

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

In the Matter of

**DARYL C. JENKS,**  
individually and d/b/a  
**Premium Essiac Tea 4less.**

FILE NO. 082 3116

**AGREEMENT CONTAINING  
CONSENT ORDER**

The Federal Trade Commission (“Commission”) has conducted an investigation of certain acts and practices of Daryl C. Jenks, individually and d/b/a Premium Essiac Tea 4less (“proposed respondent”). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

**IT IS HEREBY AGREED** by and between Daryl C. Jenks, individually and d/b/a Premium Essiac Tea 4less and counsel for the Federal Trade Commission that:

1. Proposed respondent Daryl C. Jenks is a resident of Michigan. His principal office or place of business is at 4245 Sundance Meadows, Howell, Michigan 48843. Individually or in concert with others, he formulates, directs, or controls the policies, act, or practices of the business operating under the trade name “Premium Essiac Tea 4less.”
2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondent waives:
  - a. Any further procedural steps;
  - b. The requirement that the Commission’s decision contain a statement of findings of fact and conclusions of law; and
  - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it will be publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time frame provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondent waives any right he may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the draft complaint and consent order. Proposed respondent understands that he may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

## O R D E R

### DEFINITIONS

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

1. "***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 in the profession to yield accurate and reliable results.

2. "***Commerce***" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

3. "***Food***" and "***drug***" shall mean "***food***" and "***drug***" as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.

4. "***Essiac Product***" shall mean any product for which the term "Essiac" or "Caisse" appears on the product label or on any advertising or promotion, and any product containing burdock root, sheep sorrel, and slippery elm bark herbs, alone or with other ingredients.

5. "***Endorsement***" shall mean any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual or the name or seal of an organization) which message consumers

are likely to believe reflects the opinions, beliefs, findings or experience of a party other than the sponsoring advertiser. The party whose opinions, beliefs, findings or experience the message appears to reflect will be called the endorser and may be an individual, group or institution.

6. Unless otherwise specified “**Respondent**” shall mean Daryl C. Jenks, individually and doing business as Premium Essiac Tea 4less, and his agents, representatives and employees.

7. “**Covered product or service**” means any food, dietary supplement, or drug, including, but not limited to any Essiac Product; or any health-related product, service, or program.

## I.

**IT IS ORDERED** that Respondent, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, or sale of any Essiac Product or any other covered product or service, in or affecting commerce, shall not represent, in any manner, expressly or by implication, including through the use of a product name or endorsement, that

A. Such product or service is effective in the treatment, cure, or prevention of any disease or condition, or

B. Such product or service is superior to other similar products or services,

unless the representation is true, not misleading, and, at the time it is made, Respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

## II.

**IT IS FURTHER ORDERED** that Respondent, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, or sale of any covered product or service, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of a product name or endorsement, about the absolute or comparative benefits, performance, efficacy, safety, or side effects of such covered product or service unless the claim is true, non-misleading, and, at the time it is made, Respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

## III.

**IT IS FURTHER ORDERED** that Respondent, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, or sale of any covered product or service, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, including through the use of a product name or endorsement, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

#### IV.

**IT IS FURTHER ORDERED** that:

A. Nothing in this order shall prohibit Respondent from 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. Nothing in this order shall prohibit Respondent from 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.

**IT IS FURTHER ORDERED** that Respondent shall:

A. Within seven (7) days after service of the Order upon Respondent, deliver to the Commission a list, in the form of a sworn affidavit, of all consumers that can be identified from Respondent's records who purchased an Essiac Product from Respondent on or after January 1, 2003. Such list shall include each consumer's name and address, and, if available, the telephone number and email address of each consumer and the full purchase price, including shipping, handling, and taxes, of any Essiac Product purchased from Respondent.

B. Within thirty (30) days after service of the Order upon Respondent, send by first class mail, with postage prepaid, an exact copy of the notice attached hereto as Attachment A, showing the date of mailing, to each person who can be identified from Respondent's records who purchased Respondent's Essiac Product between January 1, 2003, and the date Respondent executed this Order. This mailing shall not include any other document.

C. Except as provided in this Order, Respondent, directly or through any corporation, subsidiary, division, trade name, or other device, shall not sell, rent, lease, transfer, or otherwise disclose the name, address, telephone number, credit card number, bank account number, email address, or other identifying information of any person who paid any money to Respondent, at any time prior to date this Order becomes final, in connection with the purchase of any Essiac Product. *Provided, however,* that Respondent may disclose such identifying information as required in Subpart A above, or to any law enforcement agency, or as required by any law, regulation, or court order.

#### VI.

**IT IS FURTHER ORDERED** that Respondent shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon reasonable notice make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

## VII.

**IT IS FURTHER ORDERED** that Respondent shall deliver a copy of this order to all current and future principals, officers, directors, and other employees with managerial authority having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

## VIII.

**IT IS FURTHER ORDERED** that Respondent, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his individual current business or employment, or of his individual affiliation with any new business or employment. The notice shall include Respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part and Part IX below shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

## IX.

**IT IS FURTHER ORDERED** that Respondent shall, within sixty (60) days after service of this order, and, upon reasonable notice, at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this order.

## X.

**IT IS FURTHER ORDERED** that this order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any Respondent that is not named as a defendant in such complaint; and

- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

*Provided further*, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**RESPONDENT**

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**DARYL C. JENKS,**  
individually and doing business as  
**PREMIUM ESSIAC TEA 4LESS**

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**JOSH ARD, ESQ.**  
Attorney for Respondent Daryl C. Jenks,  
individually and doing business as Premium  
Essiac Tea 4less

**APPROVED:**

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**JOHN M. MENDENHALL**  
Director  
East Central Region  
Federal Trade Commission

**FEDERAL TRADE COMMISSION**

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**LYDIA B. PARNES**  
Director  
Bureau of Consumer Protection  
Federal Trade Commission

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**MICHAEL MILGROM**  
Attorney for the Federal Trade Commission