

Complaint

103 F.T.C.

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").

PAR. 3. Respondent has caused to be prepared and placed for publication and has caused the dissemination of advertising and promotional material, including, but not limited to, the advertising referred to herein, to promote the sale of Daily Greens.

PAR. 4. Respondent operates in various States of the United States and in the District of Columbia. Respondent's manufacturing, offering for sale, sale, and distribution of nutritional supplements, including Daily Greens mentioned herein constitutes maintenance of a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of its business, respondent has disseminated and caused the dissemination of advertisements for nutritional supplements, including Daily Greens, by various means in or affecting commerce, including *inter alia* national magazines and newspapers distributed by the mail and across state lines, and broadcasts transmitted across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products.

PAR. 6. Typical statements in said advertisements, and promotional materials, disseminated as previously described, but not necessarily inclusive thereof, are found in advertisements and promotional materials attached hereto as Exhibits A through D. Specifically, the aforesaid advertisements and promotional materials contain the following statements:

(A) Cabbage, Brussels Sprouts, Carrots, Cauliflower, Spinach and Broccoli vs. Cancer.

(B) According to the National Academy of Sciences,* a regular diet of cruciferous (cabbage, brussels sprouts, broccoli, cauliflower) and carotene-rich (carrots and spinach) vegetables is associated with a reduction in the incidence of certain cancers.

Of course you may not really like these vegetables. Or you may not cook them quite right. And even if you have all that worked out, you still have to contend with seasonal availability.

That's why there are Daily Greens. . .

* *Diet, Nutrition and Cancer*, National Academy Press, 1983.

(C) The National Academy of Sciences thinks a balanced diet may reduce your risk of cancer. Daily Greens were designed to be a part of that balanced diet. . .

(D) [S]ubstantial evidence exists that regular consumption of cruciferous vegetables is associated with a reduction in the incidence of certain cancers. Thanks to the process of dehydration, Daily Greens allow you to eat cruciferous vegetables regularly, with the convenience of a food supplement.

(E) Help your body defend itself.

(F) According to this recent report from the National Research Council, a combination of cruciferous and carotene-rich vegetables have been found to help our bodies build certain *important* biological defenses.

PAR. 7. Through the use, *inter alia*, of the statements referred to in

Paragraphs Six (A) through Six (F), and other representations contained in advertisements or promotional materials not specifically set forth herein, respondent has represented, and now represents, directly or by implication, that:

(a) The findings of the National Academy of Sciences *Diet, Nutrition and Cancer* Report support the claim that use of Daily Greens, or food supplements of dehydrated vegetables such as Daily Greens, is associated with a reduction in the incidence of certain cancers in humans.

(b) The National Research Council findings support a claim that the use of Daily Greens, or food supplements of dehydrated vegetables such as Daily Greens, may help consumers build important biological defenses.

(c) The use of Daily Greens is associated with a reduction in the incidence of certain cancers in humans.

PAR. 8. The representation referred to in Paragraph Seven (a) is false for the reasons, *inter alia*, that the findings of the National Academy of Sciences' *Diet, Nutrition and Cancer* Report do not support the claim that the use of Daily Greens or food supplements of dehydrated vegetables such as Daily Greens is associated with a reduction in the incidence of certain cancers.

PAR. 9. The representation referred to in Paragraph Seven (b) is false, for the reasons, *inter alia*, that no findings of the National Research Council support such a claim.

PAR. 10. At the time respondent made the representation alleged in Paragraph Seven (c), respondent did not possess and rely upon a reasonable basis for making such representation. Therefore, respondent's making and dissemination of said representations, as alleged, constituted and now constitute unfair and deceptive acts or practices.

PAR. 11. Through the use of the advertisements referred to in Paragraph Seven, and other advertisements not specifically set forth herein, respondent has represented, directly or by implication, that it possessed and relied upon a reasonable basis for the representation set forth in Paragraph Seven (c) at the time of the initial dissemination of the representations and each subsequent dissemination. In truth and in fact, respondent did not possess and rely upon a reasonable basis for making such representations. Therefore, respondent's making and dissemination of said representations, as alleged, constituted and now constitute unfair and deceptive acts or practices.

PAR. 12. The use by respondent of the aforesaid statements, representations, acts, and practices, directly or by implication, and the placement in the hands of others of the means and instrumentalities by and through which others may have used the aforesaid statements,

representations, acts, and practices, have had and now have the capacity and tendency to mislead consumers into the erroneous and mistaken belief that said statements and representations were and are true and complete and to induce such persons to purchase Daily Greens by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts or practices of respondent, herein alleged as deceptive, were and are to the prejudice and injury of the public and constituted and now constitute unfair or deceptive acts or practices in or affecting commerce and false advertisements in violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended.

ATTACHMENT A

Cabbage, Brussels Sprouts, Carrots, Cauliflower, Spinach and Broccoli vs. Cancer.



Your grandmother was right.

Eating vegetables is good for you. According to the National Academy of Sciences, a regular diet of cruciferous (cabbage, brussels sprouts, broccoli, cauliflower) and carotene-rich (carrots and spinach) vegetables is associated with a reduction in the incidence of certain cancers.*

Of course you may not really like these vegetables. Or you may not cook them quite right. And even if you have all that worked out, you still have to contend with seasonal availability.

That's why there are Daily Greens.™

Daily Greens are concentrated servings of cruciferous and carotene-rich vegetables. Picked ripe. Carefully washed. And quickly dehydrated without cooking. Then they're fortified with vitamins A, C, E, beta-carotene and selenium.

Finally, the ingredients are shaped into tablets and given a protective vegetable coating, freeing Daily Greens from the need for any preservatives.

The National Academy of Sciences thinks a balanced diet may reduce your risk of cancer. Daily

Greens were designed to be a part of that balanced diet. Decrease your intake of all fats by one-fourth, drink alcohol only in moderation, try to avoid pickled, smoked or salt-cured foods, eat plenty of fruits, whole grains and vegetables. And of course, don't smoke.

Daily Greens are not a cure for cancer, and there are no guarantees against cancer. But substantial evidence exists that regular consumption of cruciferous vegetables is associated with a reduction in the incidence of certain cancers. Thanks to the process of dehydration, Daily Greens allow you to eat cruciferous vegetables regularly, with the convenience of a food supplement. Ask your doctor.

Even if you already take vitamins, Daily Greens are one more step toward a complete daily health program. One of the simplest steps you can take.

Help your body defend itself.™



Complaint

ATTACHMENT B

vs. Cancer.

Your grandmother was right. Eating vegetables is good for you. According to the National Academy of Sciences, a diet rich in vegetables, fruits, and whole grains can help reduce the risk of cancer. And, as you know, your grandmother was a very healthy woman.

Let's take a closer look at the science behind this claim. The National Academy of Sciences, in its report "Diet and Cancer," states that "the evidence is strong that a diet rich in vegetables, fruits, and whole grains can help reduce the risk of cancer." This is based on a review of numerous studies, including the famous Harvard Nurses' Study, which found that women who ate a diet rich in vegetables and fruits had a lower risk of developing cancer than those who did not.

So, what's the deal? Why do we hear so much about eating vegetables and fruits to prevent cancer? The answer is simple: because it works. The evidence is overwhelming. In fact, the National Academy of Sciences estimates that a diet rich in vegetables and fruits can reduce the risk of cancer by as much as 50%. That's a pretty big deal, especially when you consider that cancer is the leading cause of death in the United States.



Help your body defend itself.



Cauliflower

Broccoli

Carrots and Spinach

Cabbage

Brussels Sprouts

ATTACHMENT C

PHARMTECH RESEARCH, INC.VIDEO

Open on white type on black screen,
as delivered in audio

Dims to ECU Female annr. in
LIMBO setting.

Cuts to MS Of her as she holds
up research.

Diss. and pan display of fresh
vegetables.

Diss. back to MS of annr. as she
moves to display of fresh vegeta-
bles. She gestures to array of
vegetables.

Cut to ECU of bottle as she holds
it up

AUDIO1. MALE ANNCR. V/O (Deep Voiced):

The following message concerns a
revolutionary new concept in diet
and nutrition.

2. ON-CAMERA FEMALE ANNCR.:

Did you know that there are certain
foods that can actually help your
body defend itself?

3. It's true. And, according to a
recent 700-page report from the Natio
Research Council, a combination of
cruciferous vegetables

4. like cabbage, cauliflower, brusse
sprouts, broccoli...and carotene-rich
vegetables like carrots and spinach

5. have been found to help our bodie
build certain important biological
defenses. Because cooking can strip
away nutrients, to get the most ben-
efits from any vegetables, you should
eat them raw. But, that can be diffic
to do every day.

6. So, I'd like to introduce you to
Daily Greens - a new concept in
nutrition.

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VIDEO

7. Hold above shot. SUPER:
NOT JUST A VITAMIN...A FOOD
8. Diss. and pan along vegetables
and petri dishes of powdered
vegetables.
9. Diss. back to anncr. holding
bottle
10. Diss. and pan vegetables to bottle.
SUPER: FORTIFIED WITH VITAMINS
A, C & E PLUS BETA-CAROTENE
11. Diss. back to anncr. with bottle
sitting in display of
vegetables.
12. Diss. to bottle, package
and tablets on sweep
13. Shrink above shot into mortise
on black. SUPER:
HELP YOUR BODY DEFEND ITSELF

AUDIO

7. Daily Greens are NOT just another
vitamin pill -- they are a food.
8. They're actually natural, fresh
cruciferous and carotene-rich vegetables,
dehydrated and compressed,
without cooking, so you get the
nutrients, the fiber and the roughage
that's so good for you.
9. Just one Daily Green tablet a
day gives you the important
10. nutritional elements you'd get
from eating these fresh, raw
vegetables. And, Daily Greens are
fortified with vitamins A, C, E plus
beta-carotene.
11. So, if you aren't getting enough
raw vegetables every day -- rely on
Daily Greens --
12. the food that not only gives you
the real thing ... it gives it to
you raw, so it can do you the most good
13. Daily Greens -- to help your body
defend itself.

ATTACHMENT D

VIDEO

1. Open on white type on black screen, as delivered in audio.
2. Diss. to MCU of female anncr. as she holds up research.
3. Diss. and pan display of fresh vegetables.
4. Diss. back to her at display of fresh vegetables.
5. Cut to ECU of bottles as she holds up bottle of Daily Greens
6. Hold above shot. SUPER: NOT JUST A VITAMIN...A FOOD
7. Diss. and move along vegetables and petri dishes of powdered vegetables
8. Diss. back to anncr. with bottle.

AUDIO

1. MALE ANNCR. V/P (Deep-Voiced):
The following message concerns a revolutionary new concept in diet and nutrition.
2. ON-CAMERA FEMALE ANNCR.:
According to this recent report from the National Research Council, a combination of cruciferous
3. and carotene-rich vegetables have been found to help our bodies build certain important biological defenses.
4. Of course, to get the most from any vegetable, you should eat them. But that's difficult to do every day.
5. So I'd like to introduce you to Daily Greens.
6. Daily Greens are NOT just another vitamin pill --
7. They're natural, fresh, cruciferous and carotene-rich vegetables, dehydrated and compressed
8. to give you the important nutritional elements that could be so vital to your future health.

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- | | |
|---|--|
| 9. Diss. to CU of bottle and vegetables.
SUPER: FORTIFIED WITH VITAMINS A,
C & E PLUS BETA-CAROTENE | 9. And, Daily Greens are fortified
with vitamin A, C and E ... plus
beta-carotene. |
| 10. Diss. back to anncr. | 10. So, if you're not getting enough
raw vegetables <u>every day</u> ... |
| 11. Diss. to product shot | 11. rely on Daily Greens -- |
| 12. Add SUPER: HELP YOUR BODY
DEFEND ITSELF | 12. to help <u>your</u> body defend itself |

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the 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, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent PharmTech Research, Inc., 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 at 1750 Montgomery Street, in the City of San Francisco, State of California.

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

ORDER

I

It is ordered, That respondent PharmTech Research, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of Daily Greens, or any

other product containing dehydrated vegetables, 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, contrary to fact, that findings of the National Academy of Sciences, or findings contained in the 1982 Report entitled *Diet, Nutrition, and Cancer*, support the claim that use of the product is associated with a reduction in incidence of any type of cancer.

II

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of any product for personal or household use, 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 purpose, content, sample, reliability, results or conclusions of any scientific test, research article, or any other scientific opinion or data.

III

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, packaging, offering for sale, sale, or distribution of any product for personal or household use, 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, concerning any benefit to health to be derived from using any such product unless, at the time of such representation, respondent possesses and relies upon reliable and competent scientific evidence that substantiates such representation. "Reliable and competent" shall mean for purposes of this Order those tests, analyses, research, studies, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

IV

It is further ordered, That respondent or its successors or assigns maintain accurate records:

1. Of all materials that were relied upon by respondent in disseminating any representation covered by this order.

2. Of all test reports, studies, surveys, or demonstrations in its possession or control or of which it has knowledge that contradict any representation made by respondent that is covered by this order.

Such records shall be retained by respondent or its successors or assigns for three years from the date that the representations to which they pertain are last disseminated. *It is further ordered*, That any such records shall be retained by respondent or its successors or assigns and that respondent or its successors or assigns shall make such documents available to the Commission for inspection and copying upon request.

V

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in 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.

VI

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions, and to all present and prospective distributors of products manufactured or marketed by respondent.

VII

It is further ordered, That respondent 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 it has complied with this order.

CARTER HAWLEY HALE STORES, INC.

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Complaint

IN THE MATTER OF

CARTER HAWLEY HALE STORES, INC.
d/b/a THE EMPORIUM and EMPORIUM-CAPWELL

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS

Docket C-3133. Complaint, May 9, 1984—Decision, May 9, 1984

This consent order requires a San Francisco, Calif. retailer to comply with the billing error resolution procedures of the Truth in Lending Act (the Act) and its implementing Regulation Z. Respondent must acknowledge a customer's written billing error notice within 30 days; resolve the dispute or mail an explanation as to why a statement is believed correct within 2 billing cycles; and maintain for at least two years, records evidencing compliance with the Act's provisions. Respondent is prohibited from attempting to collect any amount of a bill in dispute, including any finance charge computed on such amount; and must forfeit the right to collect the amount in dispute up to \$50., should it fail to comply with any of the Act's requirements.

Appearances

For the Commission: *Ralph E. Stone and Earl Stackhouse.*

For the respondent: *Jeremy V. Wisot, MacFarlane, Schaefer & Haun, Los Angeles, Calif.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder by the Board of Governors of the Federal Reserve System, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Carter Hawley Hale Stores, Inc., a corporation, doing business as The Emporium and Emporium-Capwell, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts and the implementing regulation promulgated under the Truth in Lending 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 Carter Hawley Hale Stores, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 550 South Flower Street, Los Angeles.