

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **William E. Kovacic, Chairman**
 Pamela Jones Harbour
 Jon Leibowitz
 J. Thomas Rosch

In the Matter of

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

DOCKET NO. C-4239

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an Agreement Containing Consent Order containing an admission by the respondent of all the jurisdictional facts set forth in the draft complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. 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, acts, or practices of the business operating under the trade name “Premium Essiac Tea 4less.”

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

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 on October 23, 2028, 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.

By the Commission.

Donald S. Clark
Secretary

ISSUED: October 23, 2008

ATTACHMENT A

TO AGREEMENT CONTAINING CONSENT ORDER

**LETTER TO CUSTOMERS (INCLUDING DISTRIBUTORS)
WITH WHOM RESPONDENT HAS DONE BUSINESS
PRIOR TO EXECUTING THIS ORDER**

* * * * *

[To be printed on letterhead of Premium Essiac Tea 4less]

* * * * *

[Date]

[Name and address of recipient]

Dear [recipient's name]:

I recently entered into a settlement with the Federal Trade Commission (“FTC”) regarding advertising claims for Essiac Tea. This product was sold on the Premium-essiac-tea-4less website. The settlement with the FTC does not constitute an admission that I have violated the law. As part of the settlement, however, I agreed to send you the following information prepared by the FTC about the scientific evidence on these products.

Very little scientific research has been done concerning Essiac tea as a treatment or cure for cancer or any other disease in humans. The scientific studies that have been done do not demonstrate that Essiac tea, or any of the ingredients in this product, is effective when used as a treatment for cancer or any other disease.

It is very important that you talk to your doctor or health care provider before using *any* alternative or herbal product, including Essiac tea. Speaking with your doctor is important to make sure that all aspects of your medical treatment work together. Things that seem safe, such as certain foods, herbs, or pills, may interfere with or affect your cancer or other medical treatment, or other medicines you might be taking. Some herbs or other complementary or alternative treatments may keep your medicines from doing what they are supposed to do, or could be harmful when taken with other medicines or in high doses. It also is very important that you talk to your doctor or health care provider before you decide to take any alternative or herbal product, including Essiac tea, instead

of taking conventional cancer treatments that have been scientifically proven to be safe and effective in humans.

If you would like further information about complementary and alternative treatments for cancer, the following Internet web sites may be helpful:

The National Cancer Institute: www.cancer.gov/cancertopics/pdq; or

The National Center for Complementary and Alternative Medicines: www.nccam.nih.gov

You also can contact the National Cancer Institute's Cancer Information Service at 1-800-4-CANCER or 1-800-422-6237.

Sincerely,

Daryl C. Jenks
Premium Essiac Tea 4less