDA standard or under any new drug application approved by the FDA.

Parts V through IX require the respondents to keep copies of advertisements making representations covered by the order; to keep records concerning those representations, including materials that they relied upon when making the representations; to provide copies of the order to certain of respondents' personnel; to notify the Commission of changes in corporate structure; and to file compliance reports with the Commission. Part X provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.