

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION

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U.S. DISTRICT COURT  
W. DIST. OF N.C.

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 KRIS A. PLETSCHKE, )  
 d/b/a RAW HEALTH, )  
 )  
 Defendant. )

COMPLAINT FOR CIVIL  
PENALTIES, INJUNCTIVE  
AND OTHER RELIEF

CIVIL NO. *1:03CV214-T*

Plaintiff, United States of America, acting upon the notification and authorization to the Attorney General by the Federal Trade Commission ("Commission"), for its Complaint alleges that:

1. Plaintiff brings this action under Sections 5(l), 13(b), and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(l), 53(b), and 56(a), to obtain monetary civil penalties, injunctive and other relief from Defendant for his violations of a final order to cease and desist issued by the Commission.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345 and 1355 and under 15 U.S.C. §§ 45(l), 53(b), and 56(a).

3. Venue in the United States District Court for the Western District of North Carolina is proper under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b) and 1395(a).

## DEFENDANT

4. Defendant Kris A. Pletschke ("Pletschke") is a resident of North Carolina. His principal office or place of business is in the Western District of North Carolina at 87 Nevada Avenue, Asheville, North Carolina 28806. Defendant Pletschke is the sole-proprietor of a company known as Raw Health which operates an Internet website [www.rawhealth.net](http://www.rawhealth.net). Pletschke markets a variety of products including raw foods, digestive enzymes, and colonic treatments. Pletschke, individually or in concert with others, formulates, directs, controls, or participates in the acts and practices set forth in this Complaint, and has done so at all times pertinent to this action.

## PRIOR COMMISSION PROCEEDING

5. In a Commission proceeding bearing Docket No. C-4040, Pletschke was charged by the Commission with disseminating, or causing to be disseminated false or misleading advertisements for *Colloidal Silver*, a dietary supplement purported to treat or cure over 650 diseases including anthrax, Ebola, and "flesh eating bacteria." The Commission charged that Pletschke's practices constituted 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, 15 U.S.C. §§ 45(a) and 52.

6. On February 22, 2002, the Commission issued a decision and order against Pletschke prohibiting certain advertising practices ("Commission's Order" or "Order") and requiring that he pay refunds to consumers who purchased *Colloidal Silver*. The Commission's Order was served upon Pletschke on March 7, 2002, and by operation of law became final and

enforceable thereafter. The Order has remained in full force and effect ever since. (A copy of the Commission's complaint and Order is attached to this Complaint as Exhibit A.)

7. The Commission's Order includes the following provisions:

## ORDER

### DEFINITIONS

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

1. "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 in the profession to yield accurate and reliable results.

\* \* \*

3. A requirement that respondent "notify the Commission," "file with the Commission," or "deliver to the Commission" shall mean that the respondent shall send the necessary information via first-class mail, costs prepaid, to the Associate Director for Division of Enforcement, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Attention: In the Matter of Kris A. Pletschke.

\* \* \*

7. "Distributor" shall mean any purchaser or other transferee of any product, service, or program covered by this order who acquires product or service from respondent, with or without valuable consideration, and who sells, or who has sold, such product or service to other sellers or to consumers, including but not limited to individuals, retail stores, or catalogs.

\* \* \*

9. "Covered product or service" shall mean any food, dietary supplement, drug, device, or health-related service or program.

\* \* \*

II.

IT IS HEREBY FURTHER ORDERED that respondent, directly or through any partnership, corporation, subsidiary, division, trade name, or other device, including franchisees, licensees, or distributors, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any *Colloidal Silver* or any covered product or service in or affecting commerce, shall not make any representation, in any manner, including by means of endorsements, expressly or by implication:

- A. That any such product or service is effective in treating any disease or health-related condition, including but not limited to, AIDS, allergies, anthrax, arthritis, blood poisoning, boils, wounds of the cornea, chronic fatigue, cerebral spinal meningitis, candida, cholera, colitis, cystitis, dental plaque, diabetes, diphtheria, dysentery, enlarged prostate, gonorrhea, herpes, hepatitis, infantile diseases, lesions, leukemia, lupus, Lyme disease, parasites, rheumatism, ringworm, shingles, skin cancer, staph and strep infections, stomach flu, thyroid conditions, tonsillitis, toxemia, stomach ulcers and whooping cough;

\* \* \*

- H. That any such product or service is effective in the mitigation, treatment, prevention, or cure of any disease, illness, or health conditions; or
- I. About the health benefits, performance, safety, or efficacy of any such product or service;

unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

\* \* \*

V.

IT IS FURTHER ORDERED that respondent shall:

\* \* \*

- D. Within thirty (30) days after service of this order upon respondent, send by first class mail, with postage prepaid, an exact copy of the notice attached hereto as Attachment B, showing the date of mailing, to each consumer who purchased *Colloidal Silver* between January 1, 1999 and the date of service of this order. This mailing shall not include any other document.

VI.

IT IS FURTHER ORDERED that respondent shall refund the full purchase price paid of the *Colloidal Silver*, including shipping and handling and applicable taxes, to each consumer whose initial request of a refund is received by respondent within ninety (90) days after the date of mailing as indicated on Attachment B pursuant to subpart V.D. of this order. Respondent shall refund the full purchase price under the following terms and conditions:

- A. If respondent's diligent inquiry and examination of respondent's books and records reasonably substantiates the consumer's claim of purchase or the consumer provides proof of purchase, including but not limited to any of the following: return of goods or packaging, canceled check[s], credit card invoices[s], or receipt[s], the refund shall be paid within fifteen (15) business days of respondent's receipt of the refund request.
- B. If the consumer makes a timely request for a refund but neither of the conditions of subpart A is satisfied, respondent shall provide the consumer within fifteen (15) days of receipt of the request for refund, a declaration of purchase together with a stamped and addressed return envelope, and advise the consumer that respondent will provide a prompt refund if the consumer completes and return [sic] the signed declaration to the respondent within fifteen (15) days of consumer's receipt fo the notice. the declaration shall be substantially in the form of the declaration attached hereto as Attachment C. The refund shall be paid within fifteen (15) business days of respondent's receipt of the consumer's completed declaration.

Refund requests shall be sent to Kris A. Pletschke at 11355 SW 14<sup>th</sup> Street, Beaverton, OR 97005.

VII.

IT IS FURTHER ORDERED that respondent shall, no later than one hundred and eighty (180) days after the date of service of this order, deliver to the Commission a monitoring report, in the form of a sworn affidavit executed on behalf of respondent. This report shall specify the steps respondent has taken to comply with the terms of Parts V. and VI. of this order and shall state, without limitation:

- A. The name and address of each customer to whom respondent sent the notice attached hereto as Attachment B as required under subpart V.D;
- B. The name and address of each customer from whom respondent received a refund request;
- C. The date on which each request was received and the amount of the refund request;
- D. The amount of the refund provided by respondent to each such consumer;
- E. The status of any disputed refund request and the identification of each consumer whose refund request is disputed, by name, address, and amount of the claim; and
- F. The total amount of refunds paid by respondent.

VIII.

IT IS FURTHER ORDERED that respondent, for ten (10) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and

- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

\* \* \*

### XIII.

IT IS FURTHER ORDERED that respondent, for a period of ten (10) years after the date of entry of this order, shall notify the Commission of (1) any changes in his residence address, mailing address, or business address; (2) the discontinuance of his current business or employment; and (3) his affiliation with any new business or employment. Notice of changes in employment status shall include: (1) the new employer's name, address and telephone number; (2) the full names of the employer's principals; (3) if applicable, the names of respondent's supervisors; and (4) a description of the employer's activities, and respondent's duties and responsibilities.

### XIV.

IT IS FURTHER ORDERED that respondent shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which respondent has complied and is complying with this order.

\* \* \*

### DEFENDANT'S COURSE OF CONDUCT

8. At all times mentioned herein, Defendant has been engaged in the labeling, advertising, promotion, offering for sale, sale, or distribution of foods and dietary supplements as "food" is defined in Section 15 of the FTC Act, 15 U.S.C. § 55, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

## **Defendant's Advertising**

9. Among the products marketed by Defendant are E3 Essential Algae and Parasine2. E3 Essential Algae, also known as Aphanizomenon flos-aquae or AFA, is a species of blue-green algae. Parasine2 is a dietary supplement containing wormwood, senna pods, fresh ground black seeds, fresh ground green black walnut hulls, fresh ground pumpkin seeds, organic cascara sagrada, fresh ground organic cloves, brucca, and fresh ground wormseed.

10. On numerous occasions since March 7, 2002, Defendant has disseminated advertisements on his website, [www.rawhealth.net](http://www.rawhealth.net), for E3 Essential Algae and Parasine2. These advertisements contain the following statements:

a. **E3 Essential Algae**

“Dr. Gabriel Cousins, M.D., in his article in Body, Mind Spirit in April 1995 said, ‘The greatest value of A.F.A. is not only its dense nutrient concentration or even its high neuropeptide precursors, but in its amazing positive effect on the nervous system. ...people taking AFA have consistently reported:

- an overall increase in mental alertness
- overall increase in mental stamina
- short and long term memory improved
- problem solving
- creativity
- dream recall
- greater sense of centered ness (sic)’

He also reports that algae has helped his clients with such diseases as:

- Depression
- Autisum (sic)
- Hypoglycemia
- Diabetes



- Chronic Fatigue Syndrome
- Anemia
- Ulcers
- Hepatitis
- Alzheimers

People with auto-immune system disorders (such as Lupus, CFS, connective tissue disease, AIDS, etc.), may find it adds a boost to their lives. Older people may find their mental acuity return as a result of eating Aphanizomenon flos-aquae. When applied to wounds, algae has been shown to promote more rapid healing.”

b. Parasine2

“Take Parasine2 to eliminate the organisms associated with: hunger cravings, emotional instability, chronic fatigue, and many other symptoms. It is best to use this product twice: 4-5 weeks apart because parasites have a 30-day incubation cycle. Serious cases may require up to 7 times during the first year.”

(A copy of the website pages setting forth the above statements is attached to this Complaint as Exhibit B.

**Defendants' Compliance Monitoring**

11. On March 27, 2002, Commission staff sent Defendant a letter requesting that he file a compliance report under Part XIV of the Commission's Order within 60 days after service of the Order. The letter requested samples of Defendant's current advertising, as well as a report setting forth, in detail, the manner and form in which Defendant had complied with the Order, including steps Defendant took to comply with order provisions prohibiting certain misrepresentations and requiring substantiation for others, as well as Defendant's efforts to

provide redress to consumers. Under the time specified in the Commission's Order, the due date for the report was May 6, 2002.

12. The Commission did not receive a report from Defendant by the May 6<sup>th</sup> due date. Since May 2002, Commission staff has exchanged a series of communications with Defendant in an effort to obtain information required under the Order. To date, Defendant has failed to provide all of the information requested by the Commission staff and required by the Order.

13. On January 30, 2003, Commission staff sent a letter via first-class mail and e-mail to Defendant reiterating that Defendant had violated the Order, requesting a complete compliance report and notifying Defendant of staff's intention to recommend that the Commission authorize the Department of Justice file this Complaint unless Defendant filed a complete and accurate compliance report. The letter, which was sent to a business address in Oregon, was subsequently returned by the post office. Only then, did Commission staff learn that Defendant had moved to his current North Carolina address.

#### FIRST CAUSE OF ACTION

14. Through the statements described in Paragraph 10.a., Defendant, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of E3 Essential Algae, on numerous occasions, has represented, expressly or by implication, that:

- a. E3 Essential Algae provides users with:
  - (1) an overall increase in mental alertness;
  - (2) an overall increase in mental stamina;
  - (3) improved short and long term memory; and
  - (4) improved problem solving ability;

b. E3 Essential Algae treats or alleviates symptoms associated with the following diseases:

- (1) Depression;
- (2) Autism;
- (3) Hypoglycemia;
- (4) Diabetes;
- (5) Chronic Fatigue Syndrome;
- (6) Anemia;
- (7) Ulcers;
- (8) Hepatitis;
- (9) Alzheimer's Disease; and
- (10) auto-immune system disorders (such as Lupus, CFS, connective tissue disease, AIDS, etc.).

15. Defendant made each representation set forth in Paragraph 14 without possessing and relying upon competent and reliable scientific evidence that substantiates the representation in violation of Parts II.A., II.H. and/or II.I. of the Order.

#### SECOND CAUSE OF ACTION

16. Through the statements described in Paragraph 10.b., Defendant, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of Parasine2, on numerous occasions, has represented, expressly or by implication, that Parasine2 treats or alleviates the following:

- a. hunger cravings;
- b. emotional instability; and
- c. chronic fatigue.

17. Defendant made each representation set forth in Paragraph 16 without possessing and relying upon competent and reliable scientific evidence that substantiates the representation in violation of Parts II.A., II.H. and/or II.I. of the Order.

### THIRD CAUSE OF ACTION

18. Defendant has violated Part VIII of the Commission's Order by failing to make available upon the request of the Federal Trade Commission the following information:

- a. all promotional materials that Defendant has disseminated since service of the Order to market products and/or services covered by the Order; and
- b. all the evidence Defendant relied upon to substantiate advertising claims for Parasine2, ComforTone, Colosan, Colema Boards, Young Living Essential Oils, and Non-GMO Lecithin.

### FOURTH CAUSE OF ACTION

19. Defendant has violated Part VII of the Commission's Order by failing to file a report explaining fully Defendant's efforts to provide refunds to all eligible customers as required by Parts V and VI of the Commission's Order. Defendant has failed to provide information including, but not limited to, the following:

- a. an indication that Defendant sent a refund letter to all eligible purchasers of *Colloidal Silver*;
- b. the number of refunds offered; and
- c. the number of refunds requested.

### FIFTH CAUSE OF ACTION

20. Defendant has violated Part XIV of the Commission's Order by failing to file a compliance report including, but not limited to, the following information:

- a. an adequate explanation of the steps Defendant has taken to comply with Parts I, II, and III of the Order; and
- b. a complete explanation of the steps Defendant has taken to comply with the record keeping and distributor surveillance requirements set forth in Parts VIII and X of the Order.

#### SIXTH CAUSE OF ACTION

21. Defendant has violated Part XIII of the Commission's Order by failing to notify the Commission of changes in his residence address, mailing address, or business address in a timely matter as required by Part XIII of the Commission's Order.

#### CIVIL PENALTIES AND EQUITABLE RELIEF

22. Each violation of the Commission's Order, in one or more of the ways described above, constitutes a separate violation for which Plaintiff seeks monetary civil penalties.

23. Section 5(l) of the FTC Act, 15 U.S.C. §§ 45(l), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and Section 1.98(c) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(c), authorizes this Court to award monetary civil penalties of not more than \$11,000 for each violation of the Commission's Order.

24. Sections 5(l) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(l) and 53(b), authorize this Court to issue a permanent injunction against Defendant's violating the Commission's Order and the FTC Act, and to order ancillary relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests this Court, pursuant to 15 U.S.C. §§ 45(l) and 53(b), and pursuant to the Court's own equitable powers to:

- (1) Enter judgment against Defendant and in favor of Plaintiff for each violation alleged in this Complaint;
- (2) Award Plaintiff monetary civil penalties from Defendant for each violation of the Commission's Order alleged in this Complaint;
- (3) Permanently enjoin Defendant from violating the Commission's Order issued in FTC Docket No. C-4040;
- (4) Award such relief as the Court finds necessary to redress injury to consumers resulting from defendants' violations of the Order; including, but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten monies;
- (5) Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper; and
- (6) Grant such equitable relief as the Court may determine to be just and proper.

DATED:  
Of Counsel:

FOR THE UNITED STATES OF AMERICA

ELAINE D. KOLISH  
Associate Director  
for Enforcement  
Federal Trade Commission

Acting Assistant Attorney General  
Civil Division  
U.S. Department of Justice

ROBERT M. FRISBY  
Assistant Director  
for Enforcement  
Federal Trade Commission

ROBERT J. CONRAD, JR.  
United States Attorney  
Western District of North Carolina

CRAIG R. LISHER  
Attorney  
Division of Enforcement  
Federal Trade Commission  
Washington, D.C. 20580

By: *Donald H. Caldwell, Jr.*  
Donald H. Caldwell, Jr.  
Assistant United States Attorney

EUGENE M. THIROLF  
Director  
Office of Consumer Litigation

*Elizabeth Stein by DHC, Jr. with*  
Elizabeth Stein *permission*  
Attorney  
Office of Consumer Litigation  
Civil Division  
U.S. Department of Justice  
Washington, D.C. 20530  
202-307-0486