

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

FEDERAL TRADE COMMISSION,
Plaintiff,
v.
RITE AID CORPORATION,
Defendant.

**STIPULATED FINAL
JUDGMENT AND ORDER FOR
PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF**

Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), filed a Complaint for Permanent Injunction and Other Equitable Relief against Defendant Rite Aid Corporation, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), alleging 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 Commission and Defendant Rite Aid Corporation ("Rite Aid"), without Rite Aid admitting or denying liability for any of the conduct alleged in the Complaint, have stipulated to entry of the following agreement for permanent injunction and settlement of claims for monetary relief in settlement

of the Commission's allegations against Rite Aid.

The Court, having been presented with this Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief ("Order"), finds as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and jurisdiction over all parties. Venue in the Middle District of Pennsylvania is proper.

2. The acts and practices of Rite Aid are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

3. The Complaint states a claim upon which relief can be granted under Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, and the Commission has the authority to seek the relief it has requested.

4. Rite Aid waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Rite Aid also waives any claim that it may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order.

5. This Order reflects the negotiated agreement of the Commission and Rite Aid.

6. The Commission and Rite Aid stipulate and agree to entry of this Order under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), without trial or final adjudication of any issue of fact or law. By entering into this stipulation, Rite Aid does not admit or deny any of the allegations set forth in the Complaint, other than jurisdictional facts.

7. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law.

8. Nothing in this Order obviates the obligation of Rite Aid to comply with Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45 and 52.

9. The Commission's action against Rite Aid is an exercise of the Commission's police or regulatory power as a governmental unit.

10. The paragraphs of this Order shall be read as the necessary requirements for compliance and not as alternatives for compliance, and no paragraph serves to modify another paragraph unless expressly so stated.

11. Each party shall bear its own costs and attorneys' fees.

12. Entry of this Order is in the public interest.

ORDER

DEFINITIONS

1. "Rite Aid" shall mean Rite Aid Corporation and its divisions, subsidiaries, successors, and assigns.
2. "Commerce" shall mean as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
3. "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.
4. "Rite Aid brand" shall mean any product with the name Rite Aid appearing on the product package or that is manufactured and/or distributed exclusively for sale through Rite Aid retail stores or on its website.
5. "Rite Aid Products" shall mean Rite Aid brand "Germ Defense" tablets, lozenges, and powders in all flavors and package sizes or any other Rite

Aid brand product marketed as a private label version of Airborne for sale at Rite Aid retail stores or on its website.

6. "Covered Product" shall mean Rite Aid Products and any Rite Aid brand food, drug, or dietary supplement for sale at Rite Aid retail stores or on its website, that is represented, expressly or by implication, to reduce the risk of or prevent colds or flu, reduce the severity or duration of colds, or boost the immune system.

7. "Endorsement" shall mean as defined in 16 C.F.R. § 255.0(b).

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

9. "Commission" shall mean the Federal Trade Commission.

10. A requirement that Rite Aid "notify," "furnish," "provide," or "submit" to the Commission shall mean that Rite Aid shall send the necessary information via **overnight courier**, costs prepaid, to:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580
Attn: *FTC v. Rite Aid Corporation* (M.D. Pa.), Civil Action
No. ____

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

12. The term "including" in this Order shall mean "including without limitation."

13. The Plaintiff and Rite Aid, by and through their counsel, have agreed that entry of this Order resolves all matters in dispute between them arising from the facts and circumstances alleged in the Complaint in this action, up to the date of entry of this Order.

I.
PROHIBITED REPRESENTATIONS REGARDING
COVERED PRODUCTS

IT IS HEREBY ORDERED that Rite Aid, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and its officers, agents, servants, employees, and all persons or entities in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, in connection with the advertising, labeling, promotion, offering for sale, or sale of any Covered Product, in or affecting commerce, are hereby permanently restrained and enjoined from making, or assisting others in making, directly or by implication, including through the use of a product name, endorsement, depiction, or illustration, any representation:

- A. That such product:
1. Reduces the risk of or prevents colds or flu;
 2. Protects against or helps fight germs;
 3. Reduces the severity or duration of colds;

4. Protects against colds or flu in crowded places such as airplanes, offices, or schools; or

5. Boosts the body's immune system, thereby providing protection against cold and flu viruses; or

B. About the benefits, performance, or efficacy of any Covered Product; unless the representation is true, non-misleading, and, at the time it is made, Rite Aid possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

FDA-APPROVED CLAIMS

IT IS FURTHER ORDERED that:

A. Nothing in this Order shall prohibit Rite Aid from making any representation for any drug that is permitted in labeling for such drug under any tentative 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 Rite Aid 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.

III.

MONETARY JUDGMENT AND CONSUMER REDRESS

IT IS FURTHER ORDERED that:

A. Judgment is hereby entered in favor of the Commission and against Rite Aid in the amount of five hundred thousand dollars (\$500,000.00), which amount shall be paid to the Commission by electronic funds transfer within twenty (20) days of the date of entry of this Order and in accordance with instructions provided by the Commission.

B. In the event of default on any obligation to make payment under this Order, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue

from the date of default to the date of payment. In the event such default continues for ten (10) calendar days beyond the date that payment is due, the entire amount shall immediately become due and payable.

C. All funds paid to the Commission pursuant to this Order shall be deposited into an account administered by the Commission or its agents to be used for equitable relief, including, but not limited to, consumer redress, and any attendant expenses for the administration of such equitable relief.

D. To facilitate consumer redress, Rite Aid shall post a refund notice and postage pre-paid refund request forms in a clear and conspicuous location in the Cold and Flu Aisle in all of its stores. As used herein, "Cold and Flu Aisle" means the location within Rite Aid stores where over-the-counter cold and flu remedies are normally displayed for purchase. The notice shall be displayed for 60 consecutive days commencing on October 1, 2009. The refund notice and postage pre-paid refund request form shall be in substantially the same form as Attachment A. Rite Aid shall pay the cost of preparing and placing the refund notice and postage pre-paid refund request form.

E. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after the redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Rite Aid's practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Rite Aid shall have no right to challenge the Commission's choice of remedies under this Part. Rite Aid shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payment under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.

F. Rite Aid relinquishes all dominion, control and title to the funds paid, and all legal and equitable title to the funds vests in the Treasurer of the United States and in the designated consumers. Rite Aid shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of Rite Aid, Rite Aid acknowledges

that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

G. Rite Aid agrees that the facts as alleged in the Complaint filed in this action shall be taken as true without further proof in, and solely for purposes of, any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy case. Rite Aid further stipulates and agrees that the facts alleged in the Complaint establish all elements necessary to sustain an action pursuant to, and that this Order shall have collateral estoppel effect for purposes of, Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S. C. § 523(a)(2)(A). For all other purposes and with respect to all other parties, Rite Aid's stipulation in this section shall have no effect. It is specifically agreed and acknowledged that this section is not intended to be, nor shall it be, construed as an admission of liability by Rite Aid with respect to the allegations set forth in the Complaint with respect to any claims or demands by any third parties.

H. In accordance with 31 U.S.C § 7701, Rite Aid is hereby required, unless it has done so already, to furnish to the Commission its taxpayer identifying numbers, which shall be used for the purposes of collecting and reporting on any delinquent amount arising out of Rite Aid's relationship with the government.

I. Proceedings instituted under this Part are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

IV.

COMPLIANCE MONITORING BY RITE AID

IT IS FURTHER ORDERED that Rite Aid shall take reasonable steps sufficient to monitor and ensure that the Private Label Category Manager (and any subsequent employee who performs the same functions), the Upper Respiratory Product Category Manager (and any subsequent employee who

performs the same functions), and all current or newly hired employees, agents, representatives, and independent contractors who are engaged in advertising, labeling, or promotion of Covered Products, related to the subject matter of this Order, comply with the provisions of this Order. Such steps shall include, at a minimum, periodic monitoring of representations made in advertising, labeling, and promotion for Covered Products.

V.

COMPLIANCE MONITORING BY THE COMMISSION

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

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Rite Aid shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in Rite Aid's possession or direct or

indirect control to inspect the business operation; *provided* that, Rite Aid, after attempting to resolve a dispute without court action and for good cause shown, may file a motion with this Court seeking an order including one or more of the protections set forth in Fed. R. Civ. P. 26(c).

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

1. Obtaining discovery from any person, without further leave of court, using the procedures described in Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45; and
2. Posing as consumers, marketers, manufacturers, suppliers, wholesalers, retailers, distributors, or other product-related entities to Rite Aid, its employees, or any other entity managed or controlled in whole or in part by Rite Aid, without the necessity of identification or prior notice; and

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

Provided, however, that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

VI.

COMPLIANCE REPORTING

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

A. For a period of three (3) years from the date of entry of this Order, Rite Aid shall notify the Commission in writing of any changes in the corporate structure of Rite Aid or any other business entity that Rite Aid directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided that*, with respect to any proposed change in the corporation about which Rite Aid learns less than thirty (30) days prior to the date such action is to take place, Rite Aid shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. Sixty (60) days after the date of entry of this Order, Rite Aid shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which it has complied and is

complying with this Order. This report shall include, but not be limited to:

1. A copy of each acknowledgment of receipt of this Order obtained pursuant to Part VIII; and
2. Any other changes required to be reported under subsection A of this Part.

C. For purposes of this Order, Rite Aid shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director of Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Attn: *FTC v. Rite Aid Corporation* (M.D. Pa.) Civil Action
No. ____

D. For purposes of compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Rite Aid.

VII.

RECORD-KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of this Order, Rite Aid and its agents, employees, officers, corporations, successors, and assigns are hereby permanently restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the total annual cost of Covered Products sold and total annual revenues generated;

B. Personnel records accurately reflecting the name, address, and telephone number of the Private Label Category Manager (and any subsequent employee who performs the same functions), the Upper Respiratory Product Category Manager (and any subsequent employee who performs the same functions), the immediate supervisors of both such employees, and any employees or independent contractors engaged in the advertising, labeling, or promotion of any Covered Product; which records shall include that person's

job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of Covered Products purchased, and description of Covered Products purchased, to the extent such information is obtained in the ordinary course of business;

D. Complaint and refund requests (whether received directly, indirectly, or through any third party), including but not limited to reports of adverse incidents claimed to be associated with the use of a Covered Product, and any responses to those complaints or requests;

E. Copies of all advertisements, labeling, promotional materials, websites, or other marketing materials utilized in the advertising, labeling, and promotion of any Covered Product;

F. All materials that were relied upon in making any representations contained in the materials identified in subsection E of this Part, including all

documents evidencing or referring to the accuracy of any claim therein or to the efficacy of any Covered Product, including, but not limited to, all tests, reports, studies, demonstrations, or other evidence that confirm, contradict, qualify, or call into question the efficacy of each such product, including complaints and other communications with consumers or with governmental or consumer protection agencies;

G. Records accurately reflecting the name, address, and telephone number of each manufacturer or laboratory engaged in the development or creation of any testing obtained for the purpose of manufacturing, labeling, advertising, marketing, promoting, offering for sale, selling, or distributing any Covered Product;

H. Copies of all contracts concerning the manufacturing, labeling, advertising, marketing, promotion, offering for sale, sale, or distribution of any Covered Product; and

I. All copies of acknowledgments of receipt of this Order and all

reports submitted to the Commission pursuant to this Order.

VIII.

DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, Rite Aid shall deliver copies of the Order as directed below:

A. Rite Aid shall deliver a copy of this Order to all of its officers, directors, the Private Label Category Manager (and any subsequent employee who performs the same functions), the Upper Respiratory Product Category Manager (and any subsequent employee who performs the same functions), and to all current or newly hired employees, agents, representatives, and independent contractors who are engaged in advertising, labeling, or promotion of Covered Products related to the subject matter of this Order. For current personnel, delivery shall be within five (5) days of service of this Order upon Rite Aid. For new personnel, delivery shall occur prior to their assuming a

position or engaging in conduct related to the subject matter of this Order.

B. Rite Aid shall obtain a signed and dated statement acknowledging receipt of the Order, within thirty days of delivery, from all persons receiving a copy of the Order pursuant to this Part.

IX.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that Rite Aid, within seven (7) business days of receipt of this Order as entered by the Court, shall submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

X.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

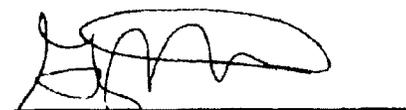
SO ORDERED:

Dated: July 20, 2009


UNITED STATES DISTRICT JUDGE

SO STIPULATED:

FOR PLAINTIFF FTC:


GREGORY W. FORTSCH
CAROL J. JENNINGS
Trial Counsel
Federal Trade Commission
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FOR RITE AID CORPORATION:


RITE AID CORPORATION
By: JAMES J. COMITALE
Vice President and Assistant
Secretary for the Corporation


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Attorneys for Rite Aid

ATTACHMENT A

Notice of Refund Offer For Germ Defense

IF YOU PURCHASED ANY RITE AID BRAND GERM DEFENSE PRODUCT BETWEEN SEPTEMBER 1, 2005 AND [INSERT EFFECTIVE DATE OF ORDER] YOU ARE ENTITLED TO A REFUND.

You may receive a refund for up to six packages of Germ Defense you purchased from Rite Aid.

To get a refund, here's what you need to do:

(1) Fill out the attached postage pre-paid refund request form, or [if feasible] to submit your refund request online, visit [insert URL], declaring under penalty of perjury the number of boxes you purchased between September 1, 2005 and [insert effective date of order];

(2) Drop the form in the nearest mailbox, or [if feasible] follow the directions on the website [insert URL] to submit your refund request online. To be eligible for a refund, you must mail it, or [if feasible] submit it through the website [insert URL], on or before December 31, 2009. Proof of purchase is not required.

If the amount of valid requests exceeds the amount of funds available to pay refunds, consumers requesting a refund will receive only a portion of their refund request. By accepting a refund issued through this program, you will be agreeing to waive any present or future claims you may have against Rite Aid in connection with the advertising, labeling, promotion, offering for sale, or sale of

the Germ Defense products for which you receive a refund.

This refund offer is being provided as part of Rite Aid's settlement with the Federal Trade Commission involving its advertising claims for Germ Defense. For more information, go to [insert URL].

[FRONT OF REFUND REQUEST FORM]

[Insert name and address of FTC redress administrator]

[REVERSE OF THE REFUND REQUEST FORM]

REFUND REQUEST

I hereby declare, under penalty of perjury, that I purchased ___ packages of Rite Aid Germ Defense products between September 1, 2005 and [insert effective date of order].

FULL NAME (Please print): _____

ADDRESS:

I understand that by accepting a refund issued through this program, I will be agreeing to waive any present or future claims I may have against Rite Aid in connection with the advertising, labeling, promotion, offering for sale, or sale of the Germ Defense products for which I receive a refund.

SIGNATURE: _____

PRIVACY ACT NOTICE

The information requested on this claim form is being collected in order to make a distribution of funds paid to the Federal Trade Commission in connection with a settlement of allegations of deceptive acts and

practices in or affecting commerce, pursuant to 15 U.S.C. § 45(a). In addition, the information may be disclosed for other purposes authorized by the Privacy Act, 5 U.S.C. § 552a and 47 Fed. Reg. 32,622, including disclosure to other government agencies. Submission of the requested information is voluntary, but failure to provide the requested information could delay processing or be a basis for rejection of your claim.