

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
JUNE 2, 2008
08CV3169
JUDGE GRADY

YM

FEDERAL TRADE COMMISSION,
Plaintiff,

v.

NORTH AMERICAN HERB AND SPICE
CO., LLC, a limited liability company,

and

JUDY KAY GRAY, individually and as the
owner and manager of North American Herb
and Spice Co., LLC,

Defendants.

Case No. MAGISTRATE JUDGE COX

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC"), through its undersigned attorneys, alleges as follows:

1. Plaintiff FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure a permanent injunction, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief against the Defendants for engaging in deceptive acts or practices in connection with the advertising, marketing, and sale of the dietary supplements Oreganol P73, Super Strength Oreganol P73, and OregaRESP, each of which purports to treat, cure, or prevent numerous health conditions, including colds and flu, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a), 52, and 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).

THE PARTIES

4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. *See* 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces Section 12 of the FTC Act, 15 U.S.C. § 52, which prohibits false advertisements for foods, drugs, devices, services, or cosmetics in or affecting commerce. The FTC, through its own attorneys, may initiate federal district court proceedings to enjoin violations of the FTC Act and to secure such other equitable relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and disgorgement of ill-gotten monies, as may be appropriate in each case. 15 U.S.C. § 53(b).

5. Defendant North American Herb and Spice Co., LLC (“NAHS”) is a Nevada limited liability company located at 1455 Lakeside Drive, Waukegan, IL 60085. At all times relevant to this Complaint, acting alone or in concert with others, NAHS has manufactured, marketed, distributed, and sold Oreganol P73, Super Strength Oreganol P73, and OregaRESP to consumers throughout the United States. NAHS transacts or has transacted business in the Northern District of Illinois.

6. Defendant Judy Kay Gray is the owner and manager of NAHS. She resides in the Northern District of Illinois and transacts or has transacted business there. She resides at 212 Willow Parkway, Buffalo Grove, IL 60089. Her business address is the same as that of NAHS. At all times relevant to this Complaint, acting alone or in concert with others, Gray has participated in, or had authority to control, the policies, acts, or practices of NAHS, including the various acts and practices set forth herein.

COMMERCE

7. The acts and practices of the Defendants, as alleged herein, have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' COURSE OF BUSINESS

8. Since January 2003 and continuing thereafter, Defendants have advertised, promoted, offered for sale, sold, and distributed the supplements Oreganol P73, Super Strength Oreganol P73, and Oregacyn (currently sold as OregaRESP) to the public, using advertisements on the Internet and in magazines such as Alternative Medicine Magazine, H2O Magazine, Health Supplement Retailer, and Women's Health and Fitness.

9. Defendants offer a line of products purported to contain P73, which is described as wild, handpicked Mediterranean oregano. Oreganol P73 is a supplement containing oregano oil P73 and extra virgin olive oil, and is offered for sale in liquid or gelcap form, for retail prices ranging from \$29.99 (for a 0.45 oz. dropper bottle of liquid or a bottle of 60 gelcaps) to \$59.99 (for a 1 oz. dropper bottle of liquid). Super Strength Oreganol P73 is a supplement containing oregano oil P73 and extra virgin olive oil that is purported to be three times more powerful than Oreganol P73. It is also sold in liquid and gelcap form for retail prices ranging from \$39.99 to \$69.99. OregaRESP is a supplement containing oregano P73, cumin, sage, and cinnamon. It is offered for sale in capsule, gelcap, and liquid form for retail prices ranging from \$29.99 to \$69.99. OregaRESP was formerly sold under the name Oregacyn.

10. To induce consumers to purchase Oreganol P73, Super Strength Oreganol P73, and OregaRESP, Defendants have disseminated or caused to be disseminated, among other things, promotional materials on Web sites, including www.p-73.com, and numerous print ads. These promotional materials include, but are not limited to, the attached Exhibits A through D and contain, among other things, the following statements or depictions:

- a. **Research shows
heat and germs
don't mix.**

Turn up the HEAT . . .

. . . against cold/flu viruses and more with
Oreganol P73—the wild oregano oil blend.

This is the power you need for any immune support. Research shows that Oreganol P73 destroys cold/flu viruses, bacteria, mold, parasites, and yeasts. For serious and immediate immune power Oreganol (P73) is your best choice.

[Depiction: Two dropper bottles, one labeled Oreganol Super Strength P73, and the other labeled Oreganol P73. Each bottle is also labeled "Researched. Tested."]

Exhibit A (magazine advertisement)

b. **Now, there's something better—**

For the last twenty years many home remedies, such as echinacea, goldenseal, elderberry, colloidal silver, vitamin C, zinc, and chicken soup, have been used for colds and flu.

**Now, there is
better science . . .**

human cold virus—100% kill
bird flu virus—99.0% kill
flu virus—99.9% kill
(in vitro in 20 minutes)

For respiratory symptoms including cold and flu recommend Oregacyn P73 and Oreganol P73—the products with peer reviewed

science. P73 mountain-grown wild oregano has been shown to kill a wide range of germs. . . .

The original and only researched-tested wild oregano products

[Depiction: Microscope, dropper bottle labeled Oreganol P73 and container labeled Oregacyn.]

Exhibit B (magazine advertisement)

c. **Viral Attack . . .**

cough

sinus pressure

sore throat

runny nose

aches and pains

Finally, the science . . .

Survive the cold and flu season with the power of Oregacyn P73 and Oreganol P73. Research shows that they kill a wide range of

germs. For copies of our research on the human cold and flu viruses, avian bird flu, hepatitis C, Staph aureus, and Helicobacter pylori, send a self-addressed, stamped envelope to Oregacyn, P.O. Box 4885, Buffalo Grove, IL, 60089, or call 1-800-243-5242.

The original and only researched-tested wild oregano

[Depiction: Dropper bottle labeled Oreganol P73 and container labeled Oregacyn. Microscope and a graph labeled "Oregacyn P73 reduces influenza A by 99.9% (in vitro at 1% dilution): 20 minutes exposure to Oregacyn P73 results in 99.9% reduction of influenza A"]

Exhibit C (magazine advertisement)

d. **Killer
cold and flu
season
is here again!**

Deadly cold and flu viruses are here again! As the seasons change, the immune system is vulnerable. To protect yourself, you need serious power. Research proves that the powerful, edible, wild spice extracts in Oregacyn P73, including wild oregano and cumin, destroy a wide range of germs. . . .

The most powerful **natural** germ-killer
The original and only researched-tested wild oregano

[Depiction: Two containers and a dropper bottle labeled Oregacyn. Graph labeled "Oregacyn P73 direct effect on influenza A (in vitro at 1% dilution): 20 minutes = 90% reduction"]

Exhibit D (magazine advertisement)

DEFENDANTS' VIOLATIONS OF THE FTC ACT

11. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a), prohibits the dissemination of any false advertisement in or affecting commerce for the purpose of inducing, or which is likely to induce, the purchase of food, drugs, devices, services, or cosmetics. For the purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, Oreganol P73, Super Strength Oreganol P73, and Oregacyn are “foods” or “drugs” pursuant to Sections 15(b) and (c) of the FTC Act, 15 U.S.C. §§ 55(b) and (c). As set forth below, Defendants have engaged and are continuing to engage in such unlawful practices in connection with the marketing and sale of Oreganol P73, Super Strength Oreganol P73, and Oregacyn.

COUNT ONE

False Claims for Cold and Flu Prevention and Treatment

12. Through the means described above in Paragraph 10, including but not limited to the statements and depictions contained in the advertisements attached as Exhibits A through D, Defendants have represented, expressly or by implication, that:

- a. Oreganol P73, Super Strength Oreganol P73, and Oregacyn are scientifically proven to prevent cold and flu infection; and
- b. Oreganol P73, Super Strength Oreganol P73, and Oregacyn are scientifically proven to be effective in the treatment of cold and flu symptoms.

13. The representations set forth in Paragraph 12 are false. Therefore, the making of the representations in Paragraph 12 constitutes a deceptive practice, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT TWO

Unsubstantiated Health and Disease Claims

14. Through the means described above in Paragraph 10, including but not limited to the statements and depictions contained in the advertisements attached as Exhibits A through D, Defendants have represented, expressly or by implication, that:

- a. Oreganol P73, Super Strength Oreganol P73, and Oregacyn enhance or improve immune system function; and
- b. Oreganol P73, Super Strength Oreganol P73, and Oregacyn kill a wide variety of germs and pathogens in humans, including cold and flu viruses, avian bird flu virus, hepatitis C, Staphylococcus aureus, Helicobacter pylori, mold, parasites, and yeasts.

15. Defendants did not possess and rely upon a reasonable basis that substantiated the representations made in Paragraph 14 at the time the representations were made. Therefore, the making of the representations set forth in Paragraph 14 constitutes a deceptive practice, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

CONSUMER INJURY

16. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss as a result of Defendants' unlawful acts and practices. In addition, Defendants have been unjustly enriched as a result of their unlawful practices. Absent relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

17. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award other ancillary relief, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies caused by Defendants' law violations.

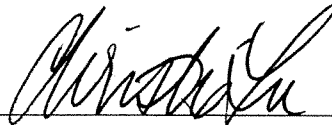
PRAYER FOR RELIEF

WHEREFORE, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that this Court:

1. Enter a permanent injunction to prevent future violation of the FTC Act by Defendants;
2. Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of Sections 5(a) and 12 of the FTC Act, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and
3. Award Plaintiff the costs of bringing this action, and such other equitable relief as the Court may determine to be just and proper.

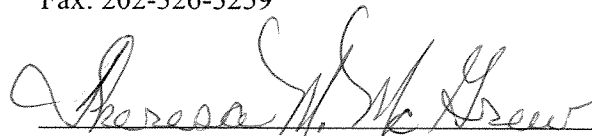
Respectfully Submitted,

WILLIAM BLUMENTHAL
General Counsel



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Dated: June 2, 2008



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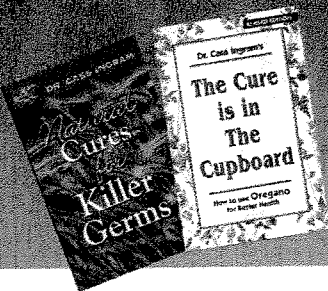
Research shows heat and germs don't mix.

Turn up the HEAT...

...against cold/flu viruses and more with Oreganol P73—the wild oregano oil blend. This is the power you need for any immune support. Research shows that Oreganol P73 destroys cold/flu viruses, bacteria, mold, parasites and yeasts. For serious and immediate immune power Oreganol (P73) is your best choice.



For internal and topical use. Available in original and super strength.



For copies of our scientific studies published in *Antiviral Research* or to order Dr. Cass Ingram's books, send a self-addressed stamped envelope to North American Herb & Spice, P.O. Box 4885, Buffalo Grove, IL 60089, or call 1-800-243-5242. www.oreganol.com

Learn how to reverse any health disaster from A to Z, all with natural medicines.

"Come See Dr. Cass Ingram"



World Renown Expert
in Nutritional Medicine
& Author of Over
20 Books



The power of nature

Proud
Sponsor of



Also available in easy-to-take regular and super strength P73 gelcaps and antiseptic spray.

These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

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EXHIBIT A

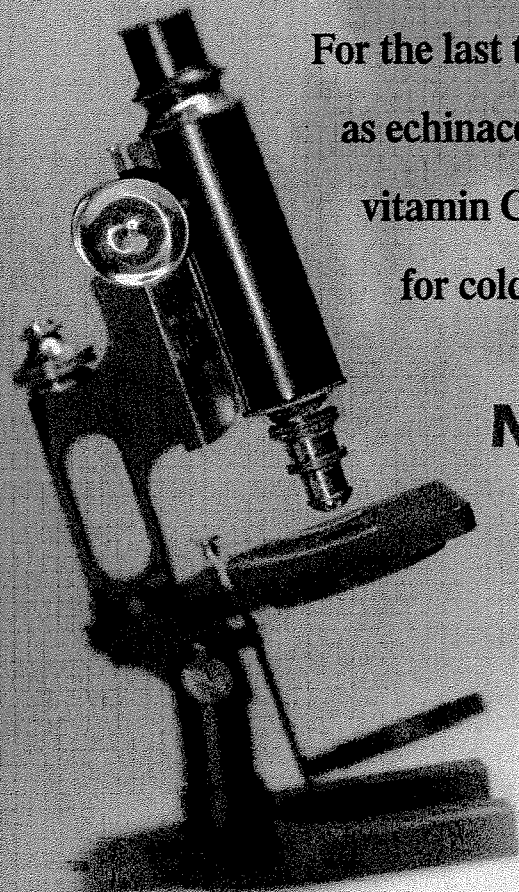
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MAGISTRATE JUDGE COX

Now, there's something better—

For the last twenty years many home remedies, such as echinacea, goldenseal, elderberry, colloidal silver, vitamin C, zinc, and chicken soup, have been used for colds and flu.



Now, there is better science...

human cold virus—100% kill
bird flu virus—99.0% kill
flu virus—99.9% kill
(in vitro in 20 minutes)



For respiratory symptoms including cold and flu recommend Oregacyn P73 and Oreganol P73—the products with peer reviewed science. P73 mountain-grown wild oregano has been shown to kill a wide range of germs. This includes the original Oreganol P73 oil and the new easy-to-take Oregacyn P73 multiple spice capsules. For copies of the current P73 research on the human cold and flu viruses, send a self-addressed stamped envelope to Oregacyn, P.O. Box 4885, Buffalo Grove, IL, 60089, or call 1-800-243-5242. Visit us at www.p-73.com



The original and only researched-tested wild oregano products

The power of nature

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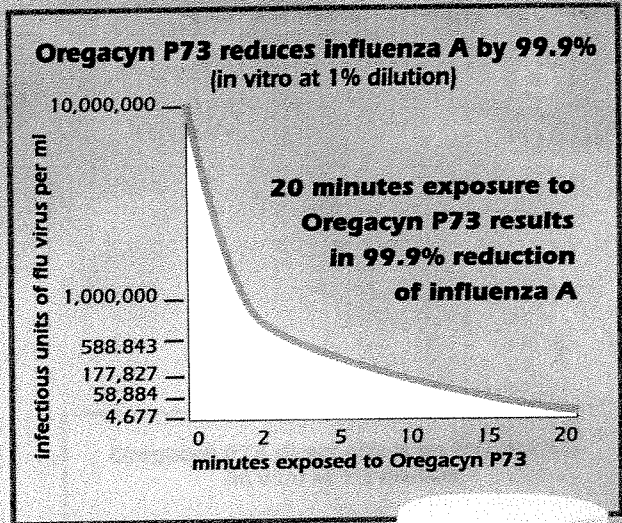
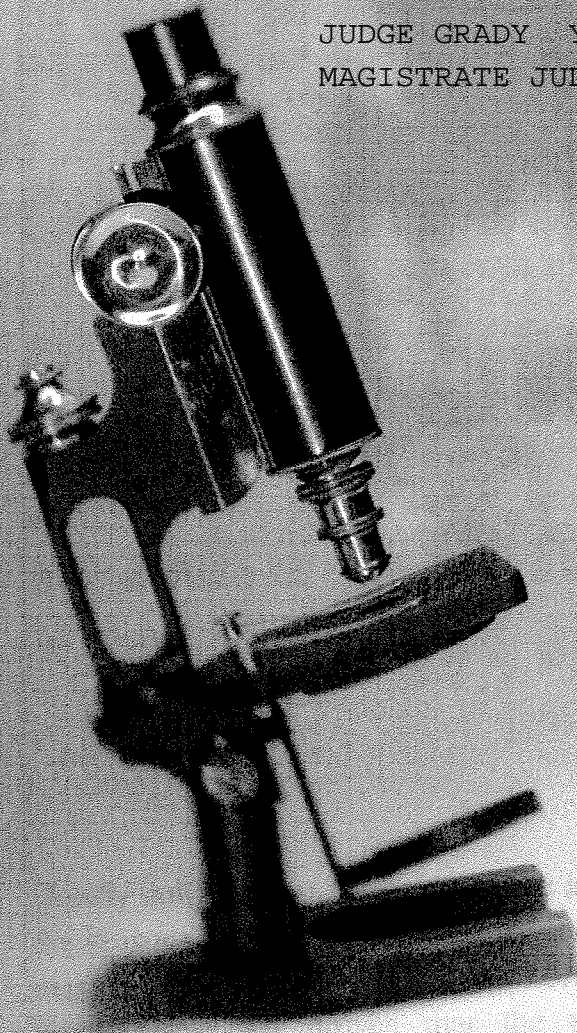
11 / 22 / 05

EXHIBIT B

Viral Attack...

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JUDGE GRADY YM
MAGISTRATE JUDGE COX

**cough
sinus pressure
sore throat
runny nose
aches and pains**



Finally, the science...

Survive the cold and flu season with the power of Oregacyn P73 and Oreganol P73. Research shows that they kill a wide range of germs. For copies of our research on the human cold and flu viruses, avian bird flu, hepatitis C, Staph aureus, and Helicobacter pylori, send a self-addressed, stamped envelope to Oregacyn, P.O. Box 4885, Buffalo Grove, IL, 60089, or call 1-800-243-5242. Visit us at www.oreganol.com



The original and only researched-tested wild oregano

Available @ **GNC Live Well.**
and other fine retailers

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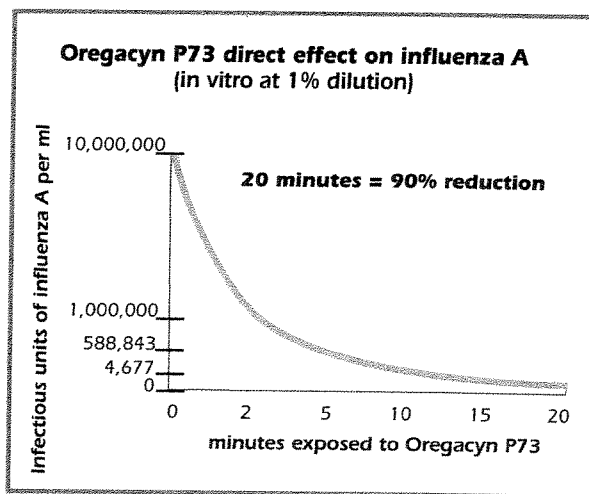
EXHIBIT C

11/4/04

Killer cold and flu season is here again!



Deadly cold and flu viruses are here again! As the seasons change, the immune system is vulnerable. To protect yourself, you need serious power. Research proves that the powerful, edible, wild spice extracts in Oregacyn P73, including wild oregano and cumin, destroy a wide range of germs. For copies of our research on influenza A, send a self-addressed stamped envelope to Oregacyn, P.O. Box 4885, Buffalo Grove, IL 60089 1-800-243-5242.
www.oreganol.com



The most powerful natural germ-killer

The original and only researched-tested wild oregano

These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

EXHIBIT D

9/8/04