



WARNING LETTER

Date: May 14, 2020

TO: ben@benjaminmcevoy.com – Benjamin McEvoy

CC: regulatory-inquiries@amazon.com – Amazon Associates Program

RE: Unapproved and Misbranded Products Related to Coronavirus Disease 2019 (COVID-19)

This is to advise you that the United States Food and Drug Administration (FDA) and the Federal Trade Commission (FTC) reviewed your website at the Internet address www.benjaminmcevoy.com on May 6, 2020 and May 12, 2020, respectively. While reviewing your website, FDA observed that you participate in the Amazon Associates program. As an Amazon associate, you earn commissions by promoting the sale of products including dietary supplements (hereinafter referred to as “Amazon associate products”)¹ with claims on your website representing or implying that the products can mitigate, prevent, treat, diagnose, or cure COVID-19² in people. Based on our review, these claims cause the Amazon associate products purchased through links on your website to be unapproved new drugs under section 505(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act), 21 U.S.C. § 355(a). Furthermore, these products are misbranded drugs under section 502 of the FD&C Act, 21 U.S.C. § 352. Causing the introduction or delivery for introduction of these products into interstate commerce is prohibited under sections 301(a) and (d) of the FD&C Act, 21 U.S.C. § 331(a) and (d). In addition, it is a prohibited act under section 301(k) of the FD&C Act, 21 U.S.C. § 331(k), to do any act with respect to a drug, if such act is done while the drug is held for sale after shipment in interstate commerce and results in the drug being misbranded.

There is currently a global outbreak of respiratory disease caused by a novel coronavirus that has been named “severe acute respiratory syndrome coronavirus 2” (SARS-CoV-2). The disease caused by the virus has been named “Coronavirus Disease 2019” (COVID-19). On January 31, 2020, the Department of Health and Human Services (HHS) issued a declaration of a public health emergency related to COVID-19 and mobilized the Operating Divisions of HHS.³ In addition, on March 13, 2020, the President declared a national emergency in response to COVID-19.⁴ Therefore, FDA is taking urgent measures to protect consumers from certain products that, without approval or authorization by FDA, claim to mitigate, prevent, treat, diagnose, or cure COVID-19 in people. As described above, you promote and participate in the sale of products for use in mitigating, preventing, treating, diagnosing, or curing COVID-19 in people, as evidenced

¹ Specifically, your website contains links that direct consumers to the Amazon.com website to purchase the Amazon products you promote. As described in the Amazon Associates Program Fee Statement (<https://affiliate-program.amazon.com/help/operating/policies/#Associates Program Fee Statement>), accessed April 22, 2020), Amazon calculates your commission or “fee” by using your website’s Amazon associate ID to track sales to consumers who are redirected to Amazon.com by clicking one of the links on your website.

² As explained in the next paragraph, there is currently an outbreak of a respiratory disease named “Coronavirus Disease 2019” (COVID-19).

³ Secretary of Health and Human Services Alex M. Azar II, Determination that a Public Health Emergency Exists. Jan. 31, 2020. (Accessible at <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx>). The declaration was renewed for another 90 days on April 21, 2020. Secretary of Health and Human Services Alex M. Azar II, Renewal of Determination that a Public Health Emergency Exists. April 21, 2020. (Accessible at <https://www.phe.gov/emergency/news/healthactions/phe/Pages/covid19-21apr2020.aspx>).

⁴ President Donald J. Trump, Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19). Mar. 13, 2020. (Accessible at <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>).

by the claims from your website quoted below. We request that you immediately cease promoting and participating in the sale of such unapproved and unauthorized products for the mitigation, prevention, treatment, diagnosis, or cure of COVID-19.

Some examples of the claims on your website <https://benjaminmcevoy.com/top-7-supplements-boosting-immune-system/> that establish the intended use of your Amazon associate products and misleadingly represent them as safe and/or effective for the treatment or prevention of COVID-19 include:

- “Top 7 Supplements for Boosting your Immune System . . . With global panic around coronavirus at an all time high, now is the time to improve your health. You can do that by . . . adding in smart supplementation. . . . These are supplements I have taken and benefited from for years. They have been studied endlessly, and could be promising additions to your supplement stack if you’re worried about coronavirus”
- “NAC (N-acetylcysteine) [Amazon associate link] . . . It’s early days still in regards to NAC and coronavirus, but seeing as the supplement has a wide range of immune-boosting properties, this makes it a sensible investment and my top recommendation. You can learn more and buy NAC here [Amazon associate link].”
- “Zinc [Amazon associate link] . . . Supplementing with zinc picolinate is extremely wise, especially in these coronavirus times, as it is a mineral with power immune-boosting effects. Zinc has been . . . found to reduce the severity and duration of colds, flus, infections, wounds, and many other diseases. . . . You can learn more and buy zinc here [Amazon associate link].”
- “Vitamin C [Amazon associate link] . . . I personally haven’t taken a vitamin C supplement for any extended period of time, only choosing to utilize one when I actually get sick . . . But you may wish to add a vitamin C supplement to your arsenal in this [sic] COVID-19 times, especially if you don’t get much in your diet. . . . You can learn more and buy vitamin C here [Amazon associate link].”
- “Vitamin D [Amazon associate link] . . . even if coronavirus wasn’t spreading throughout the world right now, you would benefit greatly from vitamin D supplementation. It would . . . make your innate and adaptive immune responses more robust. If you’re deficient in vitamin D, you’re way more susceptible to disease and infection and less equipped to fight them off valiantly. Vitamin D has also been shown to reduce odds of developing a respiratory infection by roughly 42%. Take Vitamin D every day. . . . You can learn more and buy vitamin D here [Amazon associate link].”
- “Magnesium [Amazon associate link] . . . Magnesium citrate is another mineral that many people are deficient in, and deficiency is linked with reduce [sic] immune response and increased susceptibility to viral infections. . . . You can learn more and buy magnesium here [Amazon associate link].”
- “Ashwaghandha [Amazon associate link] . . . Ashwaghandha is an adaptogen . . . which has many studied but yet to be understood positive effects on the immune system. Adaptogens reduce cortisol levels and improve immune response . . . You can learn more and buy ashwaghandha here [Amazon associate link].”
- “Echinacea [Amazon associate link] has some promising studies that demonstrate the supplement to have antiviral properties against certain coronaviruses. . . . You can learn more and buy echinacea here [Amazon associate link].”
- “Those are my personal supplement recommendations based on years of supplementation for improved immune response.”

You should take immediate action to correct the violations cited in this letter. This letter is not meant to be an all-inclusive list of violations that exist in connection with your products or operations. It is your responsibility to ensure that your activities as an Amazon associate do not violate the FD&C Act. We advise you to review your websites and other labeling and promotional materials to ensure that you are not misleadingly representing your Amazon associate products as safe and effective for a COVID-19-related use for which they have not been approved by FDA and that you do not make claims that misbrand the products in violation of the FD&C Act. **Within 48 hours, please send an email to COVID-19-Task-Force-CDER@fda.hhs.gov** describing the specific steps you have taken to correct these violations. Include an explanation of each step being taken to prevent the recurrence of violations, as well as copies of related

documentation. Failure to immediately correct the violations cited in this letter may result in legal action, including, without limitation, seizure and injunction.

FDA is advising consumers not to purchase or use certain products that have not been approved, cleared, or authorized by FDA and that are being misleadingly represented as safe and/or effective for the treatment or prevention of COVID-19. Your firm will be added to a published list on FDA's website of firms and websites that have received warning letters from FDA concerning the sale or distribution of COVID-19 related products in violation of the FD&C Act. This list can be found at <http://www.fda.gov/consumers/health-fraud-scams/fraudulent-coronavirus-disease-covid-19-products>. Once you have taken corrective actions to cease promoting the sale of unapproved and unauthorized products for the mitigation, prevention, treatment, diagnosis, or cure of COVID-19, and such actions have been confirmed by the FDA, the published list will be updated to indicate that your firm has taken appropriate corrective action.

If you cannot complete corrective action within 48 hours, state the reason for the delay and the time within which you will complete the corrections. If you believe that your Amazon associate products and activities are not in violation of the FD&C Act, include your reasoning and any supporting information for our consideration.

Please direct any inquiries to FDA at COVID-19-Task-Force-CDER@fda.hhs.gov.

In addition, it is unlawful under the FTC Act, 15 U.S.C. 41 et seq., to advertise that a product can prevent, treat, or cure human disease unless you possess competent and reliable scientific evidence, including, when appropriate, well-controlled human clinical studies, substantiating that the claims are true at the time they are made. For COVID-19, no such study is currently known to exist for the products identified above. Thus, any coronavirus-related prevention or treatment claims regarding such products are not supported by competent and reliable scientific evidence. You must immediately cease making all such claims. Violations of the FTC Act may result in legal action seeking a Federal District Court injunction and an order may require that you pay back money to consumers. Within 48 hours, please send an email to Richard Cleland, Assistant Director of the FTC's Division of Advertising Practices, via electronic mail at rcleland@ftc.gov describing the specific actions you have taken to address the FTC's concerns. If you have any questions regarding compliance with the FTC Act, please contact Mr. Cleland at 202-326-3088.

Sincerely,

Sincerely,

Donald D. Ashley
Director
Office of Compliance
Center for Drug Evaluation and Research
Food and Drug Administration

Richard A. Quaresima
Acting Associate Director
Division of Advertising Practices
Federal Trade Commission