

hair care products

MAY 25 1994

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GENERAL NUTRITION, INC.,
a corporation,

Defendant.

CIV. ACT. NO. 94 0686

CONSENT DECREE

WHEREAS: Plaintiff, the United States of America, has commenced this action by filing the Complaint herein; defendant has waived service of the Summons and Complaint; 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 defendant's admitting liability for any of the matters alleged in the Complaint;

THEREFORE, on the joint motion of plaintiff and defendant, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. This Court has jurisdiction of the subject matter and of the parties.

2. The Complaint states a claim upon which relief may be granted against the defendants under Sections 5(1), 9, 13(b), and 16(a) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(1), 49, 53(b), and 56(a).

3. The following definitions shall apply to this decree: "1989 Order" shall mean the Federal Trade Commission ("Commission") Order in FTC Docket No. C-9175, 111 F.T.C. 387, 411-16 (1989), a copy of which is attached herewith as Attachment A and made a part of this Consent Decree. "1970 Order" shall mean the Commission Order in FTC Docket No. C-1517, 75 F.T.C. 529, 536-39 (1969), as modified at 77 F.T.C. 1458, 1458-59 (1970), a copy of which is attached herewith as Attachment B and made a part of this Consent Decree.

CIVIL PENALTY

4. Pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(1), Defendant GENERAL NUTRITION, INC., shall pay a monetary civil penalty of \$2.4 million (\$2,400,000). Defendant has agreed to deposit this sum into an escrow account, established and managed by Arent Fox Kintner Plotkin & Kahn, within five (5) business days of the Commission's acceptance of an agreement settling the civil penalty actions in F.T.C. Dkt. Nos. C-1517 and D-9175 ("Agreement"). After entry of this Decree, Arent Fox Kintner Plotkin & Kahn shall within three (3) business days transfer this sum from the escrow account to

the U.S. Treasury as a civil penalty. Any interest earned on the escrow principal during the pendency of the escrow shall not accrue to the amount of the civil penalty, but shall be the property of Defendant. If the Decree is not entered within 120 days of the Commission's acceptance of the Agreement, the escrow principal and any interest earned thereon during the pendency of the escrow shall be the property of Defendant. In the event of any default in payment by Defendant to the escrow account, which default continues for ten (10) days beyond the due date of the payment, interest computed pursuant to 28 U.S.C. § 1961(a) shall accrue from the date of default to the date of payment.

INJUNCTION AGAINST ORDER VIOLATIONS

5. Defendant, GENERAL NUTRITION, INC., its successors and assigns, and its officers, agents, representatives and employees, and all persons in active concert or participation with any one or more of them who receive actual notice of this Consent Decree by personal service or otherwise, are hereby enjoined from ever violating, directly or through any corporation, subsidiary, division, or other device, any provision of the 1989 and 1970 Orders.

6. In the event that either the 1989 or the 1970 Order is hereafter modified, defendant's compliance with such Order as so modified shall not be deemed a violation of this injunction.

FURTHER ORDER PROVISIONS

7. Defendant, GENERAL NUTRITION, INC., its successors and assigns, and its officers, agents, representatives and employees,

and all persons in active concert or participation with any one or more of them who receive actual notice of this Consent Decree by personal service or otherwise, are hereby enjoined from:

- (a) Representing, directly or by implication, in connection with the advertising, packaging, labeling, promoting, offering for sale, selling, or distributing of Biotin Hair Care Kit, Biotin Shampoo, Biotin Conditioner, Biotin Vitamins and Minerals for The Hair, Polysorbate 80, or any other substantially similar hair care product ("defendant's product(s)"), that the use of defendant's product(s) will prevent or retard hair loss. For purposes of this Consent Decree, "substantially similar hair care product" shall be defined as any product that is advertised or intended for sale over-the-counter to treat, cure or curtail hair loss and which is of substantially similar composition or possesses substantially similar properties to Biotin Hair Care Kit, Biotin Shampoo, Biotin Conditioner, Biotin Vitamins and Minerals for The Hair, or Polysorbate 80.
- (b) Representing, directly or by implication, in connection with the advertising, packaging, labeling, promoting, offering for sale, selling, or distributing of any other product or service, that:

- (1) the use of the product or service can or will prevent, cure, relieve, reverse, or reduce hair loss; or
- (2) the use of the product or service can or will promote the growth of hair where hair has already been lost,

unless such representation is true and unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. For purposes of this Consent Decree, "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 by others in the profession to yield accurate and reliable results.

- (c) Advertising, packaging, labeling, promoting, offering for sale, selling, or distributing any product that is represented as promoting hair growth or preventing hair loss, unless the product is the subject of an approved new drug application for such purpose under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., provided that, this requirement shall not limit the requirements of paragraph 7(a) and (b) herein.

DISTRIBUTION OF THE DECREE

8. GENERAL NUTRITION, INC., shall, within thirty (30) days of the entry of this Consent Decree, provide a copy of this Consent Decree, to each of its officers, directors, agents, and employees having sales, advertising, or policy responsibilities with respect to the subject matter of this Order, secure from each such person a signed statement acknowledging receipt of a copy of this Consent Decree, and shall, within thirty (30) days of complying with this paragraph, serve upon the Commission an affidavit setting forth the fact and manner of its compliance, including the name and title of each person to whom a copy of the Consent Decree has been provided.

OTHER CAUSES OF ACTION NOT BARRED

9. This action, and the relief awarded herein, is in addition to and not in lieu of other remedies as may be provided by law, including both civil and criminal remedies.

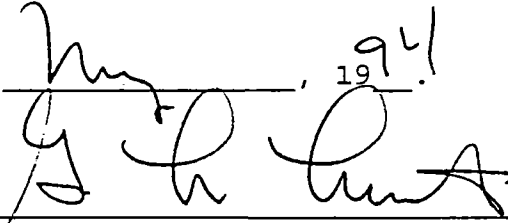
CONTINUING JURISDICTION

10. This Court shall retain jurisdiction of this matter for the purpose of enabling any of the parties to this Consent Decree to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for interpretation or modification of this Consent Decree, for the enforcement of compliance therewith, for the redress of any violations thereof, or for the punishment of any violations thereof.

JUDGMENT IS THEREFORE ENTERED in favor of plaintiff, the United States of America, and against defendant, pursuant to all of the terms and conditions recited above.

Dated this 20th day of July, 1994

cm: All parties of record MP

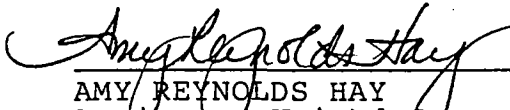

United States District Judge

The parties, by their respective counsel, hereby consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof. Defendant waives any rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412.

FOR THE UNITED STATES OF AMERICA

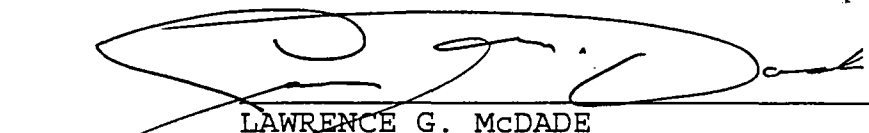
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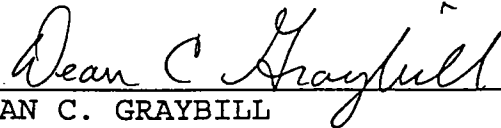
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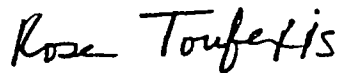
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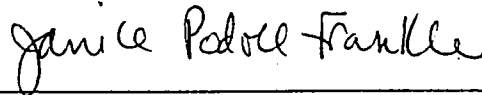
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