

## Complaint

## IN THE MATTER OF

**SMARTSCIENCE LABORATORIES, INC., ET AL.**

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

*Docket C-3980; File No. 9923274*

*Complaint, November 2, 2000--Decision, November 2, 2000*

This consent order addresses SmartScience's representations for JointFlex. The complaint alleges that Respondent advertised that JointFlex eliminated significant pain due to disabling joint conditions, crushed vertebrae, arthritis, herniated disk, and other conditions and that JointFlex provided more pain relief than other over-the-counter pain creams. The complaint also alleges that Respondents ads represented that the glucosamine sulfate and chondroitin sulfate in JointFlex contribute to pain relief when applied topically, but that respondents do not possess competent and reliable evidence that the glucosamine sulfate and chondroitin sulfate in JointFlex, a topically applied cream, penetrates the skin sufficiently to induce a pharmacological effect. The consent order requires SmartScience to have competent and reliable scientific substantiation for any future claims about the comparative efficacy of JointFlex or any other drug or supplement or any ingredient therein for relieving reducing or eliminating pain, or providing health benefits. In addition, the consent order prohibits the respondent from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study and that the experience of any testimonialist or endorser is typical unless this conclusion is supported by competent and reliable scientific evidence. The order provides a safe harbor not prohibiting representations that permitted by a standard promulgated by the Food and Drug Administration for labeling or in a drug approval.

*Participants*

For the Commission: *Janet M. Evans, C. Lee Peeler, and BE.*

For the Respondents: *Steven Weitzman, SmartScience Laboratories, Inc. and Gilbert Weil, Weil, Guttman & Malkin L.L.P.*

## Complaint

**COMPLAINT**

The Federal Trade Commission, having reason to believe that SmartScience Laboratories, Inc., a corporation, and Gene C. Weitz, 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 SmartScience Laboratories, Inc. (ASmartScience@) is a Florida corporation with its principal office or place of business at 2327 Destiny Way, Odessa, Florida 33556. SmartScience was formerly known as Eden Laboratories, Inc.
2. Respondent Gene Weitz 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, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of SmartScience.
3. Respondents have manufactured, advertised, labeled, offered for sale, sold, and distributed products to the public, including JointFlex Pain Relieving Cream (AJointFlex@). JointFlex is a "drug" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act. According to the JointFlex label, camphor (3.1%) is the product's active ingredient. The product also contains chondroitin sulfate and glucosamine sulfate which the label identifies as inactive ingredients.
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.

## Complaint

5. Respondents have disseminated or have caused to be disseminated advertisements for JointFlex, including but not necessarily limited to the attached Exhibits A through E. These advertisements contain the following statements and depictions:

- A. **A>After two crushed vertebrae followed by painful arthritis, I never thought I=d get rid of the pain, until I used *JointFlex*. The results were amazing!=** [Picture of smiling consumer].

Men and women of all ages are amazed at the relief they are experiencing from a revolutionary new pain relief cream called *JointFlex*. . . . Not only are they getting rid of nagging pain, they=re enjoying the activities they love so much. According to a recent survey, a staggering 95 % said, ***JointFlex*** helped reduce their pain, often where other pain relief products failed.@

(Exhibit A--Newspaper ad run in USA Today, Dallas Morning News, Washington Post and others)

- B. **AI s Pain Spoiling Your Fun in Life?  
Do What These People Did!**

. . . .

Men and women of all ages are amazed at the relief they are experiencing from a revolutionary new pain relief cream called *JointFlex*. . . . \*\*\*

Nutrient Enriched with Glucosamine & Chondroitin Sulfate

. . . .

**Why put up with pain when these people got rid of theirs so easily?**

Theresa Carmen, an insurance broker swears by *JointFlex*. I used crutches because of a herniated disk in my back. After using *JointFlex*, I am now able to walk without crutches! I was really, REALLY surprised when I got relief in 5 minutes. It=s *amazing*@.

## Complaint

**Tried Pain Relief Creams With Little Results?**

Don Huffer, a man from Florida, said: None of the other name brand products I tried helped, only JointFlex worked. An 80-pound header fell on Don's head and crushed two vertebrae. Soon afterwards, very painful arthritis set in. This is what he did. I got two steroid injections that cost \$1,000 each at the hospital. That helped the pain some but I didn't want more injections because of the possible side effects. Then I tried JointFlex. To my utter amazement, the pain stopped! It was like a light went on in my life![@]

....

**New technology makes the ingredients more effective in relieving pain!**

What makes *JointFlex* different from other pain relief creams? No other pain relieving cream utilizes the fast penetrating, patent pending **FUSOME DELIVERY SYSTEM**, and also contains the much publicized, all natural ingredients, **GLUCOSAMINE & CHONDROITIN SULFATE**.

**A Revolutionary New Product to help Stop Pain**

JointFlex combines the nutrients, glucosamine and chondroitin sulfate, with its patent pending, Fusome Delivery System and makes the combination into a non-greasy cream that can be applied directly to painful areas. The results are astounding!@

\* \* \* \*

**Which symptoms do you want to eliminate?**

- X Arthritis Pain
- X Simple Backache
- X Muscle Sprains
- X Tendonitis
- X Neck Pain

## Complaint

X Shoulder Pain  
X Knee and Leg Pain  
X Muscle Cramps  
X Muscle Strains  
X Bruises and more

(Exhibit B--Newspaper ad run in USA Today, New York Post, Los Angeles Times, Chicago Tribune, Washington Post, and others)

**C. Effective at Reducing Pain for People of all Ages!**

Sixteen year old Melissa Cirello couldn't walk because she injured her back cheer leading. After only a few applications of *JointFlex* she said: AThe pain went away completely. I could start cheer leading again!@

....

**Do Your Favorite Activity Without Pain!**

Catherine Lambert played 18 holes of golf every week until her knees hurt so badly she had to stop.

AI started using JointFlex and the swelling went down. I felt relief. Soon I was back to playing two rounds of golf a week. My friends said, AWhat happened to you? Did you have surgery?[@] I told them no. I started using JointFlex and now I have no pain on most days![@]

(Exhibit C--Internet ad on [www.jointflex.com](http://www.jointflex.com))

**F. ahhh!**

...**More Pain Relief!**

**GUARANTEED!**

Nutrient Enriched with Glucosamine & Chondroitin Sulfate

....

What makes **JointFlex** different from other pain relief creams? No other pain relieving cream utilizes the fast penetrating, patent pending Fusome Delivery System and also contains the all natural nutrients, **glucosamine and**

## Complaint

**chondroitin sulfate.** This new technology makes the ingredients more effective in relieving pain.  
(Exhibit D--Magazine ad newspaper ad carried by Newsweek, Prevention)

**G. AWhy Continue to Live with Pain?**

JointFlex

Pain Relieving Cream . . .

utilizes breakthrough delivery system technology to provide more pain relief than competitive brands!

Guaranteed!@

(Exhibit E--Brochure distributed with product)

6. Through the statements and depictions described in Paragraph 5, respondents have represented, expressly or by implication, that:

- a. JointFlex eliminates significant pain due to disabling joint conditions, crushed vertebrae, arthritis, herniated disk, and other conditions;
- b. JointFlex provides more pain relief than other over-the-counter pain creams; and
- c. Testimonials from consumers appearing in the advertisements for JointFlex represent the typical or ordinary experiences of members of the public who use the product.

7. Through the statements and depictions described in Paragraph 5, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 6 at the time the representations were made.

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8. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 6 at the time the representations were made. Therefore, the representation set forth in Paragraph 7 was, and is, false or misleading.

9. Through the statements and depictions described in Paragraph 5, respondents have represented, expressly or by implication, that the glucosamine sulfate and chondroitin sulfate in JointFlex contribute to pain relief when applied topically.

10. Through the statements and depictions described in Paragraph 5, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representation set forth in Paragraph 9 at the time the representation was made.

11. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 9 at the time the representation was made. Among other reasons, respondents do not possess competent and reliable evidence that the glucosamine sulfate and chondroitin sulfate in JointFlex, a topically applied cream, penetrate the skin sufficiently to induce a pharmacological effect. Therefore, the representation set forth in Paragraph 10 was, and is, false or misleading.

12. Through the statements and depictions described in Paragraph 5, respondents have represented, expressly or by implication, that:

- a. A competent and reliable survey of JointFlex users shows that ninety-five percent experienced reduction or elimination of pain due to use of JointFlex;
- b. Ninety-five percent of JointFlex users who responded to a survey said that JointFlex helped reduce their pain; and
- c. As characterized in JointFlex advertising, certain testimonials, including but not limited to those of Melissa

## Complaint

Cirello and Catherine Lambert, represent the actual experience of those individuals.

## 13. In truth and in fact:

- a. No competent and reliable survey of JointFlex users shows that ninety-five percent experienced reduction or elimination of pain due to use of JointFlex. The survey respondents relied on was not competent and reliable, because, among other reasons, responding consumers were not randomly selected. In addition, there was no assurance that any pain reduction the responding consumers reported was due to use of the product.
- b. It is not the case that ninety-five percent of JointFlex users who responded to a survey said that JointFlex helped reduce their pain. The ninety-five percent figure reflects responses to the question, Ado you feel that the product helped your symptoms,@ not a question about pain relief, and the surveys also inquired into relief from stiffness, swelling, redness, and protuberances.
- c. As characterized in JointFlex advertising, certain testimonials, including but not limited to those of Melissa Cirello and Catherine Lambert, do not represent the actual experience of those individuals, because, among other reasons, Ms. Cirello=s injury did not stop her from walking and Ms. Lambert=s arthritis did not stop her from playing golf.

Therefore, the representations set forth in Paragraph 12 were, and are, false or misleading.

14. 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

## Complaint Exhibits

violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this second day of November, 2000, has issued this complaint against respondents.

By the Commission.

## Complaint Exhibits

Complaint Exhibit A

"After two crushed vertebrae followed by painful arthritis, I never thought I'd get rid of the pain, until I used *JointFlex*. The results were amazing!"



Men and women of all ages are amazed at the relief they are experiencing from a revolutionary new pain relief cream called *JointFlex*, an FDA compliant and registered nonprescription drug. Not only are they getting rid of nagging pain, they're enjoying the activities they love so much. According to a recent survey, a staggering 95% said, *JointFlex* helped reduce their pain, often where other pain relief products failed. *JointFlex* is different from other pain relief creams, in that it utilizes the fast penetrating, patent pending, *FUSOM DELIVERY SYSTEM*, and also contains the much publicized, all natural nutrients, *GLUCOSAMINE* and *CHONDROITIN SULFATE*. This technology makes the ingredients more effective in relieving pain. Apply *JointFlex* to the painful areas and its fast penetrating formula goes right to work to relieve the pain. There is no greasy feel, or medication smell. Now you can try *JointFlex* at no risk to you. Simply order by phone. As soon as it arrives, try it and see if your pain doesn't reduce or disappear. If you're not amazed with the results, just send the remainder back to us and we will instantly mail you a full product refund... no questions asked. Call **TOLL FREE** to order *JointFlex*.



**1-800-340-5603 Extension 9950**

One tube is **Only \$19.95**. A small price to pay for more pain relief. You can use Visa, Master Card, Discover or American Express.

**Order now, get 2nd tube at 1/2 price for only \$9.95**

Remember, you can get your money back with *JointFlex*... **IT'S GUARANTEED**, but you can't get back the precious time you lose to pain. Not Available In Stores

## Complaint Exhibits

# Is Pain Spoiling Your Fun in Life?

## Do What These People Did!

Complaint Exhibit B

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Men and women of all ages are amazed at the relief they are experiencing from a revolutionary new pain relief cream called **JointFlex**, an FDA compliant and registered nonprescription drug. Not only are they getting rid of nagging pain, they are once again enjoying the activities they love so much.



According to a consumer survey, a staggering 95% said **JointFlex helped reduce or eliminate their pain often where other pain relief products failed!**

**Why put up with pain when these people got rid of theirs so easily?**

Theresa Carmen, an insurance broker swears by **JointFlex**. I used crutches because of a herniated disk in my back. After using **JointFlex** I am now able to walk without crutches!

I was really, REALLY surprised when I got relief in 5 minutes. It's amazing.

**Tried Pain Relief Creams With Little Results?**



Don Huffer, a man from Florida, said: "None of the other name brand products I

tried helped, only **JointFlex** worked". An 80-pound header fell on Don's head and crushed two vertebrae. Soon afterwards, very painful arthritis set in. This is what he did. "I got two steroid injections, that cost \$1,000 each at the hospital. That helped the pain some, but I didn't want more injections

because of the possible side effects. Then I tried **JointFlex**. To my utter amazement, the pain stopped! It was like a light went on in my life!

**New technology makes the ingredients more effective in relieving pain!**

What makes **JointFlex** different from other pain relief creams? No other pain relieving cream

utilizes the fast penetrating, patent pending, **FUSOME DELIVERY SYSTEM**, and also contains the much publicized, all natural nutrients, **GLUCOSAMINE & CHONDROITIN SULFATE**.

**A Revolutionary New Product to help Stop Pain**

**JointFlex** combines the nutrients, glucosamine and chondroitin sulfate, with its patent pending, **Fusome Delivery System** and makes the combination into a non-greasy cream that can be applied directly to painful areas. The results are astounding!

**Effective at Relieving Pain for People of any Age!**

Sixteen year old Melissa Cirello couldn't walk because she injured her back practicing cheer leading. After only a few applications of **JointFlex**, she said: "The pain went away completely. I could start cheer leading again".



**Which symptoms do you want to eliminate?**

- Arthritis Pain
- Simple Backache
- Muscle Sprains
- Tendonitis
- Neck Pain
- Shoulder Pain
- Knee and Leg Pain
- Muscle Cramps
- Muscle Strains
- Bruises and more



Just apply **JointFlex** to the painful areas. Its fast penetrating formula goes right to work to relieve the pain. There is no greasy feel, or pungent medication smell.

**Do Your Favorite Activity Without Pain!**

Cathrine Lambert played two rounds (18 holes) of golf every week until the osteo arthritis in her knees hurt so badly, she had to stop. "I started using **JointFlex** and the swelling went down and I felt relief. Soon I was back to playing two rounds of golf a week. My friends said, "What happened to you? Did you have surgery?" I told them no. I started using **JointFlex** and I now have no pain on most days!"

**Try JointFlex today and you'll have your own success story!**



**Save \$2.00**  
On One 4oz. size tube



Use **JointFlex**. Lose The Pain.

GUARANTEED

MANUFACTURER COUPON! EXPIRES 2/29/00

For each \$2.00 coupon, please attach this coupon to the back of the tube of **JointFlex** and present it to the cashier at the time of purchase. The coupon must be attached to the back of the tube of **JointFlex** and presented to the cashier at the time of purchase. The coupon must be attached to the back of the tube of **JointFlex** and presented to the cashier at the time of purchase. The coupon must be attached to the back of the tube of **JointFlex** and presented to the cashier at the time of purchase.

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## Complaint Exhibits

JointFlex Newspaper Ad

<http://www.jointflex.com/newspaper.htm>

Complaint Exhibit C

[www.jointflex.com](http://www.jointflex.com)Is Pain Spoiling Your Fun in Life?  
Do What These People Did!

using JointFlex, I am now able to walk without crutches! I was really, REALLY, surprised when I got relief in 5 minutes. It's amazing!"

Gene Wirtz, the head scientist at Eden Laboratories, says his goal when developing JointFlex Pain Relieving Formula was to make the ingredients more effective in relieving pain.

**A Revolutionary New Product to Help Stop Pain.**

Gene has combined the nutrients, glucosamine and chondroitin sulfate, with his patent pending Fusome Delivery System.

**Why put up with pain when these people got rid of theirs so easily?**

People are amazed at the relief they are experiencing from a revolutionary new pain relief cream called JointFlex. Not only are they getting rid of nagging pain, they are once again enjoying the activities they love so much.

According to a recent survey, a staggering 95 percent of those surveyed said JointFlex helped reduce or eliminate their pain - often where other pain relief products failed.

Don Huffer, a man from Florida said: "None of the other name-brand products I tried helped. Only JointFlex worked."

An 80-pound leader fell on Don's head and crushed two vertebrae. Soon afterwards very painful arthritis set in. This is what he did:

"I got two steroid injections that cost \$1,000 each at the hospital. That helped the pain some but I didn't want more injections because of the possible side effects. Then I tried JointFlex. To my utter amazement the pain stopped! It was like a light went on in my life!"

**Tried Pain Relief Creams With Little Results?**

What makes JointFlex different from other pain relief creams?

No other pain-relieving cream utilizes the fast-penetrating, patent-pending Fusome Delivery System, and also contains the much publicized, all natural nutrients, glucosamine and chondroitin sulfate. Just how effective is this new technology in relieving pain?

Theresa Carmen, an insurance broker, swears by JointFlex. "I used crutches because of a herniated disk in my back. After

\*Arthritis  
\*Pain  
\*Simple  
\*Backache  
\*Muscle Sprains  
\*Tendonitis



\*Neck Pain  
\*Shoulder Pain  
\*Elbow Pain  
\*Wrist Pain  
\*Hand Pain  
\*Back Pain  
\*Knee Pain  
\*Ankle Pain

and made the combination into a non-greasy cream that can be applied directly to painful areas. The results are astounding!

**Effective at Reducing Pain for People of all Ages!**

Sixteen year old Melissa Cirello couldn't walk because she injured her back cheer leading. After only a few applications of JointFlex she said: "The Pain went away completely. I could start cheer leading again!"

Just apply JointFlex to the painful areas. Its fast-penetrating formula goes right to work to relieve the pain. There is no greasy feel, or pungent medication smell.

Larry Viens, a Real Estate salesman, said: "When I put on JointFlex I can go into restaurants and other places. People don't know I'm wearing pain cream like they might with some other products. There is no medication smell."

If you tried other pain relieving products without results, then you should try JointFlex. With its money back guarantee, you have nothing to lose but the pain!

**Do your Favorite Activity Without Pain!**

Catherine Lambert played 18 holes of golf every week until her knees hurt so badly she had to stop.

"I started using JointFlex and the swelling went down. I felt relief. Soon I was back to playing two rounds of golf a week. My friends said, 'What happened to you? Did you have surgery?' I told them no. I started using JointFlex and I now have no pain on most days!"

**Your Pain Will Reduce - or Your Money Back!**

Now you can try JointFlex in the privacy of your home at no risk to you. Simply order by phone. As soon as it arrives, try it out and see if your pain doesn't reduce or disappear. If you're not amazed with the results, just send the remainder back to Eden Laboratories and we will instantly mail you a full product refund.

Call, 1-888-664-3336 to order JointFlex. One bottle is only \$19.95. A small price to pay for pain relief. You can use Visa or Mastercard, Discover or AmEx.

**Remember, you can get your money back with JointFlex but you can't get back the precious time you lose to pain.**

## Complaint Exhibits

Complaint Exhibit D

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# ahhh!

## ...More Pain Relief! GUARANTEED!

**Nutrient Enriched with Glucosamine & Chondroitin Sulfate**

Men and women of all ages, are amazed at the relief they are experiencing from a revolutionary new pain relief cream called **JointFlex**, an FDA compliant and registered nonprescription drug. Now, you too can get rid of nagging pain and enjoy the activities you love so much.

According to a recent survey, a staggering 95% said **JointFlex** helped reduce or eliminate their pain, often where other pain relieving products failed!

What makes **JointFlex** different from other pain relief creams? No other pain relieving cream utilizes the fast penetrating, patent pending **Fusome Delivery System** and also contains the all natural nutrients, **glucosamine and chondroitin sulfate**. This new technology makes the ingredients more effective in relieving pain.



**Don't Let Pain Spoil Your Fun In Life.**

If you have tried other pain relieving creams without results, you should try **JointFlex**. After all, with its' money back guarantee, you have nothing to lose but the pain. **JointFlex**, with its revolutionary **Fusome Delivery System**, has a pleasant, nonmedical odor, is non-greasy, non-burning and can be applied directly to painful areas for astounding results...fast!

**Your pain will reduce... or your MONEY BACK!**

**No Questions Asked.**

**Get Rid Of Your Pain... NOW!**

**1-800-340-5603**

**Ext. 1008**

**Which symptoms do you want to eliminate?**

- Arthritis Pain
- Simple Backache
- Muscle Sprains
- Tendonitis
- Neck Pain
- Shoulder Pain
- Knee and Leg Pain
- Muscle Cramps
- Muscle Strains
- Bruises and more

**Eden LABORATORIES, INC.**

**NOT SOLD IN STORES**  
Use VISA, MasterCard, Discover or American Express. You can try **JointFlex** in the privacy of your own home, at no risk to you. **Order by phone NOW.** As soon as it arrives, try it and see if your pain doesn't reduce or disappear. If you're not amazed with the results, just return the remainder back to us for a full refund, no questions asked. One large four ounce tube is **Only \$19.95**, plus shipping and handling. A small price to pay for more pain relief.

FDA Drug Registration No. - NDC 64479-110-04

JointFlex and Fusome are trademarks of Eden Laboratories, Inc.

## Complaint Exhibits

**Eden  
Laboratories,  
Inc.**

Eden Laboratories, Inc. was formed as the result of tireless research by dedicated individuals on dermal delivery (to the skin) technology and ways to improve pharmaceutical ingredients' effectiveness.

Eden Laboratories products utilize revolutionary dermal delivery system technology to deliver the FDA regulated ingredients directly to the desired areas in a highly effective form to achieve unparalleled results that exceed the results achieved by competitive products, **GUARANTEED!**

Eden Laboratories, Inc. currently offers JointFlex™ Pain Relieving Cream. By utilizing the FUSOME™ technology, JointFlex™ Pain Relieving Cream provides more pain relief compared to competitive brands. It also contains the natural nutrients Glucosamine and Chondroitin Sulfate.

Look for many new products in the future that also incorporate the revolutionary FUSOME™ Delivery System. These products will contain the safest and most effective FDA regulated active ingredient to achieve superior results for each product's intended pharmaceutical end use.

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Eden Laboratories, Inc. is committed to improving the quality of your life by its unique integration of technology and nature.

JointFlex™ Pain Relieving Cream utilizes patent-pending delivery system technology to give you a product that offers unparalleled performance,

**GUARANTEED!****Eden Laboratories'  
Guarantee**

After using JointFlex™ Pain Relieving Cream daily as directed for a minimum of two weeks, if you don't find that it is the most effective over-the-counter pain relieving cream you have ever used, simply return the unused product for a full refund, no questions asked.



**Eden  
LABORATORIES, INC.**  
*Integrating Technology & Nature*

Eden Laboratories, Inc.  
2327 Destiny Way  
Odessa, FL 33556  
(727) 375-5911 • FAX (727) 375-9062  
email: sales@jointflex.com  
www.jointflex.com

**Why Continue  
to Live with  
Pain?**



utilizes  
breakthrough delivery  
system technology to  
provide more pain  
relief than  
competitive brands!  
**Guaranteed!**

Complaint Exhibit E

## Complaint Exhibits

### FUSOME™ Deep Release System

**JointFlex™ Pain Relieving Cream's** advantage lies in the cutting edge dermal (to the skin) delivery system. Eden's unique, patent-pending FUSOME™ delivery system effectively delivers the FDA compliant and registered pain relieving formula directly to your problem areas.

**The FUSOME™ Deep Release System** is a novel combination of the latest advancements in emulsification and skin penetration technology. Ingredients are quickly and safely delivered to the skin enhancing their inherent benefits.

**The FUSOME™ Deep Release System** provides fast, deep penetration enabling long lasting relief from minor arthritis pain, simple backache, bursitis, tendonitis, muscle strains and sprains, bruises and cramps.

Only **JointFlex™ Pain Relieving Cream** utilizes this revolutionary **break-through FUSOME™** delivery system technology.

### JointFlex™ Pain Relieving Cream

Provides temporary relief from minor arthritis pain, simple backache, bursitis, tendonitis, muscle strains and sprains, bruises and cramps.

- FDA Compliant and Registered Non- Prescription Drug
- Utilizes Patent-Pending FUSOME™ Delivery System Technology
- Fast Absorbing, Non-Greasy
- Contains Natural Essential Nutrients - Glucosamine and Chondroitin Sulfate
- Non-Stinging, Non-Burning
- Mild Camphor Scent Dissipates Quickly
- GUARANTEED Performance or your money back



*Directions: Cleanse, rinse and dry skin prior to application. Apply generously to painful muscles and joints and gently massage until the JointFlex™ Pain Relieving Cream disappears. Repeat as necessary. For optimum benefit, use twice daily for a minimum of two weeks. See label for additional information.*

### 000004 Testimonials

"I tried other brand-name products to gain relief. *Nothing worked until I tried JointFlex™.* I went to a hospital and got two steroid injections that cost \$1,000 each. That helped the pain some but I didn't want more injections because of the possible side effects. Then I tried JointFlex™. To my utter amazement, the pain stopped! Before using it, I could hardly turn my head. Now I have almost 100% range of motion. It is like somebody switched a new light on in my life!"

- Don H.

"Before using JointFlex I had a hard time getting in and out of my car. I couldn't lift my foot past my ankle because of the pain. *Nothing I tried worked.* I applied JointFlex™ and couldn't believe it when the pain reduced. Now I can lift my foot to my knee...no pain. I can get in and out of my car...no pain. Now I can walk, ride my bike and finally get a good night's rest because of the reduced pain."

- Jim D.

"After applications of JointFlex™ the pain went away. Not only was I able to walk again, I could participate in my cheer leading competition again without any pain."

- Melissa C.

"When I put on JointFlex™ I can go into restaurants and other places. People don't know I'm wearing pain cream - like they might with some other products - because there's no medication smell."

- Larry V.

## Decision and Order

**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 Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations 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, 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 thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. ' 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent SmartScience Laboratories, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida. The mailing address and principal place of business of SmartScience Laboratories, Inc. is 2327 Destiny Way, Odessa, Florida 33556.

## Decision and Order

2. Respondent Gene Weitz is an officer or director of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporate respondent, including the acts or practices alleged in the complaint. His principal office or place of business is the same as that of SmartScience Laboratories, Inc.

3. 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 SmartScience Laboratories, Inc., a corporation, its successors and assigns and their officers; Gene C. Weitz, 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.

## Decision and Order

**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 JointFlex Pain Relieving Cream or any dietary supplement or drug, as "drug" is 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:

A. The absolute or comparative efficacy of the product in reducing, relieving, or eliminating pain from any source;

B. The health benefits, performance, safety or efficacy of any such product; or

C. The ability of glucosamine sulfate, chondroitin sulfate, or any other ingredient to relieve pain or provide any other health benefit when applied topically;

unless, at the time of making such representation, respondent possesses and relies 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 any product 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, survey, or research.

## Decision and Order

**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 any product in or affecting commerce:

A. Shall not misrepresent, in any manner, expressly or by implication, that any user testimonial or endorsement of the product reflects the actual and current opinions, findings, beliefs, or experiences of the user; and

B. Shall not represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless:

- i. At the time it is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or
- ii. Respondents disclose, clearly and conspicuously, and in close proximity to the endorsement or testimonial, either what the generally expected results would be for users of the product, or 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.

For purposes of this Part, "endorsement" shall mean as defined in 16 C.F.R. ' 255.0(b).

## Decision and Order

**IV.**

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in 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.**

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

**VI.**

**IT IS FURTHER ORDERED** that respondents SmartScience Laboratories, Inc., its successors and assigns, and respondent Gene Weitz 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.

## Decision and Order

**VII.**

**IT IS FURTHER ORDERED** that respondents SmartScience Laboratories, Inc., and its successors and assigns, and respondent Gene Weitz 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.

**VIII.**

**IT IS FURTHER ORDERED** that respondent SmartScience Laboratories, Inc. and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) 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, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, Attn: SmartScience Laboratories, Inc.

## Decision and Order

**IX.**

**IT IS FURTHER ORDERED** that respondent Gene Weitz, for a period of ten (10) 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, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, Attn: SmartScience Laboratories, Inc.

**X.**

**IT IS FURTHER ORDERED** that respondent SmartScience Laboratories, Inc., and its successors and assigns, and respondent Gene Weitz 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.

**XI.**

This order will terminate on November 2, 2020, 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

Analysis to Aid Public Comment

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

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

By the Commission.

**Analysis of Proposed Consent Order to Aid Public Comment**

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from SmartScience Laboratories, Inc. and its president, Gene Weitz, (together, ASSL@) settling charges that they engaged in a large-scale deceptive advertising campaign for JointFlex, a skin cream.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves alleged misleading representations for JointFlex. Respondents sold this cream through advertisements in national newspapers and magazines (including USA Today, the

*Analysis to Aid Public Comment*

Washington Post, and Newsweek), more than 200 other major and minor local newspapers, and two websites that are not currently operative. According to the FTC complaint, SSL advertisements represented that JointFlex eliminates significant pain due to disabling joint conditions, crushed vertebrae, arthritis, herniated disk, and other conditions; that JointFlex provides more pain relief than other over-the-counter pain creams; and that testimonials from consumers appearing in the advertisements for JointFlex represent the typical or ordinary experiences of members of the public who use the product. According to the complaint, SSL lacked a reasonable basis to substantiate these claims. The complaint also alleges that respondents ads represented that the glucosamine sulfate and chondroitin sulfate in JointFlex contribute to pain relief when applied topically, but that respondents do not possess competent and reliable evidence that the glucosamine sulfate and chondroitin sulfate in JointFlex, a topically applied cream, penetrates the skin sufficiently to induce a pharmacological effect.

The complaint further alleges that SSL made several false advertising claims. It alleges that the ads represented that a competent and reliable survey of JointFlex users shows that ninety-five percent experienced reduction or elimination of pain due to use of JointFlex. This claim is alleged to be false because the survey respondents relied on was not competent and reliable, because there is no assurance that any pain reduction the responding consumers reported was due to use of the product, and because the ninety-five percent figure reflects responses to the question, *Do you feel that the product helped your symptoms,* not a question about pain relief, and the surveys also inquired into relief from stiffness, swelling, redness, and protuberances. The complaint alleges that SSL falsely characterized the results of certain testimonials, by overstating the nature of their injuries at the time they used the JointFlex product.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future. Part I of the order would require, with regard to JointFlex or any drug or supplement, competent and reliable

*Analysis to Aid Public Comment*

scientific substantiation for future claims about the absolute or comparative efficacy of the product in reducing, relieving, or eliminating pain from any source; the health benefits, performance, safety or efficacy of any such product; or the ability of glucosamine sulfate, chondroitin sulfate, or any other ingredient to relieve pain or provide any other health benefit when applied topically.

Part II prohibits respondents, in connection with any product, from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, survey, or research.

Part III provides that, in connection with any product, respondents shall not misrepresent the experience of any testimonialist or endorser. It further provides that respondents shall not represent that the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless the typicality claim is substantiated by competent and reliable scientific evidence; or respondents disclose, clearly and conspicuously, and in close proximity to the endorsement or testimonial, either what the generally expected results would be for users of the product, or 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.

Part IV of the order is a safe harbor, providing that the order does not prohibit respondents from making any representation for any drug that is permitted in 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. Part V is a safe harbor, providing that the order does not prohibit respondents from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated

*Analysis to Aid Public Comment*

by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

Parts VI-XI are standard record keeping, order distribution, reporting, compliance, and sunseting provisions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

## Complaint

## IN THE MATTER OF

**MANHEIM AUCTIONS, INC., ET AL.**

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND  
SECTION 7 OF THE CLAYTON ACT

*Docket C-3982; File No. 0010098*

*Complaint, November 13, 2000--Decision, November 13, 2000*

This consent order addresses the \$1,000,000,000.00 acquisition by Manheim Auctions, Inc., owned by Cox Entertainment, Inc., of ADT Automotive Holdings, Inc., owned by Tyco International, Ltd. The complaint alleges that the proposed acquisition would lessen competition, increase concentration, and create a monopoly in the provision of wholesale motor vehicle auction services in Kansas City, Missouri, the Colorado Front Range, which includes Denver and Colorado Springs, Colorado, Atlanta, Georgia, San Francisco, California, Seattle, Washington, and the I-4 corridor of Florida, which includes Tampa, Orlando, and Daytona Beach, Florida. The order requires Respondents to divest eight of the acquire ADT auctions to ADESA and to maintain the auctions as they would in the ordinary course of business until the time of the divestiture.

*Participants*

For the Commission: *Joe Lipinsky, John B. Kirkwood, K. Shane Woods, Steven Balster, Virginia Davidson, Robert J. Schroeder, Daniel P. Ducore, Ezra Friedman, and Jeffrey Fischer.*

For the Respondents: *Timothy J. O'Rourke and John H. Pomeroy, Dow, Lohnes & Albertson, and Steve Newborn, Clifford Chance Rogers & Wells.*

**COMPLAINT**

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (ACommission@), having reason to believe that Respondents Manheim Auctions,