

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Daryl C. Jenks, individually, and d/b/a Premium Essiac Tea 4less,
File No. 082 3116

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Daryl C. Jenks, individually, and d/b/a Premium Essiac Tea 4less (“respondent”).

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns the advertising and promotion of a product known as *Premium Essiac Tea*, a powder for making a tea beverage that, according to its label, contains burdock root, rhubarb root, sheep sorrel, slippery elm, watercress, blessed thistle, red clover, and kelp. The Commission's complaint charges that respondent claimed that Premium Essiac Tea was effective to treat, prevent or cure cancer and other serious diseases. The complaint alleges that respondent did not have a reasonable basis for this claim. The complaint also charges that respondent claimed that Premium Essiac Tea was clinically proven to be superior to other types of essiac tea. The complaint alleges that this claim was false. The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I requires respondent to have competent and reliable scientific evidence substantiating any claim that any covered product or service is effective in the treatment, cure or prevention of any disease or condition, or is superior to other similar products or services. A “covered product or service” is defined as any food, dietary supplement or drug, including, but not limited to any essiac tea product; or any health-related product, service or program. Part II requires that any future claim about the absolute or comparative benefits, performance, efficacy, safety or side effects of any covered product or service be truthful and supported by competent and reliable scientific evidence.

Part III of the consent order prohibits the misrepresentation of the results of any test, study or research in connection with the advertising, promotion or sale of any covered product or service.

Part IV of the proposed order provides that the order does not prohibit respondent from making representations for any drug that are permitted in labeling for the drug under any tentative or final Food and Drug Administration (“FDA”) standard or under any new drug application approved by the FDA; and representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Part V.A. of the proposed order requires respondent to provide a list of all purchasers of Premium Essiac Tea to the Commission. Part V.B. requires respondent to mail to each purchaser a letter describing the scientific evidence related to essiac tea. Part V.C. prohibits respondent from providing any identifying information about his purchasers to anyone other than a law enforcement agency or as required by law.

Parts VI through IX of the proposed order require respondent to keep copies of relevant advertisements and materials that substantiate claims made in the advertisements; to provide copies of the order to certain of his employees; to notify the Commission of any changes in employment that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part X provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.