

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION,

Plaintiff,

-against-

CRYSTAL EWING, et. al,

Defendants.

Case Number: 2:14-cv-00683-RFB-VCF

**STIPULATED FINAL JUDGMENT AND ORDER
FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF AS TO
CRYSTAL EWING AND CLASSIC PRODUCTIONS, LLC**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint for Permanent Injunction and Other Equitable Relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b). The Commission and Defendants Crystal Ewing and Classic Productions, LLC, (the “Defendants”) stipulate to the entry of this Stipulated Final Judgment and Order For Permanent Injunction And Other Equitable Relief (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Amended Complaint charges that Defendants participated in deceptive acts or practices and false advertisements in violation of Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, in connection with the labeling, advertising, marketing, distribution, and sale of Citra-Slim 4 and W-8-B-GONE capsules, a dietary supplement.
3. Defendants admit the allegations in the Complaint.

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II

PROHIBITION AGAINST MISREPRESENTATIONS

AND UNSUBSTANTIATED CLAIMS

IT IS FURTHER ORDERED that Defendants, their successors and assigns, and their officers, agents, directors, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, program, or service, to the extent not banned by Sections I, are hereby permanently restrained and enjoined from:

A. misrepresenting, or assisting others in misrepresenting, expressly or by implication, any fact material to a consumer's decision to purchase any product, program, or service, including without limitation:

1. the benefits, performance, efficacy, safety, or side effects of any product, program, or service, including but not limited to the health benefits of any product, program, or service;
2. the terms and conditions of any policies and practices regarding refunds, including, but not limited to, that unsatisfied consumers will receive a full refund;
3. the existence of an expert endorser;
4. the qualifications of an expert endorser;
5. that an expert endorser has evaluated a product, program, or service's features or characteristics; and
6. the nature or extent of an expert endorser's evaluation of a product, program or service;

1 B. making any representation, expressly or by implication, about the benefits,
2 performance, efficacy, safety, or side effects of any product, program, or service, unless at the
3 time such representation is made, Defendants possess and rely upon competent and reliable
4 evidence, which when appropriate based on the expertise of professionals in the relevant area,
5 must be competent and reliable scientific evidence, that is sufficient in quality and quantity,
6 based on standards generally accepted in the relevant fields when considered in light of the entire
7 body of relevant and reliable evidence, to substantiate that the representation is true.
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9 For health-related claims regarding the benefits, performance, efficacy, safety, or side
10 effects of any product, program, or service, Defendants, at the time such representation is made,
11 must possess and rely upon competent and reliable scientific evidence that is sufficient in quality
12 and quantity, based on standards generally accepted in the relevant fields when considered in
13 light of the entire body of relevant and reliable evidence, to substantiate that the representation is
14 true.
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16 For purposes of this Section, competent and reliable scientific evidence means tests,
17 analyses, research, or studies (1) that have been conducted and evaluated in an objective manner
18 by qualified persons; (2) that are generally accepted in the profession to yield accurate and
19 reliable results; and (3) as to which, when they are human clinical tests or studies, all underlying
20 or supporting data and documents generally accepted by experts in the field as relevant to an
21 assessment of such testing as set forth in the Section entitled Preservation of Records Relating to
22 Competent and Reliable Human Clinical Tests or Studies are available for inspection and
23 production to the Commission.
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III

PROHIBITED REPRESENTATIONS REGARDING TESTS OR STUDIES

IT IS FURTHER ORDERED that Defendants, their successors and assigns, and officers, agents, directors, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, program, or service, in or affecting commerce, are permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, in any manner, expressly or by implication, including through the use of a product, program, or service name, endorsement, depiction, or illustration, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research or that the benefits of such product, program, or service are scientifically proven.

IV

PRESERVATION OF RECORDS RELATING TO

COMPETENT AND RELIABLE HUMAN CLINICAL TESTS OR STUDIES

IT IS FURTHER ORDERED that, with regard to any human clinical test or study (“test”) upon which Defendants rely to substantiate any claim covered by Sections II and III of this Order, Defendants 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;

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

3 C. Documents sufficient to identify all test participants, including any participants
4 who did not complete the test, and all communications with any participants relating to the test;
5 all raw data collected from participants enrolled in the test, including any participants who did
6 not complete the test; source documents for such data; any data dictionaries; and any case report
7 forms;
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9 D. All documents referring or relating to any statistical analysis of any test data,
10 including, but not limited to, any pretest analysis, intent-to-treat analysis, or between-group
11 analysis performed on any test data; and
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13 E. All documents referring or relating to the sponsorship of the test, including all
14 communications, including contracts, between any sponsor and the test's researchers

15 *Provided, however,* the preceding preservation requirement shall not apply to a Reliably
16 Reported test, unless the test was conducted, controlled, or sponsored, in whole or in part by: (1)
17 Defendants; (2) any of Defendants' officers, agents, representatives, or employees; (3) any other
18 person or entity in active concert or participation with Defendants; (4) any person or entity
19 affiliated with or acting on behalf of Defendants; (5) any supplier of any ingredient contained in
20 the product at issue to any of the foregoing or to the product's manufacturer; or (6) the supplier
21 or manufacturer of such product.
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23 For any test conducted, controlled, or sponsored, in whole or in part, by Defendants,
24 Defendants must establish and maintain reasonable procedures to protect the confidentiality,
25 security, and integrity of any personal information collected from or about participants. These
26 procedures shall be documented in writing and shall contain administrative, technical, and
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1 physical safeguards appropriate to Defendants' size and complexity, the nature and scope of
2 Defendants' activities, and the sensitivity of the personal information collected from or about the
3 participants.

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5 **V**

6 **FDA APPROVED CLAIMS**

7 **IT IS FURTHER ORDERED** that nothing in this Order shall prohibit Defendants from:

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

11 B. Making any representation for any product that is specifically permitted in
12 labeling for such product by regulations promulgated by the Food and Drug Administration
13 pursuant to the Nutrition Labeling and Education Act of 1990 or permitted under Sections 303-
14 304 of the Food and Drug Administration Modernization Act of 1997.
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16 **VI**

17 **MONETARY JUDGMENT AND CONSUMER REDRESS**

18 **IT IS FURTHER ORDERED** that:

19 A. Judgment in the amount of \$2,769,254.88 is entered in favor of the Commission
20 against Defendants, jointly and severally, as equitable monetary relief.
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22 B. The facts alleged in the Complaint will be taken as true, without further proof, in
23 any subsequent civil litigation by or on behalf of the Commission in a proceeding to enforce its
24 rights to any payment or monetary judgment pursuant to this Order, such as a
25 nondischargeability complaint in any bankruptcy case.
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1 C. The facts alleged in the Complaint establish all elements necessary to sustain an
2 action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C.
3 § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

4 D. Defendants acknowledge that their Taxpayer Identification Numbers (Social
5 Security Numbers or Employer Identification Numbers) may be used for collecting and reporting
6 on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

7 E. All money paid to the Commission pursuant to this Order may be deposited into a
8 fund administered by the Commission or its designee to be used for equitable relief, including
9 consumer redress and any attendant expenses for the administration of any redress fund. If a
10 representative of the Commission decides that direct redress to consumers is wholly or partially
11 impracticable or money remains after redress is completed, the Commission may apply any
12 remaining money for such other equitable relief (including consumer information remedies) as it
13 determines to be reasonably related to Defendants' practices alleged in the Complaint. Any
14 money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement.
15 Defendants have no right to challenge any actions the Commission or its representatives may
16 take pursuant to this Subsection.
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20 VII

21 CUSTOMER INFORMATION

22 **IT IS FURTHER ORDERED** that Defendants, their officers, agents, servants, and
23 employees, and attorneys, and all other persons in active concert or participation with any of
24 them, who receive actual notice of this Order, are permanently restrained and enjoined from
25 directly or indirectly:
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1 5 days written notice, or other reasonable notice, at such places and times as a Commission
2 representative may designate, without the service of a subpoena.
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4 **IX**

5 **ORDER ACKNOWLEDGMENTS**

6 **IT IS FURTHER ORDERED** that Defendants obtain acknowledgments of receipt of
7 this Order:

- 8 A. Each Defendant, within 7 days of entry of this Order, must submit to the
9 Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
10
- 11 B. For 20 years after entry of this Order, Defendants for any business engaged in
12 activities covered by this Order that such Defendant, individually or collectively with any other
13 defendant named in the Amended Complaint, is the majority owner or controls directly or
14 indirectly, and Defendant Classic must deliver a copy of this Order to: (1) all principals,
15 officers, directors, and LLC managers and members; (2) all employees, agents, and
16 representatives who participate in conduct related to the subject matter of the Order; and (3) any
17 business entity resulting from any change in structure as set forth in the Section titled
18 Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current
19 personnel. For all others, delivery must occur before they assume their responsibilities.
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21 C. From each individual or entity to which a Defendant delivered a copy of this
22 Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of
23 receipt of this Order.
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COMPLIANCE REPORTING

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3 **IT IS FURTHER ORDERED** that Defendants make timely submissions to the
4 Commission:

5 A. 60 days after entry of this Order, each Defendant must submit a compliance
6 report, sworn under penalty of perjury.

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- 8 1. Each Defendant must: (a) identify the primary physical, postal, and email
9 address and telephone number, as designated points of contact, which
10 representatives of the Commission may use to communicate with Defendant;
11 (b) identify all of Defendant Ewing's businesses by all of their names,
12 telephone numbers, and physical, postal, email, and Internet addresses; (c)
13 describe the activities of each business, including the products, programs, and
14 services offered, the means of advertising, marketing, and sales, and the
15 involvement of any other defendant named in the Amended Complaint (which
16 Defendant Ewing must describe if she knows or should know due to her own
17 involvement); (d) describe in detail whether and how that Defendant is in
18 compliance with each Section of this Order; and (e) provide a copy of each
19 Order Acknowledgment obtained pursuant to this Order, unless previously
20 submitted to the Commission;
 - 21 2. Additionally, Defendant Ewing must: (a) identify all telephone numbers and
22 all physical, postal, email and Internet addresses, including all residences; (b)
23 identify all business activities, including any business for which such
24 Defendant performs services whether as an employee or otherwise and any
25 entity in which such Defendant has any ownership interest; and (c) describe in
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1 detail such Defendant's involvement in each such business, including title,
2 role, responsibilities, participation, authority, control, and any ownership.

3 B. For 20 years after entry of this Order, each Defendant must submit a compliance
4 notice, sworn under penalty of perjury, within 14 days of any change in the following:

- 5
- 6 1. Each Defendant must report any change in: (a) any designated point of
7 contact; or (b) the structure of Defendant Classic or any entity that Defendants
8 have any ownership interest in or control directly or indirectly that may affect
9 compliance obligations arising under this Order, including: the creation,
10 merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate
11 that engages in any acts or practices subject to this Order.
 - 12 2. Additionally, Defendant Ewing must report any change in: (a) name,
13 including aliases or fictitious names, or residence address; or (b) title or role in
14 any business activity, including any business for which such Defendant
15 performs services, whether as an employee or otherwise, and any entity in
16 which such Defendant has any ownership interest, and identify the name,
17 physical address, and any Internet address of the business or entity.

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19 C. Each Defendant must submit to the Commission notice of the filing of any
20 bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such
21 Defendant within 14 days of its filing.

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23 D. Any submission to the Commission required by this Order to be sworn under
24 penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by
25 concluding: "I declare under penalty of perjury under the laws of the United States of America
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1 that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s
2 full name, title (if applicable), and signature.

3 E. Unless otherwise directed by a Commission representative in writing, all
4 submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or
5 sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement,
6 Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW,
7 Washington, D.C. 20580. The subject line must begin: *FTC v. Crystal Ewing, Classic*
8 *Productions, LLC, Health Nutrition Products, LLC, et al.*, D. Nev., No. 2:14-cv-00683-MMD-
9 VCF, FTC Matter No. 1423124.
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11 XI

12 RECORD KEEPING PROVISIONS

13 **IT IS FURTHER ORDERED** that Defendants must create certain records for 20 years
14 after entry of the Order, and retain each such record for 5 years. Specifically, Defendants, in
15 connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or
16 distribution of any product, program, or service, and Defendants for any business engaged in
17 activities covered by this Order that such Defendant, individually or collectively with any other
18 defendant named in the Amended Complaint, is a majority owner or controls directly or
19 indirectly, must create and retain the following records:
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21 A. Accounting records showing the revenues from all products, programs, or services
22 sold, all costs incurred in generating those revenues, and the resulting net profit or loss;
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24 B. Personnel records showing, for each person providing services, whether as an
25 employee or otherwise, that person’s: name, addresses, telephone numbers; job title or position;
26 dates of service; and, if applicable, the reason for termination;
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1 C. All records necessary to demonstrate full compliance with each provision of this
2 Order, including all submissions to the Commission; and

3 D. A copy of each unique advertisement or other marketing material.
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5 XII

6 COMPLIANCE MONITORING

7 **IT IS FURTHER ORDERED** that, for the purpose of monitoring Defendants'
8 compliance with this Order:

9 A. Within 14 days of receipt of a written request from a representative of the
10 Commission, each Defendant must: submit additional compliance reports or other requested
11 information, which must be sworn under penalty of perjury; appear for depositions; and produce
12 documents, for inspection and copying. The Commission also is authorized to obtain discovery,
13 without further leave of court, using any of the procedures prescribed by Federal Rules of Civil
14 Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.
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16 B. For matters concerning this Order, the Commission is authorized to communicate
17 directly with each Defendant. Defendant must permit representatives of the Commission to
18 interview any employee or other person affiliated with Defendants who has agreed to such an
19 interview. The person interviewed may have counsel present.
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21 C. The Commission may use all other lawful means, including posing, through its
22 representatives, as consumers, suppliers, or other individuals or entities, to Defendants or any
23 individual or entity affiliated with Defendants, without the necessity of identification or prior
24 notice. Nothing in this Order limits the Commission's lawful use of compulsory process,
25 pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.
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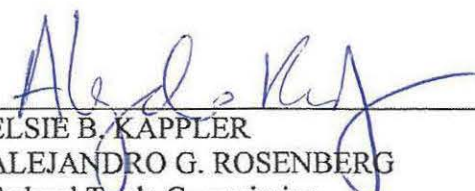
XIII

RETENTION OF JURISDICTION

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

SO STIPULATED AND AGREED:


Dated: November 2, 2015



 ELSIE B. KAPPLER
 ALEJANDRO G. ROSENBERG
 Federal Trade Commission
 600 Pennsylvania Ave., NW
 Maildrop CC-9528
 Washington, D.C. 20580
 (202) 326-2466 (Kappler)
 (202) 326-3556 (Felix)
 (202) 326-2698 (Rosenberg)
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 Email: ekappler@ftc.gov; arosenberg@ftc.gov

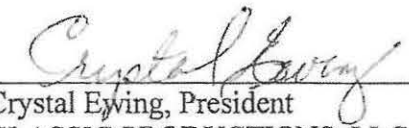
Attorneys for Plaintiff
 Federal Trade Commission

Dated: 8/14, 2015



 CRYSTAL EWING,
 Defendant

Dated: 8/14, 2015



 Crystal Ewing, President
 CLASSIC PRODUCTIONS, LLC
 Defendant

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Dated: Sept 11, 2015



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Email: sdilibero@diliberoandassociates.com
Attorney for Defendants Crystal Ewing and Classic
Productions, LLC

SO ORDERED:

Dated: _____, 2015

United States District Judge