

Please have this [redacted] and place it in the United States Attorney's box. Thank you.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CIVIL ACTION

v.

BODY WISE INTERNATIONAL, INC., and
JESSE A. STOFF, M.D.,

Defendants.

SACV 05-43 DOC (ANx)

CONSENT DECREE AS TO BODY WISE INTERNATIONAL, INC.

WHEREAS, Plaintiff, the United States of America, has commenced this action by filing the Complaint herein; Defendant Body Wise International, Inc., has waived service of the Summons and Complaint; the parties have been represented by the attorneys whose names appear hereafter; and 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 liability for any of the matters alleged in the Complaint;

THEREFORE, on the joint motion of Plaintiff and Defendant Body Wise International, Inc., it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

- 1 1. This Court has jurisdiction of the subject matter and of the parties.
- 2 2. The Complaint states a claim upon which relief may be granted against Defendant
3 under Sections 5(a), 5(l), 12, 13(b) and 16(a) of the Federal Trade Commission Act, 15
4 U.S.C. §§ 45(a), 45(l), 52, 53(b) and 56(a).
- 5 3. The following definitions shall apply to this Consent Decree:
- 6 A. "Commission's Order" shall mean the Federal Trade Commission Order
7 issued in Commission Docket No. C-3716, *Body Wise International, Inc.*
8 (September 25, 1995), a copy of which is attached hereto as Appendix A
9 and made a part of this Consent Decree.
- 10 B. "Competent and reliable scientific evidence" shall mean tests, analyses,
11 research, studies, or other evidence based on the expertise of professionals
12 in the relevant area, that has been conducted and evaluated in an objective
13 manner by persons qualified to do so, using procedures generally accepted
14 in the profession to yield accurate and reliable results.

15 **I. MONETARY PAYMENT**

16 **IT IS ORDERED** that Defendant Body Wise International, Inc., its successors or
17 assigns, shall pay to Plaintiff a civil penalty, pursuant to Section 5(l) of the Federal Trade
18 Commission Act, 15 U.S.C. § 45(l), in the amount of two million dollars (\$2,000,000.00)

- 19 A. Within ten (10) days of Defendant's execution of this Order, Defendant
20 shall pay the entire payment required by this Part into an interest-bearing
21 escrow account to be established and held by an escrow agent approved by
22 the undersigned Commission attorneys. Within ten (10) days after the date
23 of entry of this Order, the escrow agent shall transfer the entire amount in
24 the escrow account (including accrued interest) to Plaintiff in full and final
25 satisfaction of the judgment. The payment to Plaintiff under this Section
26 shall be made by electronic fund transfer in accordance with instructions
27 provided by Plaintiff. By signing this Order, Defendant relinquishes all
28 dominion, control and title to the monies transferred to Plaintiff (including

1 accrued interest), and agrees that all legal and equitable title to said monies
2 is vested in Plaintiff, for appropriate disposition. In the event the
3 Commission does not approve this Order or the Court does not enter this
4 Order, all monies in the escrow account shall be returned to Defendant
5 (including accrued interest).

6 B. In the event of any default in payment, which default continues for ten days
7 beyond the due date of payment, the entire unpaid penalty, together with
8 interest, as computed pursuant to 28 U.S.C. § 1961 from the date of default
9 to the date of payment, shall immediately become due and payable.

10 INJUNCTION

11 **II. PROHIBITION AGAINST VIOLATIONS OF THE COMMISSION'S ORDER**

12 **IT IS FURTHER ORDERED** that Defendant Body Wise International, Inc, its
13 successors, assigns, agents, representatives, employees and all other persons or entities
14 within the scope of Fed R. Civ. P. 65, and all persons in active concert or participation
15 with it who receive actual notice of this Consent Decree by personal service or otherwise,
16 are hereby permanently enjoined from ever violating, directly or through any corporation,
17 subsidiary, division, or other device, any provision of the Commission's Order. In the
18 event that the Commission's Order is hereafter modified, Defendant's compliance with
19 such Order as so modified shall not be deemed a violation of this injunction.

20 **III. PROHIBITIONS AGAINST ADVERTISING UNLESS SUBSTANTIATED**

21 **IT IS FURTHER ORDERED** that Defendant Body Wise International, Inc., its
22 successors, assigns, agents, representatives, employees and all other persons or entities
23 within the scope of Fed R. Civ. P. 65, and all persons in active concert or participation
24 with them who receive actual notice of this Consent Decree by personal service or
25 otherwise, directly or through any corporation, subsidiary, division, or other device, in
26 connection with the manufacturing, labeling, advertising, promotion, offering for sale,
27 sale or distribution of any product or service for the immune system or weight control, or
28 any health-related service or therapy, dietary supplement, food, drug, or device, as

1 “food,” “drug” and “device” are defined in Sections 12 and 15 of the Federal Trade
2 Commission Act, 15 U.S.C. §§ 52 and 55, in or affecting commerce, as “commerce” is
3 defined in the Federal Trade Commission Act, shall not represent or assist others in
4 representing, in any manner, directly or by implication, including through the use of
5 consumer or expert endorsements, that any such product, service or therapy:

- 6 A. prevents, mitigates, treats, cures or improves the symptoms of any disease
7 or health-related condition including but not limited to: Allergies; AIDS;
8 Asthma; Cancer; Candida; Canker Sores; Chronic Fatigue Syndrome; Cold;
9 Colon Disease; Crohn’s Disease; Epstein Barr; Fibromyalgia; Flu; Heart
10 Disease; Hepatitis B; Hepatitis C; HIV; Hyperactive Thyroid; Infection;
11 Irritable Bowel Syndrome; Lupus; Mononucleosis; Poison Ivy; Rheumatoid
12 Arthritis; Shingles; Sinusitis; Toenail Fungus; and Ulcerative Colitis;
- 13 B. triggers or activates the immune system to prevent or treat diseases or
14 health- related conditions;
- 15 C. increases the activity and/or the production of natural killer (NK) or other
16 immune blood cells to prevent or treat diseases or health-related conditions;
- 17 D. gives the immune system specific, coded information on how to respond to
18 prevent or treat diseases or health-related conditions;
- 19 E. improves immune system function to prevent or treat diseases or health-
20 related conditions; or
- 21 F. provides, can provide, or helps provide any other health benefit;

22 unless, at the time of making such representation, Defendant possesses and relies upon
23 competent and reliable scientific evidence that substantiates the representation.

24 **IV. PROHIBITIONS AGAINST MISREPRESENTATIONS AS TO THE**
25 **EXISTENCE OR RESULTS OF TESTS, STUDIES OR RESEARCH**

26 **IT IS FURTHER ORDERED** that Defendant Body Wise International, Inc., its
27 successors, assigns, agents, representatives, employees and all other persons or entities
28 within the scope of Fed. R. Civ. P. 65, and all persons in active concert or participation

1 with it who receive actual notice of this Consent Decree by personal service or otherwise,
2 directly or through any corporation, subsidiary, division, or other device, in connection
3 with the manufacturing, labeling, advertising, promotion, offering for sale, sale or
4 distribution of any product or service for the immune system or weight control, or any
5 health-related service or therapy, dietary supplement, food, drug, or device, as “food,”
6 “drug” and “device” are defined in Sections 12 and 15 of the Federal Trade Commission
7 Act, 15 U.S.C. §§ 52 and 55, in or affecting commerce, as “commerce” is defined in the
8 Federal Trade Commission Act, shall not misrepresent or assist others in misrepresenting,
9 in any manner, expressly or by implication, the existence, contents, validity, results,
10 conclusions, or interpretations of any test, study or research.

11 **V. REQUIRED DISCLOSURE: ENDORSEMENTS**

12 **IT IS FURTHER ORDERED** that Defendant Body Wise International, Inc., its
13 successors, assigns, agents, representatives, employees and all other persons or entities
14 within the scope of Fed. R. Civ. P. 65, and all persons in active concert or participation
15 with it who receive actual notice of this Consent Decree by personal service or otherwise,
16 directly or through any corporation, subsidiary, division, or other device, in connection
17 with the manufacturing, labeling, advertising, promotion, offering for sale, sale or
18 distribution of any product or service for the immune system or weight control, or any
19 health-related service or therapy, dietary supplement, food, drug, or device, as “food,”
20 “drug” and “device” are defined in Sections 12 and 15 of the Federal Trade Commission
21 Act, 15 U.S.C. §§ 52 and 55, in or affecting commerce, as “commerce” is defined in the
22 Federal Trade Commission Act, shall disclose clearly and prominently a material
23 connection, where one exists, between any person providing an endorsement for any such
24 product, as “endorsement” is defined in 16 C.F.R. § 255.0(b), and Defendant or any other
25 individual or entity manufacturing, labeling, advertising, promoting, offering for sale,
26 selling or distributing such product, service or therapy. For the purposes of this order,
27 “material connection” shall mean any relationship that might materially affect the weight
28 or credibility of the endorsement and would not be reasonably expected by consumers.

1 **VI. DISTRIBUTION OF ORDER**

2 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of
3 entry of this Order, Defendant Body Wise International, Inc. shall:

4 A. Deliver a copy of this Consent Decree to:

5 (1) All principals, officers, directors, managers, employees, agents and
6 representatives having responsibilities with respect to the subject
7 matter of this Consent Decree; and

8 (2) Any person who agrees to provide or provides an expert
9 endorsement or testimonial, as “expert,” “testimonial” and
10 “endorsement” are defined in the Commission’s Guides Concerning
11 the Use of Endorsements and Testimonials in Advertising, 16 C.F.R.
12 § 255.0(a), (b) and (d), of any of Defendant’s products or services, or
13 any ingredient in or component of any of Defendant’s products or
14 services.

15 B. Deliver by first class mail a summary of this Consent Decree, attached
16 hereto as Appendix “B,” to any person who agrees to sell Body Wise
17 Products, or who receives any compensation in connection with the sale of
18 Body Wise products, whether such person is characterized as a consultant,
19 distributor, associate, or otherwise.

20 Defendant Body Wise International, Inc. shall deliver this Consent Decree or Appendix
21 “B” to those persons to whom it is currently required to provide this Consent Decree or
22 Appendix “B” within thirty (30) days after entry of this Consent Decree, and to any other
23 person at the time the person agrees to assume or assumes such position or
24 responsibilities or agrees to provide or provides an expert endorsement or testimonial. At
25 the time of delivery of the Consent Decree, Defendant Body Wise shall secure from each
26 person a signed and dated statement acknowledging receipt of the Consent Decree.

1 **VII. RECORD KEEPING**

2 **IT IS FURTHER ORDERED** that for a period of six (6) years from the date of
3 entry of this Consent Decree, Defendant Body Wise International, Inc., and its agents,
4 employees, officers, corporations, subsidiaries, successors and assigns, and those persons
5 in active concert or participation with them who receive actual notice of this Consent
6 Decree by personal service or otherwise, directly or through any corporation, subsidiary,
7 division or other device, in connection with the manufacturing, labeling, advertising,
8 promotion, offering for sale, sale or distribution of any product or service for the immune
9 system or weight control, or any health-related service or therapy, dietary supplement,
10 food, drug, or device, as “food,” “drug” and “device” are defined in Sections 12 and 15 of
11 the Federal Trade Commission Act, 15 U.S.C. §§ 52 and 55, in or affecting commerce, as
12 “commerce” is defined in the Federal Trade Commission Act, are hereby restrained and
13 enjoined from failing to create and retain the following records:

- 14 A. Accounting records that reflect the cost of goods or services sold, revenues
15 generated, and the disbursement of such revenues;
- 16 B. Personnel records accurately reflecting: the name, address, and telephone
17 number of each person employed in any capacity by such business,
18 including as an independent contractor or consultant, distributor, associate,
19 or otherwise; that person’s job title or position; the date upon which the
20 person commenced work; the date and reason for the person’s termination,
21 if applicable; a copy of such person’s acknowledgment of receipt of this
22 Consent Decree; and proof of mailing or forwarding Appendix “B” to each
23 consultant, distributor, associate, or otherwise, and any mail containing
24 Appendix “B” returned as undeliverable with no forwarding address,
25 obtained by Defendant Body Wise International, Inc. pursuant to Part VI.;
- 26 C. Customer files containing the names, addresses, phone numbers, dollar
27 amounts paid, quantity of items or services purchased, and description of
28

1 the items or services purchased, to the extent such information is obtained
2 in the ordinary course of business;

3 D. Complaints and refund requests (whether received directly or through any
4 third party) and any responses to those complaints or requests;

5 E. Copies of all training materials, advertisements or other marketing
6 materials;

7 F. All projections, visual aids and materials provided to Defendant's
8 consultants, distributors, associates or otherwise, or to the general public, in
9 all presentations or discussions of any such product or service;

10 G. All materials that were relied upon to substantiate any representation made
11 in the sales scripts, training materials, advertisements or other marketing
12 materials, or in the promotions or discussions referred to in Paragraphs E
13 and F of this Part;

14 H. All tests, reports, studies, surveys, demonstrations, or other evidence in
15 their possession or control that contradict, qualify, or call into question any
16 representation made in the sales scripts, training materials, advertisements
17 or other marketing materials, or in the promotions or discussions referred to
18 in Paragraphs E and F of this Part.

19 If Defendant makes any audio or video recordings, verbatim transcripts, or any other
20 records of any presentation respecting any such product or service to Defendant's
21 consultants, distributors, associates or otherwise, or to the general public, Defendant shall
22 retain such records for the period required by this Part.

23 **VIII. COMPLIANCE REPORTING BY DEFENDANT**

24 **IT IS FURTHER ORDERED** that, in order that compliance with the provisions
25 of this Consent Decree may be monitored:

26 A. For a period of three (3) years from the date of entry of this Consent
27 Decree,

28 (1) Defendant shall notify the Commission of the following:

1 (a) Any changes in Defendant's business, mailing address and
2 telephone number, within ten (10) days of the date of such
3 changes;

4 (b) Any changes in Defendant's corporate status within ten (10)
5 days of the date of such change;

6 (c) Any change in Defendant's name or use of any assumed or
7 fictitious names; and

8 (2) Defendant shall notify the Commission of any changes in corporate
9 structure that may affect compliance obligations arising under this
10 Consent Decree, including but not limited to a dissolution,
11 assignment, sale, merger, or other action that would result in the
12 emergence of a successor corporation; the creation or dissolution of a
13 subsidiary, parent, or affiliate that engages in any acts or practices
14 subject to this Consent Decree; or the filing of a bankruptcy petition,
15 at least thirty (30) days prior to the date such action is to take place,
16 *provided, however*, that with respect to any proposed change in the
17 corporation about which Defendant learns less than thirty (30) days
18 prior to the date such action is to take place, Defendant shall notify
19 the Commission as soon as practicable after obtaining such
20 knowledge.

21 B. One hundred eighty (180) days after the date of entry of this Consent
22 Decree, Defendant shall provide a written report to the Commission, sworn
23 to under penalty of perjury, setting forth in detail the manner and form in
24 which it has complied and is complying with this Consent Decree. This
25 report shall also include, but not be limited to, a copy of each
26 acknowledgment of receipt of this Consent Decree, and an affidavit setting
27 forth the names and addresses of the persons to whom defendant has mailed
28 Appendix "B," including copies of proofs of mailing or forwarding mail,

1 and names of persons whose mail was returned as undeliverable with no
2 forwarding address, obtained by Defendant Body Wise International, Inc.
3 pursuant to Part VI.

- 4 C. For purposes of this Consent Decree, Defendant shall, unless otherwise
5 directed by the Commission's authorized representatives, mail all written
6 notifications to the Commission to:

7 Associate Director for Enforcement
8 Bureau of Consumer Protection
9 Federal Trade Commission
10 600 Pennsylvania Avenue, NW
11 Washington, DC, 20580
12 Re: *United States v. Body Wise International, Inc.*, Civil
13 Action No. _____

14 **IX. COMPLIANCE MONITORING**

15 **IT IS FURTHER ORDERED** that, for the purpose of monitoring and
16 investigating compliance with any provision of this Consent Decree,

- 17 A. Within ten (10) days of receipt of written notice from a representative of the
18 Commission, Defendant shall submit additional written reports, sworn to
19 under penalty of perjury; produce documents for inspection and copying;
20 appear for deposition; and/or provide entry during normal business hours to
21 any business location in Defendant's possession or direct or indirect control
22 to inspect, the business operation;

23 *Provided, however,* that Defendant, after attempting to resolve a dispute
24 without court action and for good cause shown, may file a motion with this
25 Court seeking an order including one or more of the protections set forth in
26 Fed. R. Civ. P. 26(c).

- 27 B. In addition, the Commission is authorized to monitor compliance with this
28 Order by all other lawful means, including but not limited to the following:
(1) obtaining discovery from any person, without further leave of court,
using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36,
and 45;

1 (2) posing as consumers, consultants or prospective consultants, and
2 suppliers to Defendant, its employees, or any other entity managed
3 or controlled in whole or in part by Defendant, without the necessity
4 of identification or prior notice;

5 *Provided, however,* that nothing in this Consent Decree shall limit the
6 Commission's lawful use of compulsory process, pursuant to Sections 9 and
7 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary
8 material, tangible things, testimony, or information relevant to unfair or
9 deceptive acts or practices in or affecting commerce (within the meaning of
10 15 U.S.C § 45(a)(1)).

11 C. Defendant shall permit representatives of the Commission to interview, any
12 employer, consultant, independent contractor, representative, agent, or
13 employee who has agreed to such an interview, relating in any way to any
14 conduct subject to this Consent Decree. The person interviewed may have
15 counsel present if he or she chooses.

16 **X. COOPERATION WITH UNITED STATES AND COMMISSION**

17 **IT IS FURTHER ORDERED** that Defendant Body Wise International, Inc., and
18 its corporations, subsidiaries, successors and assigns, shall, in connection with this action
19 or any subsequent action, proceeding or investigation related to or associated with the
20 transactions or the occurrences that are the subject of this Complaint, designate one or
21 more officers, directors, managing agents, or other persons who consent to testify on
22 Defendant's behalf, who shall cooperate in good faith with the United States and the
23 Commission and produce such documents and appear at such places and times as the
24 United States or the Commission shall reasonably request, after written notice, for
25 interviews, conferences, pretrial discovery, review of documents, and for such other
26 matters as may be reasonably requested by the United States or the Commission. If
27 requested in writing by the United States or the Commission, Defendant's designee or
28 designees hereunder shall appear and provide documents and truthful testimony in any

1 trial, deposition, or other proceeding related to or associated with the transactions or the
2 occurrences that are the subject of the Complaint, without the service of a subpoena.

3 **XI. TAXPAYER IDENTIFICATION NUMBER**

4 **IT IS FURTHER ORDERED** that Defendant is hereby required, in accordance
5 with 31 U.S.C. § 7701, to furnish to the Federal Trade Commission its taxpayer
6 identifying numbers (employer identification number), which shall be used for purposes
7 of collecting and reporting on any delinquent amount arising out of Defendant's
8 relationship with the government.

9 **XII. RETENTION OF JURISDICTION**

10 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this
11 matter for the purposes of enabling any of the parties to this Consent Decree to apply to
12 the Court at any time for such further orders or directives as may be necessary or
13 appropriate for the interpretation or modification of this Consent Decree, for enforcement
14 of compliance therewith, or for the punishment of violations thereof.

15 **JUDGMENT IS THEREFORE ENTERED** in favor of Plaintiff and against
16 Defendant pursuant to all the terms and conditions recited above.

17 This _____ day of _____, 2005

18 _____
19 United States District Judge

20 The parties, by their respective counsel, hereby consent to the terms and conditions
21 of the Consent Decree as set forth above and consent to the entry thereof. Defendant
22 waives any rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412,
23 amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).

1 FOR THE UNITED STATES OF
2 AMERICA:
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FOR THE DEFENDANT:

BODY WISE INTERNATIONAL INC.

STEPONOVICH & ASSOCIATES
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By: _____