

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

NBTY, INC.,

a corporation,

Defendant.

CIVIL ACTION NO.

**COMPLAINT FOR CIVIL PENALTIES,  
INJUNCTIVE AND OTHER RELIEF**

Plaintiff, United States of America, acting upon the notification and authorization to the Attorney General by the Federal Trade Commission ("Commission"), for its Complaint alleges that:

1. Plaintiff brings this action under Sections 5(l), 13(b) and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(l), 53(b) and 56(a), to obtain monetary civil penalties, a permanent injunction, rescission of contracts, restitution, disgorgement of ill-gotten gains and other equitable relief for Defendant's violations of the Federal Trade Commission Act and a final cease and desist order issued by the Commission.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345 and, 1355 and under 15 U.S.C. §§ 45(l), 53(b) and 56(a).

3. Venue in the United States District Court for the Eastern District of New York is proper under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b-c) and 1395(a).

**THE DEFENDANT**

4. Defendant NBTY, Inc. ("NBTY") is a Delaware corporation with its principal place of business located at 90 Orville Drive, Bohemia, New York 11716. NBTY transacts or has transacted business in the Eastern District of New York.

5. Since at least 2001, through its subsidiaries, NBTY has manufactured, advertised, packaged, labeled, promoted, offered for sale, sold, and distributed dietary supplements throughout the United States. In approximately 1999, NBTY acquired Dynamic Essentials, Inc. ("DEI"), a multilevel marketer of nutritional supplements. Between approximately 1999 and 2003, NBTY operated DEI as a wholly owned subsidiary of NBTY. During all relevant times alleged in this Complaint, NBTY had knowledge of and controlled or had the ability to control the actions of DEI and other subsidiaries that engaged in the practices complained of herein.

6. Defendant maintains, and at all times mentioned herein has maintained, a course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

### **PRIOR COMMISSION PROCEEDING**

7. In a Commission proceeding bearing Docket No. C-3593, *In the Matter of Nature's Bounty, Inc., et al.*, 120 F.T.C. 206, the Commission complaint charged that NBTY (previously Nature's Bounty, Inc.), and certain of its subsidiaries, violated Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, by making unsubstantiated claims for various weight loss, cholesterol-reduction, and other products. On July 21, 1995, the Commission issued a final decision and order against NBTY to cease and desist certain advertising practices ("Commission's order"). The Commission's order was served upon NBTY on July 31, 1995, and by operation of law became final and enforceable thereafter. The Commission's order has remained in full force and effect ever since. (A copy of the Commission's order is attached to this Complaint as Exhibit A.)

8. The Commission's order includes the following provisions:

### **ORDER**

### **DEFINITIONS**

For the purposes of this Order, the following definitions shall apply:

1. "Product" means any good that is offered for sale, sold or distributed to the public by respondents, their successors and assigns, under any brand name of respondents, their successors and assigns, or under the brand name of any third party. "Product" also means any product sold or distributed to the public by third parties under any brand name of respondents, or under private labeling agreements with respondents, their successors and assigns.

2. "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.

I.

IT IS ORDERED that respondents Nature's Bounty, Inc., Puritan's Pride, Inc., and Vitamin World, Inc., their successors and assigns, and their officers, agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacture, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, research article, or any other scientific opinion or data.

\* \* \* \* \*

V.

IT IS FURTHER ORDERED that respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, that any such product:

- A. Cures, treats, prevents, or reduces the risk of developing any disease, disorder or condition in humans or relieves symptoms thereof;
- B. Provides any weight loss or weight control benefit or otherwise provides an effective treatment for obesity;
- C. Suppresses appetite, reduces the body's absorption of calories, stimulates metabolism, or . . .

....

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

**DEFENDANT'S COURSE OF CONDUCT**

9. Since at least 2001, Defendant NBTY, through its subsidiaries, has manufactured, advertised, packaged, labeled, promoted, offered for sale, sold, and distributed numerous dietary supplements, including Royal Tongan Limu and Body Success PM Diet Program.

10. From approximately March 31, 2001, through approximately July 18, 2003, NBTY, through DEI and other subsidiaries, manufactured, labeled, advertised, promoted, offered for sale, sold and distributed Royal Tongan Limu throughout the United States as a dietary supplement that purportedly provides a number of health benefits. Royal Tongan Limu was labeled as containing *Sphaerotrichia divaricata* and advertised as containing extract of limu moui (the source of the product's key ingredient "fucoidan").

11. From approximately August 1, 2001, when it was first offered for sale, through 2003, NBTY, through its subsidiaries, manufactured, labeled, advertised, promoted, offered for sale, sold and distributed Body Success PM Diet Program throughout the United States as a dietary supplement that purportedly caused weight loss. Body Success PM Diet Program was labeled and advertised as containing, among other ingredients, Tonalin - CLA (Conjugated Linoleic Acid) and chromium.

12. NBTY, through its subsidiaries, has advertised Body Success PM Diet Program throughout the United States through print advertisements in magazines such as the National Enquirer, Soap Opera Digest, Star, The National Examiner/Globe/Sun, U.S. Weekly, First Magazine, Family Circle, Ladies Home Journal, Valassis FSI, and Cosmopolitan.

## **DEFENDANT'S ADVERTISING**

### **Royal Tongan Limu**

13. Since approximately March 13, 2001, Defendant NBTY, through DEI, has disseminated or caused to be disseminated product labels, advertisements and promotional materials for Royal Tongan Limu, including, but not limited to, the attached Exhibits B-1 through B-11. These product labels, advertisements and promotional materials contain the following statements:

- a. "contain[s] the same healing antibodies found in mother's milk, providing essential amino acids and a balanced diet of minerals necessary to boost the immune system."\*<sup>1</sup>  
(DEI website, Exhibit B-1);
- b. "been reported to fight a number of different diseases."  
(DEI website, Exhibit B-1);
- c. "What does Fucoidan Do? . . . Here are just a few findings of the 500-plus studies involving fucoidan that are listed in the National Library of Medicine's PubMed database at [www.pubmed.org](http://www.pubmed.org) . . .

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<sup>1</sup> The website includes the following: \*These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.

- **Enhances Phagocytosis** A Japanese study (1) found that fucoidan enhanced phagocytosis, the process whereby your white blood cells engulf, kill, digest and eliminate harmful invaders such as viruses or bacteria.\*
- **Inhibits Viruses** An Argentinian study (2) and a Japanese study (3) both found that fucoidan inhibited viruses such as herpes simplex type 1 from attaching to, penetrating and replicating in host cells.\*
- **Increases Blood Cells** An American study (4) reported that fucoidan increases the number of circulating mature white blood cells. White blood cells are an integral part of the immune system and play many vital roles in protecting the body.\*
- **Inhibits Excessive Inflammation** A Swedish study (5) is among many finding that fucoidan inhibits the cascading of inflammation which may lead to allergies and tissue damage. Other studies like one in Canada (6) found that fucoidan blocks a process called 'complement activation' that is believed to play an adverse role in chronic degenerative diseases such as atherosclerosis, myocardial infarction and Alzheimer's disease.\*
- **Mobilizes Stem Cells** Two American studies (4,7) found that fucoidan increases and mobilizes stem cells. Stem cells have the potential to become any one of the 200 types of cells. They enable your body to replace dead cells, thereby enabling tissue and organ regeneration and slowing down the aging process.\*
- **May Reduce Blood Glucose** A Spanish study (8) found that polysaccharides and proteins in brown seaweed of the same class as Limu Moui caused a significant reduction in the level of blood glucose.\* It is also interesting to note that Tongans are known for their relatively low incidences of both high blood pressure and high cholesterol."

(DEI website and Distributor Kit Discover the Secret of Royal Tongan Limu brochure, Exhibits B-1 and B-2 [Exhibit B-1 omits boldfaced headings and varies slightly]);

- d. "According to prominent Japanese researcher Dr. Kyosuke Owa, the Limu Moui sea plant has 'immune systems within it with exactly the same type of antibodies as in human mother's milk.' By digesting Fucoidan, the

main ingredient in Limu Moui, we can 'provide our bodies with a balanced diet of minerals, various amino acids including essential amino acids and thereby take in nutrients to boost our immune system in a similar way as mother's milk does.'"

(DEI website, Exhibit B-1);

- e. "Limu Moui . . . packs health-supporting properties known to increase longevity . . ."  
(Video, "Discover. . . A Gift from the Sea" in Distributor Kit, Exhibit B-3);

- f. "Its long list of attributes include [*sic*]: anti-biotic, anti-coagulant, anti-carcinogenic, anti-inflammatory, anti-tumor, anti-viral, and the list goes on."  
(Limu Moui Reference Materials, available in DEI Distributor Kit and available for purchase, advertising 48 page booklet "Fucoidan - The Ocean's Gift," Exhibit B-4);

- g. "Limu Moui's main ingredient is Fucoidan, which according to prominent Japanese Researcher Dr. Kyosuke Owa is said to 'contain the same healing antibodies found in mother's milk, providing essential amino acids and a balanced diet of minerals necessary to boost the immune system.'

Dr. Jeffrey Bland, Nutritional Biochemist, says 'Fucoidan has . . . been found to inhibit lymphocyte binding to endothelial surfaces. This may result in a reduced risk of coronary heart disease . . . It has also been shown that Fucoidan can enhance the immune response to certain viruses.'"

(DEI Distributor Kit marketing insert, entitled, "Royal Tongan Limu - Listen to what Doctors are saying about the key ingredient in our new nectar!," Exhibit B-5);

- h. "Fifty-seven disease conditions were listed through the research that the Fucoidan had a positive impact on. Every disease we face today -- I mean, think about it for just a moment. How many of you know someone in your immediate family or circle of friends that has -- suffering with cancer right now? How about diabetes? How about high blood pressure? How about fibromyalgia? Arthritis?"

(Transcript of 5/19/03 weekly DEI national conference call, Exhibit B-6);

- i. Marilyn from New Jersey asserts that after starting taking Limu "in one week, Shannon, my pain from arthritis was completely gone."

(Transcript of 5/19/03 weekly national conference call, Exhibit B-6);

- j. Madeline from Texas states that she hasn't had "migraines since I've been on the Limu . . . [c]holesterol has definitely gone down."  
(Transcript of 5/19/03 weekly national conference call, Exhibit B-6);
- k. Renee from Texas explains that "within a month [of taking Limu I] realized that my chronic fatigue was under control . . . I have not been in my wheelchair since . . . mid-November . . . [m]y cholesterol dropped over 50 points . . . they could not find any cysts in my kidneys."  
(Transcript of 5/19/03 weekly national conference call, Exhibit B-6);
- l. Susan, a health care professional, states that there is "overwhelming evidence supporting seaweed and its ability to fight things like allergies, asthma, cancer . . . there's overwhelming clinical evidence for fucoidan . . ."  
(Transcript of 5/19/03 weekly national conference call, Exhibit B-6);
- m. "Well, we have a testimony we heard last year when the distribution of 'Royal Tongan Limu' was done in Puerto Rico. How our product helped a client that started using 'Royal Tongan Limu' because she had a pain in the abdomen. This lady from Manati told us that after taking 'Royal Tongan Limu' for two weeks this lady expelled a twelve inches worm. Listen to that. A twelve inches worm!"  
(Translated transcript of undated Spanish conference call, Exhibit B-7);
- n. "In other words, 'Limu' is a great product to fight parasites. If you, your child or any member of your family thinks he has parasites, look, let's take immediately 'Royal Tongan Limu.'"  
(Translated transcript of undated Spanish conference call, Exhibit B-7);
- o. "What conditions the 'Limu' is good for? According to Rita Elkins (phonetic), a writer and a health specialist, who has written a wonderful book titled, 'Limu [M]oui, the [V]aluable [S]eaweed of the Tonga Islands.' In this book, pages 10 and 27, Rita Elkins (phonetic) lists a whole series of ailments that 'Limu' is good for. She mentions cancer, diabetes, arthritis, anemia, allergies, abrasions and cuts. She says that 'Limu', [sic] is very good for arteriosclerosis. 'Limu' is good to lower the cholesterol level, the triglycerides levels."  
(Translated transcript of undated Spanish conference call, Exhibit B-7);
- p. Cammie Ward from Texas states, "I underwent chemotherapy after being diagnosed with breast cancer, 3 years ago. Then, last October, I began chemotherapy again when the cancer reappeared in my other breast and lower spine. . . . [B]ecause of severe pain, . . . I was in a wheelchair. . . I

was totally bedridden and on pain killers, including morphine. . . . Now, 2 months since I began taking the product, I have plenty of energy and am pain free in my lower back. I am able to take care of my children, work around the house, and even tend to my flowerbeds. My doctors are saying, 'Whatever you are doing, keep doing it!' I praise God for Royal Tongan Limu™!"

("Results from the First 60 Days! Royal Tongan Limu Product Testimonials," Exhibit B-8);

- q. Nancy O'Connor of Missouri states, "I've had rheumatoid arthritis since 1980 and in spite of having tried every kind of medication imaginable - from Gold injections and steroids to Methotrexate and Remicade - I still had to live with many physical limitations. . . . I began to see results after 1 week on Royal Tongan Limu™ and it has continued ever since."  
("Results from the First 30 Days! Royal Tongan Limu Product Testimonials," Exhibit B-9);

- r. Maththew C. Hall from Texas states, "I am 70 years old and was diagnosed with colon cancer. The pressure from the numerous tumors also put pressure on my urinary tract and caused painful and slow urination. In the middle of my scheduled surgery in March, 2001, the doctors closed me back up and informed me there was nothing more they could do because the cancer had metastasized. I took my first dose of Royal Tongan Limu™, thinking, what did I have to lose? . . . I immediately felt relief from the bloated feeling in my stomach and called my sister to tell her I felt better than I had in 20 years. I also began to urinate at a normal rate and to eat solid food for the first time in 4 months. I am able to walk 2 miles a day, with no side effects, even after chemotherapy treatments. I am now a full time advocate for Royal Tongan Limu because it gave me a second chance at life!"  
("Results from the first 90 Days! Royal Tongan Limu Product Testimonials," Exhibit B-10);

- s. Theresa Cooley from Louisiana states, "I am 42 years old and was diagnosed with Multiple Sclerosis in 1998. . . . I became wheel chair bound, weak and with no feeling from the waist down. . . . I started taking about 2 tablespoons of Royal Tongan Limu™, twice a day, and within one month, I was out of the wheelchair and walking without a brace or cane. I even resumed my housework and cooking supper. . . . My physical therapist commented that he'd never seen anyone progress so quickly from how debilitated I was. I will never be without Royal Tongan Limu™!"  
("Results from the First 90 Days! Royal Tongan Limu Product Testimonials," Exhibit B-10); and

- t. On the Royal Tongan Limu label: "Generation after generation of Tongans have enjoyed this gift from the sea to promote longevity . . ." (Exhibit B-11).

### **Body Success PM Diet Program**

14. Since approximately the fall of 2001, Defendant NBTY, through its subsidiaries, has disseminated or caused to be disseminated labels, advertisements and promotional materials for Body Success PM Diet Program, including, but not limited to, the attached Exhibits C-1 through C-12. These labels, advertisements and promotional materials contain the following statements:

- a. "Helps Reduce Body Fat"  
(on all Display Deal Sheets, Deal Sheets, Logo Deal Sheets, Headers, Shelf Talkers, Brochures, Trade Brochures, Customer Brochures, Sam's Club Tags, Labels, Diet Program Pamphlets and all print advertisements, Exhibits C-1 through C-12, respectively);
- b. "Promotes Fat Metabolism"  
(on all Display Deal Sheets, Deal Sheets, Logo Deal Sheets, Headers, Shelf Talkers, Brochures, Trade Brochures, Customer Brochures, Sam's Club Tags, Labels, Diet Program Pamphlets and all print advertisements, Exhibits C-1 through C-12, respectively);
- c. "For the Body You've Always Dreamed Of"  
(on 22,250 brochures, Exhibit C-6);
- d. "Why lose money when all you want to lose is weight? New Body Success PM Diet Program contains all the ingredients in the leading brand – but costs a lot less! It's never been easier to succeed in achieving your weight loss goals. Try this powerful new liquid formula today! . . .

Body Success PM Diet Program combines three key elements—diet, exercise and a revolutionary liquid supplement—for the most comprehensive approach to weight loss success. By following the Body Success PM Diet Program, you'll be putting the most advanced nutritional support on the market behind your success—and you'll be saving money, too. . . . One way to help accelerate weight loss is to exercise. The Body Success PM Diet Program gives you a helpful starting point. In addition, the program includes a comprehensive diet plan which, along with the exercise recommendations, forms the basis for successful weight loss and maintenance.

And, if you're looking to lose 25 pounds or more, you can follow the advanced plan, which gives you the option of taking the supplement twice daily."

(353,000 customer brochures distributed between August 1, 2001, and January 16, 2002, Exhibit C-8);

- e. "This advanced Aloe Vera formula contains a synergistic blend of ingredients designed to turn up the heat on your fitness goals and jump start your weight control program. Just look at what Body Success PM offers: . . . Plus, Tonalin CLA, to help reduce body fat and maintain lean muscle mass."  
(Print ad, Exhibit C-12);
- f. "Best used when taken at bedtime, these unique ingredients target muscles and really turn up the heat on fitness goals."  
(On 5,250 deal sheets distributed to retailers between August 1, 2001, and September 5, 2002, Exhibit C-2);
- g. Bottle labels directed consumers to take Body Success PM Diet Program "just before bed at least 3 hours after dinner or a snack." (Bottle label, Exhibit C-10);
- h. Body Success PM Diet Program advertisements displayed the "PM" labeled product bottle against a star- or moon-lit night sky. (Exhibits C-1 through C-12).

## **DEFENDANT'S VIOLATIONS OF THE COMMISSION'S ORDER**

### **FIRST CAUSE OF ACTION**

15. Through the means described in Paragraph 13, Defendant NBTY, through DEI, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of Royal Tongan Limu, represented, expressly or by implication, that Royal Tongan Limu:

- a. cures, treats, prevents, or reduces the risk of developing diseases, disorders or conditions in humans or relieves symptoms thereof, including allergies, anemia, arthritis, asthma, bursitis, cancer, chronic fatigue, depression, diabetes, fibromyalgia, herpes simplex type 1, hypertension, and migraines;
- b. helps to prevent chronic degenerative diseases such as atherosclerosis, myocardial infarction and Alzheimer's disease;
- c. enables tissue and organ regeneration, thereby slowing down the aging process and increasing longevity;
- d. reduces high blood pressure and high cholesterol levels;

- e. is anti-biotic, anti-coagulant, anti-carcinogenic, anti-inflammatory, anti-tumor, and anti-viral; and
- f. boosts the immune system to cure, treat, prevent, or reduce the risk of developing diseases, disorders or conditions in humans or relieve symptoms thereof.

16. Defendant NBTY, through DEI, made the representations set forth in Paragraph 15 without possessing and relying upon competent and reliable scientific evidence, as defined in the Commission's order, that substantiates the representations, thereby violating Part V of the Commission's order.

## **SECOND CAUSE OF ACTION**

17. Through the means described in Paragraph 13, Defendant NBTY, through DEI, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of Royal Tongan Limu, represented, expressly or by implication, that tests, studies, research, articles, scientific opinion and data supported claims that Royal Tongan Limu:

- a. cures, treats, prevents, or reduces the risk of developing diseases, disorders or conditions in humans or relieves symptoms thereof, including allergies, diabetes, and herpes simplex type 1;
- b. prevents chronic degenerative diseases such as atherosclerosis, myocardial infarction and Alzheimer's disease;
- c. enables tissue and organ regeneration, thereby slowing down the aging process;
- d. reduces high blood pressure and high cholesterol levels; and
- e. boosts the immune system to cure, treat, prevent, or reduce the risk of developing disease, disorders or conditions in humans or relieve symptoms thereof.

18. In truth and in fact, none of the tests, studies, research, articles, scientific opinion and data described in Paragraph 13 supported any of the claims for Royal Tongan Limu set forth in Paragraph 17. NBTY, through DEI, therefore misrepresented the existence, contents, validity, results, conclusions, or interpretations of such tests, studies, research articles, scientific opinion, and data in violation of Part I of the Commission's order.

## **THIRD CAUSE OF ACTION**

19. Through the means described in Paragraph 14, Defendant NBTY, through its subsidiaries, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of Body Success PM Diet Program represented, expressly or by implication, that Body Success PM Diet Program:

- a. reduces body fat;
- b. stimulates metabolism; and

- c. causes weight loss, including weight loss during sleep.

20. Defendant NBTY, through its subsidiaries, made the representations set forth in paragraph 19 without possessing and relying upon competent and reliable scientific evidence, as defined in the Commission's order, that substantiates the representations, thereby violating Part V of the Commission's order.

### **CONSUMER INJURY**

21. Consumers throughout the United States have suffered substantial monetary loss as a result of Defendant NBTY's and its subsidiaries' unlawful acts and practices. In addition, Defendant has been unjustly enriched as a result of its unlawful practices.

### **CIVIL PENALTIES, REDRESS, INJUNCTIVE AND OTHER EQUITABLE RELIEF**

22. Each dissemination of an advertisement or promotional material containing any representation in violation of the Commission's order in one or more of the ways described above constitutes a separate violation for which Plaintiff seeks monetary civil penalties.

23. Section 5(*I*) of the FTC Act, 15 U.S.C. § 45(*I*), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and Section 1.98(c) of the Commission's Rules of Practice, 16 C.F.R. § 1.98(c), authorizes the Court to award monetary civil penalties of not more than \$11,000 for each violation of the Commission's order.

24. Under Sections 5(*I*) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(*I*) and 53(b), this Court is authorized to issue a mandatory injunction and such other and further equitable and ancillary relief as it may deem appropriate in the enforcement of the Commission's order and the FTC Act, including disgorgement and restitution to prevent and remedy any violations of any provision of law enforced by the Commission.

25. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy the injury caused by Defendant's and its subsidiaries' violations of the law.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests this Court, pursuant to 15 U.S.C. §§ 45(*I*) and 53(b), and pursuant to the Court's own equitable powers, to:

- (1) Enter judgment against Defendant NBTY and in favor of Plaintiff for each violation alleged in this Complaint;

(2) Award Plaintiff monetary civil penalties from Defendant NBTY for each violation of the Commission's order alleged in this Complaint;

(3) Enjoin Defendant NBTY from violating the Commission's order issued in FTC Docket No. C-3617;

(4) Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from Defendant NBTY's violations of the Commission's order and the FTC Act; including, but not limited to, rescission of contracts, restitution, and disgorgement of ill-gotten gains;

(5) Order Defendant NBTY to pay the costs of this action; and

(6) Award Plaintiff such additional equitable relief as the Court may deem just and proper.

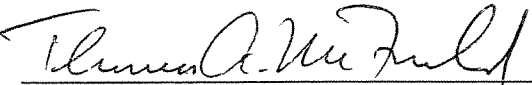
Dated: Oct. 5, 2005

FOR THE UNITED STATES OF AMERICA:

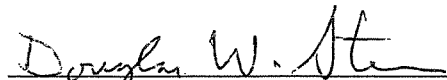
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