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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF THE ADMINISTRATIVE LAW JUDGE

In the Matter of

HEALTH RESEARCH LABORATORIES, LLC,
a limited liability company,

WHOLE BODY SUPPLEMENTS, LLC
a limited liability company, and

KRAMER DUHON,
individually and as an officer of HEALTH
RESEARCH LABORATORIES, LLC and
WHOLE BODY SUPPLEMENTS, LLC

DOCKET NO. 9397

**RESPONDENTS' MOTION FOR ACCEPTANCE OF CONTESTED STIPULATED
CEASE-AND-DESIST ORDER**

Respondents Health Research Laboratories, LLC (“HRL”), Whole Body Supplements, LLC (“WBS”) and Kramer Duhon (collectively, “Respondents”) file this Motion for Acceptance of Contested Stipulated Cease-and-Desist Order.

REASON FOR STIPULATION

The Commission filed this Administrative Complaint alleging that Respondents have “disseminated or [have] caused to be disseminated advertising and promotional materials”¹ for four supplements that the Commission contends were “not substantiated at the time the representations were made.”² Because Respondents ceased all advertising

¹ See Complaint, ¶¶ 7, 9, 11 and 13.

² See Complaint, ¶¶ 15, 17, 19, and 21.

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and promotion of these supplements more than a year ago and have no intention of disseminating any advertising or promotional materials for the supplements in the future, Respondents are filing this Stipulation and requesting that the Administrative Law Judge and the Commission accept this Stipulation.

STIPULATED CEASE-AND-DESIST ORDER

Respondents hereby stipulate and agree to the following:

Respondents shall “cease and desist”³ from disseminating or causing to be disseminated all advertising or promotional materials for all dietary supplement products referenced in the Complaint (i.e., Black Garlic Botanicals, BG18, The Ultimate Heart Formula, and Neupathic), as well as any substantially similar products.

Respondents shall cease and desist from selling or causing to be sold all dietary supplement products referenced in the Complaint (i.e., Black Garlic Botanicals, BG18, The Ultimate Heart Formula, and Neupathic), as well as any substantially similar products.

This stipulation is not a settlement agreement and it is submitted without condition or concession from the FTC. This stipulation uses the exact language and terms of the Complaint and is intended to be interpreted by reference to the Complaint.

CEASE AND DESIST UNDER THE FTC ACT

Section 5 of the FTC Act authorizes the FTC to initiate an administrative proceeding to obtain a cease-and-desist order against an unfair or deceptive act or practice. *See* 15 U.S.C. § 45(b). Because Respondents have already ceased the alleged unfair or deceptive act or practice, Respondents are agreeing to relief authorized by

³ The terms “cease and desist” are intended to have the same meaning and scope as such terms are used in Sections 5(a) and 12 of the FTC Act, 15 U.S.C. § 45(a) and 52.

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Section 5 of the FTC – the ceasing and desisting of the acts and practices alleged in the Complaint.

As noted in the Certificate of Conference and the attached Exhibit A, Respondents conferred with Complaint Counsel prior to filing this Motion. Complaint Counsel opposes the requested relief. Respondents modified the Motion in response to two of Complaint Counsel’s concerns, but Complaint Counsel advised that they still oppose the Motion. *See Ex. A.*

CONCLUSION AND PRAYER

Respondents request that the Administrative Law Judge and/or the Commission⁴ enter a binding Order that provides as follows:

Pursuant to the stipulation requested by Respondents, Respondents shall cease and desist from disseminating or causing to be disseminated all advertising or promotional materials for Black Garlic Botanicals, BG18, The Ultimate Heart Formula, and Neupathic, as well as any substantially similar products.

Pursuant to the Respondents’ request, Respondents shall cease and desist from selling or causing to be sold all dietary supplement products referenced in the Complaint (i.e., Black Garlic Botanicals, BG18, The Ultimate Heart Formula, and Neupathic), as well as any substantially similar products.

Respondents also request such other relief to which Respondents may justly be entitled.

⁴ Pursuant to 16 C.F.R. § 3.42(c)(6) & (c)(8) and (c)(12), the Administrative Law Judge has the power to grant this Motion and entered the requested Cease-and-Desist Order. However, to the extent that the Administrative Law Judge believes that he does not have the authority to enter the requested Order, Respondents request that Administrative Law Judge refer the Motion to the Commission for determination.

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Dated: January 13, 2021

Respectfully submitted,

REESE MARKETOS LLP

By: /s/ Joel W. Reese

Joel W. Reese
Texas Bar No. 00788258
joel.reese@rm-firm.com
Joshua M. Russ
Texas Bar No. 24074990
josh.russ@rm-firm.com

750 N. Saint Paul St., Suite 600
Dallas, TX 75201-3201
Telephone: (214) 382-9810
Facsimile: (214) 501-0731

ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF CONFERENCE

I hereby certify that on January 7 and 8, 2021, I conferred with Complaint Counsel for the FTC, Elizabeth Averill and Jonathan Cohen, regarding this Motion. Complaint Counsel advised me that the FTC OPPOSES the requested relief and Motion. Attached to this Motion as Exhibit A is a copy of the discussion with Complaint Counsel regarding this Motion. A draft copy of the Motion was provided to Complaint Counsel. In response to Complaint Counsel's concern that the Stipulated Order (a) would not include "virtually identical" products to the ones in the Complaint; and (b) would not stop "ongoing sales," the draft motion was revised. The FTC still opposed the Motion and refused to provide alternate language. *See* Ex. A (Email communications from January 6, 2021 through January 8, 2021 between Joel W. Reese and Jonathan Cohen).

/s/ Joel W. Reese

Joel W. Reese

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CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2021, I filed the foregoing document electronically using the FTC's E-Filing system, which will send notification to:

April J. Tabor
Acting Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

Elizabeth Averill
eaverill@ftc.gov

Jonathan Cohen
jcohen2@ftc.gov

COMPLAINT COUNSEL

/s/ Joel W. Reese
Joel W. Reese

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EXHIBIT A

From: Cohen, Jonathan jcohen2@ftc.gov
Subject: RE: FTC v. HRL; Docket 9397; Motion to Accept Stipulation
Date: January 8, 2021 at 5:52 PM
To: Joel Reese joel.reese@rm-firm.com
Cc: Averill, Elizabeth eaverill@ftc.gov, Russ Josh josh.russ@rm-firm.com

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We're not sure how drafting specific language for you will help. Making the proposal marginally more comprehensive won't address its myriad procedural and substantive problems (some of which we've raised with you). You could look at the Notice of Contemplated Relief attached to the Complaint for a general sense of what a proper cease-and-desist order might contain, but ultimately, we won't draft cease-and-desist language for you unless we're settling the case (and you've emphasized to us that this proposal isn't even a partial settlement).

Furthermore, your clients can still make jurisprudential or statutory arguments to challenge the Complaint by sufficiently asserting, in accordance with applicable law, that they will accept the Contemplated Relief or elements thereof. Those arguments lack merit for many reasons, but regardless, your clients can still advance them without everyone extensively briefing—and both the Court and Commission needlessly adjudicating—the propriety of a non-settlement unilateral voluntary cessation of, or voluntary acquiescence to, certain things.

As an aside, it's unclear whether we could enforce a nonstandard, self-imposed cease-and-desist order that: (i) we haven't requested; (ii) we don't want (or at least, that we don't want if divorced from a proper settlement or litigated result); and (iii) for which we provided no consideration (or maybe for which you provided no consideration, which is a little funky to think about, but you're not providing us anything we want in exchange for agreeing to something you want). Maybe we could enforce it—it's not something we've considered—but there's still no difference between sufficiently establishing to the Court that you'll accept certain things through a brief or other submission, and attempting to reach the same place through this proposal.

Anyway, we remain concerned that this proposal's net effect will be that both parties end up where they are now, except after extensive briefing and delay.

As always, happy to talk further.

Have a good weekend,

Jonathan Cohen

Enforcement Division | Bureau of Consumer Protection | Federal Trade Commission
600 Pennsylvania Avenue, N.W., CC-9528 Washington, D.C. 20580
(202) 326-2551 | jcohen2@ftc.gov

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From: Joel Reese <joel.reese@rm-firm.com>
Sent: Thursday, January 7, 2021 7:40 PM
To: Cohen, Jonathan <jcohen2@ftc.gov>
Cc: Averill, Elizabeth <eaverill@ftc.gov>; Russ Josh <josh.russ@rm-firm.com>
Subject: Re: FTC v. HRL; Docket 9397; Motion to Accept Stipulation

Jonathan:

Thank you for your email. We may not be able to resolve all issues regarding the motions, but I would like to resolve as many issues as possible.

1. This Administrative Complaint discusses four supplements. If FTC is concerned that the stipulation would not cover virtually identical supplements, is there any language that the FTC could propose that would alleviate this concern?
2. If the FTC is concerned about the sale of the supplements, is there language that the FTC can propose that would cover the sale of the supplements?

Please advise.

Reese Marketos LLP

Joel W. Reese

750 N. Saint Paul St., Suite 600
Dallas, Texas 75201 | Direct: (214) 382-9801 | Main: (214) 382-9810
www.rm-firm.com

On Jan 7, 2021, at 5:38 PM, Cohen, Jonathan <jcohen2@ftc.gov> wrote:

We've given this some additional consideration. Of course, we welcome your clients' willingness to stop advertising the potentially harmful products at issue. And your clients can certainly memorialize their voluntary cessation in various ways other than through this proposed stipulation. However, the proposed stipulation still permits—among other things—ongoing sales of the potentially dangerous products at issue, and advertising virtually identical ones. In fact, the stipulation would give us almost none of the important relief the

Complaint seeks.

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There are other problems with the proposal, not all of which we'll identify here. As we mentioned yesterday, though, we don't understand what procedural mechanism you propose to use to file this motion, or what substantive authority the Court or Commission would have to grant it.

We disagree about what the decision to voluntarily cease advertising certain products means, but we recognize that, from your perspective, this decision is important to your defense. But filing your proposal without our consent will simply require us to brief its procedural and substantive infirmities—potentially twice, once before the Court and again before the Commission—when you could make the same point more quickly and cheaply. You've already asserted in your answer that your clients no longer market the exact products the Complaint identifies, and you've already told the Court that you'll accept a restriction preventing you from resuming that advertising, so it's not clear how this proposal moves anything along.

Anyway, we can't consent. If you think it would be helpful to talk further, just let us know, and we'll find a time.

Jonathan Cohen

Enforcement Division | Bureau of Consumer Protection | Federal Trade Commission

600 Pennsylvania Avenue, N.W., CC-9528 Washington, D.C. 20580

(202) 326-2551 | jcohen2@ftc.gov

From: Joel Reese <joel.reese@rm-firm.com>

Sent: Thursday, January 7, 2021 3:13 PM

To: Cohen, Jonathan <jcohen2@ftc.gov>

Cc: Averill, Elizabeth <eaverill@ftc.gov>

Subject: Re: FTC v. HRL; Docket 9397; Motion to Accept Stipulation

Ok. Thanks. No problem.

Reese Marketos LLP

Joel W. Reese

750 N. Saint Paul St. Suite 600

750 N. Saint Paul St., Suite 600
Dallas, Texas 75201 | Direct: (214) 382-9801 | Main: (214) 382-9810
www.rm-firm.com

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On Jan 7, 2021, at 2:00 PM, Cohen, Jonathan <jcohen2@ftc.gov> wrote:

I'm swamped; we'll get back to you with 24 hours of when you sent it to us.

Or sooner.

Jonathan Cohen

Enforcement Division | Bureau of Consumer Protection | Federal Trade Commission
600 Pennsylvania Avenue, N.W., CC-9528 Washington, D.C. 20580
(202) 326-2551 | jcohen2@ftc.gov

From: Joel Reese <joel.reese@rm-firm.com>

Sent: Thursday, January 7, 2021 2:34 PM

To: Averill, Elizabeth <eaverill@ftc.gov>; Cohen, Jonathan <jcohen2@ftc.gov>

Subject: Re: FTC v. HRL; Docket 9397; Motion to Accept Stipulation

Liz and Jonathan:

Does the FTC oppose or agree to the requested relief and motion?

Reese Marketos LLP

Joel W. Reese

750 N. Saint Paul St., Suite 600
Dallas, Texas 75201 | Direct: (214) 382-9801 | Main: (214) 382-9810
www.rm-firm.com

On Jan 6, 2021, at 7:30 PM, Joel Reese <joel.reese@rm-firm.com> wrote:

Liz and Jonathan:

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Attached is a DRAFT Motion for Acceptance of Stipulated Cease-and-Desist Order.

As I requested on January 4, please tell me if the FTC agrees to, or opposes, the requested relief and motion.

Reese Marketos LLP

Joel W. Reese

750 N. Saint Paul St., Suite 600

Dallas, Texas 75201 | Direct: (214) 382-9801 | Main: (214)

382-9810

www.rm-firm.com

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