

CHRISTOPHER J. CHRISTIE
 United States Attorney
 By: MICHAEL A. CHAGARES
 Assistant U.S. Attorney
 Peter Rodino Federal Building, Suite 700
 970 Broad Street
 Newark, NJ 07102
 (973) 645-2700
 (973) 645-2702 (fax)
 MC 5483

RECEIVED-CLERK
 U.S. DISTRICT COURT

2003 JUL -9 P 2: 52

UNITED STATES DISTRICT COURT
 DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	MODIFIED
)	CONSENT DECREE
v.)	
)	
LIFESTYLE FASCINATION, INC.,)	CIV. ACT. NO.
a corporation,)	
)	
Defendant.)	
)	

WHEREAS: Plaintiff, the United States of America, has commenced this action by filing the Complaint herein; defendant Lifestyle Fascination, Inc., has waived service of the Summons and Complaint; the parties have been represented by the attorneys whose names appear hereafter; the parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law and without defendant admitting that the law has been violated as alleged in the attached Complaint, or that the facts as alleged in the attached Complaint, other than the jurisdictional facts, are true; and defendant has waived all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).

THEREFORE, on the joint motion of plaintiff and defendant, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. This Court has jurisdiction over the subject matter and the parties.
2. The Complaint states a claim upon which relief may be granted against the defendant under Sections 5(a), 5(l), 13(b), and 16(a) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a), 45(l), 53(b), and 56(a).

CIVIL PENALTY

3. Pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), defendant Lifestyle Fascination, Inc., its successors and assigns, shall pay a monetary civil penalty of one hundred and seventy five thousand dollars (\$175,000). Defendant shall make this payment according to the following schedule: (a) \$60,000 payable on the date of entry of this Modified Consent Decree; (b) \$60,000 payable one year from the date of entry of this Modified Consent Decree; and (c) \$55,000 payable 18 months from the date of entry of this Modified Consent Decree. Payment shall be made by certified check, cashier's check, or attorney's check made payable to the Treasurer of the United States and delivered to: Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.

4. To secure defendant's obligation to pay the penalty required hereunder, defendant hereby grants to the Commission a first priority lien and security interest in all inventory and equipment wherever located and whether now owned or hereafter acquired by defendant, together with all the appurtenances or parts thereto belonging, or which hereafter may be added or attached thereto, and all replacements, substitutions therefor or thereto, and all proceeds thereof, whether presently existing or hereafter arising (collectively "the collateral"). Defendant agrees to execute, on or before the date of

entry of this Modified Consent Decree, and cooperate fully with the Commission with respect to filing financing statements in all public offices the Commission deems necessary or desirable to perfect and evidence such security interest, in accordance with the Uniform Commercial Code or comparable law of any jurisdiction and in the form attached as Exhibit A. Defendant further agrees to execute and cooperate fully with the Commission with respect to filing any other instruments and documents, including amended financial statements and continuation statements, the Commission deems necessary or desirable to perfect, evidence and continue the security interest granted herein. Upon full collection of all monies required hereunder, and at defendant's written request, the Commission agrees to release its security interest granted herein and defendant shall be responsible for preparing and filing any termination statements reasonably required in connection therewith, provided that the Commission shall cooperate with defendant and shall not unreasonably withhold its consent and acknowledgment of the same. Defendant shall pay the costs of filing all financing statements, termination statements, continuation statements, and other instruments or documents reasonably required in connection with the security interest granted herein.

5. In the event of any default in payment, plaintiff shall send a notice to defendant, with a copy to its counsel. In the event such default continues for ten (10) days beyond the date of receipt of the notice of non-payment:

a. The entire unpaid penalty shall immediately become due and payable together with interest, as computed pursuant to 28 U.S.C. § 1961, without further notice to defendant;

b. The Commission shall be entitled to immediately exercise any and all rights and remedies against the defendant and its property, including the collateral, to collect the unpaid penalty and interest

thereon, including but not limited to realizing upon its security interest in the collateral in accordance with the Uniform Commercial Code or other applicable law; and

c. The facts as alleged in the Complaint filed in this action must be taken as true in any subsequent litigation filed by the Commission to collect any unpaid amounts or otherwise enforce this Part of the Modified Consent Decree.

FURNISHING OF TAXPAYER I.D. NUMBER

6. Defendant is hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Commission its taxpayer identifying number(s), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of the defendant's relationship with the government.

INJUNCTIVE PROVISIONS

7. Defendant Lifestyle Fascination, Inc., its successors and assigns, and its officers, agents, representatives and employees, and all persons in active concert or participation with any one or more of them who receive actual notice of this Modified Consent Decree by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any food, drug, dietary supplement, or medical device, in or affecting commerce, are hereby enjoined from making any representation that tests or studies prove or establish (or other words of similar meaning) the efficacy of the product, unless such representation is true and such tests or studies have been conducted in an objective manner by persons qualified by training and experience to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

8. Defendant Lifestyle Fascination, Inc., its successors and assigns, and its officers, agents, representatives and employees, and all persons in active concert or participation with any one or more of them who receive actual notice of this Modified Consent Decree by personal service or otherwise, in

connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, in or affecting commerce, are hereby enjoined from failing to provide a full refund of the cost, including any shipping, insurance, handling or other fee paid by the purchaser, of any product returned pursuant to a satisfaction, quality, or money-back guarantee offer made by the defendant; *provided, however*, that defendant may refund only the purchase price of the returned product, if defendant has disclosed, clearly and conspicuously and in close proximity to the guarantee offer made by defendant, that the guarantee is for the purchase price of the product.

9. Defendant Lifestyle Fascination, Inc., its successors and assigns, and its officers, agents, representatives and employees, and all persons in active concert or participation with any one or more of them who receive actual notice of this Modified Consent Decree by personal service or otherwise, are hereby enjoined from ever violating, directly or through any partnership, corporation, subsidiary, division, or other device, any provision of the Federal Trade Commission's Order in Docket No. C-3513. Nothing in this Paragraph shall void any of the injunctive provisions set forth in Paragraphs 7 and 8 of this Modified Consent Decree.

DISTRIBUTION OF THE DECREE

10. Defendant Lifestyle Fascination, Inc., shall, within thirty (30) days of the date of entry of this Modified Consent Decree, provide a copy of the Commission's Order and this Modified Consent Decree to each of its current officers, directors, and managers, and to all current agents, representatives, employees, and distributors having responsibilities with respect to the subject matter of this Modified Consent Decree, and shall, within thirty (30) days of complying with this paragraph, serve upon the Commission an affidavit setting forth the fact and manner of its compliance, including the name and title of each person to whom a copy of the Modified Consent Decree has been provided. For a

period of five (5) years from the date of entry of this Modified Consent Decree, defendant shall also provide a copy of the Commission's Order and this Modified Consent Decree to each of its future officers, directors, and managers, and to all future agents, representatives, employees, and distributors having responsibilities with respect to the subject matter of this Modified Consent Decree, within three (3) days after the person assumes the position.

RECORDKEEPING

11. For a period of five (5) years from the date of entry of this Modified Consent Decree, Defendant Lifestyle Fascination, Inc., its successors and assigns, shall maintain and, upon request, make available to the Commission, copies of business records demonstrating compliance with the terms and provisions of this Modified Consent Decree.

CONTINUING JURISDICTION

12. This Court shall retain jurisdiction of this matter for the purpose of enabling any of the parties to this Modified Consent Decree to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for interpretation or modification of this Modified Consent Decree, for the enforcement of compliance therewith, for the redress of any violations thereof, or for the punishment of any violations thereof.

JUDGMENT IS THEREFORE ENTERED in favor of plaintiff, the United States of America, and against defendant Lifestyle Fascination, Inc., pursuant to all of the terms and conditions recited above.

Dated this _____ day of _____, 2003.

United States District Judge

The parties, by their respective counsel, hereby consent to the terms and conditions of the Modified Consent Decree as set forth above and consent to the entry thereof.

FOR THE UNITED STATES OF AMERICA

ROBERT D. McCALLUM, JR.
Assistant Attorney General
Civil Division
United States Department of Justice

CHRISTOPHER J. CHRISTIE
United States Attorney
District of New Jersey

By: _____

Assistant United States Attorney
District of New Jersey
Peter Rodino Federal Building
Suite 700
970 Broad Street
Newark, NJ 07102
(973) 645-2700

EUGENE M. THIROLF
Director
Office of Consumer Litigation


BY: *Elizabeth Stein*

ELIZABETH STEIN
Attorney, Office of Consumer Litigation
Civil Division
U.S. Department of Justice
(202) 307-0486

FOR THE FEDERAL TRADE COMMISSION:



ELAINE D. KOLISH
Associate Director for Enforcement
Bureau of Consumer Protection



CAROL J. JENNINGS
Attorney
Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission

FOR THE DEFENDANT:

LIFESTYLE FASCINATION, INC.

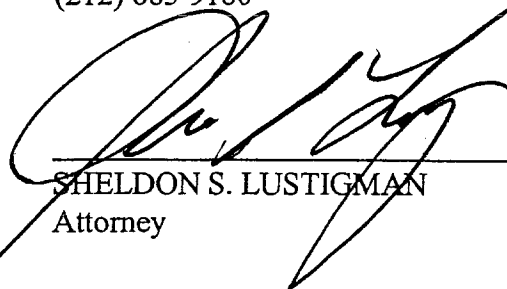
By:



Eli Zabate
Vice President

THE LUSTIGMAN FIRM
Attorneys for Defendant
149 Madison Avenue
New York, New York 10016
(212) 683-9180

By:



SHELDON S. LUSTIGMAN
Attorney