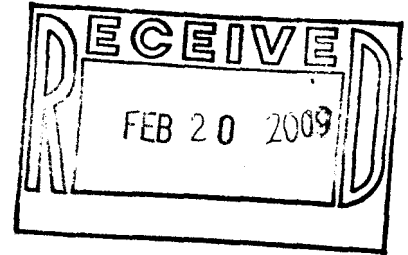


JF

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA



UNITED STATES OF AMERICA,	)
	)
Plaintiff,	)
	)
v.	)
	)
QVC, INC.,	)
	)
Defendant/Third-Party Plaintiff,	)
	)
v.	)
	)
VITAQUEST INTERNATIONAL, INC.,	)
et al.,	)
	)
Third-Party Defendants.	)

Civil Action No. 04-1276  
(The Honorable John P. Fullam)

CONSENT DECREE

WHEREAS: Plaintiff, the United States of America, filed its Complaint in this action for monetary civil penalties, consumer redress, injunctive and other relief pursuant to 15 U.S.C. §§ 45(a), 45(l), 52, 53(b), and 56(a) against defendant QVC, Inc. ("QVC"), alleging violations of the Order entered by the Federal Trade Commission ("FTC" or "Commission") on June 14, 2000, in a Commission proceeding bearing Docket No. C-3955, and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

WHEREAS, plaintiff and defendant have been represented by counsel and have agreed to the entry of this Consent Decree by this Court to resolve all matters of dispute between the plaintiff and defendant, and to satisfy all monetary claims asserted by the plaintiff, with respect to the conduct of defendant alleged in the Complaint in this action, without trial or further

adjudication of any issue of fact or law and without defendant admitting liability for any of the matters alleged in the Complaint;

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 defendant under Sections 5(a), 5(l), 12, 13(b) and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 45(l), 52, 53(b) and 56(a).
3. The following definition shall apply to this Consent Decree: "Commission's Order" means the FTC Order in FTC Docket No. C-3955 (2000), a copy of which is attached hereto as Exhibit A and made a part of this Order.

**I.**

**CIVIL PENALTY**

**IT IS FURTHER ORDERED** that:

- A. Pursuant to Section 5(l) of the FTC Act, 15 U.S.C. § 45(l), defendant QVC shall pay a monetary civil penalty of One Million, Five Hundred Thousand Dollars (\$1,500,000).
- B. Defendant QVC shall make the payments required by Subpart A of this Part, within five (5) days after the date of entry of this Order by electronic fund transfer in accordance with the instructions provided by: The Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.
- C. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the entire unpaid penalty, together with interest

as computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, shall immediately become due and payable.

II.

**CONSUMER REDRESS**

**IT IS FURTHER ORDERED** that no later than five (5) days after the date of entry of this Consent Decree, defendant QVC shall pay to the Commission the sum of Six Million Dollars (\$6,000,000) under the following terms and conditions:

- A. The payment shall be made by wire transfer or certified or cashier's check made payable to the Federal Trade Commission.
- B. In the event of any default on any obligation to make payment under this Part, which default continues for ten (10) days beyond the due date of payment, the entire unpaid amount, together with interest as computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, shall immediately become due and payable.
- C. All funds paid pursuant to this Part shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress for consumers who purchased from defendant any of the products specified in paragraph II.D.1., infra, and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including information remedies) as it determines to be reasonably related to defendant QVC's practices alleged in the Complaint. Any funds not

applied by the Commission for such equitable relief shall be deposited to the United States Treasury as equitable disgorgement. Defendant QVC shall have no right to challenge the Commission's choice of remedies under this Part. No portion of any payments under this Part shall be deemed a payment of any fine, penalty, punitive assessment, or forfeiture.

D. Within sixty (60) days from the date of entry of this Consent Decree, defendant QVC must:

1. Compile a mailing list identifying each person who purchased any of the following products from QVC, during the period from June 14, 2000, through the date of entry of this Consent Decree:
  - a. Bee-Alive Feel Good 90 Day System
  - b. Bee-Alive Sweet Energy Royal Jelly
  - c. Bee-Alive Pure Royal Jelly
  - d. Bee-Alive 10 Piece Pick-Me-Up Formula
  - e. For Women Only Zero Fat
  - f. For Women Only Advanced Zero Fat
  - g. For Women Only Zero Fat Ultra
  - h. For Women Only Zero Carb
  - i. For Women Only Advanced Zero Carb
  - j. For Women Only 30 Day Weight Control System
  - k. All Lite Bites products
  - l. Lipofactor Target Lotion
  - m. Lipofactor Target Spray

2. Include on the list the person's name and last known address, the name and quantity of product(s) purchased, the total cost of the product(s) purchased, and any refunds or credit previously provided; and
3. Provide Commission staff with a copy of the mailing list in a mutually agreeable electronic form on (1) a product-by-product basis and (2) an overall basis.

### III.

#### PROHIBITION AGAINST VIOLATING COMMISSION'S ORDER

**IT IS FURTHER ORDERED** that defendant QVC, and its successors and assigns, and their officers, agents, representatives, and employees, and all persons in active concert or participation with them who receive actual notice of this Consent Decree by personal service or otherwise, directly or through any corporation, subsidiary, division, or other device, are hereby permanently enjoined from violating any provision of the Commission's Order as modified in the manner provided in Part IV of this Consent Decree.

### IV.

#### MODIFICATION OF THE COMMISSION'S ORDER

**IT IS FURTHER ORDERED** that, defendant QVC shall consent to: reopening of the proceeding in FTC Docket No. C-3955; waiver of its rights under the show cause procedures set forth in Section 3.72(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.72(b); and modification of the Commission's Order as follows:

- A. By renumbering Parts II, III, IV, V, VI, VII, VIII, and IX as Parts III, IV, V, VI, VII, VIII, IX, and X, respectively;
- B. By adding a new Part II of the Commission's Order that reads as follows:

\* \* \*

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 Lipofactor or any other drug or cosmetic, as "drug" and "cosmetic" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, are hereby permanently enjoined from making any representation, in any manner, expressly or by implication, including, but not limited to, through the use of before-and-after depictions, or endorsements that such product:

- A. Eliminates or reduces cellulite; or
- B. Causes measurable inch loss from users' arms, thighs, abdomens, or other targeted areas of the body,

unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

\* \* \*

- C. By replacing the current language in the newly designated Part X with the following:

\* \* \*

X.

This order will terminate twenty (20) years from the date this order, as modified, is issued, or twenty 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.

\* \* \*

V.

**DISTRIBUTION OF CONSENT DECREE BY DEFENDANT**

**IT IS FURTHER ORDERED** that defendant QVC, and its successors and assigns, shall, within thirty (30) days after the date of entry of this Consent Decree, provide a copy of the Commission's Order, as modified in the manner provided in Part IV, and a copy of this Consent Decree to each of its officers, and to all personnel, whether such persons are designated as employees, consultants, independent contractors, vendor representatives, or otherwise, involved in the advertising or promotion of any product covered by the Commission's Order, as modified in the manner provided in Part IV. Defendant QVC shall provide a copy of the Commission's Order, as modified in the manner provided in Part IV, and this Consent Decree to future personnel within thirty (30) days after the person assumes such position or responsibilities. Within ten (10) days of complying with this paragraph, each defendant shall provide the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, 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 Commission's Order, as modified in the manner provided in Part IV, and a copy of the Consent Decree has been provided.

**VI.**

**RECORD-KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Consent Decree, defendant QVC, and its successors and assigns, shall maintain and, upon request, make available to the Commission, copies of all business records demonstrating compliance with the terms and provisions of this Consent Decree.

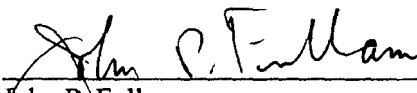
**VII.**

**CONTINUING JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Consent Decree.

**JUDGMENT IS THEREFORE ENTERED** in favor of plaintiff and against defendant, pursuant to all the terms and conditions recited above.

Dated this 4<sup>th</sup> date of March, 2009

  
\_\_\_\_\_  
John P. Fullam  
United States District Judge



The parties, by their respective counsel, hereby consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof. Defendant waives any 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, 863-63 (1996).


FOR THE UNITED STATES OF AMERICA:

JEFFREY S. BUCHOLTZ  
Acting Assistant Attorney General  
Civil Division  
United States Department of Justice

PATRICK MEEHAN  
United States Attorney  
Eastern District of Pennsylvania

JOSEPH TRAUTWEIN  
Assistant United States Attorney  
615 Chestnut Street  
Suite 1250  
Philadelphia, PA 19106

EUGENE M. THIROLF  
Director  
KENNETH JOST  
Deputy Director  
Office of Consumer Litigation




MARK L. JOSEPHS  
Trial Attorney  
Office of Consumer Litigation  
Civil Division  
U.S. Department of Justice  
Washington, D.C. 20530  
(202) 305-3630

FOR THE FEDERAL TRADE COMMISSION:

JAMES A. KOHM  
Associate Director for Enforcement

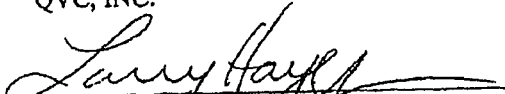
ROBERT KAYE  
Assistant Director for Enforcement

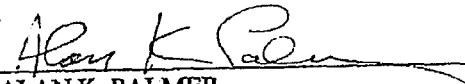


MARK MORELLI  
Attorney  
Division of Enforcement  
Bureau of Consumer Protection  
600 Pennsylvania Avenue, N.W.  
Federal Trade Commission  
Washington, D.C. 20580  
(202) 326-2601

FOR THE DEFENDANT:

QVC, INC.

By:   
LAWRENCE R. HAYES  
General Counsel

By:   
ALAN K. PALMER  
Kaye Scholer, LLP  
901 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 682-3536

Attorneys for Defendant QVC, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of February, 2009, a true copy of the Consent Decree was served by electronic filing on the following parties:

David M. Howard, Esq.  
Cira Centre  
2929 Arch Street  
Philadelphia, PA 19104-2808

Alan Palmer, Esq.  
Kaye Scholer LLP  
901 15th Street, N.W., Suite 1100  
Washington, DC 20005

*Attorneys for Defendant/Third-Party Plaintiff QVC, Inc.*

Matthew J. Siembieda, Esq.  
Matthew Lee, Esq.  
Blank Rome LLP  
One Logan Square  
Philadelphia, PA 19103-6988

*Attorneys for Third-Party Defendant Nutrition 21, Inc.*

Edward Gross, Esq.  
Riker Danzig Scherer Hyland & Perretti, LLP  
New Jersey Office at Headquarters Plaza  
One Speedwell Avenue  
Morristown, NJ 07692-1981

*Attorneys for Third-Party Vitaquest International, Inc.*

Christopher R. Mellott, Esq.  
Randolph Stuart Sergent, Esq.  
Venable LLP  
Two Hopkins Plaza  
Suite 1800  
Baltimore, MD 21201-2978

*Attorneys for Third-Party Defendants Bee-Alive, Inc. and  
Madeline Balletta*

Matthew J. Borger, Esq.  
Klehr, Harrison, Harvey, Branzburg & Ellers LLP  
260 South Broad Street  
Suite 400  
Philadelphia, PA 19102

*Attorneys for Fourth-Party Defendant Marvin Segal*

/s MARK L. JOSEPHS  
Mark L. Josephs

**EXHIBIT A**

9823152

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: Robert Pitofsky, Chairman  
Sheila F. Anthony  
Mozelle W. Thompson  
Orson Swindle  
Thomas B. Leary

In the Matter of )  
 )  
QVC, INC., )  
a corporation. )  
 )  
 )  
 )

FILE NO. C-3955

DECISION & ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the draft complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated or that the facts, as alleged in the complaint, other than jurisdictional facts, are true; and

The Commission having considered the matter and having determined that it had reason to believe that the respondent has violated the Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comment filed thereafter by an interested person pursuant to § 2.34 of its Rules, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional finding and enters the following order:

1. Respondent QVC, Inc. is a Delaware corporation with its principal office or place of business at 1200 Wilson Drive, West Chester, PA 19380.

**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. Unless otherwise specified, "respondent" shall mean QVC, Inc., its successors and assigns and its officers, agents, representatives, and employees.
3. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

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 Cold-Eeze Zinc Lozenges, or any other food, drug or dietary supplement, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such product:

- A. will prevent users from contracting colds;
- B. will reduce the risk of contracting pneumonia;
- C. will relieve or reduce the symptoms of hay fever or allergies;
- D. will reduce the severity of cold symptoms in children; or
- E. will prevent children from contracting colds;

unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates 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 dietary supplement, 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.

III.

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.

IV.

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.

V.

IT IS FURTHER ORDERED that respondent QVC, Inc., and its successors and assigns, 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, including videotapes of all such broadcast advertisements;
- 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.

VI.

IT IS FURTHER ORDERED that respondent QVC, Inc., and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent shall maintain and upon request, make available to the Federal Trade Commission for inspection and copying, a copy of each signed statement acknowledging receipt of the order.

VII.

IT IS FURTHER ORDERED that respondent QVC, Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. 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.

VIII.

IT IS FURTHER ORDERED that respondent QVC, Inc., and its successors and assigns, 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 they have complied with this order.

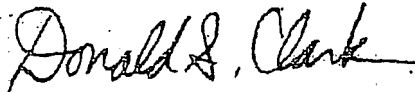
IX.

This order will terminate on June 14, 2020, 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.

By the Commission, Commissioner Leary not participating.



Donald S. Clark  
Secretary

ISSUED: June 14, 2000

SEAL: