

## IN THE MATTER OF

## EFFICIENT LABS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3768. Complaint, Sept. 12, 1997--Decision, Sept. 12, 1997*

This consent order requires, among other things, the Puerto Rico-based Spanish-language advertiser of dietary supplements and its officer to have scientific evidence to substantiate any claims they make concerning the health benefits, performance, safety or efficacy of any food, drug, cosmetic or dietary supplement promoted or used to treat conditions or illnesses related to the circulatory system.

*Appearances*

For the Commission: *Michael Bloom, Donald D'Amato and Denise Tighe.*

For the respondents: *Jose Acosta-Grubb, Fiddler, Gonzalez & Rodriquez, San Juan, Puerto Rico.*

## COMPLAINT

The Federal Trade Commission, having reason to believe that Efficient Labs, Inc., a corporation, and Blas Reyes-Reyes, individually and as an officer of the corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Efficient Labs, Inc. is a corporation organized under the laws of the Commonwealth of Puerto Rico, with its principal office or place of business at 413 San Jorge Street, San Juan, Puerto Rico.

2. Respondent Blas Reyes-Reyes is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, participates in, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Efficient Labs, Inc.

3. Respondents have advertised, offered for sale, sold, and distributed products to the public, including "Venoflash," a nutritional supplement with ingredients that include Niacin U.S.P.; Vitamins

B-1, B-6, B-12, C, and E; and various plant derivatives. Venoflash purportedly, among other things, treats the symptoms of varicose veins and hemorrhoids. "Venoflash" is a "food" and/or "drug" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52,55.

4. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

5. Respondents have disseminated or have caused to be disseminated print and television advertisements for Venoflash that have appeared in Miami's El Nuevo Herald, and have been broadcast and cablecast on Telemundo de Puerto Rico, Univision 41(WXTV-New York), Telemundo (T47/WNJU New York), Univision 23 (WLTW-Miami), and Telemundo de Florida. These print and television advertisements, including but not necessarily limited to the attached Exhibit A (transcript of a television advertisement), contain the following statements:

"Clogged, Clogged, Clogged!

When your blood circulation feels like it's clogging, look for the Venoflash aid.

If you suffer from varicose veins, Venoflash can help you!

If you suffer from hemorrhoids, Venoflash can help you!

To order, 1-800-272-8964.

Venoflash can help if your extremities become numb as a result of problems in your veins and capillaries.

Defend yourself from those dangerous clogs in your circulatory system and recover your lost agility taking Venoflash.

Venoflash can help you!"

(Exhibit A)

6. Through the means described in paragraph five, respondents have represented, expressly or by implication, that:

- A. Venoflash removes dangerous clogs in the circulatory system;
- B. Venoflash treats the symptoms of varicose veins; and
- C. Venoflash treats the symptoms of hemorrhoids.

7. Through the means described in paragraph five, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph six at the time the representations were made.

8. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph six at the time the representations were made. Therefore,

the representation set forth in paragraph seven was, and is, false or misleading.

9. The acts and practices of respondents as alleged in this complaint constitute 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 Federal Trade Commission Act.

Complaint

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## EXHIBIT A

## VENOFLASH TV COMMERCIAL SCRIPT

TAPON, TAPON, TAPON!  
Clogged, Clogged, Clogged!

CUANDO SE PRODUCEN TAPONES EN LA CIRCULACION DE LA SANGRE,  
BUSQUE LA AYUDA DE VENOFLASH.

When your blood circulation feels like it's clogging, look for the Venoflash aid.

SI SUFRE DE VARICES, VENOFLASH PUEDE AYUDARLE!  
If you suffer from varicose veins. Venoflash can help you!

SI PADECE DE HEMORROIDES, VENOFLASH PUEDE AYUDARLE!  
If you suffer from hemorrhoids. Venoflash can help you!

PARA ORDENAR, 1-800-272-8964.  
To Order, 1-800-272-8964.

VENOFLASH PUEDE AYUDARLE SI SE LE ADORMECEN LAS EXTREMIDADES  
POR PROBLEMAS EN SUS VENAS Y CAPILARES.

Venoflash can help if your extremities become numb as a result of  
problems in your veins and capillaries.

DEFIENDASE DE ESOS PELIGROSOS TAPONES EN SUS SISTEMA CIRCULATORIO  
Y RECUPERE SU AGILIDAD PERDIDA TOMANDO VENOFLASH.

Defend yourself from those dangerous clogs in your circulatory system  
and recover your lost agility taking Venoflash.

VENOFLASH PUEDE AYUDARLE!  
Venoflash can help you!

## DECISION AND ORDER

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

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

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

1. Respondent Efficient Labs, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico, with its office and principal place of business located at 413 San Jorge Street, San Juan, Puerto Rico.

Respondent Blas Reyes-Reyes is an officer and director of the corporate respondent. Mr. Reyes-Reyes, individually or in concert with others, formulates, directs, and controls the policies, acts, and practices of said corporation, and his business address is the same as that of the said corporate respondent.

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. Unless otherwise specified, "*respondents*" shall mean Efficient Labs, Inc., a corporation, its successors and assigns and its officer; Blas Reyes-Reyes, individually and as an officer of the corporation; and each of the above's agents, representatives and employees.

3. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

## I.

*It is ordered*, That respondents, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of "Venoflash" or any other product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such product:

- A. Removes dangerous clogs in the circulatory system;
- B. Treats the symptoms of varicose veins; or
- C. Treats the symptoms of hemorrhoids.

unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

## II.

*It is further ordered*, That respondents, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Venoflash or any food, dietary supplement, or drug, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, promoted or used

to treat conditions or illnesses related to the circulatory system, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the health benefits, performance, safety, or efficacy of such product, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

### III.

Nothing in this order shall prohibit respondents from making any representation for any product that is specifically permitted in the labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

### IV.

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in the labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

### V.

*It is further ordered*, That respondent Efficient Labs, Inc., and its successors and assigns, and respondent Blas Reyes-Reyes shall, for five (5) 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.

## VI.

*It is further ordered,* That respondent Efficient Labs, Inc. and its successors and assigns, and respondent Blas Reyes-Reyes, 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. Respondents 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.

## VII.

*It is further ordered,* That respondent Efficient Labs, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a 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 corporate name or address. Provided, however, that, with respect to any proposed change in the corporation 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. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

## VIII.

*It is further ordered,* That respondent Blas Reyes-Reyes, for a period of seven (7) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All

notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

IX.

*It is further ordered,* That respondent Efficient Labs, Inc., and its successors and assigns, and respondent Blas Reyes-Reyes 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 they have complied with this order.

X.

This order will terminate on September 12, 2017, 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.

## IN THE MATTER OF

## KENT &amp; SPIEGEL DIRECT, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3769. Complaint, Sept. 18, 1997--Decision, Sept. 18, 1997*

This consent order requires, among other things, the California-based infomercial company and its officers, who marketed the Abflex abdominal exerciser, to have competent and reliable evidence for future claims regarding weight loss and the benefits, efficacy or performance of such a product in promoting weight loss. In addition, the consent order requires that the testimonials in the respondents' advertisement and infomercial either represent the typical experience of users, or include disclosures of the generally expected results or that users should not expect similar results.

*Appearances*

For the Commission: *Kerry O'Brien* and *Jeffrey Klurfeld*.

For the respondents: *Barry J. Cutler* and *Julia A. Oas*, *McCutchen, Doyle, Brown & Enersen*, New York, N.Y. and *Arthur Herold, Webster, Chamberlain & Bean*, New York, N.Y.

## COMPLAINT

The Federal Trade Commission, having reason to believe that Kent & Spiegel Direct, Inc., a corporation, and Marsha Kent and Peter Spiegel, individually and as officers of the corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Kent & Spiegel Direct, Inc. is a Delaware corporation with its principal office or place of business at 6133 Bristol Parkway, Suite 150, Culver City, California.

2. Respondent Marsha Kent is an officer of the corporate respondent. Individually or in concert with others, she formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. Her principal office or place of business is the same as that of Kent & Spiegel Direct, Inc.

3. Respondent Peter Spiegel is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation,