

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour

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| _____) | |
| In the Matter of) | |
|) | DOCKET NO. C-4116 |
| NUTRAMAX LABORATORIES, INC.,) | |
| a corporation.) | |
| _____) | |

COMPLAINT

The Federal Trade Commission, having reason to believe that Nutramax Laboratories, Inc., a corporation, (“respondent”), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Nutramax Laboratories, Inc. is a Maryland corporation with its principal office or place of business at 2208 Lakeside Boulevard, Edgewood, MD 21040.
2. Respondent has advertised, labeled, offered for sale, sold, and distributed the dietary supplement Senior Moment. According to the package label, Senior Moment contains cerebral phospholipids and docosahexaenoic acid (DHA).
3. Senior Moment is a “food” or “drug” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.
4. The acts and practices of respondent alleged in this complaint has been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.
5. Respondent has disseminated or has caused to be disseminated advertisements for Senior Moment, including but not limited to the attached Exhibits A through F. These advertisements contain the following statements:

A. (Exhibit A: Television advertisement)

Opening Visual: An envelope reading: "Happy Belated Birthday"
Accompanying Voice Over: "I'm worried about her. She's starting to forget things."
Visual: Mother & daughter having lunch at restaurant, birthday card is on the table (the mother's voice provided the preceding voice-over)
Daughter: "I can't seem to remember anything these days."
Mother: "Oh Kathy, even younger adults forget things. Dad and I take this."
Daughter: "Senior Moment. I'm not a senior"
Mother: "It's for adults of all ages."
Daughter: "This isn't one of the trendy herbal kind of . . ."
Mother: "No, no, no. This is a nutritional supplement just for the brain. It helps us remember. And it's safe."
Daughter: "Well, thanks mom. With Senior Moment, I won't miss your birthday next year."

B. (Exhibit B: Radio advertisement)

Dr. Anna Marie: I'm sure this has happened to you. You try to recall a name and it's right there on the tip of your tongue, but you just can't remember it. As we get older, our memory seems to play tricks on us more and more. I'm Dr. Anna Marie. I've been a television medical reporter for over ten years, and I have exciting news about a new nutritional supplement specially formulated to enhance memory in adults of all ages. Don't laugh, the name of the product is Senior Moment. It's a serious product with a name that's easy to remember. It's not one of those trendy herbal products. Senior moment is truly the next generation in memory support. Senior Moment contains two brain-specific nutrients to help overcome mild memory loss. And what I like best? Senior moment is from the makers of CosaminDS, so you know it's a safe, quality supplement. Don't forget, try Senior Moment. Even the name is easy to remember.

C. (Exhibit C: Print advertisement)

NEW MEMORY ENHANCING SUPPLEMENT

"You don't have to be a senior
to need SENIOR MOMENT!"

THE NEXT GENERATION IN MEMORY ENHANCEMENT*

- ♣ Advanced formula -
Not an herbal product -
NO GINGKO
- ♣ Helps overcome mild
memory loss*

- ❖ Contains a proprietary blend of brain specific nutrients
- ❖ For adults of all ages

...

*These statements have not been evaluated by the Food & Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.

D. (Exhibit D: Press Release)

Nutramax Laboratories Compiles Studies Affirming Efficacy of Senior Moment

Edgewood, MD (May 16, 2002) - **Nutramax Laboratories** announced that it is reaffirming the efficacy of its **Senior Moment** product, a dietary supplement containing a proprietary blend of brain-specific nutrients shown to enhance memory, by making available a booklet of studies related to the product. . . .

The booklet, **CLINICAL AND SCIENTIFIC STUDIES SUPPORTING THE USE OF SENIOR MOMENT FOR MEMORY**, contains a summary of studies conducted to show that DHA and Cerebral Phospholipids, the two ingredients that comprise Senior Moment, have been proven to enhance memory.

E. (Exhibit E: Package label)

“You don’t have to be a senior to need Senior Moment”

**SENIOR
MOMENT**
Dietary Supplement

FOR
ADULTS OF
ALL AGES

**ADVANCED MEMORY
ENHANCING FORMULA**

- Contains a proprietary blend of brain-specific nutrients
- Helps overcome mild memory loss*

*These statements have not been evaluated by the Food & Drug Administration.

This product is not intended to diagnose, treat, cure or prevent any disease.

F. (Exhibit F: Package insert)

SENIOR MOMENT
ADVANCED MEMORY ENHANCING*
DIETARY SUPPLEMENT

What is Senior Moment?

Senior Moment is a liquid filled capsule containing cerebral phospholipids and docosahexaenoic acid (DHA) taken once a day to help maintain memory function or taken more frequently, according to the directions provided, to help enhance memory function.* Senior Moment is rich in the same phospholipids in the same combination as found in your brain.

...

How did this happen?

Aging, stress, heredity, and diet can lead to brain cell membranes becoming rigid and less permeable. This change in cell membrane structure decreases the efficiency of brain function and memory. . . .

How can Senior Moment Help?

Scientific research indicates that supplementation with the brain-specific phospholipids and DHA found in Senior Moment can compensate for aging, stress, and diet-related deficits in these phospholipids. Senior Moment is specifically designed to restore these deficits.*

...

To maintain memory function, take 1 or 2 capsules daily, preferably in the morning.

To enhance memory function, intake can vary depending on individual needs and may be increased up to 6 capsules daily.

...

*These statements have not been evaluated by the Food & Drug Administration.

This product is not intended to diagnose, treat, cure or prevent any disease.

6. Through the means described in Paragraph 5, respondent has represented, expressly or by implication, that:

- (a) Senior Moment prevents memory loss in adults of all ages.
- (b) Senior Moment restores lost memory function in adults of all ages.

7. Through the means described in Paragraph 5, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 6, at the time the representations were made.

8. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 6, at the time the representations were made. Therefore, the representation set forth in Paragraph 7 was, and is, false or misleading.

9. Through the means described in Paragraph 5, respondent has represented, expressly or by implication, that scientific studies prove that Senior Moment restores lost memory function in adults of all ages.

10. In truth and in fact, scientific studies do not prove that Senior Moment restores lost memory function in adults of all ages. Therefore, the representation set forth in Paragraph 9 was, and is, false or misleading.

11. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

IN WITNESS WHEREOF, the Federal Trade Commission has caused its complaint to be signed by its Secretary and its official seal to be hereto affixed at Washington, D.C. this twenty-seventh day of August, 2004.

By the Commission.

Donald S. Clark
Secretary

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