

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.

FEDERAL TRADE COMMISSION,

Plaintiff

v.

SLIM DOWN SOLUTION, LLC, SLIM
DOWN SOLUTION, INC., S.S.T.
MANAGEMENT, INC., THE KARA
GROUP, LLC, RONALD ALARCON,
KATHLEEN ALARCON, MADERIA
MANAGEMENT, INC.,
POLYGLUCOSAMINE, LTD., AND
STEVEN PIERCE,

Defendants.

STIPULATED ORDER FOR PRELIMINARY INJUNCTION

Plaintiff Federal Trade Commission (“FTC” or “Commission”) has filed a Complaint for Injunctive and Other Equitable Relief against all defendants for their alleged deceptive acts or practices and false advertisements in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

Without defendants Slim Down Solution, LLC, Slim Down Solution, Inc., S.S.T. Management, Inc., The KARA Group, LLC, and their principals Ronald Alarcon and Kathleen Alarcon (“SDS defendants”) admitting liability for any of the alleged violations referred to in the Complaint, the Commission and the SDS defendants have stipulated to the entry of the following Stipulated Order for Preliminary Injunction (“Order”):

FINDINGS

1. This Court has jurisdiction over the subject matter of this case, and jurisdiction over all parties. Venue in the Southern District of Florida is proper.
2. The Complaint states a claim upon which relief can be granted, the Commission has authority to seek the relief which is stipulated to in this Order.
3. The activities of defendants are in or affecting commerce, as defined in 15 U.S.C. § 44.
4. Entry of this Order is in the public interest.

DEFINITIONS

For the purposes of this Order, the following definitions shall apply:

- A. “SDS defendants” shall refer to Slim Down Solution, LLC, Slim Down Solution, Inc., S.S.T. Management, Inc., the KARA Group, LLC, Ronald Alarcon, and Kathleen Alarcon, and each of them, and any entity through which they do business.
- B. “Corporate defendants” shall refer to Slim Down Solution, LLC, Slim Down Solution, Inc., S.S.T. Management, Inc., and the KARA Group, LLC, and each of them, and any entity through which they do business.
- C. “Target product” means Slim Down Solution tablets or any substantially similar product containing D-glucosamine and/or chitosan.
- D. “Covered product or service” means any dietary supplement, food, drug, cosmetic, or service purporting to provide weight-loss, health, cosmetic, or other physical health benefits.
- E. “Competent and reliable scientific evidence” means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted

and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the professions to yield accurate and reliable results.

F. “Continuity program” means any plan, arrangement, or system pursuant to which a consumer receives periodic shipments of products or the provision of services without prior notification by the seller before each shipment or service period, regardless of any trial or approval period allowing the consumer to return or be reimbursed for the product or service.

G. “Endorsement” means as defined in 16 C.F.R. § 255.0(b).

H. “Document(s)” or “record(s)” shall refer to

1. The original or a true copy of any written, typed, printed, electronically stored, transcribed, taped, recorded, filmed, punched, or graphic matter or other data compilations of any kind, including, but not limited to, letters, e-mail or other correspondence, messages, memoranda, interoffice communications, notes, reports, summaries, manuals, magnetic tapes or discs, tabulations, books, records, checks, invoices, work papers, journals, ledgers, statements, returns, reports, schedules, or files; and

2. Any information stored on any desktop personal computer (“PC”) and workstations, laptops, notebooks, and other portable computers, whether assigned to individuals or in pools of computers available for shared use; and home computers used for work-related purposes; backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether stored onsite with the computer used to generate them, stored offsite in another company facility or stored offsite by a third-party, such

as in a disaster recovery center; and computers and related offline storage used by the SDS defendants' associates, who include persons who are not employees of the company or who do not work on company premises.

A. The terms “and” and “or” in this Order shall be construed conjunctively or disjunctively as necessary, to make the applicable sentence or phrase inclusive rather than exclusive.

B. The term “including” means “including without limitation.”

C. A requirement that any defendant communicate with the Commission means that the defendant shall send the necessary information via first-class mail, costs prepaid or via overnight courier to:

Associate Director for Advertising Practices
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Attn: *FTC v. Slim Down Solution* (S.D. Fla.)

I. PROHIBITED BUSINESS ACTIVITIES

A. TARGET PRODUCT CLAIMS

IT IS HEREBY ORDERED that the SDS defendants and their officers, directors, agents, servants, employees, salespersons, distributors, corporations, subsidiaries, affiliates, successors, assigns, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise are hereby preliminarily enjoined from making, or assisting others in making, directly or by implication, any material false or misleading oral or written statement or representation in connection with the advertising, marketing, promotion, offer for sale, distribution, or sale of any target product, including but not limited to:

1. Misrepresenting, expressly or by implication, including through the use of endorsements, that any target product, or any ingredient contained in them, causes substantial weight loss without calorie reduction or exercise, enabling consumers to lose at least 10 pounds and 2 inches in 30 days;
 2. Misrepresenting, expressly or by implication, including through the use of endorsements, that any target product, or any ingredient contained in them, causes weight loss even if consumers eat substantial amounts of food high in fat, including hamburgers, chocolate, cheesecake, chicken nuggets, french fries, cheeseburgers, and chocolate cake;
 3. Misrepresenting, expressly or by implication, including through the use of endorsements, that any target product, or any ingredient contained in them, isolates up to 20 grams of dietary fat per dose, then binds it to be carried out of the body as waste;
 4. Making any representation, in any manner, expressly or by implication, including through the use of any endorsement, trade name, or logo, regarding the efficacy of any target product in causing or promoting weight loss, or in causing or promoting the absorption, isolation, binding, or elimination of fat or lipids (including but not limited to the representations described in subparagraphs A.1 through A.3, above) unless, at the time of making such representation, the SDS defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation;
 5. Misrepresenting, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study regarding a target product;
- or

6. Misrepresenting any other fact material to a consumer's decision to purchase any target product.

B. COVERED PRODUCT CLAIMS

IT IS FURTHER ORDERED that the SDS defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, representatives, employees, and all persons or entities in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, are hereby preliminarily enjoined from making any representation, in any manner, expressly or by implication, including through the use of endorsements, about the absolute or comparative weight-loss or other health benefits, performance, efficacy, safety, or side effects, of any covered product or service unless, at the time the representation is made, they possess and rely upon competent and reliable scientific evidence that substantiates the representation.

C. RUN OUT PROVISION

Provided, that the provisions of Parts A, B, or C of this Order shall not apply to the packaging depicted in Attachment A to the extent that it is shipped (1) by defendants or defendants' fulfillment houses to retailers prior to March 22, 2003 or (2) only to consumers who are purchasing under a continuity program for which they have not requested cancellation.

D. CONTINUITY PROGRAM BILLING

IT IS FURTHER ORDERED that the SDS defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants,

representatives, employees, and all persons or entities in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service pursuant to a continuity program, are hereby preliminarily enjoined from enrolling consumers in a continuity program, unless the SDS defendants have obtained the consumers' express and verified consent to participate in the continuity program. *Provided further* that consent to participate in a continuity program will be deemed express and verified only if either of the following means is employed:

1. The SDS defendants obtain express written agreement by the consumer to purchase the goods or services and authorization to submit a charge on a specified billing account for payment that includes the consumer's signature (the term "signature" includes a verifiable electronic or digital form of signature, to the extent such form of signature is recognized as a valid signature under applicable federal law or state contract law); or

2. The SDS defendants obtain express oral agreement by the consumer to purchase the goods or services and authorization to submit a charge on a specified billing account for payment that is tape recorded and that meets the following criteria:

- a. For all outbound telemarketing calls, the tape recording must include the entirety of each and every conversation involving the consumer who is making a purchase (*e.g.*, initial call, verification call);

- b. For all inbound telemarketing calls, the tape recording must include the entirety of each and every conversation involving the consumer that relates to the goods and

services that are the subject of the SDS defendants' offer;

c. For all inbound and outbound calls during which there is an upsell, the tape recording must include the entirety of each and every conversation involving the consumer that relates to the goods or services that are the subject of the upsell offer.

d. A copy of the tape recording is provided upon request to the consumer, the consumer's bank, credit card company or other billing entity, state attorney general or consumer protection agency, including the plaintiff FTC.

II. FDA APPROVED CLAIMS

IT IS FURTHER ORDERED that:

A. Nothing in this Order shall prohibit the SDS defendants 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; and

B. Nothing in this Order shall prohibit the SDS defendants 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.

III. RESTRICTIONS ON DISSIPATION OF ASSETS

A. **IT IS FURTHER ORDERED** that the SDS defendants and their officers, directors, agents, servants, employees, salespersons, distributors, corporations, subsidiaries, affiliates, successors, assigns, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, are hereby preliminarily enjoined from

directly or indirectly selling, liquidating, assigning, transferring, converting, loaning, encumbering, pledging, concealing, dissipating, spending, withdrawing, or otherwise disposing of any funds, real or personal property, or other assets or any interest therein, wherever located, which are owned and controlled by, or held for the benefit of, in whole or in part, or in the possession of the corporate SDS defendants, other than those transfers for actual, ordinary and necessary business expenses that the corporate SDS defendants will reasonably incur; such expenses shall include, in total from all corporate SDS defendants, (a) a transfer of no more than \$12,000 per month, for a total transfer of no more than \$35,000 during the pendency of this Stipulated Preliminary Injunction, for payment of attorneys fees and (b) a transfer of no more than \$5,000 per month to Kathy Alarcon.

B. IT IS FURTHER ORDERED that the corporate SDS defendants, upon request of the Commission, shall produce copies of all documents reflecting such transfers for actual, ordinary and necessary business expenses, including, but not limited to, books and records of accounts, all financial and accounting records, balance sheets, income statements, and bank records (including monthly statements, canceled checks, records of wire transfers, and check registers).

IV. PRESERVATION OF RECORDS AND OTHER EVIDENCE

IT IS FURTHER ORDERED that the SDS defendants, and their officers, directors, agents, servants, employees, salespersons, distributors, corporations, subsidiaries, affiliates, successors, assigns, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, are hereby preliminarily enjoined from:

A. Destroying, erasing, mutilating, concealing, altering, transferring or otherwise disposing of, in any manner, directly or indirectly, any target product advertised, marketed, promoted, offered for

sale, distributed, sold, or purchased by any SDS defendant.

B. Destroying, erasing, mutilating, concealing, altering, transferring or otherwise disposing of, in any manner, directly or indirectly, contracts, agreements, customer files, customer lists, customer addresses and telephone numbers, correspondence, advertisements, brochures, sales material, training material, sales presentations, documents evidencing or referring to SDS defendants' target products, data, computer tapes, disks, or other computerized records, books, written or printed records, handwritten notes, telephone logs, "verification" or "compliance" tapes or other audio or video tape recordings, receipt books, invoices, postal receipts, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind, including electronically-stored materials, that relate to the business practices or business or personal finances of any SDS defendant or other entity directly or indirectly under the control of any SDS defendant; and

C. Failing to create and maintain books, records, and accounts which, in reasonable detail, accurately, fairly, and completely reflect the incomes, assets, disbursements, transactions and use of monies by any SDS defendant or other entity directly or indirectly under the control of any SDS defendant.

V. DISCLOSURE OF FINANCIAL INFORMATION BY THE SDS DEFENDANTS

IT IS FURTHER ORDERED that within seven (7) days after service with this Order, Slim Down Solution, Inc., the KARA Group, LLC, Kathleen Alarcon, Ronald Alarcon, Televison Media, Inc., and HTR Management, Inc. shall prepare and provide to the Commission:

A. A complete and accurate individual or corporate financial statement, as the case may

be, signed under penalty of perjury, on the forms attached to this Order as Attachments B and C, respectively; and

B. Profit-and-loss statements for each corporate SDS defendant, other than SST Management, Inc. and Slim Down Solutions, LLC, from January 1, 2001 through the date of this Order.

VI. ACCOUNTING PROVISIONS

A. **IT IS FURTHER ORDERED** that, within ten (10) days after entry of this Order, for all target products advertised, marketed, promoted, offered for sale, distributed, or sold by the SDS defendants, and their officers, directors, agents, servants, employees, salespersons, distributors, corporations, subsidiaries, affiliates, successors, or assigns, the SDS defendants shall serve on the Commission a detailed accounting of:

1. the names and active ingredients of all such target products;
2. all gross revenues obtained from the sale of all such target products from inception of sales through the date of the issuance of this Order;
3. all net profits obtained from the sale of all such target products from inception of sales through the date of the issuance of this Order;
4. the total amount of all such target products sold; and
5. the full names, addresses, and telephone numbers of all purchasers of all such target products, and the amount of target product purchased by each purchaser; *provided that* this customer list shall be provided in the form of a searchable electronic document formatted in Word, Word Perfect, Excel, or Access and supplied on (a) 3.5-inch microcomputer floppy diskettes, high-density,

double-sided, formatted for IBM compatible computers (1.44 MB capacity) (b) Iomega ZIP disks formatted for IBM compatible PCs (100 MB capacity); or (c) CD-R74 CD-ROM readable disks formatted to ISO 9660 specifications (650 MB capacity).

B. IT IS FURTHER ORDERED that within ten (10) days after entry of this Order, the SDS defendants shall further provide counsel for the Commission with a statement, verified under oath, of all transfers and assignments of assets and property worth \$1,000 or more since January 1, 2002, that shall include the amount or value transferred or assigned, the name and address of the transferee or assignee, the date of the transfer or assignment, and the type and amount of consideration paid to any SDS defendant. Each statement shall specify where applicable the name and address of each financial institution and brokerage firm, both domestic and foreign, at which the SDS defendant has an account or safe deposit boxes, and the account number or other identification of each such account or safe deposit box.

VII. DISTRIBUTION OF ORDER BY THE SDS DEFENDANTS

IT IS FURTHER ORDERED that the SDS defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, agent, attorney, ad broker, advertising agency, fulfillment house, call center, domain registrar, mail receipt facility, and representative of the SDS defendants, and within fourteen (14) calendar days following service of this Order by the Commission, the SDS defendants shall provide the Commission with an affidavit identifying the names, titles, addresses, and telephone numbers of the persons and entities that the SDS defendants have served with a copy of this Order in compliance with this provision.

VIII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO STIPULATED:

JANET M. EVANS
KAREN MUOIO
SERENA VISWANATHAN (FL Bar #
A5500649)
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room NJ-3212
Washington, DC 20580
(202) 326-2125, 2491, 3244 (voice)
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Attorneys for Plaintiff

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by: Ronald Alarcon, President

SLIM DOWN SOLUTION, INC.
by: Kathleen Alarcon, President

S.S.T. MANAGEMENT, INC.
by: Ronald Alarcon, President

THE KARA GROUP, LLC
by: Kathleen Alarcon, CEO

RONALD ALARCON, individually and as
an officer or director of the above companies

KATHLEEN ALARCON, individually and as
an officer or director of the above companies

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Attorney for SDS Defendants

SO ORDERED:

DATED:

UNITED STATES DISTRICT JUDGE

ATTACHMENT A

Packaging and Labeling

ATTACHMENT B

Form of Individual Financial Statement

ATTACHMENT C

Form of Corporate Financial Statement