082 3095

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **William E. Kovacic, Chairman**
Pamela Jones Harbour
Jon Leibowitz
J. Thomas Rosch

In the Matter of	)	
BIOQUE TECHNOLOGIES, INC.,	)	
VITTORIO A. BONOMO, individually and as a director of Bioque Technologies, Inc., and	)	**DOCKET NO. C-4237**
CHRISTINE A. GUILMAN, individually and as an officer of Bioque Technologies, Inc.	)	

DECISION AND ORDER

The Federal Trade Commission ("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 of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violation of the Federal Trade Commission Act; and

The Respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the Respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the Respondents that the law has been violated as alleged in the complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, 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 had reason to believe that the Respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent

agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Bioque Technologies, Inc. ("Bioque") is a Virginia corporation with its principal office or place of business at 200 Country Club Drive SW, Blacksburg, Virginia 24060.

2. Respondent Vittorio A. Bonomo is a director of Bioque. Individually or in concert with others, he formulates, directs, controls, or participates in the policies, acts, or practices of Bioque, including the acts and practices alleged in the complaint. His principal office or place of business is the same as that of the corporation.

3. Respondent Christine A. Guilman is an officer of Bioque. Individually or in concert with others, she formulates, directs, controls, or participates in the policies, acts, or practices of Bioque, including the acts and practices alleged in the complaint. Her principal office or place of business is the same as that of the corporation.

4. The Federal Trade 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:

   A. Bioque Technologies, Inc. ("Bioque"), a corporation, its successors and assigns and its officers;

   B. Vittorio A. Bonomo ("Bonomo"), individually, and as a director of Bioque;

   C. Christine A. Guilman ("Guilman"), individually, and as an officer of Bioque;

and each of the above's agents, representatives, and employees.

2. "Serum GV" shall mean Serum GV and any other product containing annona muricata, soursop, guanabana, or graviola.

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

4. "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 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.

5. "Covered product or service" shall mean any health-related service or program; or any food, dietary supplement, device, or drug, including, but not limited to, Serum GV.

6. "Endorsement" shall mean as defined in 16 C.F.R. § 255.0(b).

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

8. The term "including" shall mean "without limitation."

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.

IT IS ORDERED that Respondents, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, or sale of Serum GV or any other covered product or service, in or affecting commerce, shall not represent, in any manner, expressly or by implication, including through the use of a product name or endorsement, that such product or service:

A. is an effective treatment for skin cancer, including melanoma;

B. prevents melanoma;

C. is recognized by the medical profession as an effective treatment for skin cancer; or

D. is clinically proven to prevent or treat melanoma,

unless the representation is true, non-misleading, and, at the time it is made, Respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II.

IT IS FURTHER ORDERED that Respondents, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, or sale 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 product name or endorsement, about the absolute or comparative benefits, performance, efficacy, safety, or side effects of such covered product or service, unless the representation is true, non-misleading, and, at the time it is made, Respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

IT IS FURTHER ORDERED that Respondents, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, or sale of any covered product or service, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, including through the use of a product name or endorsement, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

IV.

IT IS FURTHER ORDERED that:

A. Nothing in this Order shall prohibit Respondents from making any representation for any drug that is permitted in labeling for such drug under any tentative 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. 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 National Labeling and Education Act of 1990.

V.

IT IS FURTHER ORDERED that:

A. Respondents shall, within seven (7) days after the date of entry of this Order, deliver to the Commission a list, in the form of a sworn affidavit, of all consumers who purchased Serum GV, on or after January 1, 2003 through the date of entry of this Order, to the extent they have such information in their possession or control. Such list shall include each consumer's name and address, the product(s) purchased, the total amount of moneys paid less any amount credited for returns or refunds, and, if available, the consumer's telephone number and email address; and

B. Except as provided in this Order, Respondents, and their officers, agents, servants, employees, and attorneys and all other persons or entities who receive actual notice of this Order by personal service or otherwise, are permanently

restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, email address, or other identifying information of any person who paid any money to any Respondent, at any time prior to entry of this Order, in connection with the purchase of Serum GV. *Provided, however*, that Respondents may disclose such identifying information as required in Subparagraph A above, or to any law enforcement agency, or as required by any law, regulation, or court order.

VI.

IT IS FURTHER ORDERED that within forty-five (45) days after the date of entry of this Order, Respondents shall send by first class mail, postage prepaid, an exact copy of the notice attached as Attachment A to all persons identified in Part V(A). The mailing shall not include any other documents.

VII.

IT IS FURTHER ORDERED that Respondents shall pay to the Federal Trade Commission the sum of nine thousand, thirty-five dollars and eighty-five cents ($9,035.85). This payment shall be made in the following manner:

A. The payment shall be made by wire transfer or certified or cashier's check made payable to the Federal Trade Commission, the payment to be made no later than fifteen (15) days after the date that this order becomes final.

B. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the amount due, together with interest, as computed pursuant to 28 U.S.C. § 1961(a), from the date of default to the date of payment, shall immediately become due and payable to the Commission.

C. The funds paid by Respondents, together with any accrued interest, shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of Serum GV in connection with the acts and practices alleged in the complaint, and to pay any attendant costs of administration. If the Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty, or punitive assessment.

D. Respondents relinquish all dominion, control, and title to the funds paid, and all legal and equitable title to the funds vests in the Treasurer of the United States

and in the designated consumers. Respondents shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of any Respondent, Respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

VIII.

IT IS FURTHER ORDERED that Respondent Bioque, and its successors and assigns, and Respondents Bonomo and Guilman shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon reasonable notice 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; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their 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.

IX.

IT IS FURTHER ORDERED that Respondent Bioque, and its successors and assigns, and Respondents Bonomo and Guilman shall deliver a copy of this order to all current and future principals, officers, directors, and other employees with managerial authority 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 thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

X.

IT IS FURTHER ORDERED that Respondent Bioque, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including, but not limited to, 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. *Provided, however*, that, with respect to any proposed change in the corporation about which Respondents learn less than thirty (30) days prior to the date of such action is to take place, Respondents shall notify the Commission as soon as is 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, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

XI.

IT IS FURTHER ORDERED that Respondents Bonomo and Guilman, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of their individual current business or employment, or of their individual affiliation with any new business or employment. The notice shall include the Respondent's new business address and telephone number and a description of the nature of the business or employment and their duties and responsibilities. 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, 600 Pennsylvania Avenue, N.W., Washington, D.C., 20580.

XII.

IT IS FURTHER ORDERED that Respondent Bioque, and its successors and assigns, and Respondents Bonomo and Guilman shall, within sixty (60) days after service of this order, and, upon reasonable notice, 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.

XIII.

This order will terminate on October 22, 2028, 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.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: October 22, 2008

ATTACHMENT A
LETTER TO BE SENT BY FIRST CLASS MAIL
[on letterhead of Bioque Technologies, Inc.]

[Name and address of recipient] [Date]

Dear [recipient's name]:

Our records show that you bought Serum GV from our website, www.bioque.com. We are writing to tell you that the Federal Trade Commission ("FTC") has alleged that our advertising claims for Serum GV were false or unsubstantiated. To resolve these charges, we have entered into a settlement with the FTC that prohibits us from making misleading claims about Serum GV or any other health-related product. The settlement with the FTC does not constitute an admission that we have violated the law. As part of the settlement, however, we agreed to send you the following information about the scientific evidence on Serum GV.

Very little scientific research has been done concerning Serum GV or any other product that contains annona muricata for the prevention, treatment, or cure of skin cancer, including melanoma, in humans. The scientific studies that have been done do not demonstrate that Serum GV or annona muricata effectively prevent or treat melanoma or other forms of skin cancer.

It is very important that you talk to your doctor or health care provider before using ***any*** alternative or herbal product, including Serum GV or any other product that contains annona muricata. Speaking with your doctor is important to make sure that all aspects of your medical treatment work together. Things that seem safe, such as certain foods, herbs, or pills, may interfere or affect your cancer or other medical treatment, or other medicines you might be taking. Some herbs or other complementary or alternative treatments may keep your medicines from doing what they are supposed to do, or could be harmful when taken with other medicines or in high doses. It also is very important that you talk to your doctor or health care provider before you decide to take any alternative or herbal product, including Serum GV or any other product that contains annona muricata, instead of taking conventional cancer treatments that have been scientifically proven to be safe and effective in humans.

If you would like further information about complementary and alternative treatments for cancer, the following Internet web sites may be helpful:

10. The National Cancer Institute: www.cancer.gov/cancertopics/pdq; or
11. The National Center for Complementary and Alternative Medicines: www.nccam.nih.gov.

You also can contact the National Cancer Institute's Cancer Information Service at 1-800-4-CANCER or 1-800-422-6237.

Sincerely,

_____
Christine Guilman, President
Bioque Technologies, Inc.