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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

Commissioners:

Robert Pitofsky
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle

In the Matter of

MEGA SYSTEMS INTERNATIONAL, INC., a corporation, and JEFFREY SALBERG,
individually and as an officer of the corporation.

DOCKET NO. C-3811

DECISION AND ORDER

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

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents that the law has been violated as alleged in such complaint, 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 respondents have 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 sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to §2.34 of its Rules, 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 Mega Systems International, Inc. is an Indiana corporation with its principal office or place of business at 2025 East 175th Street, Lansing, Illinois 60438.
2. Respondent Jeffrey Salberg is an officer of the corporate respondent. His principal office or place of business is the same as that of Mega Systems International, Inc.

3. The acts and practices of the respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.
4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, 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. Unless otherwise specified, "respondents" shall mean Mega Systems International, Inc., corporation, its successors and assigns and its officers; and Jeffrey Salberg, individually and as an officer of the corporation; and each of the above's agents, representatives and employees.
3. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of Eden's Secret Nature's Purifying Product or any substantially similar product in or affecting commerce, shall not represent, in any manner, expressly or by implication, that:

- A. Such product causes significant weight loss;
- B. Such product prevents or cures illnesses, including but not limited to fatigue, headaches, depression, arthritis, insomnia, immune suppression, and premenstrual syndrome;
- C. Such product will cleanse the body of harmful toxins; or
- D. Such product will purify the body's blood supply.

For purposes of this Part, "substantially similar product" shall mean any herbal-based product that is substantially similar in ingredients, composition and properties.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for

sale, sale, or distribution of Sable Hair Farming System or any substantially similar product in or affecting commerce, shall not represent, in any manner, expressly or by implication, that:

A. Such product will stop, prevent, cure, relieve, reverse or reduce hair loss;

B. Such product will promote the growth of hair where hair has already been lost; or

C. Such product is superior to Rogaine and Minoxidil in stopping, preventing, curing, relieving, reversing or reducing hair loss.

For purposes of this Part, “substantially similar product” shall mean any product that is substantially similar in ingredients, composition and properties.

III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any hair care product or drug, as “drug” is defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not represent, that any product promotes hair growth or prevents hair loss, unless the product is the subject of an approved new drug application for such purpose under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §301 et seq., provided that, this requirement shall not limit the requirements of Order paragraph II herein.

IV.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of Kevin Trudeau’s Mega Memory System or any substantially similar product in or affecting commerce, shall not represent, in any manner, expressly or by implication, that such product will enable users to achieve a photographic memory. For the purposes of this Part, “substantially similar product” shall mean any product or program that is substantially similar in components, techniques, composition and properties.

V.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of Kevin Trudeau’s Mega Memory System or any substantially similar product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication that such product is effective in causing adults or children with learning disabilities or attention deficit disorder to substantially improve their memory, unless, at the time the representation is made, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation. For the purposes of this Part, “substantially similar product” shall mean any

product or program that is substantially similar in components, techniques, composition and properties.

VI.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of Dr. Callahan's Addiction Breaking System or any substantially similar product in or affecting commerce, shall not represent, in any manner, expressly or by implication, that:

A. Such product reduces an individual's compulsive desire to eat, leading to significant weight loss;

B. Such product reduces an individual's compulsive desire to eat, leading to significant weight loss without the need to diet or exercise; or

C. Such product cures addictions and compulsions, including but not limited to, smoking, eating and using alcohol or heroin.

For purposes of this Part, "substantially similar product" shall mean any product or program that is substantially similar in components, techniques, composition and properties.

VII.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of Jeanie Eller's Action Reading or any other product or program that provides instruction in any aspect of reading in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, concerning:

A. The extent to which individuals who use such product will learn to read, or

B. The success rate of individuals who use such product,

unless, at the time the representation is made, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

VIII.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product or program in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test, study, or research.

IX.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product or program in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the benefits, performance, or efficacy of such product, unless, at the time the representation is made, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

X.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product or program in or affecting commerce, shall not represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless:

A. At the time it is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or

B. Respondents disclose, 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.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

XI.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product or program in or affecting commerce, shall not create, produce, sell, or disseminate:

A. Any advertisement that misrepresents, directly or by implication, that it is not a paid advertisement;

B. Any television commercial or other video advertisement fifteen (15) minutes in length or longer or intended to fill a broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer that does not display visually, clearly and prominently, and for a length of time

sufficient for an ordinary consumer to read, within the first thirty (30) seconds of the advertisement and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

“THE PROGRAM YOU ARE WATCHING IS A PAID ADVERTISEMENT FOR [THE PRODUCT OR SERVICE].”

Provided that, for the purposes of this provision, the oral or visual presentation of a telephone number, e-mail address or mailing address for viewers to contact for further information or to place an order for the product or service shall be deemed a presentation of ordering instructions so as to require the display of the disclosure provided herein; or

C. Any radio commercial or other radio advertisement five (5) minutes in length or longer that does not broadcast, clearly and audibly, within the first thirty (30) seconds of the advertisement and immediately before each presentation of ordering instructions for the product or service or periodically through the program, but no more than approximately ten (10) minutes apart, the following disclosure:

“THE PROGRAM YOU ARE LISTENING TO IS A PAID ADVERTISEMENT FOR [THE PRODUCT OR SERVICE].”

Provided that, for the purposes of this provision, the presentation of a telephone number, e-mail address or mailing address for listeners to contact for further information or to place an order for the product or service shall be deemed a presentation of ordering instructions so as to require the announcement of the disclosure provided herein.

Provided further that, for a period of one (1) year from the date of entry of this order, the specific disclosure language of Subparts XI(B) and (C) shall not apply to any commercial or other video or audio advertisement produced prior to the date of entry of this order that contains a clear and prominent disclosure of the fact that the program is a paid advertisement or presentation within the first thirty (30) seconds of the commercial and immediately before each presentation of ordering instructions for the product or program that includes one or more of the following disclosures:

1. "The following is a paid commercial program brought to you by Mega Systems International, Inc."
2. "This is a paid advertisement for [the product or program]."
3. "The preceding has been a paid commercial program brought to you by Mega Systems International, Inc."

XII.

Nothing in this order shall prohibit respondents 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.

XIII.

IT IS FURTHER ORDERED that:

A. Respondent Mega Systems International, Inc., its successors and assigns, and respondent Jeffrey Salberg, shall pay to the Federal Trade Commission by electronic funds transfer the sum of five hundred thousand dollars (\$500,000) no later than fifteen (15) days after the date of service of this order. In the event of any default on any obligation to make payment under this Part, 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 of default, respondent Mega System, Inc., its successors and assigns, and respondent Jeffrey Salberg, shall be jointly and severally liable.

B. The funds paid by respondent Mega Systems International, Inc., its successors and assigns, and respondent Jeffrey Salberg, pursuant to subpart A above shall be paid into a redress fund administered by the FTC and shall be used to provide direct redress to purchasers of certain Mega Systems International, Inc.'s products. Payment to such persons represents redress and is intended to be compensatory in nature, and no portion of such payment shall be deemed a payment of any fine, penalty, or punitive assessment. If the FTC determines, in its sole discretion, that redress to purchasers is wholly or partially impracticable, any funds not so used shall be paid to the United States Treasury. Respondent Mega Systems International, Inc., its successors and assigns, and respondent Jeffrey Salberg, shall be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission.

XIV.

IT IS FURTHER ORDERED that respondent Mega Systems International, Inc., and its successors and assigns, and respondent Jeffrey Salberg shall, for five (5) 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.

XV.

IT IS FURTHER ORDERED that respondent Mega Systems International, Inc., and its successors and assigns, and respondent Jeffrey Salberg shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and shall deliver a copy of this order or a summary of this order in the form attached hereto as Exhibit A to all other 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 or Exhibit A. Exhibit A shall be printed in its entirety in an easily readable font in at least 12 point dark-colored type against a contrasting background and shall contain no additional language. Bracketed language in Exhibit A may be included at Mega Systems' option but is not required. Respondents shall deliver this order or Exhibit A 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.

XVI.

IT IS FURTHER ORDERED that respondent Mega Systems International, Inc. and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation 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 corporation; 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 corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

XVII.

IT IS FURTHER ORDERED that respondent Jeffrey Salberg, for a period of five (5) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his 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 shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

XVIII.

IT IS FURTHER ORDERED that respondent Mega Systems International, Inc., and its successors and assigns, and respondent Jeffrey Salberg 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 they have complied with this order.

XIX.

This order will terminate on June 8, 2018, 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.[\(1\)](#)

Donald S. Clark
Secretary

SEAL

ISSUED: June 8, 1998

Exhibit A

NOTICE TO MSI, INC'S EMPLOYEES AND AGENTS IN THE SALE OF MSI PRODUCTS

MSI has signed an agreement with the Federal Trade Commission that contains rules and standards about the marketing of products to consumers. With MSI's consent, the FTC has issued an order that gives that agreement the force of law. Of particular importance to you are things that can be said or not said to consumers about any product or service. This document contains several specific parts of the agreement and order that persons who deal directly with customers must know. It is important that you read it and understand it. When you sign it, you will be certifying not only your understanding, but your agreement to follow the requirements.

[It is important that MSI follow the agreement carefully to avoid future legal disputes, and you can be sure that we will make every effort to do so. This document is a way that we make sure that you also understand how important it is to follow it and that MSI takes the agreement and other aspects of dealing fairly with consumers very seriously. You could be disciplined for violations or even terminated for the most serious ones. However, this process is not intended to

put a burden on you or scare you. To the contrary, MSI puts a lot of effort into making sure its telemarketing scripts are legal and, if you follow them, you will have no problem. However, you should not make claims beyond the script that you are not totally sure of and, if you do not know the answer to a customer's question, you should simply say so, or seek help from a supervisor, but you should not just make one up.]

The following are excerpts from the order that we have promised to follow. [If you have any questions about this form, or the agreement terms, or what they mean, please ask (your supervisor or other person).] Items where numbers are skipped do not apply to you.

I. In connection with the sale of any herbal-based colon or body cleansing product, MSI shall not represent, in any manner, expressly or by implication, that:

A. Such product causes significant weight loss;

B. Such product prevents or cures illnesses, including but not limited to fatigue, headaches, depression, arthritis, insomnia, immune suppression, and premenstrual syndrome;

C. Such product will cleanse the body of harmful toxins; or

D. Such product will purify the body's blood supply.

II. In connection with the sale any hair growth product, MSI shall not represent, in any manner, expressly or by implication, that:

A. Such product will stop, prevent, cure, relieve, reverse or reduce hair loss;

B. Such product will promote the growth of hair where hair has already been lost; or

C. Such product is superior to Rogaine and Minoxidil in stopping, preventing, curing, relieving, reversing or reducing hair loss.

III. In connection with the sale of any hair care product or drug, MSI shall not represent, that any product promotes hair growth or prevents hair loss, unless the product has been approved by the Food and Drug Administration.

IV. In connection with the sale of Kevin Trudeau's Mega Memory System or any substantially similar memory enhancement product, MSI shall not represent, in any manner, expressly or by implication, that such product will enable users to achieve a photographic memory.

V. In connection with the sale of Kevin Trudeau's Mega Memory System or any substantially similar memory enhancement product, MSI shall not make any representation, in any manner, expressly or by implication that such product is effective in causing adults or children with learning disabilities or attention deficit disorder to substantially improve their memory, unless MSI possesses and relies upon competent and reliable evidence that substantiates the representation.

VI. In connection with the sale of any addiction cure product, MSI shall not represent, in any manner, expressly or by implication, that:

A. Such product reduces an individual's compulsive desire to eat, leading to significant weight loss;

B. Such product reduces an individual's compulsive desire to eat, leading to significant weight loss without the need to diet or exercise; or

C. Such product cures addictions and compulsions, including but not limited to, smoking, eating and using alcohol or heroin.

VII. In connection with the sale of Jeanie Eller Action Reading or any other product or program that provides instruction in any aspect of reading, MSI shall not make any representation, in any manner, expressly or by implication, concerning:

A. The extent to which individuals who use such product will learn to read, or

B. The success rate of individuals who use such product,

unless, at the time the representation is made, MSI possesses and relies upon competent and reliable evidence that substantiates the representation.

VIII. In connection with the sale of any product or program, MSI shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test, study, or research.

IX. In connection with the sale of any product or program, MSI shall not make any representation, in any manner, expressly or by implication, about the benefits, performance, or efficacy of such product, unless, at the time the representation is made, MSI possesses and relies upon competent and reliable evidence that substantiates the representation.

X. In connection with the sale of any product or program, MSI shall not represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless:

A. At the time it is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or

B. Respondents disclose, 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.

Nothing contrary to the disclosure shall be stated.

On this ___ day of _____, _____, I have read and understood this document and agree to follow it. [I am signing this voluntarily and understand that I could be disciplined, even terminated, for serious violations.]

_____ Employee _____

[_____ Witness _____]

Endnote

(1) Prior to leaving the Commission, former Commissioner Azcuenaga registered a vote in the affirmative for this Decision & Order.