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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Julie Brill
Maureen K. Ohlhausen
Terrell McSweeny

In the Matter of **CARROT NEUROTECHNOLOGY, INC., a corporation,** **ADAM GOLDBERG, individually and as an owner and officer of CARROT NEUROTECHNOLOGY, INC., and** **AARON SEITZ, individually and as an owner and officer of CARROT NEUROTECHNOLOGY, INC.**	**DOCKET NO. C-4567**

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof and the respondents having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of the Federal Trade Commission Act, 15 U.S.C. § 45 *et seq.*; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order ("consent agreement") that includes: a statement that the respondents neither admit nor deny any of the allegations in the draft complaint except as specifically stated in the consent agreement; an admission by the respondents of facts necessary to establish jurisdiction for purposes of this action; and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that the respondents have violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such consent agreement on the public record for a period of 30 days, and having duly considered the comments filed thereafter by interested

persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Carrot Neurotechnology, Inc. ("Carrot") is a California corporation with its principal office or place of business at 3995 Prado De Las Frutas, Calabasas, California, 91302.

2. Respondent Adam Goldberg is an owner and officer of Carrot. Individually or in concert with others, he formulates, directs, or controls the policies, acts, and practices of the corporation.

3. Respondent Aaron Seitz is an owner and officer of Carrot. Individually or in concert with others, he formulates, directs, or controls the policies, acts, and practices of the corporation.

4. The Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

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

1. Unless otherwise specified, "Respondents" shall mean Carrot Neurotechnology, Inc., a corporation, its successors and assigns and its officers; Adam Goldberg, individually and as an officer of the corporation; Aaron Seitz, individually and as an officer of the corporation; and each of the above's agents, representatives, and employees.

2. "Clearly and conspicuously" shall mean that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

   A. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made through only one means.

   B. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

   C. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

D. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

E. On a product label, the disclosure must be presented on the principal display panel.

F. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.

G. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

H. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

I. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, "ordinary consumers" includes reasonable members of that group.

3. "Close proximity" shall mean that the disclosure is very near the triggering representation. In an interactive electronic medium (such as a mobile app or other computer program), a visual disclosure that cannot be viewed at the same time and in the same viewable area as the triggering representation, on the technology used by ordinary consumers, is not in close proximity. A disclosure made through a hyperlink, pop-up, interstitial, or other similar technique is not in close proximity to the triggering representation. A disclosure made on a different printed page than the triggering representation is not in close proximity.

4. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

5. "Covered Product or Service" shall mean any Device, as defined below, or any program or service that is:

A. intended for use in the diagnosis of disease or other condition, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals; or intended to affect the structure or any function of the body of man or other animals; and

B. which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

6. "Device" shall mean, as defined in Section 15 of the FTC Act, 15 U.S.C. § 55, an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is:

1. recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them;

2. intended for use in the diagnosis of disease or other condition, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals; or

3. intended to affect the structure or any function of the body of man or other animals; and

which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

7. "Endorsement" shall mean, as defined in 16 C.F.R. § 255.0(b), any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual or the name or seal of an organization) that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser. The party whose opinions, beliefs, findings, or experience the message appears to reflect will be called the endorser and may be an individual, group, or institution.

8. "Material connection" shall mean any relationship that materially affects the weight or credibility of any endorsement and that would not be reasonably expected by consumers.

9. "Person" shall mean a natural person, an organization, or another legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

10. "Reliably Reported," for a human clinical test or study ("test"), shall mean a report of the test has been published in a peer-reviewed journal, and such published report provides sufficient information about the test for experts in the relevant field to assess the reliability of the results.

11. The term "including" in this order shall mean "including without limitation."

12. The terms "and" and "or" in this order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

I.

IT IS ORDERED that Respondents, directly or through any corporation, subsidiary, division, or other means, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product or Service, including, but not limited to, Ultimeyes, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of a name, endorsement,

depiction, or illustration, that the Covered Product or Service improves users' vision, including that the Covered Product or Service:

A. Improves the vision of users, including people of all ages, genders, and visual abilities;

B. Improves vision with real world benefits, including benefits across a broad range of activities ranging from athletics to more routine lifestyle activities, such as reading, watching TV, and driving;

C. Improves vision on average by 31% and two lines on the Snellen eye chart, and improves contrast sensitivity by 100%; and

D. Reverses, delays, or corrects aging eye or presbyopia, including, but not limited to, by improving night vision, improving users' ability to read in dim light, and diminishing the need for glasses or other visual aids,

unless the representation is non-misleading and, at the time of making such representation, Respondents possess and rely upon competent and reliable scientific evidence to substantiate that the representation is true. For purposes of this Part, competent and reliable scientific evidence shall consist of human clinical testing of the Covered Product or Service that is sufficient in quality and quantity, based on standards generally accepted by experts in the relevant field, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. Such testing shall (1) be randomized, double-blind, and adequately controlled; and (2) be conducted by researchers qualified by training and experience to conduct such testing. In addition, all underlying or supporting data and documents generally accepted by experts in the relevant field as relevant to an assessment of such testing as set forth in Part III must be available for inspection and production to the Commission.

II.

IT IS FURTHER ORDERED that Respondents, directly or through any corporation, subsidiary, division, or other means, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product or Service in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of a name, endorsement, depiction, or illustration, any representation, other than representations covered under Part I of this order, about the health benefits, performance, efficacy, safety, or side effects of any Covered Product or Service, unless the representation is non-misleading, and, at the time of making such representation, Respondents possess and rely upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Part, competent and reliable scientific evidence means tests, analyses, research, or studies (A) that have been conducted and evaluated in an objective manner by qualified persons; (B) that are generally accepted in the profession to yield accurate and reliable results; and (C) when they are human clinical tests or studies, all

underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of such testing as set forth in Part III are available for inspection and production to the Commission.

III.

IT IS FURTHER ORDERED that, with regard to any human clinical test or study ("test") upon which Respondents rely to substantiate any claim covered by Parts I or II of this order, Respondents shall secure and preserve all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of the test, including, but not necessarily limited to:

A. All protocols and protocol amendments, reports, articles, write-ups, or other accounts of the results of the test, and drafts of such documents reviewed by the test sponsor or any other person not employed by the research entity;

B. All documents referring or relating to recruitment; randomization; instructions, including oral instructions, to participants; and participant compliance;

C. Documents sufficient to identify all test participants, including any participants who did not complete the test, and all communications with any participants relating to the test; all raw data collected from participants enrolled in the test, including any participants who did not complete the test; source documents for such data; any data dictionaries; and any case report forms;

D. All documents referring or relating to any statistical analysis of any test data, including, but not limited to, any pretest analysis, intent-to-treat analysis, or between-group analysis performed on any test data; and

E. All documents referring or relating to the sponsorship of the test, including all contracts and communications between any sponsor and the test's researchers.

Provided, however, the preceding preservation requirement shall not apply to a Reliably Reported test, unless the test was conducted, controlled, or sponsored, in whole or in part (1) by Respondents, or by any person or entity affiliated with or acting on behalf of Respondents, including officers, agents, representatives, and employees, or by any other person or entity in active concert or participation with Respondents, or (2) by Respondents' programmers, manufacturers, or suppliers of any component of the Covered Product or Service.

For any test conducted, controlled, or sponsored, in whole or in part, by Respondents, Respondents must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of any personal information collected from or about participants. These procedures shall be documented in writing and shall contain administrative, technical, and physical safeguards appropriate to Respondents' size and complexity, the nature and scope of Respondents' activities, and the sensitivity of the personal information collected from or about the participants.

IV.

IT IS FURTHER ORDERED that Respondents, directly or through any corporation, subsidiary, division, or other means, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, program, or service in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, including through the use of a name, endorsement, depiction, or illustration:

A. The existence, contents, validity, results, conclusions, or interpretations of any test, study, or research; or

B. That any benefits of such product, program, or service are scientifically proven.

V.

IT IS FURTHER ORDERED that Respondents, directly or through any corporation, subsidiary, division, or other means, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, program, or service in or affecting commerce, shall disclose, clearly and conspicuously, and in close proximity to the triggering representation:

A. For any representation that any test, study, or research supports any claims about the product, program, or service, all material connections with any person that has conducted, authored, or participated in the test, study, or research; and

B. For any endorsement of such product, program, or service, all material connections between the person providing the endorsement and Respondents or any other person manufacturing, labeling, advertising, promoting, offering for sale, selling, or distributing such product, program, or service.

VI.

IT IS FURTHER ORDERED that:

A. Respondents shall pay to the Commission $150,000, which Respondents have stipulated their undersigned counsel holds in escrow for no purpose other than payment to the Commission.

B. Such payment shall be made within 8 days of the effective date of this order by electronic funds transfer in accordance with instructions provided by a representative of the Commission.

C. Respondents relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this order and may not seek the return of any assets.

D. The facts alleged in the complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission to enforce its rights to any payment pursuant to this order, such as a nondischargeability complaint in any bankruptcy case.

E. The facts alleged in the complaint establish all elements necessary to sustain an action by or on behalf of the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this order will have collateral estoppel effect for such purposes.

F. All money paid to the Commission pursuant to this order may be deposited into a fund administered by the Commission or its designee to be used for relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other relief (including consumer information remedies) as it determines to be reasonably related to Respondents' practices alleged in the complaint. Any money not used is to be deposited to the U.S. Treasury. Respondents have no right to challenge any activities pursuant to this Part.

G. In the event of default on any obligation to make payment under this order, interest, computed as if pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment. In the event such default continues for 10 days beyond the date that payment is due, the entire amount will immediately become due and payable.

H. Each day of nonpayment is a violation through continuing failure to obey or neglect to obey a final order of the Commission and thus will be deemed a separate offense and violation for which a civil penalty shall accrue.

I. Respondents acknowledge that their Taxpayer Identification Numbers (Social Security or Employer Identification Numbers), which Respondents have previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this order, in accordance with 31 U.S.C. § 7701.

VII.

IT IS FURTHER ORDERED that Respondents must directly or indirectly provide sufficient customer information, including sufficient identification of all resellers, to enable the Commission to efficiently administer consumer redress to all purchasers of Ultimeyes. If a representative of the Commission requests in writing any information related to redress, Respondents must provide it, in the form prescribed by the Commission representative, within 14 days.

VIII.

IT IS FURTHER ORDERED that Respondent Carrot Neurotechnology, Inc. and its successors and assigns, and Respondents Adam Goldberg and Aaron Seitz shall, for 5 years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation;

C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations; and

D. All acknowledgements of receipt of this order obtained pursuant to Part IX.

IX.

IT IS FURTHER ORDERED that Respondent Carrot Neurotechnology, Inc. and its successors and assigns, and Respondents Adam Goldberg and Aaron Seitz shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within 30 days after the date of service of this order, and to future personnel within 30 days after the person assumes such position or responsibilities.

X.

IT IS FURTHER ORDERED that Respondent Carrot Neurotechnology, Inc. and its successors and assigns, and Respondents Adam Goldberg and Aaron Seitz shall notify the Commission at least 30 days prior to any change in the corporation 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 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 Respondents learn less than 30 days prior to the date such action is to take place, Respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer

Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580. The subject line must begin: *In re Carrot Neurotechnology, Inc*.

XI.

IT IS FURTHER ORDERED that Respondent Carrot Neurotechnology, Inc. and its successors and assigns, and Respondents Adam Goldberg and Aaron Seitz, within 60 days after the date of service of this order, each shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of their own compliance with this order. Within 10 days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports. Unless otherwise directed by a representative of the Commission in writing, these reports shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580. The subject line must begin: *In re Carrot Neurotechnology, Inc*.

XII.

This order will terminate on February 22, 2036, or 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 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 Respondents 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.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: February 22, 2016