

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS:

Robert Pitofsky, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

In the Matter of

MICHAEL D. MILLER, individually and d/b/a Natural Heritage Enterprises.

FILE NO. C-3941

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 of 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 violation of the Federal Trade Commission Act; and

The respondent, his attorney, and counsel for Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of 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 considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that 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 § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Michael D. Miller is a resident of Colorado. His principal office or place of business is 183 Bellevue Overlook, Crestone, Colorado 81131. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the business operating under the trade name "Natural Heritage Enterprises."
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:

A. "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.

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

C. "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, rhubarb root, and slippery elm bark herbs.

D. "Food" and "drug" shall mean "food" and "drug" as defined in Section 15 of the FTC Act, 15 U.S.C. § 55(b)-(c).

E. "Metatags" shall mean any word or words embedded in the source code of an Internet Web site that may be used by an Internet search engine in indexing Web sites for the purpose of selecting sites in response to an Internet user's search request.

F. "Mouseover text" shall mean any terms, triggered by the movement of the user's mouse, that are displayed in a dialog box or other similar device.

G. A requirement that respondent "notify the Commission" shall mean that the respondent shall send the necessary information via first-class mail, costs prepaid, to the Associate Director for Division of Enforcement, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Attention: In the Matter of Michael D. Miller.

H. "Person" shall mean a natural person, organization or other legal entity, including a partnership, corporation, proprietorship, association, cooperative, or any other group acting together as an entity.

I. Unless otherwise specified, "respondent" shall mean Michael D. Miller, individually and doing business as Natural Heritage Enterprises, and his agents, representatives, and employees.

I.

IT IS HEREBY ORDERED that respondent, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Essiac product, service, or program, or any other food, drug, or dietary supplement in or affecting commerce, shall not make any representation, in any manner, including by means of metatags or mouseover text, expressly or by implication:

A. That such product, service, or program is effective in the treatment or cure of cancer, leukemia, brain tumors, lymphoma, bone cancer, ovarian cancer, breast

cancer, prostate cancer, diseases of the colon, thyroid conditions, fibromyalgia, diabetes, lupus, chronic fatigue syndrome, multiple sclerosis, HIV/AIDS, arthritis, diseases affecting the lungs or liver, any illness which is affected by a lowered or weakened immune system, or pets' illnesses, including cancer, tumors, or feline leukemia;

B. That such product, service, or program is effective in the mitigation, treatment, prevention, or cure of any disease or illness; or

C. About the health benefits, performance, safety, or efficacy of any such product, service, or program,

unless, at the time the representation 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 manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any "Essiac" product, service, or program, or any other food, drug, or dietary supplement in or affecting commerce, shall not misrepresent, in any manner, including by means of metatags or mouseover text, expressly or by implication:

A. The connection or association between any Web site created and/or maintained by respondent and any other Web site; or

B. The existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any "Essiac" product, service, or program, or any other food, drug, or dietary supplement in or affecting commerce, shall not represent, in any manner, including by means of metatags or mouseover text, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product, service, or program represents the typical or ordinary experience of members of the public who use the product, service, or program, unless:

A. The representation is true and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation; or

B. Respondent discloses, clearly and prominently, and in close proximity to the endorsement or testimonial, either:

1. what the generally expected results would be for users of the product, or

2. the limited applicability of the endorser's experience to what consumers

may generally expect to achieve, that is, that consumers should not expect to experience similar results.

For purposes of this Section, "endorsement" shall mean as defined in 16 C.F.R. § 255.0(b).

IV.

IT IS FURTHER ORDERED that respondent shall:

A. Within seven (7) days after service of this Order upon respondent, deliver to the Commission a list, in the form of a sworn affidavit, of all consumers who purchased an Essiac product from respondent on or after September 15, 1996. 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 this 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 purchased respondent's Essiac product between September 15, 1996, and the date respondent executed this Order. This mailing shall not include any other document.

V.

IT IS FURTHER ORDERED that respondent shall pay to the Federal Trade Commission the sum of seventeen thousand five hundred dollars (\$17,500). This payment shall be made in the following manner:

A. The payment shall be made by wire transfer or certified or cashier's check made payable to the Federal Trade Commission, the payment to be made no later than the date that this order becomes final.

B. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the amount due, together with interest, as computed pursuant to 28 U.S.C. 1961 from the date of default to the date of payment, shall immediately become due and payable.

C. The funds paid by respondent, together with any accrued interest, shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of an Essiac product in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondent shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty or punitive assessment.

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

VI.

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. Nor shall it 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.

VII.

IT IS FURTHER ORDERED that respondent shall, for ten (10) years after the last date of dissemination of any representation covered by this Order, maintain and upon request 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.

VIII.

IT IS FURTHER ORDERED that respondent shall, for a period of ten (10) years after the date of entry of this Order, deliver a copy of this Order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives 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. Respondent shall maintain and upon request make available to the Commission for inspection and copying each such signed and dated statement for a period of five (5) years after creation.

IX.

IT IS FURTHER ORDERED that for a period of five (5) years from the date of entry of this Order, respondent Miller shall notify the Commission at least thirty (30) days prior to any change with regard to Natural Heritage Enterprises that may affect compliance obligations arising under this Order, including but not limited to its incorporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the proposed filing of a bankruptcy petition; or a change in the business or corporate name or address. Provided, however, that, with respect to any proposed change about which respondent learns less than thirty (30) days prior to

the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge.

X.

IT IS FURTHER ORDERED that respondent, within five (5) days of entry of this Order, shall notify the Commission of (1) his residence address and mailing address; (2) his telephone number(s); (3) the name, address, and telephone number of his employer; (4) the full names of his employer's principals; (5) if applicable, the names of his supervisors, and (6) a description of his employer's activities, and the respondent's duties and responsibilities.

XI.

IT IS FURTHER ORDERED that respondent, for a period of ten (10) years after the date of entry of this Order, shall notify the Commission of any changes in his residence address or mailing address or business address or mailing address, of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. Notice of changes in employment status shall include: (1) the new employer's name, address and telephone number; (2) the full names of the employer's principals; (3) if applicable, the names of respondent's supervisors, and (4) a description of the employer's activities, and respondent's duties and responsibilities.

XII.

IT IS FURTHER ORDERED that respondent shall, within sixty (60) days after the date of service of this Order, and 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 respondent has complied and is complying with this Order.

XIII.

This Order will terminate on May 16, 2020, 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; and
- B. 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: May 16, 2000

SEAL