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Clerk, U. S. Dist. Court
W. Dist. of N. C.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

FILED
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W. DIST. OF N.C.

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 1:03CV214-T

KRIS A. PLETSCHKE,
d/b/a RAW HEALTH,

Defendant.

**DEFAULT JUDGMENT AND ORDER FOR PERMANENT
INJUNCTION AGAINST DEFENDANT KRIS A. PLETSCHKE, d/b/a RAW HEALTH**

Plaintiff, the United States of America commenced this action by filing a complaint on August 27, 2003, for civil penalties, consumer redress, and a permanent injunction against defendant Kris A. Pletschke, d/b/a Raw Health. Defendant was served with the summons and the complaint on August 27, 2003. The complaint alleged that defendant had violated, and is continuing to violate, an Order issued by the Federal Trade Commission ("FTC" or "Commission") in 2002 ("2002 Order") that prohibited defendant from engaging in certain advertising practices and requiring that defendant pay refunds to consumers of a certain product and to file reports and make certain documents and information available to the FTC. After the Court partially granted an extension of time to respond to the complaint, defendant filed a motion to dismiss the complaint on October 28, 2003. On January 27, 2004, the Court denied defendant's motion to dismiss and ordered defendant to file an answer to the complaint on or before February 11, 2004. To date, defendant has not filed an answer to the complaint, and the

deadline for such a pleading has not been further extended. On March 1, 2004, default was entered against Kris A. Pletschke, d/b/a Raw Health. Pursuant to the entry of Default and the Motion For Entry of Default Judgment Against Defendant Kris A. Pletschke, d/b/a/ Raw Health, and the corresponding Memorandum, the following final judgment and permanent injunction (“Order”) is hereby entered. Unless otherwise specified, “defendant” shall mean Kris A. Pletschke, individually, and d/b/a Raw Health, his agents, representatives, and employees.

FINDINGS

1. The Complaint states a claim upon which relief may be granted against defendant 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).
2. This Court has jurisdiction over the parties and subject matter of this action.
3. Venue in this district is proper under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b).
4. The activities of defendant, as alleged in the Complaint, were in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
5. Entry of this Order is in the public interest.

CIVIL PENALTY

I. Defendant is ordered, pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), to pay a monetary civil penalty to the United States of America in the total amount of one hundred and one thousand dollars (\$101,000.00). Such payment shall be made within five (5) days after the date of entry of this Order by electronic fund transfer in accordance with the instructions provided by: The Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.

II. In the event of default in payment, which default continues for ten (10) days beyond the due date of the payment, interest shall be computed pursuant to 28 U.S.C. § 1961(a). Interest shall accrue from the date of default to the date of payment.

INJUNCTIVE RELIEF

III. Defendant, directly or through any corporation, subsidiary, or other device, and all persons in active concert or participation with him, are hereby enjoined from ever violating any provision of the 2002 Order, a copy of which is attached herewith as Appendix A and made part of this Default Judgment and Permanent Injunction Order.

IV. In the event that the 2002 Order is hereafter modified, defendant's compliance with such 2002 Order as so modified shall not be deemed a violation of this injunction.

RECORD KEEPING, COMPLIANCE AND OTHER REPORTING REQUIREMENTS

V. Defendant must, for a period of five years from the date of entry of this Order:

a. Provide a copy of this Order and the 2002 Order to, and obtain a signed and dated acknowledgment of receipt from, all personnel, whether such persons are designated as employees, consultants, independent contractors, or otherwise, involved in the advertising or promotion of any product or service covered by this Order, *provided*, that defendant must deliver a copy of the Order and the 2002 Order to current personnel within thirty (30) days after the date of entry of this Order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities; and

b. Maintain, for a period of three (3) years after creation, and, upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments required in Subparagraph a of this Paragraph.

VI. Within thirty (30) days after the receipt of a written request by a representative of the Commission, defendant must: submit written reports (under oath, if requested) and produce documents; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such Defendant's possession or direct or indirect control to inspect the business operation with respect to any conduct subject to this Order.

VII. Defendant must, in accordance with 31 U.S.C. § 7701, furnish to the Commission his taxpayer identifying number (social security number or employer identification number), which will be used for purposes of collecting and reporting any delinquent amount arising out of defendant's relationship with the government.

VIII. For purposes of this Order, defendant must, unless otherwise directed by the Commission or its representatives, mail all written notifications to the Commission to the Commission's Associate Director for Enforcement at the following address:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580
Re: Kris Pletschke, d/b/a Raw Health

IX. The Commission and Plaintiff are authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

A. obtaining discovery from any person, without further leave of court, using the procedures proscribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;

B. posing as consumers and suppliers to: the Defendant, a Defendant's employee, or any other entity managed or controlled in whole or in part by Defendant, without the

necessity of identification or prior notice;

Provided that nothing in this Order shall limit 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, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

X. Defendant shall permit representatives of the Commission or Plaintiff to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

WEBSITE CESSATION

XI. Any party hosting any web pages or websites for the defendant shall immediately take whatever steps necessary to ensure that Web pages or websites operated, in whole or in part, under the name www.rawhealth.net cannot be accessed by the public and shall immediately notify the Commission's Associate Director for Enforcement of any other Web page or website operated or controlled by the defendant.

XII. The domain name registrar that registered www.rawhealth.net shall immediately suspend the website's registration and shall immediately notify the Commission's Associate Director for Enforcement of any other Web page or website operated or controlled by the defendant.

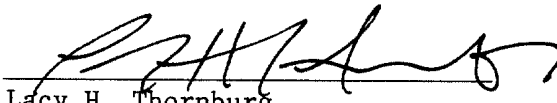
JURISDICTION RETENTION

XIII. This Court shall retain jurisdiction of this matter for the purpose of enabling any of the parties to this Order to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Order, for the

enforcement of the compliance therewith, or for the punishment of the violations thereof.

JUDGMENT IS THEREFORE ENTERED in favor of plaintiff, the United States of America, and against defendant Kris Pletschke d/b/a Raw Health pursuant to the terms and conditions recited above.

Dated this 8th day of Sept., 2004.



Lacy H. Thornburg
UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS:

Timothy J. Muris, Chairman

Sheila F. Anthony

Mozelle W. Thompson

Orson Swindle

Thomas B. Leary

In the Matter of

KRIS A. PLETSCHKE

individually and d/b/a

Raw Health

DOCKET NO. C-4040

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft 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 respondent with violations of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, and admission by the respondent of all the jurisdictional facts set forth in the draft complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent 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 respondent violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement, now in further conformity with the procedure prescribed in Section 2.34(c) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

APPENDIX A

1. Respondent Kris A. Pletschke is an individual doing business and residing at 11355 SW 14th St., Beaverton, OR 97005 under the trade name "Raw Health."
2. 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. "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.
2. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
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 Kris A. Pletschke.
4. "Person" shall mean a natural person, organization or other legal entity, including a partnership, corporation, proprietorship, association, cooperative, or any other group acting together as an entity.
5. Unless otherwise specified, "respondent" shall mean Kris A. Pletschke, individually, and d/b/a Raw Health, his agents, representatives, and employees.
6. "Colloidal Silver product" shall mean any product containing or purporting to contain colloidal silver or silver salts, including but not limited to Raw Health's *Colloidal Silver*.

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.

8. "Food," "drug," and "device" shall mean as "food," "drug," and "device" are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.

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

10. "Endorsement" shall mean as "endorsement" is defined in 16 C.F.R. § 255.0(b).

I.

IT IS HEREBY 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* product or any covered product or service in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, that such product or service is effective in treating or curing 650 diseases; eliminates all pathogens in the human body in six minutes or less; or has been medically proven to kill any destructive bacterial, viral and fungal organism in the body, including anthrax, Ebola and Hunta, or "flesh-eating bacteria."

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* product, 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;

- B. That any such product or service kills the HIV virus or can be used as an antibiotic for any acquired diseases of active AIDS;
- C. That any such product or service is superior to antibiotics in killing disease-causing organisms or the treatment of burns;
- D. That any such product or service protects or strengthens the immune system;
- E. That any such product or service can be used safely on open wounds, sprayed into the eye, injected, used orally, vaginally, anally, atomized or inhaled into the nose or lungs, or dropped into the eyes;
- F. That any such product or service has no side effects or that it is safe for children, or pregnant or nursing women;
- G. That any such product or service aids the growth or health of the developing fetus or eases delivery or recovery;
- 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.

III.

IT IS 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 covered product or service in or affecting commerce, shall not misrepresent, in any manner, including by means of metatags, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

IV.

Nothing in this order shall prohibit respondent from making any representation for any drug that is permitted in labeling for such product under any tentative final or final standard promulgated by the Food and Drug Administration. Nor shall it prohibit respondent from 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.

V.

IT IS FURTHER ORDERED that respondent shall:

- A. Within seven (7) days after service of this order upon respondent, deliver to the Commission a list, in the form of a sworn affidavit, of all distributors who purchased *Colloidal Silver* on or after January 1, 1999, directly from respondent or indirectly through one of respondent's other distributors. Such list shall include each distributor's name and address, and, if available, the telephone number and email address of each distributor.
- B. Within seven (7) days after service of this order upon respondent, deliver to the Commission a list, in the form of a sworn affidavit, of all consumers who purchased *Colloidal Silver* on or after January 1, 1999, directly from respondent or indirectly through one of respondent's distributors. Such list shall include each consumer's name and address, and, if available, the telephone number and email address of each consumer and the full purchase price paid, including shipping, handling, and taxes, for *Colloidal Silver* purchased from respondent.
- C. 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 A, showing the date of mailing, to each distributor who purchased *Colloidal Silver* from respondent between January 1, 1999 and the date of service of this order. This mailing shall not include any other document.

- 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 for 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 invoice[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 the signed declaration to the respondent within fifteen (15) days of consumer's receipt of 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 14th 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 consumer to whom respondent sent the notice attached hereto as Attachment B as required under subpart V.D;
- B. The name and address of each consumer from whom respondent received a refund request;
- C. The date on which each request was received and the amount of the refund requested;
- 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.

IX.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities as stated above. Respondents shall maintain and upon request make available to the Commission for inspection and copying each such signed and dated statement.

X.

IT IS FURTHER ORDERED that respondent, directly or through any partnership, corporation, subsidiary, division, trade name, or other device, including franchisees, licensees, or distributors shall:

- A. For a period of five (5) years following the entry of this order, send a copy of the notice attached hereto (Attachment A) by first class certified mail, return receipt requested, to any distributor of *Colloidal Silver* or any other covered product or service, *provided, however*, that the requirement of this subpart shall not apply to any distributor who received a copy of the notice attached hereto (Attachment A) pursuant to the requirements of subpart V.C of this order.
- B. Institute a reasonable program of surveillance adequate to reveal whether any of respondent's distributors are disseminating advertisements or promotional materials that contain any representation about *Colloidal Silver* or any other covered product or service manufactured by or purchased from respondent, that is prohibited by Parts I through III of this order.
- C. Terminate all sales of *Colloidal Silver* or any other covered product or service to any distributor who is engaged in disseminating advertisements or promotional materials that contain any representation about *Colloidal Silver* or any other covered product or service manufactured by or purchased from respondent, that is prohibited by Parts I through III of this order, once respondent knows or should know that the distributor is or has been engaged in such conduct.

XI.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any change with regard to Raw Health that may affect compliance obligations arising under this order, including but not limited to its incorporation; and if incorporated, its creation, dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the business or corporate name or address. *Provided, however*, that, with respect to any proposed change about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge.

XII.

IT IS FURTHER ORDERED that respondent, within five (5) days of entry of this order, shall notify the Commission of (1) his residence address and mailing address; (2) his telephone number(s); (3) if applicable, the names of his employer and supervisor(s); and (4) his duties and responsibilities.

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.

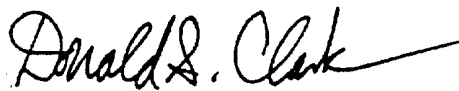
XV.

This order will terminate on February 22, 2022, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission



Donald S. Clark

Secretary

ISSUED: February 22, 2002

United States District Court
for the
Western District of North Carolina
September 8, 2004

* * MAILING CERTIFICATE OF CLERK * *

Re: 1:03-cv-00214

True and correct copies of the attached were mailed by the clerk to the following:

Kris A. Pletschke
87 Nevada Ave.
Asheville, NC 28806

Elizabeth Stein, Esq.
Office of Consumer Litigation
Civil Division
U.S. Dept. of Justice
Washington, DC 20530

Donald H. Caldwell Jr., Esq.
U.S. Attorney's Office
227 W. Trade St.
1700 Carillon Bldg.
Charlotte, NC 28202

cc:
Judge (X)
Magistrate Judge ()
U.S. Marshal ()
Probation ()
U.S. Attorney ()
Atty. for Deft. ()
Defendant ()
Warden ()
Bureau of Prisons ()
Court Reporter ()
Courtroom Deputy ()
Orig-Security ()
Bankruptcy Clerk's Ofc. ()
Other _____ ()

Date: 9/8/04

Frank G. Johns, Clerk

By: P. Freeman
Deputy Clerk