

IN THE MATTER OF

NUTRIVIDA, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3826. Complaint, Sept. 10, 1998--Decision, Sept. 10, 1998*

This consent order prohibits, among other things, the New York-based corporation and its officer from making any unsubstantiated claims regarding the health benefits, performance or efficacy of Cartilet (a dietary supplement comprised of shark cartilage), or any food, drug or dietary supplement. In addition, the consent order prohibits the use of testimonials, unless they reflect the typical experience of consumers or the required disclosure is made, and the consent order requires the respondents to disclose that radio or video presentations are paid advertisements.

Participants

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

For the respondents: *Gary Hailey, Venable, Baetjer, Howard & Civiletti, Washington, D.C. and Jeffrey Rubin, Rubin & Shang, New York, NY.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Nutrivida, Inc., a corporation, and Frank Huerta, individually and as an officer and director 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:

PARAGRAPH 1. Respondent Nutrivida, Inc. ("Nutrivida") is a New York corporation with its principal office or place of business at 25 Chapel Street, Brooklyn, New York. Nutrivida produces and distributes program length television advertisements, or "infomercials." These infomercials include an advertisement for Nutrivida's "Cartilet" shark cartilage capsules, a dietary supplement which purports to treat or cure, among other things, cancer, arthritis, and diabetes.

Respondent Frank Huerta is an officer and director 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 business address is 25 Chapel Street, Brooklyn, New York.

PAR. 2. Respondents have manufactured, labeled, advertised, offered for sale, sold, and distributed products to the public, including Cartilet shark cartilage capsules. This product 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 and 55.

PAR. 3. 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.

PAR. 4. Respondents Nutrivida and Frank Huerta have disseminated or have caused to be disseminated advertisements for Cartilet shark cartilage capsules, including, but not limited to, the attached Exhibit A (partial transcript of a program length television advertisement). Advertisements for Cartilet shark cartilage capsules have been broadcast in Spanish language television media, including Telemundo's New York metropolitan cable channel. These advertisements contain the following statements:

Narrator (male):

"[F]rom the complexities of the ocean to the wonders of the natural. Shark cartilage. The shark does not sleep. We bring our cartilage from clean waters, without contamination. Its [shark cartilage's] marvelous properties are already known. It [shark cartilage] has been used in studies against cancer, arthritis, diabetes, and other illnesses."

Copy on Screen:

"It has been used in studies against:
Cancer Arthritis Diabetes"

Dr. J. Casas:

"My friends, as you all know, for there to be a tumorous process, for a fibroid, for a tumor in the body to grow, survive, it definitely needs nourishment. How do you nourish a tumor? How do you nourish a fibroid? Well, you only and exclusively nourish it through the blood vessels. It must have blood irrigation -- the main -- the best that shark cartilage has is that it inhibits the formation of blood vessels that irrigate and cause the tumor to grow. [T]his is a basic principle which has been documented various times, it is written in many books how shark cartilage has a predilection and goes directly to inhibit the growth of the

blood vessels that nourish the tumor. Because there are no nutrients, because there is no nourishment, because there is no blood to nourish that tumor, it has no alternative but to disappear and to give in to the shark cartilage. In few words, my friends, shark cartilage is the medium by which to inhibit any nutrients so that that tumor can not prosper.... Shark cartilage has many indications of being a potent anti-inflammatory. For that reason, it is indicated in the processes of rheumatism, in the processes of arthritis, in bursitis, in the circulatory process, in all that has to do with pain and inflammation. Remember, it is important to always visit your doctor It definitely works, because in it we find elements that help . . . those cells and arteries that nourish that cyst, that fibroid, that tumor, to simply stop providing nourishment . . . malnourishment to the blood and that fibroid, that cyst, can no longer grow. The results at this moment are extraordinary. Thank God. Shark cartilage, like they have properly stated, sharks do not get cancer”

Consumer (female): “Dr. Pestano, I believe because the experience has been marvelous. I personally did not believe much in natural medicine, truly. But really, my son, who had visited Miami, came to my house and brought me . . . Cartilet. He said, ‘Mom, try this.’ I had suffered for a very long time from a pain in my left arm; my arm was paralyzed, I was tormented, I was desperate. I had taken other medicines, and nothing had been effective. I listened to my son and started to take the capsules of this wonderful product. I later learned it was shark cartilage, and it worked a miracle because my arm was cured.”

Dr. R. Martinez: “What I want to emphasize is that to separate and place shark cartilage like a great medicine, as an independent weapon in the fight against these illnesses, is a mistake. Shark cartilage must be treated like a powerful weapon, but, within the combination of medicines and therapeutic possibilities we have; all natural, all complementary, but, directed towards the same end”

Dr. R. Martinez: “When we speak about inflammation, we also speak about cancer, about arthritis, about rheumatism [T]he results in patients with different types of arthritis are parallel to the results obtained with different types of cancer -- regarding effectiveness. This all depends on the dosage -- in accordance with the individual’s weight in accordance with the patient’s immune system. But I repeat, the results with different types of arthritis were highly effective, without

toxicity, and with little side effects. In comparison with the other weapons we have in the modern pharmacopoeia against these illnesses or to alleviate these illnesses, it has come to represent a step in advancement -- in my opinion -- extraordinary."

PAR. 5. Through the means described in paragraph four, respondents Nutrivida and Frank Huerta have represented, expressly or by implication, that:

- a. Cartilet shark cartilage capsules are effective in the symptomatic relief, treatment, or cure of cancer;
- b. Cartilet shark cartilage capsules are effective in the symptomatic relief or treatment of rheumatism, arthritis, diabetes, fibroids, bursitis, circulatory problems, and cysts; and
- c. A testimonial from a consumer appearing in the advertisements for Cartilet shark cartilage capsules reflects the typical or ordinary experience of members of the public who use the product.

PAR. 6. Through the means described in paragraph four, respondents Nutrivida and Frank Huerta have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph five at the time the representations were made.

PAR. 7. In truth and in fact, respondents Nutrivida and Frank Huerta did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph five at the time the representations were made. Therefore, the representation set forth in paragraph six was, and is, false or misleading.

PAR. 8. Through the means described in paragraph four, respondents Nutrivida and Frank Huerta have represented, expressly or by implication, that studies prove that Cartilet shark cartilage capsules are effective in the symptomatic relief or treatment of cancer, arthritis, and diabetes.

PAR. 9. In truth and in fact, studies do not prove that Cartilet shark cartilage capsules are effective in the symptomatic relief or treatment of cancer, arthritis, and diabetes. Therefore, the representation set forth in paragraph eight was, and is, false or misleading.

PAR. 10. Through the advertising and dissemination of the program length television advertisement for Cartilet shark cartilage capsules, respondents Nutrivida and Frank Huerta have represented,

expressly or by implication, that the program length television advertisement for Cartilet shark cartilage capsules is an independent television program and is not paid commercial advertising.

PAR. 11. In truth and in fact, the program length television advertisement for Cartilet shark cartilage capsules is not an independent television program and is paid commercial advertising. Therefore, the representation set forth in paragraph ten was, and is, false and misleading.

PAR. 12. 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.

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EXHIBIT A

EXHIBIT A

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Narrator (male):

"[F]rom the complexities of the ocean to the wonders of the natural. Shark cartilage. The shark does not sleep. We bring our cartilage from clean waters, without contamination. Its [shark cartilage's] marvelous properties are already known. It [shark cartilage] has been used in studies against cancer, arthritis, diabetes, and other illnesses."

"De los complejos del mar a la maravilla de lo natural. Cartilago de tiburón. El tiburón no duerme. Nuestro cartilago lo traemos de aguas limpias y sin contaminación. Ya se conoce sus maravillosas propiedades. Se ha utilizado en estudios contra el cáncer, artritis, diabetes, y otras enfermedades . . ."

* * * * *

Copy on Screen:

"It has been used in studies against:

Cancer
Arthritis
Diabetes"

"Se ha utilizado en estudios contra:

Cáncer
Artritis
Diabetes"

* * * * *

Dr. J. Casas:

"My friends, as you all know, for there to be a tumorous process, for a fibroid, for a tumor in the body to grow, survive, it definitely needs nourishment. How do you nourish a tumor? How do you nourish a fibroid? Well, you only and exclusively nourish it through the blood vessels. It must have blood irrigation -- the main -- the best that shark cartilage has is that it inhibits the formation of blood vessels that irrigate and cause the tumor to grow. [T]his is a basic principle which has been documented various times, it is written in many books how shark cartilage has a

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predilection and goes directly to inhibit the growth of the blood vessels that nourish the tumor. Because there are no nutrients, because there is no nourishment, because there is no blood to nourish that tumor, it has no alternative but to disappear and to give in to the shark cartilage. In few words, my friends, shark cartilage is the medium by which to inhibit any nutrients so that that tumor can not prosper. . . . Shark cartilage has many indications of being a potent anti-inflammatory. For that reason, it is indicated in the processes of rheumatism, in the processes of arthritis, in bursitis, in the circulatory process, in all that has to do with pain and inflammation. Remember, it is important to always visit your doctor. . . . It definitely works, because in it we find elements that help . . . those cells and arteries that nourish that cyst, that fibroid, that tumor, to simply stop providing nourishment . . . malnourishment to the blood and that fibroid, that cyst, can no longer grow. The results at this moment are extraordinary. Thank God. Shark cartilage, like they have properly stated, sharks do not get cancer"

"Mis amigos, como ustedes todos saben para que haya un proceso tumoral, para que un fibroma, para que un tumor en el cuerpo pueda crecer, sobrevivir, se necesita definitivamente que se nutra. Como se nutre un tumor? Como se nutre un fibroma? Bueno, se nutre unica y exclusivamente por las vasos sanguineos. Tiene que tener riego sanguineos -- el principal -- lo mejor que tiene cartilago de tiburón es que precisamente inhibe la formación de vasos sanguincos que van ha irrigar y hacer que este tumor crezca. [E]ste es un principio básico el cual ya se ha documentado varias veces, esta escrito en muchos libros como el cartilago de tiburón tiene predilección y va directamente haya ha inhibir el crecimiento de esos vasos sanguineos que van ha alimentar el tumor. Como no hay nutriente, como no hay alimentación, como no hay sangre para nutrir ese tumor, el no tiene alguna alternativa que desvanecer y ceder ante el cartilago de tiburón. En pocas palabras, mis amigos, el cartilago de tiburón es el medio por lo cual se inhibe que haga cualquier tipo de nutrición para que ese tumor no pueda prosperar. . . . El cartilago de tiburón tiene muchas indicaciones por ser un anti-inflamatorio potente. Por lo tanto, esta indicado en los procesos ruematicos, en los procesos artríticos, en la bursitis, en los procesos circulatorio, en todo aquello que tenga que ver con dolor y inflamación. Recuerden que siempre es importante visitar su médico Trabaja definitivamente, porque en el encontramos elementos que ayudan . . . ha que esas células, ha que esos vasitos

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arteriales que alimentan ese quiste, ese fibroma, que ayuda precisamente, que alimentan a ese tumor, pues que simplemente no le de mas nutrición para la alimentación para desnutriente, para la sangre, y por lo tanto ese fibroma, ese quiste, no puede crecer mas. Los resultados hasta el momento son extraordinario. Gracias a Dios. El cartilago de tiburón, como muy bien lo han dicho, los tiburones no tienen cáncer"

* * * * *

Consumer (female):

"Dr. Pestano, I believe because the experience has been marvelous. I personally did not believe much in natural medicine, truly. But really, my son, who had visited Miami, came to my house and brought me . . . Cartilet. He said, 'Mom, try this.' I had suffered for a very long time from a pain in my left arm; my arm was paralyzed, I was tormented, I was desperate. I had taken other medicines, and nothing had been effective. I listened to my son and started to take the capsules of this wonderful product. I later learned it was shark cartilage, and it worked a miracle because my arm was cured."

"Dra. Pestano, he creído, porque la experiencia ha sido maravillosa. Yo personalmente no creía mucha en la medicina natural, la verdad. Pero realmente, llego a mi casa mi hijo que fue a Miami. Me llevo . . . Cartilet. Me dice 'Mami, prueba con esto.' Porque sufría por mucho tiempo un dolor en el brazo izquierdo; que tenía mi brazo paralizado, era para mi tormentoso, yo estaba desesperada. Había tomado otras medicinas y nada había sido efectivo. Entonces le hice caso a mi hijo y empecé a tomar las capsulas de este maravilloso producto que despues vine a saber que se llamaba exactamente cartilago de tiburón, y que obro en mi un milagro, una maravilla, porque mi brazo se curo."

Dr. R. Martinez:

"What I want to emphasize is that to separate and place shark cartilage like a great medicine, as an independent weapon in the fight against these illnesses, is a mistake. Shark cartilage, must be treated like a powerful weapon, but, within the combination of medicines and therapeutic possibilities we have; all natural, all complementary, but, directed towards the same end"

"Lo que quiero enfatizar es que separar al cartilago de tiburón como una gran medicina y colocarlo como una arma independiente en la lucha contra las enfermedades es un error. El cartilago de

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tiburón, hay que tratarlo como una arma poderosísima, pero dentro del conjunto de medicamentos y de posibilidades terapéutica que tenemos; todas naturales, todas complementarias, pero dirigido con el mismo fin"

* * * * *

Dr. R. Martinez:

"When we speak about inflammation, we also speak about cancer, about arthritis, about rheumatism [T]he results in patients with different types of arthritis are parallel to the results obtained with different types of cancer - regarding effectiveness. This all depends on the dosage -- in accordance with the individual's weight in accordance with the patient's immune system. But I repeat, the results with different types of arthritis were highly effective, without toxicity, and with little side effects. In comparison with the other weapons we have in the modern pharmacopoeia against these illnesses or to alleviate these illnesses, it has come to represent a step in advancement -- in my opinion -- extraordinary."

"Cuándo se habla de inflamación, se habla también de cáncer, de artritis, se habla de reumatismo, se habla de [L]os resultados con pacientes de los diferentes clases de artritis son paralelos a los resultados que se han obtenido con distinto tipo de cáncer, en cuanto a la efectividad. Es muy importante dosificar de acuerdo con el peso de la persona -- en acuerdo con el estado inicial del sistema inmunológico del paciente. Pero repito, el resultado con diferentes tipos de artritis son de altas efectividad, de ninguna toxicidad, y muy poco efecto secundario. Por lo tanto en comparación con todas las otras armas que tenemos en la farmacopeia moderna en contra de estas enfermedades o para tratar de aliviar estas enfermedades, a venido a representar un paso de avance -- en mi opinión -- extraordinario."

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 Nutrivida, Inc. ("Nutrivida") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 25 Chapel Street, Brooklyn, New York.

Respondent Frank Huerta is an officer and director of the corporate respondent. Individually or in concert with others, he formulates, directs or controls the policies, acts, or practices of the corporation. His business address is 25 Chapel Street, Brooklyn, New York.

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 Nutrivida, Inc., a corporation, its successors and assigns and its officers; and Frank Huerta, individually and as an officer and director 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.

4. "*Video advertisement*" shall mean any advertisement intended for dissemination through television broadcast, cablecast, home video, or theatrical release.

I.

It is ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Nutrivida's Cartilet shark cartilage capsules or any other product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such product:

- A. Is effective in the symptomatic relief, treatment, or cure of cancer;
or
- B. Is effective in the symptomatic relief or treatment of rheumatism, arthritis, diabetes, fibroids, bursitis, circulatory problems, or cysts,

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, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Nutrivida's Cartilet shark cartilage capsules, or any food, dietary supplement, or drug as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the health benefits, performance, 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.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Nutrivida's Cartilet shark cartilage capsules or any food, dietary supplement, or drug, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

IV.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any food, dietary supplement, or drug as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement (as endorsement is defined in 16 CFR 255.0(b)) of the food, dietary supplement, or drug represents the typical or ordinary experience of members of the public who use the product, unless:

- A. At the time it is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or
- B. Respondents disclose in the same language as the predominant language that is used in the advertisement, clearly and prominently, and in close proximity to the endorsement or testimonial, either:
 - 1. What the generally expected results would be for users of the food, dietary supplement, or drug, or
 - 2. The limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

V.

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.

VI.

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.

VII.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, do forthwith cease and desist from creating, producing, selling, or disseminating:

- A. Any advertisement that misrepresents, expressly or by implication, that it is not a paid advertisement; and
- B. Any commercial or other video advertisement fifteen (15) minutes in length or longer or intended to fill a broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer

that does not display visually in the same language as the predominant language that is used in the advertisement, in a clear and prominent manner, and for a length of time sufficient for an ordinary consumer to read, within the first thirty (30) seconds of the commercial and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

“THE PROGRAM YOU ARE WATCHING IS A PAID
ADVERTISEMENT FOR [THE PRODUCT OR SERVICE].”

Provided that, for the purposes of this provision, the oral or visual presentation of a telephone number or address for viewers to contact to place an order for the product or service shall be deemed a presentation of ordering instructions so as to require the display of the disclosure provided herein; and

- C. Any radio advertisement fifteen (15) minutes in length or longer or intended to fill a time slot of fifteen (15) minutes in length or longer that does not state in the same language as the predominant language that is used in the advertisement, in a clear and prominent manner, and in a volume and cadence sufficient for an ordinary consumer to hear, within the first thirty (30) seconds of the commercial and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

“THE PROGRAM YOU ARE LISTENING TO IS A PAID
ADVERTISEMENT FOR [THE PRODUCT OR SERVICE].”

Provided that, for the purposes of this provision, the presentation of a telephone number or address for viewers to contact to place an order for the product or service shall be deemed a presentation of ordering instructions so as to require the stating of the disclosure provided herein.

VIII.

It is further ordered, That respondent Nutrivida, Inc., and its successors and assigns, and respondent Frank Huerta 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.

IX.

It is further ordered, That respondent Nutrivida, Inc., and its successors and assigns, and respondent Frank Huerta, for a period of five (5) years after the date of issuance of this order, 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.

X.

It is further ordered, That respondent Nutrivida, 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, respondents 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.

XI.

It is further ordered, That respondent Frank Huerta, for a period of three (3) 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 that involves the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any food, dietary supplement, or drug as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act. 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.

XII.

It is further ordered, That respondent Nutrivida, Inc., and its successors and assigns, and respondent Frank Huerta 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.

XIII.

This order will terminate on September 10, 2018, 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.

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IN THE MATTER OF

HERBAL WORLDWIDE HOLDINGS CORP., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3827. Complaint, Sept. 16, 1998--Decision, Sept. 16, 1998*

This consent order prohibits, among other things, a Florida-based company and its two principal officers from making any unsubstantiated weight-loss claims for "Fattaché," a purported dietary product, or from representing that any dietary supplement, food or drug can cause or contribute to achieving or maintaining weight loss without dieting, that such a product can prevent the absorption of ingested fat, helps eliminate ingested fat, or has any beneficial effect, unless the claims are supported by competent and reliable scientific evidence. In addition, the consent order prohibits the respondents from representing that any endorsement or testimonial represents the typical experience of users, unless they can substantiate the experience or the respondents provide the required disclosure.

Participants

For the Commission: *Sylvia Kundig and Jeffrey Klurfeld.*

For the respondents: *Stephen Nagin, Nagin, Gallop & Figueredo,*
Miami, FL.

COMPLAINT

The Federal Trade Commission, having reason to believe that Herbal Worldwide Holdings Corp., a corporation, José Diaz, individually and as an officer of the corporation, and Eduardo Naranjo, 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 Herbal Worldwide Holdings Corp. ("Herbal") is a Florida corporation with its principal office or place of business at 3326 Mary Street, Miami, Florida.

2. Respondent José Diaz is an owner and officer of respondent Herbal. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of Herbal, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Herbal.