

RECEIVED
APR 17 2003
CLERK
U.S. DISTRICT COURT
MINNEAPOLIS, MINNESOTA

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Plaintiff,

v.

VALUEVISION INTERNATIONAL, INC.,

Defendant.

COMPLAINT FOR CIVIL
PENALTIES, INJUNCTIVE
AND OTHER RELIEF

CIV. ACTION NO.

Plaintiff, United States of America, acting upon the notification and authorization to the Attorney General by the Federal Trade Commission ("Commission"), for its Complaint alleges that:

1. Plaintiff brings this action under Sections 5(l), 13(b), and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(l), 53(b), and 56(a), to obtain monetary civil penalties, injunctive and other relief from defendant for its violations of a final order to cease and desist issued by the Commission.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345 and 1355 and under 15 U.S.C. §§ 45(l), 53(b), and 56(a).

3. Venue in the United States District Court for the District of Minnesota is proper under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b-c) and 1395(a).

DEFENDANT

4. Defendant ValueVision International, Inc. ("ValueVision"), is a Minnesota corporation with its principal office or place of business in the District of Minnesota at 6730 Shady Oak Road, Eden Prairie, Minnesota 55344. Defendant ValueVision operates a cable shopping service, ShopNBC, and is principally engaged in the marketing of a variety of consumer products by means of live, customer-interactive, televised sales programs and through its Internet website www.ShopNBC.com. ValueVision produces and disseminates advertising in the form of television programming that is disseminated through cable channels, broadcast stations, and satellite dish receivers. This programming markets consumer products directly to viewers.

PRIOR COMMISSION PROCEEDING

5. In a Commission proceeding bearing Docket No. C-4022, in which ValueVision was charged by the Commission with violating Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, the Commission on August 22, 2001 issued a final order against ValueVision to cease and desist certain advertising practices ("Commission's Order"). The Commission's Order was served upon ValueVision on August 30, 2001, and by operation of law became final and enforceable thereafter. The order has remained in full force and effect ever since. (A copy of the Commission's complaint and order is attached to this Complaint as Exhibit A.)

6. The Commission's Order includes the following provisions:

ORDER

DEFINITIONS

For the 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, "respondent" shall mean ValueVision International, Inc., its successors and assigns, and its officers, agents, representatives, and employees.

IV.

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 food, drug, dietary supplement, cellulite treatment product or weight-loss program in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such product can or will cure, treat, or prevent any disease, or have any effect on the structure or function of the human body, unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation

* * *

DEFENDANT'S COURSE OF BUSINESS

7. At all times mentioned herein, defendant has been engaged in the labeling, advertising, promotion, offering for sale, sale, or distribution of foods and dietary supplements as "food" is defined in Section 15 of the FTC Act, 15 U.S.C. § 55, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

8. Since August 30, 2001, the defendant has labeled, advertised, promoted, offered for sale, sold or distributed numerous foods and dietary supplements to the public, including Physician's RX. The Physician's RX product consists of packets of 6 capsules containing a variety of vitamins, minerals, and antioxidants. The packets include three anti-oxidant capsules; one "Carni-Q-Gel" capsule, containing l-carnitine, alpha lipoic acid, vitamin E, and coenzyme Q10; another capsule containing liquid calcium and magnesium; and a capsule containing omega 3 fish oils.

DEFENDANT'S ADVERTISING FOR PHYSICIAN'S RX

9. On numerous occasions since August 30, 2001, the defendant has disseminated or caused to be disseminated advertisements for Physician's RX, including but not necessarily limited to television programs that were aired on August 30, 2001, October 3, 2001, October 5, 2001, and November 7, 2001. These advertisements contain the following statements, among others:

- a. Dr. DeSilva: Every single medication depletes your body of a nutrient. And what's interesting here is you mentioned the Coenzyme Q10 specifically with the diabetes. Let me tell you something, dear. Coenzyme Q10 gets depleted and taken out of the body. I did some of the original work with this, and I've been working on a book on drug nutrient depletion. Coenzyme Q10 gets depleted from the body when you take prescription drugs for the heart, prescription drugs for cholesterol and prescription drugs for diabetes. And you will get tired. This is putting the nutrients back into your system, and that's why you are starting to feel so good.
Physician's RX Formula, August 30, 2001.
- b. Karen Connelly: Well, see, and the thing is, when you're feeling good -- and I've got to ask this because you said prior to taking the Eternal Health, you were trying to do your own thing and all that. You felt lousy.
Carol: Yes.

Karen Connelly: Did you have that sparkle, did you have that spark? Did your skin and eyes look great before?

Carol: No, absolutely not. I -- I had breast cancer surgery a few years ago. . . . And I suffered from something they call cancer fatigue, it's a phenomenon. . . . Some people get it and some people don't. . . . And they're -- you know, everyone just kept saying, oh, you'll be fine, you'll be fine, but I was miserable. So, I did a lot of reading. . . . and I tried a lot of vitamins and all I can say is I -- once I started the Physicians RX, I felt better.

Dr. Derrick Desilva: Carol, let me just jump in here one second and this is -- I want to make -- this is a very important point. A lot of people, a lot of you out there that are taking prescription medications, folks, I did some of the original work on something called drug nutrient depletion. Drug nutrient depletion is every single prescription medicine you take, it doesn't matter what it is, as long as it's a synthetic, even if it's sold over the counter, will deplete your body of a nutrient. What you were talking about, Carol, with regard to the cancer fatigue is when you go through chemo, when you go through radiation, yes, that's a good thing to get rid of the cancer, but what it also does is the chemo and radiation destroys, damages, takes out, robs your body of some of the nutrients. And a lot of people in my practice see me because they're taking prescription medicines and they'll come in to me and say, okay, what can I do to prevent this. And let me give you a number one example. And that is, every single one of you that are taking statin drugs, Lipitor, Medacor, Zocor, any of those drugs, it is very well-documented that the cholesterol medicines, those particular ones, deplete your body of Coenzyme Q10. . . . So, that depletion over a period of time is what produces the muscle aches and the body aches and the fatigue and things like that. For any of you that are taking prescription medicines, folks, the B vitamins come out, calcium comes out, magnesium comes out, Coenzyme Q10 comes out. We've got it all right here. . . . You take one pack in the morning, one pack at night and you're done. It's that simple. And this is what was going on with Carol. So, Carol, that's -- it had to make a difference in you and it had to happen very quickly because of what you were going through.

Physician's RX Formula, November 7, 2001.

- c. Diane: I am a diabetic. And I'm very careful about myself, although I wasn't at one time, so I really did some damage to myself by walking around with very high blood sugar and not taking care of myself. So it's very important for me to take the correct vitamins and minerals in order to give myself the energy and the supplements that I need. And when this product first came on the air, which was about a year ago, I started taking it. I've had such good experience with it that I cannot even begin to tell you. I travelled in Italy and climbed and walked and did all kinds of things I didn't think I could ever be able to do. . . . And when I take it, all of a sudden I hear bong, like that, and my body starts to function. . . . It really does happen. Now, because I'm also

diabetic and I am in my 60's, I also take the Coenzyme Q10. . . . Because I take medication . . . that I have to be careful of. Some of these things that I must take do have some side effects.

Dr. Derrick Desilva: Diane, can I stop you right there for one second? . . . That was a very important point that you just made. As I mentioned before when -- I think it was Priscilla that called. . . . Every single medication depletes your body of a nutrient. And what's interesting here is you mentioned the Coenzyme Q10 specifically with the diabetes. Let me tell you something, dear. Coenzyme Q10 gets depleted and taken out of the body. I did some of the original work with this, and I've been working on a book on drug nutrient depletion. Coenzyme Q10 gets depleted from the body when you take prescription drugs for the heart, prescription drugs for cholesterol and prescription drugs for diabetes. And you will get tired. This is putting the nutrients back into your system, and that's why you are starting to feel so good.
Physician's RX Formula, August 30, 2001.

d. Dr. DeSilva: Now, any other medical conditions that you have, Bob, or are you relatively healthy?

Bob: Yeah. No, I have a disease called Sarcoidosis. . . . And I was always tired too, from that and achy And I feel a world of difference already with -- on this program with the vitamins.

.....
Dr. DeSilva: Well, Sarcoidosis is a collagen disease It is -- it is an autoimmune disease, means that the body starts to attack itself. You can have manifestations, as you said, joint aches, body aches, fatigue also because there's some lung conditions. There's some lung problems that happen with that. There can be heart conditions that happen. A lot of times, people that have arthritis and a lot of these disorders are on medicines. . . . And that's another thing. Who should be using the Physician's RX Formula? . . . If you're over the age of 20, 25, even in your mid twenties, early twenties, if you take prescription medications because every single prescription medication depletes your body of nutrients. The other thing is if you diet chronically -- if you diet chronically, you don't eat well. So, you don't get the nutrients. If you have any kind of a disorder, this -- this is absolutely the best and one of the most important things that you can do for your body.

Physician's RX Formula, October 3, 2001.

e. Dr. Derrick Desilva: You've been using -- well, tell us your experience with this.

Priscilla: Dr. DeSilva, I've been using this product for about a month. . . . And I do notice an increase in my energy, and I'm just absolutely delighted.

Dr. Derrick Desilva: Wonderful. Priscilla, how old are you, dear?

Priscilla: I'm 75 years old. . . . I'm very, very active. I just retired three years ago from a full time job.

Priscilla: Anyway, I'm so enthusiastic about it, because I'm a very active person. And another thing that I might mention here, is I have chronic Lime's [sic] disease and I've had it for seven or eight years, and I need every single thing that I can get to increase my energy and help my --

Dr. Derrick Desilva: You know what, Priscilla? I want to -- I just want to interrupt you for one second. . . . And just make one point here. . . . People that have chronic illnesses . . . Folks, if you have chronic -- let's say you have heart disease. . . . If you have any kind of chronic illness . . . what that does to your body is the incredible stress. The incredible oxidative damage. And what is oxidation? We'll get into that in a little bit. . . . But oxidation is essentially rusting. The body is going to rust faster if you've got something going on as opposed to you being, let's say, quote, normal. . . . So these nutrients -- these wonderful little packets -- twice a day is going to make that oxidative damage or that stress calm down and give it -- the supplements or the nutrients it needs to function at a better level. Okay? . . . So just keep that in mind, and I'm glad you mentioned about the Lime disease issue.

Physician's RX Formula, August 30, 2001.

f. Dr. DeSilva: How long was it before you started to feel the energy, feel -- feel good if you will?

Susan: Probably I'd say about a week -- a week or so. . . . A week to ten days.

Dr. DeSilva: Mostly people are saying two weeks but a week is good. Yeah. . . . A week is good. Because, again, in her, probably because she has these nutrient deficiencies . . . she wasn't aware of. . . . that it started to effect her even -- even faster.

Physician's RX Formula, October 5, 2001.

g. Joleen (host): I'm interested, a little bit, Marie, in having you expand a little bit on the arthritis part as well because I think a lot of women and men suffer from some form of arthritic- Yeah. Was it morning or night for you? Was it kind of all day? Was it back? Was it hands, joints?

Marie: It's basically hip, thigh. . . . Yeah, it's -- as a matter of fact, I'm going in for hip replacement on the 15th.

Dr. DeSilva (product spokesperson): Have the oils helped you?

Marie: Oh, absolutely. I mean, I would get up in the morning and it would take me like -- I mean, literally a good five minutes to get myself up.

Joleen: To get around. . . . Get Stretching.

Marie: Right.

Joleen: And percentage wise, after taken Physician's RX, where would you say where you were then as opposed to where you are? On a scale of one to 10, at one being there was nothing happening with the vitamins I'm taking and a 10, I'm feeling as wonderful as I've ever felt, where would you be?

Marie: Absolutely a 10.

....
Dr. DeSilva: Are you on a lot of medications, Marie?

Marie: I'm not anymore. I was on one prescription for arthritis - - . . . and there were some problems just recently on the news with this one particular medication. . . . And I took myself off of it.

....
Dr. DeSilva: Wonderful. Well, just make sure you do that with your doctor's blessing sweetheart.

Marie: Oh, no. He know - - he knows.

Dr. DeSilva: Good. Very important.

Physician's RX Formula, October 3, 2001.

CAUSE OF ACTION

10. Through the statements described in Paragraph 9, the defendant, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of Physician's RX, which is a food or dietary supplement, has, on numerous occasions, represented, directly or by implication, that

Physician's RX:

- a. Reduces fatigue associated with taking prescription drugs, such as drugs for heart disease, high cholesterol, and diabetes;
- b. Reduces fatigue associated with certain illnesses, including diabetes, lyme disease, sarcoidosis, and cancer;
- c. Increases energy, stamina, and endurance within 7 to 10 days; and
- d. Relieves arthritis symptoms.

11. The defendant made each representation set forth in Paragraph 10 without possessing and relying upon competent and reliable scientific evidence, as defined in the Commission's Order, that substantiates the representation, thereby violating Part IV of the Commission's Order.

CIVIL PENALTIES AND EQUITABLE RELIEF

12. Each dissemination by the defendant of any representation in any program in violation of the Commission's Order, in one or more of the ways described above, constitutes a separate violation for which plaintiff seeks monetary civil penalties.

13. Section 5(l) of the FTC Act, 15 U.S.C. §§ 45(l), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and Section 1.98(c) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(c), authorizes this Court to award monetary civil penalties of not more than \$11,000 for each violation of the Commission's Order.

14. Sections 5(l) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(l) and 53(b), authorize this Court to issue a permanent injunction against defendant's violating the Commission's Order and the FTC Act, and to order ancillary relief.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests this Court, pursuant to 15 U.S.C. §§ 45(l) and 53(b), and pursuant to the Court's own equitable powers to:

- (1) Enter judgment against the defendant and in favor of plaintiff for each violation alleged in this Complaint;
- (2) Award plaintiff monetary civil penalties from the defendant for each violation of the Commission's Order alleged in this Complaint;

(3) Enjoin the defendant from violating the Commission's Order issued in FTC Docket No. C-4022; and

(4) Award plaintiff such additional relief as the Court may deem just and proper.

DATED: April 17, 2003

Of Counsel:

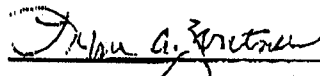
FOR THE UNITED STATES OF AMERICA

ROBERT M. FRISBY
Assistant Director
for Enforcement
Federal Trade Commission


ROBERT D. McCALLUM, Jr.
Assistant Attorney General
Civil Division
U.S. Department of Justice

LAURA KOSS
MELISSA D. HART
Attorneys
Division of Enforcement
Federal Trade Commission
Washington, D.C. 20580

THOMAS B. HEFFELFINGER
United States Attorney
District of Minnesota


LYNN A. ZENINER
Assistant United States Attorney
District of Minnesota
300 S. 4th Street, Suite 600
Minneapolis, MN 55415
(612) 664-5600

EUGENE M. THIROLF
Director
Office of Consumer Litigation


ELIZABETH STEIN
Attorney
Office of Consumer Litigation
Civil Division
U.S. Department of Justice
Washington, D.C. 20530
(202) 307-0486
(202) 514-8742 (Fax)