

Modifying Order

103 F.T.C.

IN THE MATTER OF

G.R.I. CORPORATION

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8828. Consent Order, Feb. 11, 1972—Modifying Order, April 20, 1984*

This order reopens the proceeding and modifies a consent order entered on Feb. 11, 1972 (80 F.T.C. 155), which required a direct mail marketing firm, among other things, to cease disseminating advertisements and promotional materials which falsely guarantee or misrepresent the quality or price of any drug, food or beauty preparation. The order further required respondent to clearly and conspicuously disclose, in close proximity to any offer used to enroll consumers in a plan in which other items would be shipped regularly at additional charges, the full details and conditions of that plan, and to repeat them each time the offer was mentioned in the ad. Under the modifying order, the company must clearly and conspicuously disclose near any "free" or special offers that acceptance of the offer places further obligations on the consumer. Except where a coupon or similar form of acceptance is included, respondent need only disclose details of such obligations once elsewhere in the ad.

ORDER REOPENING THE PROCEEDING AND
MODIFYING CEASE AND DESIST ORDER

On December 23, 1983, G.R.I. Corporation, [hereinafter G.R.I. or respondent] respondent in the above-captioned matter, filed a petition pursuant to Rule 2.51 of the Commission's Rules of Practice to reopen the proceeding and modify the order entered therein.

The order, which was entered in 1972, covers the offering for sale, sale, or distribution of "Bio-Rich Beauty Cream," "Over Fifty Capsules," and "Beauty Kits," or any food, drug, or cosmetic.

The order, among other things, prohibits the respondent from falsely guaranteeing its products, misrepresenting the quality of its products in any way, misrepresenting various quality aspects of its products, misrepresenting various aspects of its prices, or attempting to collect for merchandise which has been refused or returned. Paragraph 1(a) of the order prohibits respondent from representing that "[a]ny product is offered free or under any other terms where the offer is used as a means of enrolling those who accept the offer in a plan whereby additional supplies of the product are shipped at an additional charge unless all of the conditions of the plan are disclosed clearly and conspicuously and within close proximity to the 'free' or other offer."

G.R.I. now seeks to modify the order, by adding a provision to

paragraph 1(a) of the order which would permit it to have the option of clearly and conspicuously disclosing obligations attendant upon acceptance of the free or nominally priced offer and then clearly and conspicuously disclosing the complete terms of the offer elsewhere. Thus, the alternative language would not require that respondent disclose all the conditions "within close proximity to the free or other offer" as is now mandated.

The Commission has concluded that the petition is in the public interest and should be granted. The proposed modification should be sufficient to ensure that consumers are aware of their obligations in accepting the free or other offer. Not only is respondent required by the modified order to disclose clearly and conspicuously and within close proximity to the offer that there are other conditions that a consumer assumes upon accepting the offer, but the respondent must clearly and conspicuously set forth elsewhere in the advertisement the complete details, conditions, and obligations. Thus, assuming that the proper language is used, a consumer can be expected to be aware of the obligations attendant upon acceptance of the offer. Moreover, as noted by G.R.I. in its petition, the proposed modification is identical to that granted on March 17, 1983, by the Commission in *Golden Tabs Pharmaceutical Co., Inc.*, Docket 8792. [101 F.T.C. 410]

Respondent has attached several advertisements to its petition, including those which purport to contain disclosures that would satisfy the proposed modified order. Respondent is advised that, in granting the petition, the Commission does not agree that the attached advertisements, or the disclosures contained therein, would constitute satisfactory compliance with the modified order.

It is therefore ordered, That the proceeding is hereby reopened and the Decision and Order issued February 11, 1972, in Docket No. 8828 is hereby modified to read as follows:

ORDER

It is ordered, That respondent G.R.I. Corporation, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of "Bio-Rich Beauty Cream," "Over Fifty Capsulets," and "Beauty Kits," or any food, drug or cosmetic, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing the dissemination of, by means of the United States mail or by means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents directly or by implication that:

(a) Any product is offered "free" or under any other terms where the offer is used as a means of enrolling those who accept the offer in a plan whereby additional supplies of the product are shipped at an additional charge unless all of the conditions of the plan are disclosed clearly and conspicuously and within close proximity to, the "free" or other offer;

or, alternatively,

any product is offered free or under any other terms when the offer is used as a means of enrolling those who accept the offer in a plan whereby additional supplies of the product are shipped at an additional charge unless (1) respondent discloses clearly, conspicuously, and within close proximity to the free or other offer that there is a further obligation upon the consumer upon acceptance of the offer, and (2) respondent also discloses clearly and conspicuously elsewhere in the advertisement the complete details, conditions, and obligations attendant upon acceptance of the offer, provided further that, if the advertisement includes a coupon, signature space, or other designated means by which the consumer is intended to accept the offer, respondent discloses clearly and conspicuously on or in close proximity to the coupon or other space provided for acceptance of the offer the complete details, conditions and obligations attendant upon acceptance of the offer, but such complete disclosure need not appear more than once in the advertisement, including the coupon.

(b) Persons who respond to advertisements incur no obligation when responding to such advertisements: *Provided, however*, this prohibition shall not apply to a representation that persons receiving merchandise are under no obligation to keep or to continue receiving such merchandise.

(c) Respondent's products are guaranteed in any manner unless the nature and extent of the guarantee, the identity of the guarantor and the manner in which said guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith; and unless the respondent fully, satisfactorily and promptly performs all of its obligations and requirements under the terms of the guarantee.

(d) The freshness or potency of any vitamin-mineral or cosmetic preparation is guaranteed.

(e) Any offer is limited in time or in any other manner unless any represented limitation or restriction is actually imposed and adhered to.

(f) Women of any special age require special care or attention for their skin or skin problems.

(g) Bio-Rich Beauty Cream or the ingredients thereof is new or is a recent discovery.

(h) Any price for respondent's products is a special or reduced price, unless such price constitutes a significant reduction from an established selling price at which such products have been sold in substantial quantities by respondent in the recent regular course of its business, and unless respondent has maintained business records that substantiate an established selling price at which such products have been sold in substantial quantities in the recent regular course of its business; or misrepresenting in any manner the savings available to purchasers. In the sale of the products of others, including assortments and/or kits containing the products of others, a representation of comparable value shall not violate the provisions of this paragraph when such comparable value is based on respondent's good faith reliance upon a manufacturer's assurance of value based on (1) substantial recent sales of an item at a given price, or (2) in the case of items that are packaged in a size not otherwise sold to the public, based on a prorata adjustment from the prices obtained for those sizes of the items that have been sold recently and in substantial quantities. Written evidence of said manufacturer's assurance of value shall be maintained by respondent.

(i) That regulations and scientific controls relating to respondent's products have been strictly observed, or in any manner representing that respondent's products conform to any stricter regulations or controls than those required for any other similar products.

(j) That the use of respondent's vitamin-mineral "capsulets" will be of benefit in the prevention of the symptoms of tiredness, nervousness, restlessness, listlessness, worry, irritability, tension, depression, lack of pep or energy, loss of vigor or vitality, or lack of alertness, unless such advertisement expressly limits the effectiveness of the preparation to those persons whose symptoms are due to a deficiency of Vitamin B-1 (Thiamin), Vitamin B-2 (Riboflavin), Vitamin C (Ascorbic Acid), or Niacinamide, and further, unless such advertising clearly and conspicuously reveals the facts that in the great majority of persons, or of any age, sex, or other group or class thereof, who experience such symptoms, these symptoms are caused by conditions other than those which may respond to the use of respondent's vitamin-mineral preparation, and that in such persons the preparation will not be of benefit.

(k) That the ingredients in respondent's vitamin-mineral preparation other than Vitamin B-1 (Thiamin), Vitamin B-2 (Riboflavin), Vitamin C (Ascorbic Acid), or Niacinamide will be of benefit in the prevention of tiredness, nervousness, restlessness, listlessness, worry,

irritability, tension, depression, lack of pep or energy, loss of vigor or vitality, or lack of alertness.

2. Dissemination, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of respondent's products in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations or misrepresentations prohibited by Paragraph 1 hereof.

It is further ordered, That respondent G.R.I. Corporation, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of "Bio-Rich Beauty Cream," "Over Fifty Capsulets," and "Beauty Kits," or any food, drug or cosmetic product in commerce, as "commerce" is defined by the Federal Trade Commission Act, do forthwith cease and desist from:

1. Shipping or sending any merchandise to any person without the prior expressed request or consent of the person to whom such merchandise is sent, unless such merchandise is a free sample and has attached to it a clear and conspicuous statement informing the recipient that he may treat the merchandise as a gift to him and has the right to retain, use, discard, or dispose of it in any manner he sees fit without any obligation whatsoever to the sender in regard to that merchandise.

2. Mailing any bill or any dunning communication for any merchandise shipped or sent without the prior expressed request or consent of the recipient, to such recipient.

3. Shipping or sending merchandise to any person and attempting, or causing to attempt, the collection of the price thereof when a notification of cancellation for any further shipments of merchandise has been sent by such person: *Provided, however,* that it shall be a defense in any enforcement proceeding instituted under this prohibition for respondent to affirmatively establish that: (1) such merchandise had been shipped less than ten (10) working days after said notification of cancellation had been received by respondent in the regular course of business, and (2) no invoices, except for that one accompanying the shipment of said merchandise, or any notice requesting payment for or return of said merchandise had been sent or caused to be sent by respondent to such person concerning said shipment, except that respondent may send one notice to such person advising that the cancellation has been effected and requesting the return of such merchandise if respondent clearly discloses in said notice that such person is under no obligation to return said merchandise, and respondent promises to pay for the return of said merchandise.

dise and further, respondent, in fact, reimburses such person for any expenses incurred in its return.

4. Attempting, or causing to attempt, the collection of the price for merchandise when such merchandise has been refused and returned to respondent: *Provided, however*, that it shall be a defense in any enforcement proceeding instituted under this prohibition for respondent to affirmatively establish that any collection notice sent in regard to said refused and returned merchandise could not reasonably be halted after the return of said merchandise, except that this defense shall be unavailable with respect to any collection notice sent more than twenty (20) days after the date on which such merchandise has been refused, returned, and received by respondent in the regular course of business.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions or departments.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent 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 corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondent shall, within sixty (60) days after service upon it of this modified order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist.

It is further ordered, That the foregoing modification shall become effective upon service of this Order.

IN THE MATTER OF
PHARMTECH RESEARCH, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5
AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9168. Complaint, July 27, 1983—Decision, May 1, 1984

This consent order requires a San Francisco, Calif. manufacturer of nutritional supplements, among other things, to cease representing that findings of a 1982 National Academy of Sciences report entitled *Diet, Nutrition and Cancer* support the claim that Daily Greens, a dehydrated vegetable tablet, reduces the incidence of any type of cancer. The order requires the company to substantiate representations concerning benefits to health with reliable and competent scientific evidence, and to maintain accurate records which either support or contradict such claims. Further, respondent is prohibited from misrepresenting the purpose, content or conclusion of any scientific test, research article or scientific opinion.

Appearances

For the Commission: *Andrew B. Sacks* and *Reid B. Horwitz*.

For the respondent: *Jon Henry Kouba, Adams, Kouba & Dickson*, San Francisco, Calif. and *Eugene Lambert, Covington & Burling*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that PharmTech Research, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located in San Francisco, California.

PAR. 2. Respondent is now and for some time in the past has been engaged in the manufacture, offering for sale, and sale of nutritional supplements, including Daily Greens, and other products for personal or household use by members of the general public (hereinafter "consumer products").