

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Nature's Bounty, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 90 Orville Dr., in the City of Bohemia, State of New York.

2. Respondent Puritan's Pride, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 90 Orville Dr., in the City of Bohemia, State of New York. Puritan's Pride, Inc., is a wholly-owned subsidiary of Nature's Bounty, Inc.

3. Vitamin World, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of

Delaware, with its office and principal place of business located at 90 Orville Dr., in the City of Bohemia, State of New York. Vitamin World, Inc., is a wholly-owned subsidiary of Nature's Bounty, Inc.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "*Product*" means any good that is offered for sale, sold or distributed to the public by respondents, their successors and assigns, under any brand name of respondents, their successors and assigns, or under the brand name of any third party. "Product" also means any product sold or distributed to the public by third parties under any brand name of respondents, or under private labeling agreements with respondents, their successors and assigns.

2. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession to yield accurate and reliable results.

I.

It is ordered, That respondents Nature's Bounty, Inc., Puritan's Pride, Inc., and Vitamin World, Inc., their successors and assigns, and their officers, agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacture, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations

of any test, study, research article, or any other scientific opinion or data.

II.

It is further ordered, That respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of "Sleeper's Diet," "L-Arginine," or "L-Ornithine," or any other substantially similar amino acid product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

- A. Any such product stimulates greater production or release of human growth hormone in a user than a non-user of such product;
- B. Any such product promotes muscular development; or
- C. Any such product burns fat or otherwise alters human metabolism to use up or burn stored fat, or promotes weight loss.

For purposes of this order paragraph, "substantially similar amino acid product" shall mean any product which is of substantially similar composition or possesses substantially similar properties to Sleeper's Diet, L-Arginine or L-Ornithine.

III.

It is further ordered, That respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of L-Cysteine, L-Methionine, or any other substantially similar hair care product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any such product will prevent or retard hair loss or promote hair growth where hair has already been lost. For purposes of this order paragraph, "substantially similar hair care product" shall mean any product that is advertised or intended for

sale over-the-counter to treat, cure or curtail hair loss or to promote hair growth where hair has already been lost, and which is of substantially similar composition or possesses substantially similar properties to L-Cysteine or L-Methionine.

IV.

It is further ordered, That respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of any hair care product or service, in or affecting commerce, as "commerce," is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that

(1) The use of the product or service will prevent, cure, relieve, reverse, or reduce hair loss; or

(2) The use of the product or service will promote the growth of hair where hair already has been lost,

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

B. Manufacturing, advertising, labeling, packaging, promoting, offering for sale, selling, or distributing any product that is represented as promoting hair growth or preventing hair loss, unless the product is the subject of an approved new drug application for such purpose under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 *et seq.*, provided that, this requirement shall not limit the requirements of order paragraphs III or IV.A. herein.

V.

It is further ordered, That respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, labeling,

packaging, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, that any such product:

A. Cures, treats, prevents, or reduces the risk of developing any disease, disorder or condition in humans or relieves symptoms thereof;

B. Provides any weight loss or weight control benefit or otherwise provides an effective treatment for obesity;

C. Suppresses appetite, reduces the body's absorption of calories, stimulates metabolism, or reduces serum cholesterol;

D. Cures, treats, prevents, or reduces the risk of benign prostatic hypertrophy;

E. Promotes greater muscular development, endurance, strength, power, definition, or stamina, or shorter exercise recovery or recuperation time in a user than a non-user of such product;

F. Removes or diminishes dark circles under the eyes;

G. Improves mental clarity, mental concentration, mental comprehension, mental retention or mental alertness;

H. Aids digestion or promotes increased absorption of nutrients from ingested foods;

I. Relieves stress or promotes relaxation; or

J. Prevents, relieves or treats fatigue or boosts energy;

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Provided, however, that respondents shall not be liable under this paragraph for any representation contained on a package label or package insert for a product that meets all of the following conditions:

1. The product is manufactured and distributed by a third party and is not manufactured or distributed exclusively for respondents;
2. The product is generally available at competing retail outlets;
3. The product is not identified with respondents and does not contain respondents' names or logos;
4. The product was not developed or manufactured at the instigation or with the assistance of respondents; and,

5. The product representation is not otherwise advertised or promoted by respondents.

Provided further, that the proviso in the preceding paragraph is currently identical to the "safe harbor" proviso contained in paragraph V. of the order in General Nutrition, Inc., Docket No. 9175, entered February 2, 1989. It is the intention of the parties to the order herein that the provisos shall remain identical. Therefore, except upon respondents filing a petition to reopen the proceeding herein and making a satisfactory showing that changed conditions of law or fact or the public interest warrants modification of the order herein by the Commission, respondents agree to be bound by any subsequent modifications (including vacation) of the safe harbor proviso in Docket No. 9175, without any further formal modification of the instant order.

VI.

It is further ordered, That nothing in this order shall prohibit respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, from making any representation that is specifically permitted in labeling for any product by regulations promulgated by the Food and Drug Administration (FDA) pursuant to the Nutrition Labeling and Education Act of 1990; moreover, nothing in this order shall prohibit respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, from making any representation for any drug that is permitted in labeling for any drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

VII.

It is further ordered, That respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, labeling,

packaging, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the name "Sleeper's Diet" or any other brand name that represents, directly or by implication, that such product has the ability to promote weight loss during sleep;
2. Using the name "Memory Booster" or any other brand name that represents, directly or by implication, that such product improves memory retention;
3. Using the name "Dark Circle Eye Treatment" or any other brand name that represents, directly or by implication, that such product removes dark circles from under the eyes; or
4. Using the name "Super Fat Burners" or any other brand name that represents, directly or by implication, that such product reduces body fat

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

VIII.

It is further ordered, That respondents, their successors and assigns, shall pay to the Federal Trade Commission, by cashier's check or certified check made payable to the Federal Trade Commission and delivered to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Ave., NW, Washington, DC, the sum of two hundred and fifty thousand dollars (\$250,000). Respondents shall make this payment on or before the tenth day following the date of issuance of this order. In the event of any default on any obligation to make payment under this section, interest, computed pursuant to 28 U.S.C. 1961(a), shall accrue from the date of default to the date of payment. The funds paid by respondents shall, in the discretion of the Federal Trade Commission, be used to provide direct redress to consumers allegedly injured by respondents in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the Federal Trade Commission determines, in its sole discretion, that redress to consumers is impracticable or

unwarranted, any funds not used for redress shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission.

IX.

It is further ordered, That, for five (5) years after the last date of dissemination of any representation covered by this order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All labeling, packaging, advertisements and promotional materials setting forth any representation covered by this order;
2. All materials that were relied upon by respondents to substantiate any representation covered by this order; and
3. All test reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation or the basis upon which respondents relied for such representation, including complaints from consumers.

X.

It is further ordered, That for a period of ten (10) years after service upon them of this order, respondents, their successors and assigns, shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporations that may affect compliance obligations arising under this order.

XI.

It is further ordered, That the respondents shall distribute a copy of this order to each of their operating divisions, to each of their officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this order, and

to all distributors of products manufactured or marketed by respondents.

XII.

It is further ordered, That respondents shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied or intend to comply with this order.

Commissioner Azcuenaga dissenting.

STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

I dissent from the Commission's decision to issue a final decision and order against Nature's Bounty and its subsidiaries, Puritan's Pride, Inc., and Vitamin World, Inc., because the order leaves the respondents free to sell products they know, or should know, are deceptively labeled.

The proviso in paragraph V of the order states that the respondents would not necessarily be liable for false or unsubstantiated claims appearing on the labels or in the packaging of the products sold at its stores, even if it were clear that the companies had actual knowledge that those claims were unsubstantiated or untrue. I believe that the order should have provided that the respondents would be liable if they know, or should know, that the labels or packaging of any such product contains false or unsubstantiated claims.