

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

04-21280

FILED by *[Signature]* D.C.
JUN 02 2004
CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

CASE NO.

FEDERAL TRADE COMMISSION,)
)
Plaintiff,)
)
v.)
)
KAMARFU ENTERPRISES, INC., and)
MARITZA FUENTES,)
)
Defendants.)

CIV - LENARD

MAGISTRATE JUDGE
SIMONTON

CLOSED
CIVIL
CASE

STIPULATED FINAL ORDER FOR PERMANENT INJUNCTIVE
AND OTHER EQUITABLE RELIEF AGAINST
KAMARFU ENTERPRISES, INC. AND MARITZA FUENTES

WHEREAS Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), has commenced this action by filing the Complaint herein; Defendants Kamarfu Enterprises, Inc., and Maritza Fuentes have 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 Defendants admitting liability for any of the matters alleged in the Complaint;

NOW, THEREFORE, on the joint motion of Plaintiff and Defendants, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. This Court has jurisdiction over the subject matter of this case and jurisdiction over all parties. Venue in the Southern District of Florida is proper under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b).

[Handwritten signature]

2. The Complaint states a claim upon which relief can be granted against the Defendants under Sections 5(a), 12, and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 52, and 53(b).

3. The acts and practices of Defendants were, and are, in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

4. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendants also waive any claims that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order.

5. Each party shall bear its own costs and attorneys' fees.

6. Entry of this Order is in the public interest.

DEFINITIONS

For purposes of this Order, the following definitions apply:

1. "Commerce" means as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

2. "Competent and reliable scientific evidence" means 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.

3. "Covered product or service" means any product, service, or program that purportedly provides health benefits, including weight loss, inch loss, fat loss, or exercise or fitness benefits.

4. Unless otherwise specified, "Defendants" mean Kamarfu Enterprises, Inc., and its successors and assigns ("Kamarfu Enterprises") and Maritza Fuentes ("Fuentes").

5. "Drug" and "cosmetic" mean as defined in Section 15 of the FTC Act, 15 U.S.C.

§ 55.

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

7. "Person" means a natural person, organization or other legal entity, including a partnership, corporation, proprietorship, association, cooperative, or any other group acting together as an entity.

8. The term "including" in this Order means "including, without limitation."

9. "1-2-3 Diet Kit" means a purported weight loss kit containing three dietary supplements:

(a) Diet Formula (Step 1), sometimes containing chitosan, and containing chromium (chromium picolinate), L-carnitine (L-Carnitine, L-Tartate), Citrimax, citrus aurantium extract, uva ursi, buchu leaf, juniper berries, green tea extract, and other ingredients;

(b) either (i) Diet Plus (Step 2) containing Super Citrimax (HCA 60%) and other ingredients, or (ii) Fiber Formula (Step 2) containing psyllium husk, guar gum, oat bran, apple pectin, papaya enzyme, and other ingredients; and

(c) Spirulina Plus Formula (Step 3) containing spirulina (arthrospira plantesis) and chlorella, and other ingredients.

I.

PROHIBITED REPRESENTATIONS

IT IS ORDERED that Defendants, and their officers, agents, servants, employees, and attorneys, and all persons and entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through

any corporation, subsidiary, division, or other entity, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the following products, in or affecting commerce, are hereby permanently enjoined from representing, in any manner, expressly or by implication, including through the use of endorsements or trade name, that:

- A. The 1-2-3 Diet Kit, or any dietary supplement, over-the-counter drug, or cosmetic, causes permanent weight loss; or
- B. The 1-2-3 Diet Kit, any of its components individually or in combination, or any other product or group of products identical or substantially similar to any one or more of the dietary supplements in the 1-2-3 Diet Kit, causes substantial weight loss in a short period of time; or
- C. The 1-2-3 Diet Kit, or any dietary supplement, over-the-counter drug, or cosmetic, causes weight loss by blocking or absorbing a substantial portion or amount of dietary fat.

II.

REPRESENTATIONS PROHIBITED UNLESS TRUE AND SUBSTANTIATED

IT IS FURTHER ORDERED that Defendants, and their officers, agents, servants, employees, and attorneys, and all persons and entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other entity, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, in or affecting commerce, are permanently enjoined from making any representation, expressly or by implication, including through the use of endorsements or trade name:

- A. That any such product, service, or program:
 - 1. Causes weight loss;
 - 2. Blocks the absorption of dietary fat;
 - 3. Suppresses appetite; or
- B. About the benefits, performance, efficacy, safety, or side effects, of any such product, service, or program;

unless, at the time the representation is made, the representation is true, and they possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

PROHIBITED MISREPRESENTATIONS ABOUT TESTS, STUDIES, AND RESEARCH

IT IS FURTHER ORDERED that Defendants, and their officers, agents, servants, employees, and attorneys, and all persons and entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other entity, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, service, or program, in or affecting commerce, are hereby permanently enjoined from making any misrepresentation, expressly or by implication, including through the use of endorsements, about the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

IV.

FOOD AND DRUG ADMINISTRATION

IT IS FURTHER ORDERED that nothing in this Order prohibits Defendants from:

- A. Making any representation for any drug that is permitted in labeling for 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; and

- B. 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.

V.

CONSUMER REDRESS

IT IS FURTHER ORDERED that judgment is hereby entered, jointly and severally, against Defendants, in favor of the FTC, in the sum of THIRTY THOUSAND DOLLARS (\$30,000), under the following terms and conditions:

- A. Defendants, jointly and severally, shall pay the full amount of the judgment to the Commission in accordance with the following schedule:
1. Twenty thousand dollars (\$20,000) within five (5) days of the date of entry of this Order;
 2. Five thousand dollars (\$5,000) within two (2) months of the date of entry of this Order; and
 3. Five thousand dollars (\$5,000) within four (4) months of the date of entry of this Order.
- B. Defendants shall pay all amounts due under this Order to the Commission by certified cashier's check made payable to the Federal Trade Commission, Division of Finance, 600 Pennsylvania Ave., NW, Washington, DC 20580, Reference Information FTC v. Kamarfu Enterprises, Inc., Matter No. 0323173, or by wire

transfer in accord with directions provided by the FTC.

- C. All funds paid pursuant to this Order must be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of such equitable relief. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants have no right to challenge the Commission's choice of remedies under this Paragraph. Defendants have no right to contest the manner of distribution chosen by the Commission.
- D. Defendants relinquish all dominion, control, and title to the funds paid to the Commission, and all legal and equitable title to the funds. Defendants shall make no claim to or demand for the return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of any Defendant, Defendants acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.
- E. In accordance with 31 U.S.C. § 7701, Defendants are hereby required, unless they have done so already, to furnish to the FTC their taxpayer identifying numbers and/or social security numbers, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendants' relationship with

the government.

VI.

RIGHT TO REOPEN

IT IS FURTHER ORDERED that:

- A. The Commission's agreement to this Order, requiring that the Defendants be liable for less than the full amount of consumer injury, is expressly premised on the truthfulness, accuracy, and completeness of Defendants' sworn financial statements and supporting documents submitted to the Commission, including:
1. The Financial Statement of Kamarfu Enterprises dated February 4, 2004, including U.S. Income tax returns, balance sheets and income statements attached thereto; the additional balance sheets dated January 27, 2004; and the sworn one-page letter dated March 25, 2004 from Maritza Fuentes to the Commission staff; and
 2. The Financial Statement of Maritza Fuentes dated February 4, 2004, including the U.S. Income Tax Returns attached thereto.

Such financial statements and supporting documents contain material information upon which the Commission relied in negotiating and agreeing to this Order.

- B. If, upon motion by the Commission, a Court finds that any Defendant has failed to disclose any material asset, or made any other material misrepresentation or omission in the financial statements and related documents described in Paragraph VI (A) above, the Court shall enter judgment against Defendants, jointly and severally, in favor of the Commission, in the amount of \$4,300,000 (four million three hundred thousand dollars) in U.S. currency, which amount would be

rendered immediately due and payable less any amounts already paid pursuant to Paragraph V of this Order. Interest computed at the rate prescribed in 28 U.S.C. § 1961 shall immediately begin to accrue on the balance. For the purposes of this Paragraph and any subsequent proceedings to enforce payment, the Defendants waive any right to contest any of the allegations in the Complaint filed in this action. *Provided however*, that in all other respects this Stipulated Final Order remains in full force and effect unless otherwise ordered by the Court; and *provided further*, that proceedings instituted under this Paragraph VI are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

VII.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that Defendants, within five (5) business days of receipt of this Order as entered by the Court, must each execute and submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

VIII.

DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, Defendants shall deliver copies of the Order as directed below:

- A. **Corporate Defendant:** Defendant Kamarfu Enterprises must deliver a copy of this Order to all of its principals, officers, directors, and managers. Defendant Kamarfu Enterprises also must deliver copies of this Order to all of its employees,

agents, and representatives who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

B. **Individual Defendant Fuentes as control person:** For any business that Defendant Fuentes controls, directly or indirectly, or in which Defendant Fuentes has a majority ownership interest, Defendant Fuentes must deliver a copy of this Order to all principals, officers, directors, and managers of that business.

Defendant Fuentes must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

C. **Defendant Fuentes as employee or non-control person:** For any business where Defendant Fuentes is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, Defendant Fuentes must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

D. **Defendants** must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Paragraph.

IX.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order:

- A. Within twenty (20) days of receipt of written notice from a representative of the Commission, Defendants each must submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such Defendant's possession or direct or indirect control to inspect the business operation;
- B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:
 - 1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
 - 2. Posing as consumers and suppliers to Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part by Defendants, without the necessity of identification or prior notice;Provided that nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).
- C. Defendants must permit representatives of the Commission to interview any

employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

X.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

- A. For a period of three (3) years from the date of entry of this Order,
 1. Defendant Fuentes must notify the Commission of the following:
 - a. Any changes in her residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
 - b. Any changes in her employment status (including self-employment) within ten (10) days of the date of such change. Such notice must include the name and address of each business that she is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of her duties and responsibilities in connection with the business;
 - c. Any changes in her name or use of any aliases or fictitious names; and
 2. Defendant Kamarfu Enterprises, and its successors and assigns, must notify the Commission of any changes in corporate structure 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 filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which Defendant Kamarfu Enterprises learns less than thirty (30) days prior to the date such action is to take place, Defendant Kamarfu Enterprises must notify the Commission as soon as is practicable after obtaining such knowledge.

- B. One hundred eighty (180) days after the date of entry of this Order, Defendants each must provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report must include, but not be limited to:
1. Any changes required to be reported pursuant to Subpart A above; and
 2. A copy of each acknowledgment of receipt of this Order obtained by Defendants pursuant to Paragraph VIII.
- C. For the purposes of this Order, Defendants must, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to: Associate Director for Enforcement, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. Attn: FTC v. Kamarfu Enterprises, Inc. et al., (S.D. Fla.).
- D. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with Defendants.

XI.

RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of this Order, Defendant Kamarfu Enterprises, and its successors and assigns, and Defendant Fuentes in connection with any business where (1) she is the majority owner, an officer, or director of the business, or directly or indirectly manages or controls the business and (2) the business engages in, or assists others engaged in, the manufacturing, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, each must maintain, and upon request, make available to the Commission, copies of all business records demonstrating compliance with the terms and provisions of this Order, including, but not limited to the following:

- A. Accounting records that reflect the cost of products, services, or programs sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, telephone numbers, dollar amounts paid, quantity of products, services, or programs purchased, and description of products, services, or programs, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly, indirectly, or through

- any third party) and any responses to those complaints or requests;
- E. Copies of all advertisements, promotional materials, sales scripts, training materials, or other materials utilized in the advertising, labeling, promotion, offering for sale, distribution or sale of any product, service, or program;
 - F. All materials that were relied upon in making any representations contained in the materials identified in Subpart E;
 - G. All other documents evidencing or referring to the accuracy of any claim therein or to the safety or efficacy of any product, service, or program, including, but not limited to, all tests, reports, studies, demonstrations, or other evidence that confirm, contradict, qualify, or call into question the safety or efficacy of any such product, service, or program; and
 - H. Records accurately reflecting the name, address, and telephone number of each manufacturer or laboratory engaged in the development or creation of any testing obtained for the purpose of advertising, labeling, promoting, offering for sale, distributing, or selling any product, service, or program.

XII.

RETENTION OF JURISDICTION

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

XIII.

SCOPE OF ORDER

IT IS FURTHER ORDERED that this Order resolves only claims against the named

Defendants and does not preclude the Commission from initiating further action or seeking any remedy against any other persons or entities, including without limitation persons or entities who may be subject to portions of this Order by virtue of actions taken in concert or participation with Defendants, and persons or entities in any type of indemnification or contractual relationship with Defendants.

SO STIPULATED:

ELAINE D. KOLISH
Associate Director for Enforcement

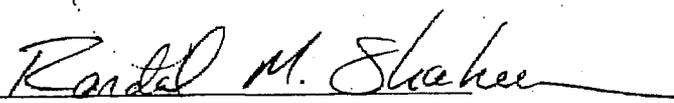
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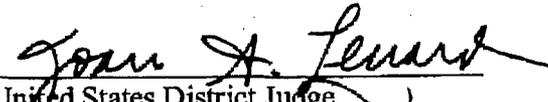
KAMARFU ENTERPRISES, INC.

By: 
MARITZA FUENTES, President


MARITZA FUENTES,
Individually and as President of Kamarfu
Enterprises, Inc.


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SO ORDERED this 2 day of June, 2004 in Miami, Florida


United States District Judge
Southern District of Florida