

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Federal Trade Commission,

Plaintiff,

vs.

NourishLife, LLC, and Mark Nottoli,
individually and as an officer of NourishLife,
LLC,

Defendants.

Case Number : 15-cv-93

Judge Elaine E. Bucklo

STIPULATED ORDER FOR
PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF AS TO DEFENDANTS
NOURISHLIFE, LLC AND
MARK NOTTOLI

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”) for a permanent injunction and other equitable relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b). The Commission and Defendants NourishLife, LLC and Mark Nottoli stipulate to the entry of this Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants participated in deceptive acts or practices in violation of Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45 and 52, in connection with the labeling, advertising, marketing, distribution, and sale of children’s dietary supplements that

purportedly maintain and develop speech and language capacity, including products marketed and sold under the brand names “speak” and “speak smooth.”

3. Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction.

4. Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney fees.

5. Defendants and the Commission waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

1. “Corporate Defendant” means NourishLife, LLC (“NourishLife”), and its successors and assigns.
2. “Individual Defendant” means Mark Nottoli.
3. “Defendants” means the Individual Defendant and the Corporate Defendant, individually, collectively, or in any combination.
4. “Drug” (as defined in Section 15 of the FTC Act, 15 U.S.C. § 55) means:
 - a. Articles recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;
 - b. Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

c. Articles (other than food) intended to affect the structure or any function of the body of man or other animals; and

d. Articles intended for use as a component of any article specified in clause (a), (b), or (c); but does not include devices or their components, parts, or accessories.

5. “Advertising” and “promotion” mean any written or verbal statement, illustration, or depiction designed to effect a sale or create interest in the purchasing of products or services.

6. “Clearly and conspicuously” means:

a. In print communications (*e.g.*, printed publications or words displayed on the screen of an electronic device), the disclosure shall be presented in a manner that stands out from the accompanying text, so that it is sufficiently prominent, because of its type size, contrast, location, or other characteristics, for an ordinary consumer to notice, read, and comprehend it; and

b. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), the disclosure shall be presented simultaneously in both the audio and the visual portions of the communication. In any communication presented solely through visual or audio means, the disclosure shall be made through the same means through which the communication is presented. In any communication disseminated by means of an interactive electronic medium, such as software, the Internet, or online services, the disclosure must be unavoidable. Any audio disclosure shall be presented in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual disclosure shall be presented in a manner that stands out in the context in which it is presented, so that it is sufficiently prominent, due to its size and shade,

contrast to the background against which it appears on the screen, and its location, for an ordinary consumer to notice, read, and comprehend it.

Regardless of the medium used to disseminate it, the disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any communication or within any document linked or referenced therein.

7. “Close Proximity” means on the same print page, webpage, or other electronic page, and proximate to the triggering representation, and not accessed or displayed through hyperlinks, pop-ups, interstitials, or other means.

8. “Commerce” means as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

9. “Covered Product” means any dietary supplement, food, or drug, including, but not limited to, any Speak product.

10. “Covered Product Formulation” means any active ingredient or combination of active ingredients in any Covered Product.

11. “Continuity Program” means any program in which, subsequent to the consumer’s agreement to participate in the program, a seller automatically ships goods to a consumer, or automatically renews the agreement to purchase goods and charges the consumer, *unless* the consumer notifies the seller within a certain time period not to ship such product, or cancels the agreement prior to renewal.

12. “Dietary supplement” means:

a. Any product labeled as a dietary supplement or otherwise represented as a dietary supplement; or

b. Any pill, tablet, capsule, powder, softgel, gelcap, liquid, or other similar form containing one or more ingredients that is a vitamin, mineral, herb or other botanical, amino acid, probiotic, or other dietary substance for use by humans to supplement the diet by increasing the total dietary intake, or a concentrate, metabolite, constituent, extract, or combination of any ingredient described above, that is intended to be ingested, and is not represented to be used as a conventional food or as a sole item of a meal or the diet.

13. “Endorsement” (as defined in 16 C.F.R. § 255) means any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual or the name or seal of an organization) that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser. The party whose opinions, beliefs, findings, or experience the message appears to reflect will be called the endorser and may be an individual, group, or institution.

14. “Essentially Equivalent Product” means a product that contains the identical ingredients, except for inactive ingredients (e.g., binders, colors, fillers, excipients), in the same form and dosage, and with the same route of administration (e.g., orally, sublingually), as the Covered Product; provided that the Covered Product may contain additional ingredients if reliable scientific evidence generally accepted by experts in the relevant field indicates that the amount and combination of additional ingredients is unlikely to impede or inhibit the effectiveness of the ingredients in the Essentially Equivalent Product.

15. “Food” (as defined in Section 15 of the FTC Act, 15 U.S.C. § 55) means:

a. Articles used for food or drink for man or other animals;

- b. Chewing gum; and
- c. Articles used for components of any such article.

16. “Material connection” means any relationship that materially affects the weight or credibility of any endorsement and that would not reasonably be expected by consumers.

17. “Person” means a natural person, an organization, or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

18. “Pre-existing Speak Continuity Program” means any continuity program, such as Defendants’ “Monthly Saver Program,” in which any Defendant automatically ships any Speak product to a consumer, or automatically renews an agreement to purchase any Speak product and charges the consumer, where a consumer agreed to participate in such continuity program prior to the date of entry of this Order.

19. “Reliably Reported,” for a human clinical test or study (“test”), means a report of the test has been published in a peer-reviewed journal, and such published report provides sufficient information about the test for experts in the relevant field to assess the reliability of the results.

20. The term “including” in this Order means “including without limitation.”

21. The terms “and” and “or” in this Order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

22. “Speak product” means any children’s dietary supplement containing a combination of omega 3 and 6 fatty acids and vitamin E, including but not limited to any dietary supplement marketed or sold under the brand names “speak,” “speak smooth,” and “SpeechNutrients.”

ORDER

I

PROHIBITED REPRESENTATIONS: COMMUNICATION- AND BEHAVIOR-RELATED CLAIMS

IT IS ORDERED that Defendants, Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, are hereby permanently restrained and enjoined from making, or assisting others in making, directly or by implication, including through the use of a product name, endorsement, depiction, or illustration, any representation that:

A. Such product will develop or maintain normal, healthy speech or language capacity in children, including children who have apraxia and autism spectrum disorders, or other developmental conditions;

B. Such product will treat or mitigate verbal apraxia or any communication or behavioral deficits in children who have autism spectrum disorders or other developmental conditions; or

C. Consumers can generally expect that children who use such product will obtain the speech, language, and other behavioral improvements represented by an endorser of such product;

unless the representation is non-misleading and, at the time of making such representation, Defendants possess and rely upon competent and reliable scientific evidence to substantiate that the representation is true. For purposes of this Section, competent and reliable scientific

evidence shall consist of human clinical testing of the Covered Product or of an Essentially Equivalent Product that is sufficient in quality and quantity, based on standards generally accepted by experts in research on behavioral and communication deficits in children (including children who have apraxia, autism spectrum disorders, or other developmental conditions), when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. Such testing shall (1) be randomized, double-blind, and placebo-controlled; and (2) be conducted by researchers qualified by training and experience to conduct such testing. In addition, all underlying or supporting data and documents generally accepted by experts in research on communication and behavioral deficits in children as relevant to an assessment of such testing as described in the Section entitled Preservation of Records Relating to Competent and Reliable Human Clinical Tests or Studies must be available for inspection and production to the Commission. Defendants shall have the burden of proving that a product satisfies the definition of an Essentially Equivalent Product.

II

PROHIBITED REPRESENTATIONS:

OTHER HEALTH-RELATED CLAIMS

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, are hereby permanently restrained and enjoined from making, or assisting others in making, directly or by implication, including through the use of a product name, endorsement, depiction, or illustration, any representation, other than

representations covered under Section I of this Order, about the health benefits, performance, or efficacy of any Covered Product, unless the representation is non-misleading, and, at the time of making such representation, Defendants possess and rely upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true.

For purposes of this Section, competent and reliable scientific evidence means tests, analyses, research, or studies (1) that have been conducted and evaluated in an objective manner by qualified persons; (2) that are generally accepted in the profession to yield accurate and reliable results; and (3) as to which, when they are human clinical tests or studies, all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of such testing as set forth in the Section entitled Preservation of Records Relating to Competent and Reliable Human Clinical Tests or Studies are available for inspection and production to the Commission.

III

PROHIBITED REPRESENTATIONS REGARDING TESTS OR STUDIES

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, are hereby permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, in any manner, expressly or by

implication, including through the use of any product name, endorsement, depiction, or illustration:

- A. The existence, contents, validity, results, conclusions, or interpretations of any test, study, or research; or
- B. That the benefits of such product are scientifically proven.

IV

FDA APPROVED CLAIMS

IT IS FURTHER ORDERED that nothing in this Order shall prohibit Defendants from:

- A. Making any representation for any drug that is permitted in labeling for such drug under any tentative or final monograph promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration; and
- B. 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 or permitted under Sections 303-304 of the Food and Drug Administration Modernization Act of 1997.

V

DECEPTIVE FORMAT IN ADVERTISING

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, are hereby permanently restrained and enjoined from misrepresenting that any website (including but not limited to www.apraxiaresearch.com)

or other publication is an independent, objective resource for research or other scientific information.

VI

REQUIRED DISCLOSURES OF MATERIAL CONNECTIONS:

WEBSITES AND OTHER ENDORSEMENTS

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of a product name, product formulation description, endorsement, depiction, or illustration, about any website (including but not limited to www.apraxiaresearch.com) or other publication's endorsement of any such Covered Product or Covered Product Formulation unless they disclose, clearly and prominently, and in close proximity to the representation, a material connection, when one exists, between such website or other publication and Defendants or any other person manufacturing, advertising, labeling, promoting, offering for sale, selling, or distributing such product or product formulation.

VII

REQUIRED DISCLOSURES OF MATERIAL CONNECTIONS:

CONSUMER ENDORSERS

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of

them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, by means of an endorsement, shall disclose, clearly and prominently, and in close proximity to the representation, a material connection, if one exists, between any person providing the endorsement and Defendants or any other person manufacturing, advertising, labeling, promoting, offering for sale, selling, or distributing such product.

VIII

PROHIBITION ON PROVIDING OTHERS THE MEANS AND INSTRUMENTALITIES TO MAKE PROHIBITED REPRESENTATIONS

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, are hereby permanently restrained and enjoined from providing others the means and instrumentalities with which to make, expressly or by implication, orally or in writing, any representation prohibited by Sections I, II, and III of this Order. For the purposes of this Section, "means and instrumentalities" means any information, including but not limited to, any advertising, labeling, promotional, sales training, or purported substantiation materials, for use by trade customers in their marketing of any Covered Product.

IX

NOTICE TO DISTRIBUTORS

IT IS FURTHER ORDERED that, within thirty (30) days of entry of this Order, Defendants shall:

A. Submit to the Commission a searchable electronic file containing the name and contact information of all distributors who purchased or otherwise received any Speak product from Defendants through date of entry of this Order. Such file shall: (1) include each distributor's name, mailing address, and email, and if available, telephone number of each distributor; and (2) be accompanied by a sworn affidavit attesting to its accuracy; and

B. Send by first-class mail, postage paid and return receipt requested or by courier service such as FedEx with signature proof of delivery, an exact copy of the notice attached as Attachment A, showing the date of mailing, to all distributors identified pursuant to Section IX.A of this Order. The notice required by this Section shall not include any other document or enclosures, and shall be sent to the principal place of business of each distributor.

X

NOTICE TO CONTINUITY PROGRAM PARTICIPANTS

IT IS FURTHER ORDERED that, within thirty (30) days of entry of this Order, Defendants shall send by first-class mail, postage paid and return receipt requested or by courier service such as FedEx with signature proof of delivery, an exact copy of the notice attached as Attachment B, showing the date of mailing, to any consumer who, as of the date of entry of this Order, participates in any Pre-existing Speak Continuity Program. The notice required by this Section shall not include any other document or enclosures.

XI

MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment in the amount of three-million, six hundred seventy-eight thousand Dollars (\$3,678,000) is entered in favor of the Commission against Defendants, jointly and severally, as equitable monetary relief.

B. Defendants are ordered to pay the Commission two hundred thousand Dollars (\$200,000), which, as Defendants stipulate, their undersigned counsel holds in escrow for no purpose other than payment to the Commission. Such payment must be made within 7 days of entry of this Order by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission. Upon such payment, the remainder of the judgment is suspended, subject to the Subsections below.

C. The Commission's agreement to the suspension of part of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendants' sworn financial statements and related documents (collectively, "financial attestations") submitted to the Commission, namely:

1. the Financial Statement of Individual Defendant Mark Nottoli signed on August 1, 2014, including the attachments;
2. the Financial Statement of Corporate Defendant NourishLife, LLC signed on July 15, 2014, including the attachments;
3. The additional financial documentation provided by Corporate Defendant NourishLife on September 15, 2014, including 2013 federal and state partnership returns for NourishLife, LLC;

4. The additional financial documentation provided by Individual Defendant Mark Nottoli on September 15, 2014, including 2013 corporate returns for Nottoli Investments, LLC, Revolution Works, Ltd., and Pharmanutrients, Inc.;

5. The supplemental Financial Statements of Individual Defendant Mark Nottoli dated September 10, 2014 and September 24, 2014, including attachments; and

6. The additional financial information and documentation provided by Individual Defendant Mark Nottoli on October 7, 2014.

D. The suspension of judgment will be lifted as to any Defendant if, upon motion by the Commission, the Court finds that Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial attestations identified above.

E. If the suspension of the judgment is lifted, the judgment becomes immediately due as to that Defendant in the amount specified in Subsection A above (which the parties stipulate only for the purposes of this Section represents the consumer injury alleged in the Complaint), less any payment previously made pursuant to this Section plus interest computed from the date of entry of this Order.

F. Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

G. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

H. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

I. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Defendants previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

J. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

XII

REQUIREMENT TO PROVIDE CUSTOMER LIST

IT IS FURTHER ORDERED that, within sixty (60) days of entry of this Order, Defendants shall compile and deliver to the Commission a report, in the form of a sworn affidavit, listing all persons who registered for or purchased any Speak product prior to the date

of entry of this Order. Such report shall include each person's name and address, the products purchased, the date of purchase, the approximate total amount of moneys paid less any amount credited for returns or refunds, and, if available, the person's telephone number and email address. The report shall be submitted electronically to the Associate Director for Advertising Practices, in a format to be approved in advance by a representative of the Commission and encrypted with encryption software such as SecureZip with the encryption key provided electronically in a separate communication.

XIII

PRESERVATION OF RECORDS RELATING TO COMPETENT AND RELIABLE HUMAN CLINICAL TESTS OR STUDIES

IT IS FURTHER ORDERED that, with regard to any human clinical test or study ("test") upon which Defendants rely to substantiate any claim covered by this Order, Defendants shall secure and preserve all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of the test, including, but not necessarily limited to:

- A. All protocols and protocol amendments, reports, articles, write-ups, or other accounts of the results of the test, and drafts of such documents reviewed by the test sponsor or any other person not employed by the research entity;
- B. All documents referring or relating to recruitment; randomization; instructions, including oral instructions, to participants; and participant compliance;
- C. Documents sufficient to identify all test participants, including any participants who did not complete the test, and all communications with any participants relating to the test; all raw data collected from participants enrolled in the test, including any participants who did

not complete the test; source documents for such data; any data dictionaries; and any case report forms;

D. All documents referring or relating to any statistical analysis of any test data, including, but not limited to, any pretest analysis, intent-to-treat analysis, or between-group analysis performed on any test data; and

E. All documents referring or relating to the sponsorship of the test, including all communications and contracts between any sponsor and the test's researchers.

Provided, however, the preceding preservation requirement shall not apply to a Reliably Reported test, unless the test was conducted, controlled, or sponsored, in whole or in part by: (1) any Defendant; (2) any Defendant's officers, agents, representatives, or employees; (3) any other person or entity in active concert or participation with any Defendant; (4) any person or entity affiliated with or acting on behalf of any Defendant; (5) any supplier of any ingredient contained in the product at issue to any of the foregoing or to the product's manufacturer; or (6) the supplier or manufacturer of such product.

For any test conducted, controlled, or sponsored, in whole or in part, by Defendants, Defendants must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of any personal information collected from or about participants. These procedures shall be documented in writing and shall contain administrative, technical, and physical safeguards appropriate to Defendants' size and complexity, the nature and scope of Defendants' activities, and the sensitivity of the personal information collected from or about the participants.

XIV

ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this Order:

A. Each Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 10 years after entry of this Order, the Individual Defendant for any business that such Defendant, individually or collectively with any other Defendants, is the majority owner or controls directly or indirectly, and the Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

XV

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants make timely submissions to the Commission:

A. Sixty days after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:

1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Individual Defendants must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 10 years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of the Corporate Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement,

Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The subject line must begin: *FTC v. NourishLife, Inc., et al.*, [insert X number].

XVI

RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for 10 years after entry of the Order, and retain each such record for 5 years. Specifically, Corporate Defendant in connection with the marketing and sale of any dietary supplement, food, or drug, and each Individual Defendant for any business that such Defendant, individually or collectively with any other Defendants, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. Accounting records showing the revenues from all goods or services sold;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. Records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- E. A copy of each unique advertisement or other marketing material.

XVII

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance with this Order:

A. Within 14 days of receipt of a written request from a representative of the Commission, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

XVIII

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO STIPULATED AND AGREED:


FOR PLAINTIFF:




LAURA M. SULLIVAN
PAUL B. SPELMAN
Federal Trade Commission
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Washington, DC 20580
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FEDERAL TRADE COMMISSION

FOR DEFENDANTS:

NourishLife, LLC
272 East Deerpath Road
Suite 244
Lake Forest, IL 60045


By: _____
Mark Nottoli, President



Mark Nottoli, individually
and as an officer of NourishLife, LLC
272 East Deerpath Road, Suite 244
Lake Forest, IL 60045



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Attorneys for Defendants NourishLife, LLC and Mark Nottoli

SO ORDERED this ___ day of _____, 2015.

UNITED STATES DISTRICT JUDGE

ATTACHMENT A

[On NourishLife letterhead]

**IMPORTANT NOTICE ABOUT ADVERTISING AND MARKETING
FOR SPEECHNUTRIENTS' SPEAK™**

Dear Distributor:

We are writing you because you have bought our product, speak™. The Federal Trade Commission (FTC), the nation's consumer protection agency, has sued us for deceptive advertising. To settle the lawsuit, we have agreed to stop making certain claims for our speak™ line of products, including speak™ Capsules, speak™ Twist-offs and speak™ Smooth. Specifically, we have agreed to stop using any ads, promotional materials, or labels that claim our products can:

- develop or maintain normal speech and language in children, including those with verbal apraxia, an autism spectrum disorder, or any other developmental condition; or
- treat verbal apraxia or any communication or behavior deficits in children who have an autism spectrum disorder or other developmental condition.

According to the FTC, these claims aren't backed by scientific evidence.

As a distributor of speak™ products, please take these four steps immediately:

- 1) If you have consumer brochures, FAQs, fact cards or other promotional materials that include any of these claims, destroy them.
- 2) Where these claims appear on boxes, bottles, or packets, return the boxes, bottles, or packets to us or cover them with stickers that NourishLife will provide. A pre-paid, return shipping label is included with this notice. [Note: If NourishLife intends to use stickers, we will revise the language to specify whether the company will include stickers with the notice or send upon request].
- 3) If inserts in boxes include any of these claims, remove the inserts and destroy them.
- 4) If we gave you any other marketing materials – including presentations about our products or professional FAQs – stop using these materials and destroy them.

Find out more about the FTC's case at [URL]. Please call [insert name and telephone number of responsible NourishLife attorney or employee] if you have any questions about complying with this request.

Sincerely,

ATTACHMENT B

[On NourishLife letterhead]

IMPORTANT NOTICE ABOUT SPEECHNUTRIENTS' SPEAK™ LINE OF PRODUCTS

Dear [Recipient]:

We're writing because you have a Monthly Saver Plan subscription for speak™ products. The Federal Trade Commission (FTC), the nation's consumer protection agency, has sued us for deceptive advertising. To settle the lawsuit, we have agreed:

- to stop claiming that our speak™ products can develop or maintain normal speech and language in children, including those with verbal apraxia, an autism spectrum disorder, or any other developmental condition; or
- to stop claiming that our speak™ products can treat verbal apraxia or any communication or behavior deficits in children who have an autism spectrum disorder or other developmental condition.

According to the FTC, these claims aren't backed by scientific evidence. Find out more about the FTC's case at [URL].

To cancel your subscription, call us at [number] or email [address]. If we don't hear from you, we will continue to bill your credit card every month.

Sincerely,