



4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondent waives any right he may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the draft complaint and consent order. He understands that he may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

## 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. "Clearly and prominently" shall mean as follows:

- A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. Provided, however, that in any advertisement presented solely through video or audio means, the disclosure may be made through the same means in which the ad is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media, the disclosure shall also be unavoidable and shall be presented prior to the consumer incurring any financial obligation.
- B. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or first page.
- C. On a product label, the disclosure shall be in a type size and location on the principal display panel sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

3. Unless otherwise specified, "respondent" shall mean Robert M. Currier and his agents, representatives, and employees.

4. "Drug" shall mean as defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.

5. "Food" shall mean as defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.

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

I.

IT IS ORDERED that respondent, 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 SNORenz or any other food, drug, or dietary supplement, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication that:

- A. Such product reduces or eliminates snoring or the sound of snoring in users of the product;
- B. A single application of such product reduces or eliminates snoring or the sound of snoring for any specified period of time; or
- C. Such product can eliminate, reduce or mitigate the symptoms of sleep apnea including daytime tiredness and frequent interruptions of deep restorative sleep

unless at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. Provided that, for any representation made by respondent as an expert endorser, respondent must possess and rely upon competent and reliable scientific evidence, and an actual exercise of respondent's represented expertise, in the form of an examination or testing of the foods, drugs, or dietary supplements at least as extensive as an expert in the field would normally conduct in order to support the conclusions presented in the representation.

II.

IT IS FURTHER ORDERED that respondent, 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 that has not been shown by competent and reliable scientific evidence to be effective in the treatment of sleep apnea, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that the product is effective in reducing or eliminating snoring or the sounds of snoring, unless he discloses, clearly and prominently, and in close proximity to the representation, that such product is not intended to treat sleep apnea, that the symptoms of sleep apnea include loud snoring, frequent episodes of totally obstructed breathing during sleep, and excessive daytime sleepiness, that sleep apnea is a potentially life-threatening condition, and that persons who have symptoms of sleep apnea should consult their physician or a specialist in sleep medicine. Provided, however, that for any television commercial or other video advertisement fifteen (15) minutes in length or longer or intended to fill a broadcasting or cablecasting time slot fifteen (15) minutes in length or longer, the disclosure shall be made within the first thirty (30) seconds of the advertisement and immediately before each presentation of ordering instructions for the product. Provided further, that, for the purposes of this provision, the presentation of a telephone number,

e-mail address, or mailing address for listeners to contact for further information or to place an order for the product shall be deemed a presentation of ordering instructions so as to require the announcement of the disclosure provided herein.

### III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the endorsing, manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of SNORenz or any other product, service, or program in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the benefits, performance, efficacy, or safety of any such product, service, or program, unless, at the time the representation is made, respondent possesses and relies upon competent and reliable evidence, which, when appropriate, must be competent and reliable scientific evidence, that substantiates the representation. Provided that, for any representation made by respondent as an expert endorser, respondent must possess and rely upon competent and reliable scientific evidence, and an actual exercise of respondent's represented expertise, in the form of an examination or testing of the products, services, or programs at least as extensive as an expert in the field would normally conduct in order to support the conclusions presented in the representation.

### IV.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the endorsing, manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, service, or program 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.

### V.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the endorsing of any product, service, or program in or affecting commerce, shall disclose, clearly and prominently a material connection, where one exists, between respondent and any individual or entity manufacturing, labeling, advertising, promoting, offering for sale, selling, or distributing such product, service or program. For purposes of this order, "material connection" shall mean any relationship that might materially affect the weight or credibility of the endorsement and would not be reasonably expected by consumers.

### VI.

Nothing in this order shall prohibit respondent 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.

## VII.

Nothing in this order shall prohibit respondent 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.

## VIII.

IT IS FURTHER ORDERED that respondent 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, for a period of five (5) 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.

## X.

IT IS FURTHER ORDERED that respondent 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 he has complied with this order.

XI.

This order will terminate twenty (20) years from the date of its issuance, 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.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2002

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ROBERT M. CURRIER, individually

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DENISE BURKE  
Attorney for respondent

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