

COPY

CAROL C. LAM  
United States Attorney  
JOHN B. SCHERLING  
Assistant United States Attorney  
California State Bar No. 122234  
880 Front Street, Room 6293  
San Diego, California 92101-8893  
Telephone: (619) 557-7120

Attorneys for Plaintiff

FILED

02 DEC 13 AM 11:36

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY: DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,

v.

Undetermined quantities of an article of drug in plastic bottles, each bottle containing 90 capsules, more or less, labeled in part:

(bottle)

\*\*\*\* EverCLR™ \*\*\* 90 CAPSULES \*\*\*  
Manufactured exclusively for:  
Halo Supply Co., San Diego, CA  
\*\*\*\*"

and

undetermined quantities of promotional literature, labeling for the article of drug, labeled in part:

(flyer)

\*\*\*\* Cold & Flu Protection \*\*\*  
EverCLR is great for managing the herpes viruses \*\*\*\*"

(flyer)

\*\*\*\* HOW TO TAKE EverCLR \*\*\*\*,"

Defendant.

'02 CV 2450 K (LSP)  
Civil No. \_\_\_\_\_

COMPLAINT FOR FORFEITURE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 For its claim against the defendant article of drug, the United  
2 States of America alleges as follows:

3 I.

4 This Court has jurisdiction under 28 U.S.C. 1345 and 21 U.S.C.  
5 334.

6 II.

7 The article is a drug within the meaning of the Federal Food,  
8 Drug, and Cosmetic Act (Act), 21 U.S.C. 321(g) (1) (B), because, as in-  
9 dicated in its labeling, it is intended for use in the cure, mitiga-  
10 tion, treatment, or prevention of human disease.

11 III.

12 The article is a drug within the meaning of the Act, 21 U.S.C.  
13 321(g) (1), that may not be introduced or delivered for introduction  
14 into interstate commerce pursuant to 21 U.S.C. 355(a) because it is  
15 a new drug within the meaning of 21 U.S.C. 321(p) and no approval of  
16 an application filed pursuant to 21 U.S.C. 355(b) is in effect for  
17 such drug.

18 IV.

19 The article of drug is misbranded while held for sale after  
20 shipment of one or more of its components in interstate commerce,  
21 within the meaning of the Act, 21 U.S.C. 352(f) (1), in that its la-  
22 beling fails to bear adequate directions for use and it is not exempt  
23 from such requirement under 21 CFR 201.115 because the article is an  
24 unapproved new drug.

25 V.

26 The article of drug, which is in the possession of Halo Supply  
27 Company, 7950 Silverton Avenue, Suite 203, and 7940 Silverton Avenue,  
28 Suite 210, San Diego, California, or elsewhere within the jurisdic-

1 tion of this Court, consists in whole or in part of components that  
2 were shipped in interstate commerce from outside the State of  
3 California.

4 VI.

5 By reason of the foregoing, the article is held illegally within  
6 the jurisdiction of this Court and is liable to seizure and condemna-  
7 tion.

8 WHEREFORE, plaintiff requests as follows:

- 9 1. That process issue against the article;  
10 2. That all persons having any interest in the article be cited  
11 to appear herein and answer the allegations of the complaint;  
12 3. That this Court decree the condemnation and forfeiture of  
13 the article and grant plaintiff the costs of this proceeding against  
14 the claimant of the article;  
15 4. That the article be disposed of as this Court may direct  
16 pursuant to the provisions of the Act; and  
17 5. That plaintiff have such other and further relief as the  
18 case may require.

19 DATED: December 13, 2002

CAROL C. LAM  
United States Attorney

  
JOHN B. SCHERLING  
Assistant U.S. Attorney

Attorneys for Plaintiff  
United States of America

24 OF COUNSEL:

- 25 DANIEL TROY  
Chief Counsel  
26 ERIC BLUMBERG  
Deputy Chief Counsel  
27 STEVEN SILVERMAN  
Associate Chief Counsel  
28 U.S. Food and Drug Administration

VERIFICATION

I, Barbara J. Rincon, Compliance Officer of the Food and Drug Administration, United States Department of Health and Human Services, declare under penalty of perjury as provided by 28 U.S.C. 1746, that I have read the foregoing Complaint for Forfeiture and that the information contained therein is true and correct to the best of my knowledge and belief.

DATED:

10 Dec. 2002

  
BARBARA J. RINCON

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28