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CENTRAL DISTRICT OF CALIFORNIA
FEDERAL COURTS & CLERKS

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION,
Plaintiff,
v.
SMART INVENTIONS, INC.; JON D.
NOKES; AND DARRELL STODDARD,
Defendants.

Hon. Stephen G. Larson
CV 04-4431-SGL (Ex)

~~Proposed~~
**ORDER AND JUDGMENT
FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF
AGAINST DEFENDANT
DARRELL STODDARD**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), filed a Complaint for permanent injunction and other relief against Defendants Smart Inventions, Inc., Jon D. Nokes, and Darrell Stoddard, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), alleging unfair or deceptive acts or practices and false advertisements in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

The FTC filed a motion for summary judgment against all three Defendants on April 16, 2007. Subsequent to the motion's filing, the Court entered a stipulated final order resolving the FTC's case against defendants Smart Inventions, Inc. and Jon D. Nokes. The FTC's motion for summary judgment against Darrell Stoddard remained pending. Darrell Stoddard did not file an opposition to the FTC's motion

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1 for summary judgment.

2 The Court, having considered the FTC's motion and evidence, **hereby**
3 **GRANTS** the FTC's motion for summary judgment.

4
5 **FINDINGS**

6 1. This Court has jurisdiction over the subject matter of this case and
7 over all parties. Venue in the Central District of California is proper.

8 2. The Commission has the authority to seek the relief it has requested.

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

11 4. The Complaint states a claim upon which relief may be granted against
12 Darrell Stoddard under Sections 5(a), 12, and 13(b) of the FTC Act, 15 U.S.C.
13 §§ 45(a), 52, and 53(b).

14 5. There is no genuine issue as to any material fact concerning the
15 liability of Darrell Stoddard for the illegal acts or practices charged in the Amended
16 Complaint.

17 6. Darrell Stoddard has violated Sections 5(a) and 12 of the FTC Act by
18 making false or misleading representations to induce the purchase of a purported
19 pain-relief product known as Biotape, including but not limited to the following
20 representations that Biotape:

21 A. Provides significant and/or permanent relief from severe pain,
22 including, but not limited to, debilitating back pain, and pain
23 from arthritis, frozen shoulder, surgical procedures, sciatica,
24 migraines, and other conditions; and

25 B. Is more effective than other products or treatments, such as
26 over-the-counter analgesics and topical creams and ointments,
27 in relieving or eliminating severe pain.

1 7. Uncontroverted evidence establishes that Darrell Stoddard violated
2 Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

3 8. There is a reasonable likelihood that Darrell Stoddard would continue
4 to engage in the activities alleged in the Complaint unless permanently enjoined
5 from such acts and practices.

6 9. Plaintiff is entitled to judgment as a matter of law pursuant to Rule 56
7 of the Federal Rules of Civil Procedure.

8 10. Entry of this Order is in the public interest.

9 11. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of
10 this Order are binding upon Darrell Stoddard, and his officers, agents, servants,
11 representatives, employees and all other persons or entities in active concern or
12 participation with him, who receive actual notice of this Order by personal service
13 or otherwise.

14 12. This action and the relief awarded herein are in addition to, and not in
15 lieu of, any other remedies, civil or criminal, that may be provided by law,
16 including any proceedings the Commission may initiate to enforce this judgment.

17
18 **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED AS**
19 **FOLLOWS:**

20
21 **DEFINITIONS**

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

23 1. “Darrell Stoddard” or “Stoddard” means Darrell Stoddard,
24 individually.

25 2. “Advertising” means any written or verbal statement, illustration or
26 depiction that is designed to effect a sale or create interest in the purchasing of
27 goods or services, whether it appears in a brochure, newspaper, magazine,
28

1 pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter,
2 catalogue, poster, chart, billboard, public transit card, point of purchase display,
3 packaging, package insert, label, film, slide, radio, television or cable television,
4 audio program transmitted over a telephone system, program-length commercial
5 (“infomercial”), the Internet, email, or in any other medium.

6 3. “Asset” means any legal or equitable interest in, right to, or claim to,
7 any real, personal, or intellectual property, including, but not limited to, chattel,
8 goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds,
9 mail or other deliveries, inventory, checks, notes, accounts, credits, receivables (as
10 those terms are defined in the Uniform Commercial Code), shares of stock, and all
11 cash, wherever located.

12 4. “Assisting others” means knowingly providing any of the following
13 services to any person or entity: (a) performing customer service functions for any
14 person or entity, including, but not limited to, receiving or responding to consumer
15 complaints; (b) formulating or providing, or arranging for the formulation or
16 provision of, any telephone sales script or any other advertising or marketing
17 material for any person or entity; or (c) performing advertising, marketing or
18 consulting services of any kind for any person or entity.

19 5. “Commerce” means as defined in Section 4 of the FTC Act, 15 U.S.C.
20 § 44.

21 6. “Competent and reliable scientific evidence” means tests, analyses,
22 research, studies, or other evidence based on the expertise of professionals in the
23 relevant area, that has been conducted and evaluated in an objective manner by
24 persons qualified to do so, using procedures generally accepted in the profession to
25 yield accurate and reliable results.

26 7. “Covered product” means any dietary supplement, food, drug, device,
27 or health product, including but not limited to Biotape or any substantially similar
28

1 purported pain-relief product.

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

3 9. "Food," "drug," and "device" mean as defined in Section 15 of the
4 FTC Act, 15 U.S.C. § 55.

5 10. "FTC" or "Commission" means the Federal Trade Commission.

6 11. "Target product" means Biotape or any substantially similar purported
7 pain-relief product, including but not limited to conductive silver headache bands,
8 conductive silver socks, conductive silver gloves, conductive knee supports,
9 conductive elbow supports, conductive back supports, and conductive wrist
10 supports.

11 12. "Distributor, Reseller, or Sales Agent" means any person other than
12 Stoddard who: (a) sells Biotape or any substantially similar purported pain-relief
13 product through, in accordance with, by permission of, or with the endorsement of,
14 Stoddard; or (b) refers the names of prospective customers to Stoddard and
15 receives compensation as a result of Stoddard's sale of Biotape or any substantially
16 similar purported pain-relief product to such customers.

17 13. "Person" or "persons" means all natural persons, corporations,
18 partnerships, or other business associations and all other legal entities, including all
19 members, officers, predecessors, assigns, divisions, affiliates and subsidiaries.

20 14. "Promotion" means any written or verbal statement, illustration, or
21 depiction that is designed to effect a sale or create interest in the purchasing of
22 goods or services that is not "advertising," including but not limited to video news
23 releases and press releases.

24 15. A requirement that any defendant "notify," "furnish," "provide," or
25 "submit" to the Commission means that the defendant shall send the necessary
26 information via overnight courier, costs prepaid, to:

1 Associate Director for Enforcement
2 Federal Trade Commission
3 600 Pennsylvania Avenue, N.W.
4 Washington D.C. 20580
5 Facsimile: (202) 326-2559
6 Attn: *FTC v. Smart Inventions, Inc., et al.*, (C.D. Cal.)

7 16. The terms "and" and "or" in this Order shall be construed
8 conjunctively or disjunctively as necessary, to make the applicable sentence or
9 phrase inclusive rather than exclusive.

10 17. The term "including" in this Order means "including without
11 limitation."

12 PROHIBITED BUSINESS ACTIVITIES

13 I.

14 **IT IS HEREBY ORDERED** that Stoddard, directly or through any
15 corporation, partnership, subsidiary, division, trade name, or other entity, and his
16 officers, agents, servants, employees, and all persons and entities in active concert
17 or participation with him who receive actual notice of this Order by personal
18 service or otherwise, including by facsimile, in connection with the manufacturing,
19 labeling, advertising, promotion, offering for sale, sale, or distribution of any target
20 product, in or affecting commerce, are hereby permanently enjoined from making,
21 or assisting others in making, in any manner, directly or by implication, including
22 through the use of endorsements or the product name, any representation that such
23 product:

24 A. Provides significant and/or permanent relief from severe pain,
25 including, but not limited to, debilitating back pain, and pain from arthritis,
26 frozen shoulder, surgical procedures, sciatica, migraines, and other
27 conditions; or

28 B. Is more effective than other products or treatments, such as over-

1 the-counter analgesics and topical creams and ointments, in relieving
2 or eliminating severe pain.

3
4 **II.**

5 **IT IS FURTHER ORDERED** that Stoddard, directly or through any
6 corporation, partnership, subsidiary, division, trade name, or other entity, and his
7 officers, agents, servants, employees, and all persons and entities in active concert
8 or participation with him who receive actual notice of this Order by personal
9 service or otherwise, including by facsimile, in connection with the manufacturing,
10 labeling, advertising, promotion, offering for sale, sale, or distribution of any
11 product advertised or promoted for the purpose of relieving pain, in or affecting
12 commerce, are hereby permanently enjoined from making, or assisting others in
13 making, in any manner, directly or by implication, including through the use of
14 endorsements or the product name, any representation that such product can relieve
15 pain or that such product is more effective in relieving pain than competing
16 products or treatments, unless the representation is true, non-misleading, and, at the
17 time the representation is made, they possess and rely upon competent and reliable
18 scientific evidence that substantiates the representation.

19
20 **III.**

21 **IT IS FURTHER ORDERED** that Stoddard, directly or through any
22 corporation, partnership, subsidiary, division, trade name, or other entity, and his
23 officers, agents, servants, employees, and all persons and entities in active concert
24 or participation with him who receive actual notice of this Order by personal
25 service or otherwise, including by facsimile, in connection with the manufacturing,
26 labeling, advertising, promotion, offering for sale, sale, or distribution of any
27 covered product, in or affecting commerce, are hereby permanently enjoined from
28

1 making, or assisting others in making, in any manner, directly or by implication,
2 including through the use of endorsements or the product name, any representation
3 about the health benefits, performance, efficacy, or safety of that product unless the
4 representation is true, non-misleading, and, at the time the representation is made,
5 they possess and rely upon competent and reliable scientific evidence that
6 substantiates the representation.

7
8 **IV.**

9 **IT IS FURTHER ORDERED** that Stoddard, directly or through any
10 corporation, partnership, subsidiary, division, trade name, or other entity, and his
11 officers, agents, servants, employees, and all persons and entities in active concert
12 or participation with him who receive actual notice of this Order by personal
13 service or otherwise, including by facsimile, in connection with the manufacturing,
14 labeling, advertising, promotion, offering for sale, sale, or distribution of any
15 covered product, in or affecting commerce, are hereby permanently enjoined from
16 making, or assisting others in making, in any manner, directly or by implication,
17 including through the use of endorsements or the product name, any representation
18 that the issuance of a patent proves the efficacy or safety of such product; *provided*
19 *that* the foregoing shall not be construed to preclude Stoddard from making a
20 truthful statement that a U.S. Patent has been issued for a product, so long as no
21 additional express or implied representation is made concerning the meaning or
22 import of the existence or grant of such Patent.

23
24 **FDA APPROVED CLAIMS**

25 **V.**

26 **IT IS FURTHER ORDERED** that nothing in this Order shall prohibit
27 Stoddard from making any representation:
28

1 A. For any product that is specifically permitted in labeling for such
2 product by regulations promulgated by the Food and Drug
3 Administration pursuant to the Nutrition Labeling and Education Act
4 of 1990; or

5 B. For any drug that is permitted in the labeling for such drug under any
6 tentative final or final standard promulgated by the Food and Drug
7 Administration, or under any new drug application approved by the
8 Food and Drug Administration.

9
10 **PACKAGING AND LABELING RECALL**

11 **VI.**

12 **IT IS FURTHER ORDERED** that Stoddard, within five (5) days of the
13 date of service of this Order, shall recall from any Distributor, Reseller, or Sales
14 Agent that is offering for sale, selling, or distributing to consumers any target
15 product, all packaging, package inserts, and labeling for any target product
16 received from Stoddard containing, expressly or by implication, any of the
17 representations set forth in Part I above, *provided, however*, that in lieu of a recall,
18 Stoddard may immediately repackage and relabel all offending packages and labels
19 of such target product in such a manner as to ensure that no representations
20 prohibited by this Order are disseminated.

21
22 **MONETARY JUDGMENT**

23 **VII.**

24 **IT IS FURTHER ORDERED** that:

25 A. Judgment in the amount of \$86,000 is hereby entered in favor of the
26 Commission and against Stoddard, with post-judgment interest at the legal rate, for
27 disgorgement to the United States Treasury.

1 B. All payments shall be made by certified check or other guaranteed
2 funds payable to and delivered to the Commission, or by wire transfer in accord
3 with instructions provided by the Commission. No portion of any payments under
4 the judgment herein shall be deemed a payment of any fine, penalty, or punitive
5 assessment.

6 C. In accordance with 31 U.S.C. § 7701, Stoddard is hereby required,
7 unless he has done so already, to furnish to the Commission his social security
8 number, which shall be used for the purposes of collecting and reporting on any
9 delinquent amount arising out of Stoddard's relationship with the government.

10 . 11 **TURNOVER OF ASSETS**

12 **VIII.**

13 **IT IS FURTHER ORDERED** that in order partially to satisfy the monetary
14 judgment set forth in Part VII above, any law firm, financial or brokerage
15 institution, escrow agent, title company, commodity trading company, supplier,
16 distributor, manufacturer, business entity, or person, whether located within the
17 United States or outside the United States, that holds, controls, or maintains
18 accounts or assets of, on behalf of, or for the benefit of Stoddard shall turn over
19 such accounts or assets to the Commission within ten (10) days of receiving notice
20 of this Order by any means, including but not limited to via facsimile.

21 22 **NOTICE TO DISTRIBUTORS, RESELLERS, AND SALES AGENTS**

23 **IX.**

24 **IT IS FURTHER ORDERED** that Stoddard shall:

25 A. Not disseminate to any Distributor, Reseller, or Sales Agent any
26 material containing any representations prohibited by this Order.

27 B. Not authorize, directly or indirectly, any Distributor, Reseller, or Sales
28

1 Agent to make any representations prohibited by this Order.

2 C. Send, within twenty (20) days of entry of this Order, by first class mail,
3 postage prepaid and return receipt requested, an exact copy of the notice attached
4 hereto as Attachment A, showing the date of mailing, to each Distributor, Reseller,
5 or Sales Agent. This mailing shall notify each Distributor, Reseller, or Sales Agent
6 that Stoddard will stop doing business with that Distributor, Reseller, or Sales
7 Agent if it uses any advertisement or promotional material containing any
8 representation prohibited by this Order, in the event Stoddard becomes aware that
9 the Distributor, Reseller, or Sales Agent is using or disseminating any such
10 advertisement or promotional material subsequent to receipt of Attachment A. The
11 mailing shall not include any other document or enclosure.

12 D. For a period of five (5) years following the date of entry of this Order,
13 send by first class mail, postage prepaid and return receipt requested, an exact copy
14 of the notice attached hereto as Attachment A, showing the date of mailing, to each
15 Distributor, Reseller, or Sales Agent with whom Stoddard first does business after
16 the date of entry of this Order. Stoddard shall send this notice within ten (10) days
17 after first engaging in any transaction concerning any covered product. This
18 mailing shall not include any other document or enclosure.

19 E. Stoddard may, as an alternative to the first class mailing required in
20 subparts C and D of this Part, send Attachment A by email to any Distributor,
21 Reseller, or Sales Agent for whom Stoddard has a valid email address.

22 F. Within thirty (30) days of providing notice pursuant to subparts C, D,
23 or E of this Part, secure from each Distributor, Reseller or Sales Agent to whom a
24 notice has been sent a signed and dated statement acknowledging receipt of such
25 and, as to any Distributor, Reseller, or Sales Agent who has not provided such
26 statement, shall not sell or distribute any covered product to any such Distributor,
27 Reseller, or Sales Agent, accept any orders for any covered product submitted by or
28

1 on behalf of such Distributor, Reseller, or Sales Agent, pay any commission, bonus,
2 or other compensation to any such Distributor, Reseller, or Sales Agent, or endorse
3 any such Distributor, Reseller, or Sales Agent. Stoddard shall retain the original of
4 each acknowledgment for a period of five (5) years following the date of entry of
5 this Order.

6 G. Use reasonable efforts to monitor the advertising and promotional
7 activities of Distributors, Resellers, and Sales Agents and terminate any Distributor,
8 Reseller, or Sales Agent within ten (10) days after Stoddard becomes aware that the
9 Distributor, Reseller, or Sales Agent has used any advertisement or promotional
10 material that contains any representation prohibited by this Order after receipt of the
11 notice required by subpart C or D of this Part.

12 H. Stoddard shall not provide any endorsement to, endorse in any way,
13 or authorize the use of his name or likeness by, any Distributor, Reseller, or Sales
14 Agent who uses any advertisement or promotional material that contains any
15 representation prohibited by this Order after receipt of the notice required by
16 subparagraph C or D of this Part.

17 I. Provide to the Commission by overnight courier or facsimile, within
18 thirty (30) days of entry of this Order for the notices required by subpart C and
19 within ten (10) days after such notice has been sent for the notices required by
20 subpart D, the name and address of each and every Distributor, Reseller and Sales
21 Agent to whom the notice attached as Attachment A is sent.

22
23 **ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**

24 **X.**

25 **IT IS FURTHER ORDERED** that within five (5) business days after receipt
26 of this Order as entered by the Court, Stoddard shall submit to the Commission a
27 truthful sworn statement, substantially in the form set forth in Attachment B,
28

1 acknowledging receipt of this Order.

2
3 **COMPLIANCE MONITORING**

4 **XI.**

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

7 A. Within ten (10) days of receipt of written notice from a representative
8 of the Commission, Stoddard shall submit additional written reports, sworn to under
9 penalty of perjury; produce documents for inspection and copying; appear for
10 deposition; and/or provide entry during normal business hours to any business
11 location in his possession or direct or indirect control to inspect the business
12 operation;

13 B. In addition, the Commission is authorized to monitor compliance with
14 this Order by all other lawful means, including but not limited to the following:

- 15 1. obtaining discovery from any person, without further leave of
16 court, using the procedures prescribed by Fed. R. Civ. P. 30, 31,
17 33, 34, 36, and 45.
- 18 2. posing as consumers and suppliers to Stoddard, his employees,
19 or any other entity managed or controlled in whole or in part by
20 Stoddard, without the necessity of identification or prior notice;
21 and

22 C. Stoddard shall permit representatives of the Commission to interview
23 any officer, director, employee, employer, consultant, independent contractor,
24 representative, or agent who has agreed to such an interview, relating in any way to
25 any conduct subject to this Order. The person interviewed may have counsel
26 present.

27 *Provided*, however, that nothing in this Order shall limit the Commission's
28

1 lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15
2 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony,
3 or information relevant to unfair or deceptive acts or practices in or affecting
4 commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

5 6 **COMPLIANCE REPORTING**

7 **XII.**

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

10 A. For a period of five (5) years from the date of entry of this Order:

11 1. Stoddard shall notify the Commission of the following:

12 a. Any change in his residence, mailing address, and
13 telephone number, within ten (10) days of the date of such
14 change;

15 b. Any change in his employment status (including
16 self-employment) and any change in his ownership of any
17 business entity, within ten (10) days of such change. Such
18 notice shall include the name, address, and telephone
19 number of each business that he is affiliated with,
20 employed by, creates or forms, or performs services for; a
21 statement of the nature of the business; and a statement of
22 his duties and responsibilities in connection with the
23 business or employment; and

24 c. Any change in his names or use of any aliases or fictitious
25 names, within ten (10) days of such change or use; and

26 2. Stoddard shall notify the Commission of any changes in the
27 corporate structure of any business entity that Stoddard directly
28

1 or indirectly controls, or has an ownership interest in, that may
2 affect compliance obligations arising under this Order, including
3 but not limited to a dissolution, assignment, sale, merger, or
4 other action that would result in the emergence of a successor
5 entity; the creation or dissolution of a subsidiary, parent, or
6 affiliate that engages in any acts or practices subject to this
7 Order; the filing of a bankruptcy petition; or a change in the
8 corporate name or address, at least thirty (30) days prior to such
9 change, *provided* that, with respect to any proposed change
10 about which Stoddard learns less than thirty (30) days prior to
11 the date such action is to take place, Stoddard shall notify the
12 Commission as soon as is practicable after obtaining such
13 knowledge.

14 B. Sixty (60) days after the date of entry of this Order, Stoddard shall
15 provide a written report to the Commission, sworn to under penalty of perjury,
16 setting forth in detail the manner and form in which they have complied and are
17 complying with this Order. This report shall include, but not be limited to:

- 18 1. His then-current residence addresses, mailing addresses, and
19 telephone numbers;
- 20 2. His then-current employment and business addresses and
21 telephone numbers, a description of the business activities of
22 each such employer or business, and their titles and
23 responsibilities for each such employer or business;
- 24 3. A copy of each acknowledgment of receipt of this Order,
25 obtained pursuant to Part XIV(D) below;
- 26 4. Any other changes required to be reported under subpart A of
27 this Part; and
28

1 5. Copies of all sales scripts, training materials, advertisements, or
2 other marketing materials relating to the subject matter of this order.

3 C. For purposes of the compliance reporting required by this Order, the
4 Commission is authorized to communicate directly with Stoddard.

6 RECORD KEEPING PROVISIONS

7 XIII.

8 **IT IS FURTHER ORDERED** that for a period of eight (8) years from the
9 date of entry of this Order, Stoddard, and his agents, employees, officers,
10 corporations, successors, and assigns, and those persons in active concert or
11 participation with him who receive actual notice of this Order by personal service
12 or otherwise, including by facsimile, in connection with any business where: (1)
13 Stoddard owns at least 50% of the business, or directly or indirectly controls the
14 business, and (2) the business is engaged, participating, or assisting in any manner
15 whatsoever, directly or indirectly, in the advertising, marketing, promotion,
16 offering for sale, distribution, or sale of any covered product, are hereby
17 permanently restrained and enjoined from failing to create and retain the following
18 records:

- 19 A. Accounting records that reflect the cost of goods or services sold,
20 revenues generated, and the disbursement of such revenues;
- 21 B. Personnel records accurately reflecting: the name, address, and
22 telephone number of each person employed in any capacity by such
23 business, including as an independent contractor; that person's job or
24 position; the date upon which the person commenced work; and the
25 date and reason for the person's termination, if applicable;
- 26 C. Customer files containing the names, addresses, telephone numbers,
27 dollar amounts paid, quantity of items or services purchased, and
28

1 description of items or services purchased, to the extent such
2 information is obtained in the ordinary course of business;

3 D. Complaints and refund requests (whether received directly, indirectly,
4 or through any third party) and any responses to those complaints or
5 requests;

6 E. All documents referring or relating to the advertising, marketing,
7 promotion, offering for sale, distribution or sale of any covered
8 product, including but not limited to infomercials, print ads, product
9 inserts, product labels, sales scripts, and training materials;

10 F. All documents upon which Stoddard relies to substantiate any
11 representation covered by Parts II and III above; and

12 G. All records and documents necessary to demonstrate full compliance
13 with each provision of this Order, including but not limited to, copies
14 of acknowledgments of receipt of this Order, required by Part XIV(D),
15 and all reports submitted to the FTC pursuant to Part XII(B).

16 **DISTRIBUTION OF ORDER**

17 **XIV.**

18
19 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the
20 date of entry of this Order, Stoddard shall deliver copies of the Order as directed
21 below:

22 A. Stoddard as Control Person: For any business that Stoddard controls,
23 directly or indirectly, or in which Stoddard has an ownership interest
24 of at least fifty (50) percent, Stoddard shall deliver a copy of this
25 Order to all principals, officers, directors, and managers of that
26 business. Stoddard shall also deliver copies of this Order to all
27 employees, agents, and representatives of that business who engage in
28

1 conduct related to the subject matter of the Order (the manufacturing,
2 labeling, advertising, promotion, offering for sale, sale or distribution
3 of any covered product) or in recordkeeping within the scope of Part
4 XIII. For current personnel, delivery shall be within (5) days of
5 service of this Order upon Stoddard. For new personnel, delivery shall
6 occur prior to their assuming their responsibilities.

7 C. Stoddard as employee or non-control person: For any business where
8 Stoddard is not a controlling person of a business but he engages in
9 conduct related to the subject matter of this Order (the manufacturing,
10 labeling, advertising, promotion, offering for sale, sale or distribution
11 of any covered product), Stoddard shall deliver a copy of this Order to
12 all principals and managers of such business before engaging in such
13 conduct.

14 D. Stoddard shall secure a signed and dated statement acknowledging
15 receipt of the Order, within thirty days of delivery, from each person
16 receiving a copy of the Order pursuant to this Part.

18 **SERVICE OF THIS ORDER BY THE COMMISSION**

19 **XV.**

20 **IT IS FURTHER ORDERED** that copies of this Order and the initial
21 pleadings and papers filed in this matter may be served by agents and employees of
22 the Commission, including without limitation private process servers, and by
23 agents or employees of any other law enforcement agency, upon Stoddard, any
24 agent or employee of Stoddard, or any other person, partnership, corporation, or
25 other entity that may be in possession of any records, assets, property or property
26 rights of Stoddard, or that may be subject to any provision of this Order. Service
27 upon any branch or office of any entity shall effect service upon the entire entity.

SCOPE OF ORDER

XVI.

IT IS FURTHER ORDERED that this Order resolves only claims against Stoddard as alleged in the Complaint. This Order 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 Stoddard, and persons or entities in any type of indemnification or contractual relationship with Stoddard.

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1 **RETENTION OF JURISDICTION**

2 **XVII.**

3 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this
4 matter for all purposes.

5
6 **SO STIPULATED:**

7
8 **EDWARD GLENNON**
9 **PETER MILLER**
10 Federal Trade Commission
11 600 Pennsylvania Avenue, NW
12 NJ-3212
13 Washington, DC 20580
14 Ph: (202) 326-3126 / 2629
15 Fax: (202) 326-3259
16 eglennon@ftc.gov, pmiller@ftc.gov

DARRELL STODDARD _____

17 **ATTORNEYS FOR PLAINTIFF**

18
19
20 **IT IS SO ORDERED:**

21
22 
23 _____
24 Hon. Stephen G. Larson
25 United States District Court Judge

26
27 7/21/07 Date _____
28

1 ATTACHMENT A

2 **By FIRST CLASS MAIL, RETURN RECEIPT REQUESTED**

3 [date]

4 Dear [distributor, reseller, or agent]:

5 Our records indicate that you are a distributor, reseller, or sales agent of
6 Biotape. This letter is to inform you that Darrell Stoddard has settled a civil
7 dispute with the Federal Trade Commission regarding advertising for Biotape.
8 Among other things, Stoddard has agreed to notify resellers, distributors, and
9 agents of the settlement.

10 In its complaint, the FTC alleged that advertisements for Biotape made a
11 number of false or unsubstantiated claims. Stoddard denied the FTC's allegations
12 and did not admit to any wrongdoing or violation of law. Nonetheless, in order to
13 resolve this matter, Stoddard agreed not to represent in the future that Biotape, or
14 any substantially similar product, including conductive silver headache bands,
15 conductive silver socks, conductive silver gloves, conductive knee supports,
16 conductive elbow supports, conductive back supports, and conductive wrist
17 supports:

- 18 1. Provides significant and/or permanent relief from severe pain,
19 including, but not limited to, debilitating back pain, and pain from
20 arthritis, frozen shoulder, surgical procedures, sciatica, migraines, and
21 other conditions; or
- 22 2. Is more effective than other products or treatments, such as over-
23 the-counter analgesics and topical creams and ointments, in relieving
24 or eliminating severe pain.

25 Stoddard also agreed not to make any representation about the health benefits,
26 performance, efficacy, or safety of any food, drug, device, dietary supplement or
27 health product unless that representation is true, non-misleading, and, at the time it
28 is made, he possesses and is relying upon competent and reliable scientific
evidence that substantiates the representation.

Stoddard must request that his resellers, distributors, and agents not use or
distribute advertisements, packaging, or promotional materials containing any of
the representations prohibited by his agreement with the FTC. If you do, Stoddard
must terminate his business relationship with you. Stoddard also is prohibited from
conducting any business with you if he fails to receive from you within 30 days of
sending you this letter a signed and dated statement acknowledgment your receipt
of this letter. To provide such an acknowledgment, you may sign and date a copy
of this letter in the space provided below, and return the signed and dated copy to
Stoddard. Please retain a copy of this letter for your files.

1 If you have any questions or if you want a copy of the FTC order, please
2 contact [insert name and telephone number of Stoddard's contact].

3
4 Darrell Stoddard _____

5 ACKNOWLEDGMENT:

6 I have received and read Darrell Stoddard's letter regarding the settlement
7 into which he entered with the Federal Trade Commission.

8
9 (Signature) _____

10
11
12 (Print your name, the name of your business, and your title
13 _____

14 (Date) _____
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