



June 3, 2016

**VIA OVERNIGHT MAIL AND EMAIL**

Jessica Rich, Director, Bureau of Consumer Protection  
James A. Kohm, Associate Director, Division of Enforcement  
Federal Trade Commission  
600 Pennsylvania Ave. N.W.  
Washington, D.C. 20580



Re: Violations of Decision and Order *In the Matter of I-Health, Inc. and Martek Biosciences Corp.*, Docket No. C-4486

Dear Ms. Rich and Mr. Kohm:

As you know, the Federal Trade Commission entered an Order against i-Health, Inc. and Martek Biosciences Corporation (“Respondents”) in 2014 regarding their marketing of the supplement BrainStrong Adult. That Order prohibits Respondents directly or through any corporation, partnership, subsidiary, division, trade name, or other device, from, among other things, claiming, expressly or by implication, that any dietary supplement promoted to prevent cognitive decline or improve memory, or containing docosahexaenoic acid (DHA), can improve memory in adults or prevent cognitive decline in adults unless the representation is non-misleading and, at the time of making such representation, Respondents possess and rely upon competent and reliable scientific evidence to substantiate that the representation is true.<sup>1</sup>

Truth in Advertising, Inc. (“TINA.org”) has recently learned from the Center for Science in the Public Interest that Martek Biosciences, through its successor, DSM Nutritional Products, LLC, is currently in violation of this 2014 Order. Specifically, DSM Nutritional Products manufactures and supplies the supplement known as *life’sDHA*<sup>TM</sup>, which, when sold by CVS Pharmacy, goes by the name Algal-900 DHA.<sup>2</sup>

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<sup>1</sup> FTC Decision and Order *In the Matter of I-Health, Inc. and Martek Biosciences Corp.*, Docket No. C-4486.

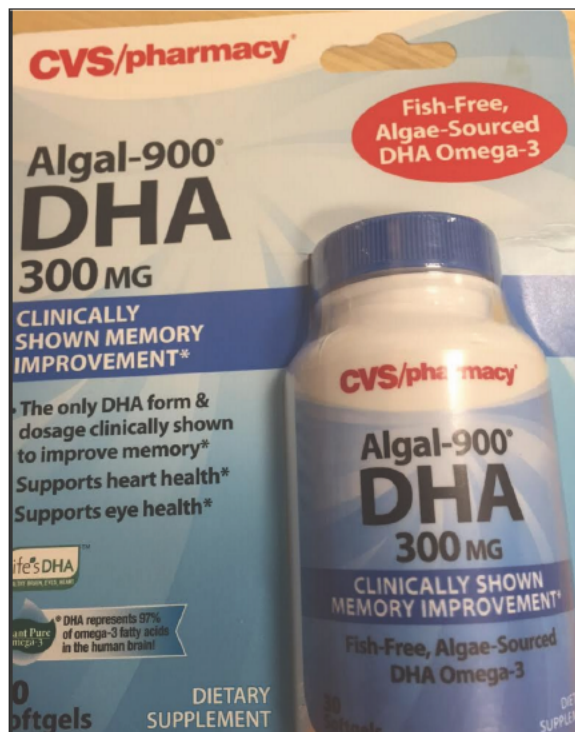
<sup>2</sup> See

[http://www.dsm.com/markets/foodandbeverages/en\\_US/products/nutritional-lipids/life-dha.html](http://www.dsm.com/markets/foodandbeverages/en_US/products/nutritional-lipids/life-dha.html);  
<https://www.cvs.com/shop/vitamins/health-goals/memory-support/cvs-health-algal-900-dha-softgels-prodid-1070656?skuId=474135>.

CVS Pharmacy is currently selling Algal-900 DHA under a label that states “Memory Support,” implying the supplement can improve memory and/or prevent cognitive decline, in violation of the 2014 Order. Further, the product bore a label making the express claim “clinically shown to improve memory” up until December 2015.<sup>3</sup>



[CVS’s Algal-900 DHA photographed by TINA.org on June 1, 2016.]



[Image of previous label for Algal-900 DHA used up until December 2015]

<sup>3</sup> See *Aliano v. CVS Pharmacy, Inc.*, E.D.N.Y., No. 16-2624, Stipulation of Settlement, ¶ 3.3 (“In a process that culminated in December 2015, before the filing of this Action, CVS created new labels for the Algal-900 DHA Product and ceased receiving product with the old labels. The new labels do not use the statements “clinically shown to improve memory” or “clinically shown memory improvement.”)

In addition to these violations of the 2014 Order, CVS is now seeking preliminary approval of the above mentioned settlement agreement, which, if approved, would condone continuing violations of the Order because the injunctive relief allows for inappropriate flexibility in the way DSM Nutritional DHA products are marketed. (A full explanation of the deficiencies with the proposed agreement is laid out in TINA.org’s opposition to preliminary approval, which is available at <https://www.truthinadvertising.org/wp-content/uploads/2016/06/Opposition-to-Settlement-Letter-to-Judge-Go.pdf>.) The first lawsuit filed against CVS Pharmacy over its marketing of Algal-900 DHA (filed by the Center for Science in the Public Interest) has not reached a settlement agreement and is still pending. *Worth v. CVS Pharmacy, Inc.*, E.D.N.Y., Docket No. 16-cv-498.

In addition, DSM Nutritional Products currently markets a product called BrainStrong Memory Support (containing Ginkgo biloba and Choline), which, as the name suggests, is promoted as able to help with memory and prevent cognitive decline.<sup>4</sup> The marketing for this supplement also violates the 2014 Order by implying it can improve memory and/or prevent cognitive decline.

**brainstrong**  
MEMORY SUPPORT

WHAT IT IS   HOW IT WORKS   WHERE TO BUY   GET A COUPON

## BRAINSTRONG® MEMORY SUPPORT. SUPPORTING BRAIN HEALTH IS EASY AS 1, 2, 3.

BrainStrong Memory Support nourishes the brain in a whole new way.\* Forget the rest, our exclusive triple action formula is a safe, drug-free blend of Ginkgo biloba and Choline.

This unique formula contains individually scientifically studied ingredients, and is designed to address the three key areas of brain health - memory, focus and mental sharpness.\* Plus, it gives support to your brain's communication network.\* But that's not all. With BrainStrong Memory Support, you'll benefit from healthy blood flow and circulation to help maintain overall brain health.\*

That means you can help support a higher level of productivity and focus in both your personal and professional life.\* Because when your brain is performing at its highest level, you can too.\*

**Why take BrainStrong Memory Support?**

NEW Triple Action Brain Health Formula  
**brainstrong**  
MEMORY SUPPORT  
ONLY ONE PER DAY!  
Helps support a healthy memory  
Supports SHARPNESS, MENTAL FOCUS, CONCENTRATION

<sup>4</sup> See [http://brainstrongmemory.com/what-it-is?gclid=CjwKEAjsr-6BRCLvrj785rbhTsSJADjUxakJy1Xll-bHTXe\\_xOmZfEpMAkr15csXL1Ccoi2mYHaDRoC8R\\_w\\_wcB; http://www.dsmihealth.com/](http://brainstrongmemory.com/what-it-is?gclid=CjwKEAjsr-6BRCLvrj785rbhTsSJADjUxakJy1Xll-bHTXe_xOmZfEpMAkr15csXL1Ccoi2mYHaDRoC8R_w_wcB;http://www.dsmihealth.com/). Though BrainStrong Memory Support, which seems to have replaced BrainStrong Adult (the product that was specifically at issue in the 2014 FTC action against i-Health, Inc. and Martek Bioscience, Corp.), does not contain DHA, it nonetheless is covered by the 2014 Order as a dietary supplement promoted to prevent cognitive decline and/or improve memory.

It is also worth noting that, as of today, June 3, 2016, BrainStrong Adult is still listed on third party websites and promoted as clinically shown to improve memory. For example, the largest retailer in the world, Walmart, still has a listing for the product showing the now banned product packaging. See <http://www.walmart.com/ip/Brainstrong-Adult-Natural-Daily-DHA-Supplement-900mg-serving-90ct/16608832>.

If you have any questions or need further information, please do not hesitate to contact us.

Sincerely,



Laura Smith, Esq.  
Legal Director  
Truth in Advertising, Inc.



Bonnie Patten, Esq.  
Executive Director  
Truth in Advertising, Inc.

Cc: Thomas M. Moriarty, General Counsel, CVS Health  
Cees Los, General Counsel, DSM Nutritional Products, LLC  
Leon Bechet, Associate General Counsel, Wal-Mart Stores, Inc.