



**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: Jon Leibowitz, Chairman
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

In the Matter of)
)
POM WONDERFUL LLC and)
ROLL INTERNATIONAL CORP.,)
companies, and) Docket No. 9344
)
) PUBLIC DOCUMENT
STEWART A. RESNICK,)
LYNDA RAE RESNICK, and)
MATTHEW TUPPER, individually and)
as officers of the companies.)

ANSWER AND DEFENSES OF RESPONDENTS

Pursuant to Rule 3.12 of the Commission's Rules of Practice for Adjudicative Proceedings, Respondents POM Wonderful LLC, Roll International Corp., Stewart Resnick, Lynda Resnick, and Matthew Tupper (collectively "Respondents"), by their undersigned counsel, answer the Complaint of the Federal Trade Commission ("FTC") as follows:

1. Respondents admit the allegations in paragraph 1.
2. Respondents admit the allegations in paragraph 2 except that legal services are provided by The Roll Law Group, PC. With regard to the final sentence of paragraph 2, Respondents note that Fire Station works with employees of POM Wonderful LLC to monitor and report on the effectiveness of advertisements.
3. Respondents admit the allegations in the first, second, and fourth sentences of paragraph 3. The third sentence of paragraph 3 states legal conclusions to which no response is required. Respondents note that Mr. Resnick, in his capacity of Chairman of POM Wonderful

LLC and Chairman and Director of Roll International LLC, is involved in and provides guidance with regard to some of the respective companies' decisions and deliberations, but is not involved in all decision making and policy setting.

4. Respondents admit the allegations in the first and fourth sentence of paragraph 4. The second and third sentences of paragraph 4 state legal conclusions to which no response is required.

5. Respondents admit the first and third sentence of paragraph 5. Respondents admit that Mr. Tupper, as an officer of POM Wonderful LLC, together with others, formulates, directs, or controls the policies, acts, or practices of POM Wonderful LLC. To the extent that this paragraph makes references to unspecified "acts or practices alleged" in the FTC's Complaint, Respondents hereby restate and reincorporate their specific answers to such allegations as set forth in the paragraphs that follow.

6. Respondents admit the allegations of paragraph 6, except that they deny that any of their products are "drugs" within the meaning of Sections 12 and 15 of the FTC Act. Furthermore, to the extent paragraph 6 contains conclusions of law, no response is required.

7. Respondents deny the allegations of paragraph 7, including (without limitation) that their acts or practices are or were in any way deceptive. Furthermore, to the extent paragraph 7 contains conclusions of law, no response is required.

8. Respondents admit the allegations of paragraph 8.

9. Respondents admit that they disseminated or caused to be disseminated advertising and promotional materials and, in particular, such materials as are attached to the Complaint in Exhibits A through H. Respondents deny any inference, characterization, suggestion or legal argument concerning those materials caused by selective quotation or

comment added by the FTC in this paragraph and in the attached exhibits. Respondents are also without information sufficient to confirm the dates any particular material was posted or removed from POM's website or otherwise disseminated and therefore deny those allegations.

10. Respondents admit that they disseminated or caused to be disseminated the advertising and promotional materials identified in paragraph 10, which are attached to the Complaint as Exhibits E and I through N. Respondents deny any inference, characterization, suggestion or legal argument concerning those materials caused by selective quotation or comment added by the FTC in this paragraph and in the attached exhibits. Respondents are also without information sufficient to confirm the dates any particular material was posted or removed from POM's website or otherwise disseminated and therefore deny those allegations.

11. Respondents deny the first sentence of paragraph 11 as factually inaccurate and containing legal argument to which no response is required. Respondents aver that the Davidson Study did show some significant differences between treatment and control sub-groups, as well as significant results for all groups at 12 months. Respondents also deny any allegation about the state of their "knowledge" about the Davidson Study as of May 2007. Respondents admit that the Davidson Study was published in October 2009. Respondents admit that they continued to advertise their products after May 2007, but deny the inaccurate characterizations of such advertising in paragraph 11. Respondents deny the allegation that the Davidson Study was "negative."

12. Respondents deny that their advertising and promotional materials make the claims described in paragraph 12. To the extent that this paragraph refers to the allegations in paragraphs 9 and 10, Respondents hereby restate and reincorporate their answers to those paragraphs.

13. To the extent this paragraph addresses the claims alleged in paragraph 12, which Respondents have denied, the allegations in this paragraph are irrelevant. Respondents nevertheless deny the allegations of paragraph 13 and aver that there is substantial scientific research indicating the health benefits of their products and substantiating their advertising and promotional materials. The final paragraph of paragraph 13 misstates the conclusions of the identified research and Respondents deny such mischaracterizations. With respect to unidentified studies referred to in this paragraph, Respondents are without knowledge sufficient to respond to these vague allegations and therefore deny them.

14. Respondents deny that their advertising and promotional materials make the claims described in paragraph 14. To the extent that this paragraph refers to the allegations in paragraphs 9 and 10, Respondents hereby restate and reincorporates their answers to such paragraphs.

15. To the extent this paragraph addresses the claims alleged in paragraph 14, which Respondents have denied, the allegations in this paragraph are irrelevant. Respondents nevertheless deny the allegations of paragraph 15 and aver that there is substantial scientific research indicating the health benefits of their products and substantiating their advertising and promotional materials. To the extent that the final paragraph of paragraph 15 refers to published research, the research speaks for itself. Moreover, the final paragraph of paragraph 15 misstates the conclusions and significance of the identified research and Respondents deny all such mischaracterizations and selective quotations. In particular, Respondents deny the characterization of this study as “uncontrolled.” Respondents further deny any suggestion that they relied on only one study at the time of the advertisements and promotional materials identified in paragraphs 9 and 10 and referenced in paragraph 14.

16. Respondents deny that their advertising and promotional materials make the claims described in paragraph 16. To the extent that this paragraph refers to the allegations in paragraphs 9 and 10, Respondents hereby restate and reincorporate their answers to such paragraphs.

17. To the extent this paragraph addresses the claims alleged in paragraph 16, which Respondents have denied, the allegations in this paragraph are irrelevant. Respondents nevertheless deny the allegations of paragraph 17 and aver that there is substantial scientific research indicating the health benefits of its products and substantiating their advertising and promotional materials. To the extent that the final paragraph of paragraph 17 refers to published research, the research speaks for itself. Moreover, the final paragraph of paragraph 17 misstates the conclusions of the identified research and Respondents deny such mischaracterizations. Respondents further deny any suggestion that they relied on only one study at the time of the advertisements and promotional materials identified in paragraphs 9 and 10 and referenced in paragraph 16.

18. Respondents deny the allegations in paragraph 18. Furthermore, to the extent paragraph 18 contains conclusions of law, no response is required.

19. Respondents deny that their advertising and promotional materials make the claims described in paragraph 19. To the extent that this paragraph refers to the allegations in paragraphs 9 and 10, Respondents hereby restate and reincorporate their answers to such paragraphs.

20. To the extent this paragraph addresses the claims alleged in paragraph 19, which Respondents have denied, the allegations in this paragraph are irrelevant. Respondents nevertheless deny the allegations of paragraph 20 and aver that there is substantial scientific

research indicating the health benefits of their products and substantiating their advertising and promotional materials.

21. To the extent this paragraph addresses the claims alleged in paragraph 19, which Respondents have denied, the allegations in this paragraph are irrelevant. Respondents aver that there is substantial scientific research indicating the health benefits of their products and substantiating its advertising and promotional materials. Further, to the extent the allegations of paragraph 21 are legal arguments and conclusions, no response is required.

22. Respondents deny the allegations of paragraph 22, including (without limitation) any allegation that their advertisements are unfair, deceptive, or false. Further, to the extent the allegations of paragraph 22 are legal arguments and conclusions, no response is required.

* * *

To the extent the Complaint makes any other specific allegations that were not admitted or denied above, those allegations are denied.

NOTICE

The FTC's Notice contains statements and conclusions of law to which no response is required. Nevertheless, Respondents deny that they have violated any law enforced by the FTC, that any proceeding by the FTC would be in the public interest, and that the prerequisites for an action under Section 19(b) are present in this matter. Respondents further state that the relief proposed in the FTC's Notice is beyond its authority, infringes the exclusive jurisdiction of the United States Food & Drug Administration, would violate Respondents' rights under the First and Fifth Amendments of the U.S. Constitution, and is otherwise improper and unwarranted.

FURTHER DEFENSES

Without assuming any burden of proof on any issue or relieving Complaint counsel of its burden of establishing each element of its purported claims for relief, and reserving their right to assert additional defenses as this matter proceeds, Respondents assert the following defenses:

1. The Complaint fails to state a claim upon which relief can be granted under Section 5 of the FTC Act, 15 U.S.C. § 45.
2. The FTC lacks authority to impose all or part of the relief sought under the FTC Act, the Administrative Procedure Act, and the First and Fifth Amendments of the U.S. Constitution.
3. The Complaint and the FTC's contemplated relief improperly seek to restrict consumers' access to valuable information about the potential health benefits of Respondents' products and therefore are contrary to the public interest. By taking this enforcement action the FTC has, without adequate justification, changed its position with respect to the dissemination of such information and is seeking to impose new and unwarranted standards for the advertising of food products without adequate notice to the public, in particular to consumers and the business community.

* * *

Wherefore, Respondents deny that the FTC is entitled to any relief on its Complaint and request that the Complaint be dismissed.

Respectfully Submitted,



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October 18, 2010

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FEDERAL TRADE COMMISSION**

COMMISSIONERS: Jon Leibowitz, Chairman
 William E. Kovacic
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CERTIFICATE OF SERVICE

I hereby certify that this is a true and correct copy of the Answer and Defenses of Respondents POM Wonderful LLC, Roll International Corporation, Stewart A. Resnick, Lynda Rae Resnick, and Matthew Tupper, and that on this 18th day of October, 2010, I caused the foregoing to be served by first class mail on each of the following:

Donald S. Clark
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Washington, DC 20580

The Honorable D. Michael Chappell
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Dated: October 18, 2010