

Complaint

120 F.T.C.

IN THE MATTER OF

NATURE'S BOUNTY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3593. Complaint, July 21, 1995--Decision, July 21, 1995*

This consent order requires, among other things, the New York-based company and two of its wholly-owned subsidiaries to pay \$250,000 to the Commission for possible use for consumer redress, and requires them to have substantiation for specific health-related representations they make in advertising and promoting any product in the future.

Appearances

For the Commission: *Justin Dingfelder, Peter Metrisko, Rose Toufexis and Jonathan Cowen.*

For the respondents: *Michael F. Brockmeyer, Piper & Marbury, Baltimore, MD.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Nature's Bounty, Inc., a corporation, Puritan's Pride, Inc., a corporation, and Vitamin World, Inc., a corporation, ("respondents"), have violated Sections 5(a) and 12 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45(a) and 52, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. A. Respondent Nature's Bounty, Inc. ("Nature's Bounty"), is a Delaware corporation, with its office and principal place of business at 90 Orville Dr., Bohemia, NY.

B. Respondent Puritan's Pride, Inc. ("Puritan's Pride"), is a Delaware corporation with its office and principal place of business at 90 Orville Dr., Bohemia, NY. Puritan's Pride is a wholly-owned subsidiary of Nature's Bounty.

C. Respondent Vitamin World, Inc. ("Vitamin World"), is a Delaware corporation with its office and principal place of business

at 90 Orville Dr., Bohemia, NY. Vitamin World is a wholly-owned subsidiary of Nature's Bounty.

D. Nature's Bounty directs or controls its subsidiaries Puritan's Pride and Vitamin World in carrying out the acts and practices alleged in this complaint.

PAR. 2. Respondents have manufactured, advertised, offered for sale, sold or distributed a variety of products, including "Sleeper's Diet," "L-Arginine 500 mg. tablets," "L-Ornithine 500 mg. tablets," "Prostex," "L-Cysteine," "L-Lysine," "L-Methionine," "Octacosanol," "New Zealand Green Lipped Mussel Extract," "KLB6," "Glucomannan," "Sugar Blocker," "Spirulina 500 mg. tablets," "Eye-Vites" (also sold as CATA-RX), "KLB6 Grapefruit Diet," "Herbal Cellulex Formula," "Memory Booster," "Ginsana," "Fatbuster Diet Tea," "Shake-A-Weigh," "Dark Circle Eye Treatment," "Natural Sterol Complex," "Super Fat Burners," "Super Cut," "Papaya Enzyme Tablets," and "Calmtabs." Each of these products is a "food" and/or "drug" within the meaning of Sections 12 and 15 of the FTC Act.

PAR. 3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act.

PAR. 4. Respondents have disseminated or have caused to be disseminated advertisements and promotional materials for the products referred to in paragraph two, including, but not necessarily limited to, the attached Exhibits ("Ex.") A-R. These advertisements contain the following statements:

A. In regard to Sleeper's Diet: "SLEEPER'S DIET . . . Based on a popular weight loss program. Dieters will be interested in this special combination of amino acids." (Ex. A)

B. In regard to L-Arginine: (1) "L-Arginine stimulates the release of HGH (human growth hormone). HGH . . . promotes the formation of DNA and RNA needed to increase muscle mass and decrease body fat." (Ex. B) (2) "L-ARGININE . . . stimulates the release of growth hormone . . . [I]ncreases muscle mass while decreasing the amount of body fat." (Ex. C)

C. In regard to L-Ornithine: (1) "L-ORNITHINE . . . As with L-Arginine this amino acid releases HGH. However, L-Ornithine is said to be twice as effective." (Ex. B) (2) "L-ORNITHINE stimulates the release of growth hormone which increases muscle mass while decreasing the amount of body fat." (Ex. C)

D. In regard to Prostex: "PROSTEX Can Help You! If you are over 50 years of age and Benign Prostatic Hypertrophy is causing these discomforts: Frequent urination. Painful Urination. Urgency to urinate. Dribbling. Distended bladder due

to incomplete emptying. Sleepless nights caused by night time urination. Developed by a doctor - Prostex is a scientific combination of 3 pure amino acids in capsule form. It is safe, natural and effective . . . to relieve the symptoms of Benign Prostatic Hypertrophy." (Ex. D)

E. In regard to L-Cysteine: (1) "L-CYSTEINE found to increase hair growth by as much as 100%." (Ex. C)(2) "[E]ffective in preventing not only hangovers but brain and liver damage from alcohol." (Ex. C) (3)[H]elps prevent damages from the ill effects of cigarette smoke." (Ex. C)

F. In regard to L-Lysine: "L-LYSINE . . . produces L-Carnitine which improves stress tolerance . . . and has an anti-fatigue effect." (Ex. C)

G. In regard to L-Methionine: "L-METHIONINE . . . helps prevent premature hair loss." (Ex. C)

H. In regard to Octacosanol: "Increase Stamina, Vigor and Endurance. OCTACOSANOL . . . In fact, a recent study at the University of Illinois has shown that Octacosanol may speed reaction time, lower cholesterol levels and strengthen muscles (including the heart)." (Ex. D)

I. In regard to New Zealand Green Lipped Mussel Extract: "NEW ZEALAND GREEN LIPPED MUSSEL EXTRACT. It has been shown in recent studies that Green Lipped Mussel not only relieves the symptoms of arthritis, but works on the cause. For relief of one of the most painful and discomforting ailments, try Puritan's Pride Green Lipped Mussel today!" (Ex. E)

J. In regard to KLB6: "Losing weight is easy the KLB6 way. The original natural fat fighting plan that helps put you in shape. KLB6 Kelp, Lecithin, Vitamin B-6 and Cider Vinegar, all-in-one capsule. KELP - a natural food rich in iodine. It works to maintain a healthy thyroid. And, of course, a sluggish metabolism is an enemy to anyone wishing to shed a few pounds. LECITHIN . . . is of special interest if you're concerned about weight reduction. It is a lipotropic agent that disperses fat globules in the body and also appears to be involved in keeping down the cholesterol level." (Ex. F)

K. In regard to Glucomannan: "GLUCOMANNAN . . . Feel Full, Satisfied and Eat Less . . . Glucomannan helps your body to process your food easier and faster. Therefore many of the calories you do take in pass through your digestive tract undigested without adding inches to your waistline. Helps you lose weight without harmful drugs, chemicals or stimulants." (Ex. G)

L. In regard to Sugar Blocker: "Stop Sugar Calories before they make it to your waistline. SUGAR BLOCKER. New Sugar Blocker contains the herb Gymnema Sylvestre which helps to impede the absorption of some of the sugar you eat . . . When taken before a meal, Sugar Blocker occupies the same sites in the small intestine where sugar is absorbed. With these sites blocked, the sugar passes through your system, greatly reducing assimilation by the body." (Ex. H)

M. In regard to Spirulina 500 mg. tablets: "Diet without hunger . . . the natural way. SPIRULINA . . . People are reporting fast weight loss of 20 pounds and more . . . without hunger! . . . Taken before meals it helps turn off your brain's hunger center. It cuts your drive to eat, so you stick to your diet." (Ex. I)

N. In regard to Eye-Vites, also sold as CATA-RX: "EYE-VITES Tablet. A Nutritional Breakthrough in Cataracts Prevention . . . [N]ow, thanks to the efforts of a group of dedicated vision scientists, there's Eye-Vites . . . the nutritional approach to the prevention of age related cataracts. The potent anti-oxidants and

micronutrients in Eye-Vites combine to help prevent the formation of cataracts. Research has proven that patients undergoing anti-oxidant therapy were 70% less likely to develop cataracts." (Ex. J)

O. In regard to KLB6 Grapefruit Diet: "KLB6 GRAPEFRUIT DIET . . . Puritan's Pride brings you the ultimate grapefruit diet formula to help you lose weight. You get the famous KLB6 combination that helps keep your body active so you can burn calories. Grapefruit extract works as a 'fat melter' to stimulate your metabolism and suppress the appetite." (Ex. K)

P. In regard to Herbal Cellulex Formula: "HERBAL CELLULEX FORMULA . . . Millions of dieters have used this unique herbal-vitamin formula as part of their herbal diet weight loss plan . . . You also get the famous Kelp, Lecithin and Cider Vinegar 'fat fighters' plus 6 herbal extracts." (Ex. F)

Q. In regard to Memory Booster: "An Exciting Blend of Nutrients to Help Sharpen Your Mind. MEMORY BOOSTER. Memory Booster from Puritan's Pride combines these special natural ingredients to work together as an aid to memory retention and mental alertness." (Ex. J)

R. In regard to Ginsana: "GINSANA. Concentrated Herbal Extract Helps Build Physical Endurance and Mental Alertness. Years of research studies have shown that endurance [and] mental alertness . . . were improved among Ginsana users." (Ex. L)

S. In regard to Fatbuster Diet Tea: "Lose weight naturally with . . . FATBUSTER DIET TEA . . . The result is a flavorful beverage that actually helps you shed unwanted pounds! When taken after every meal, the special combination of herbs filters through fatty substances, aiding your body in eliminating them . . ." (Ex. F)

T. In regard to Shake-A-Weigh: "SHAKE-A-WEIGH . . . This great tasting seasoning contains . . . Pantothenic Acid (B5) which helps food to pass rapidly through your digestive tract allowing less time to absorb calories." (Ex. G)

U. In regard to Dark Circle Eye Treatment: "This photo shows how there is no longer any evidence of dark circles after only one application on her left eye. DARK CIRCLE EYE TREATMENT. Makes Your Dark Circles Disappear . . . Dark Circle Eye Treatment is a new beauty discovery that therapeutically removes dark circles from the delicate area under your eyes in 2 easy steps." (Ex. M)

V. In regard to Natural Sterol Complex: "ADVANCED MUSCLE BUILDING FORMULA. NATURAL STEROL COMPLEX. MASS AND DENSITY ENHANCER . . . To maximize gains in muscle mass and strength, world-class bodybuilders train with Natural Sterol Complex . . . For serious growth in mass and strength, you need real power. And nothing powerizes you like Natural Sterol Complex by Universal. It's the most advanced, anabolic-strength formula available today for anyone looking to build a huge, massive and awe-inspiring body . . . Massive arms. Rock-hard shoulders. Awesome legs. Chiseled abs. For building your body, nothing even comes close to the power of Natural Sterol Complex." (Ex. N)

W. In regard to Super Fat Burners: "SUPER FAT BURNERS. Super Fat Burners contains a special combination of vitamins, minerals and amino acids needed for the reduction of fat cells. The ingredients in this formula help the body's ability to burn fat, thereby promoting visible muscle definition." (Ex. O)

X. In regard to Super Cut: "SUPER CUT . . . The ingredients in this formula help the body's ability to burn fat, thereby promoting visible muscle definition." (Ex. P)

Y. In regard to Papaya Enzyme Tablets: "PAPAYA ENZYME Tablets. An aid to better digestion from papaya . . . [C]ontains the enzyme Papain which helps you digest protein and helps release the nutritional potency of your foods and also promotes comfortable natural digestive processes." (Ex. Q)

Z. In regard to Calmtabs: "CALMTABS. All Natural Non-Habit Forming Herbal Relaxant. Puritan's Pride Calmtabs offers you a gentle and safe way to relax especially when everyday stress winds you up. This special formulation gives you six different herbs known for their calmative properties . . . You can enjoy Calmtabs' soothing, calm effect anytime during the day or before bedtime." (Ex. R)

PAR. 5. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the attached Exhibits A-R, respondents have represented, directly or by implication, that:

A. Sleeper's Diet promotes weight loss during sleep.

B. L-Arginine stimulates the release of human growth hormone which increases muscle mass while decreasing body fat.

C. L-Ornithine stimulates the release of human growth hormone which increases muscle mass while decreasing body fat.

D. Prostex relieves the symptoms of benign prostatic hypertrophy.

E. L-Cysteine (1) increases hair growth, (2) prevents hangovers and brain and liver damage from alcohol, and (3) helps prevent harm caused by cigarette smoke.

F. L-Lysine improves stress tolerance and reduces fatigue.

G. L-Methionine prevents premature hair loss.

H. Octacosanol increases stamina, vigor, and endurance, improves reaction time, lowers cholesterol levels and strengthens muscles.

I. New Zealand Green Lipped Mussel Extract prevents arthritis and relieves its symptoms.

J. KLB6 causes weight loss and reduces cholesterol levels.

K. Glucomannan causes weight loss by suppressing appetite and allowing calories to pass through the body undigested.

L. Sugar Blocker prevents weight gain by impeding the body's absorption of sugar.

M. Spirulina 500 mg. tablets suppress the appetite, enabling adherence to a diet.

N. KLB6 Grapefruit Diet causes weight loss by stimulating metabolism and suppressing appetite.

O. Herbal Cellulex Formula causes weight loss by eliminating body fat.

P. Memory Booster improves memory retention and mental alertness.

Q. Ginsana helps build physical endurance and mental alertness.

R. Fatbuster Diet Tea causes weight loss by eliminating fatty substances from the body.

S. Shake-A-Weigh reduces the body's absorption of calories from food.

T. Dark Circle Eye Treatment removes dark circles from under the eyes.

U. Natural Sterol Complex promotes growth in muscle mass and improves strength.

V. Super Fat Burners reduces body fat, thereby promoting muscle definition.

W. Super Cut reduces body fat, thereby promoting muscle definition.

X. Papaya Enzyme Tablets aid digestion and promote greater absorption of nutrients from food.

Y. Calmtabs relieves stress and promotes relaxation.

PAR. 6. In truth and in fact:

A. Sleeper's Diet does not promote weight loss.

B. L-Arginine does not stimulate the release of human growth hormone so as to increase muscle mass while decreasing body fat.

C. L-Ornithine does not stimulate the release of human growth hormone so as to increase muscle mass while decreasing body fat.

D. L-Cysteine does not promote hair growth.

E. L-Methionine does not prevent premature hair loss.

Therefore the representations set forth in paragraph five A, B, C, G, and E(1) were, and are, false and misleading.

PAR. 7. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the attached Exhibits A-R, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph five A-

Y, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 8. In truth and in fact, at the time they made the representations set forth in paragraph five A-Y, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. Through the use of the statements contained in certain advertisements and promotional materials set forth in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits D, E, J, and L, respondents have represented, directly or by implication, that scientific research, including scientific papers and/or studies, prove that:

1. Octacosanol may improve reaction time, lower cholesterol levels and strengthen muscles.
2. New Zealand Green Lipped Mussel Extract prevents arthritis and relieves its symptoms.
3. As to Eye-Vites, also sold as CATA-RX, patients undergoing anti-oxidant therapy such as that provided by Eye-Vites and CATA-RX are 70% less likely to develop cataracts.
4. Ginsana improves physical endurance and mental alertness.

PAR. 10. In truth and in fact, at the time respondents made the representations set forth in paragraph nine, scientific research, including scientific papers and/or studies, did not prove that (1) Octacosanol may improve reaction time, lower cholesterol levels and strengthen muscles, (2) New Zealand Green Lipped Mussel Extract prevents arthritis and relieves its symptoms, (3) patients undergoing anti-oxidant therapy such as that provided by Eye-Vites and CATA-RX are 70% less likely to develop cataracts, and (4) Ginsana improves physical endurance and mental alertness. Therefore, the representations set forth in paragraph nine were, and are, false and misleading.

PAR. 11. Through the use of the trade names set forth in this paragraph, including but not necessarily limited to their uses in the advertisements and promotional materials attached as Exhibits A, J, M, and O referred to in paragraph four, respondents have represented, directly or by implication, that:

1. "Sleeper's Diet" promotes weight loss during sleep.
2. "Memory Booster" improves memory retention.
3. "Dark Circle Eye Treatment" removes dark circles from under the eyes.
4. "Super Fat Burners" reduces body fat.

PAR. 12. In making the representations referred to in paragraph eleven, respondents have represented, directly or by implication, that at the time they made these representations they possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 13. In truth and in fact, at the time respondents made the representations set forth in paragraph eleven, they did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph twelve was, and is, false and misleading.

PAR. 14. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the FTC Act.