

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

BRONSON PARTNERS, LLC, MARTIN
HOWARD, H & H MARKETING, LLC, and
SANDRA HOWARD,

Defendants.

CIVIL ACTION NO.
3:04cv1866 (SRU)

PERMANENT INJUNCTION ORDER

For the reasons set forth in the Ruling and Order dated, December 4, 2009, it is hereby ordered that:

I. **DEFINITIONS**

For the purposes of this Order, the following definitions shall apply:

1. **“Defendant(s)”** means Bronson Partners, LLC, (“Bronson”), doing business as New England Diet Center and Bronson Day Spa, and its successors and assigns, and/or H&H Marketing, LLC (“H&H”), and its successors and assigns, and Martin Howard individually and as a member, owner, and officer of Bronson and H&H.
2. **“Relief Defendant”** means Sandra Howard, individually.
3. **“Competent and reliable scientific evidence”** means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have 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.
4. **“Document(s)” or “record(s)” shall refer to:** (1) the original or a true copy of any written, typed, printed, electronically stored, transcribed, taped, recorded, filmed, punched, or graphic matter or other data compilations of any kind, including, but not limited to, letters, email or other correspondence, messages,

memoranda, interoffice communications, reports, summaries, manuals, magnetic tapes or discs, tabulations, books, records, checks, invoices, work papers, journals, ledgers, statements, returns, reports, schedules, or files; and (2) any information stored on any desktop personal computer (“PC”) and workstations, laptops, notebooks, and other portable computers, whether assigned to individuals or in pools of computers available for shared use; and home computers used for work-related purposes; backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether stored onsite with the computer used to generate them, stored offsite in another company facility or stored offsite by a third-party, and computers and related offline storage used by Defendants’ associates, who include persons who are not employees of the company or who do not work on company premises.

5. “**Asset(s)**” means any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, monies, and all cash, wherever located, and shall include both existing assets and assets acquired after the date of entry of this Order.
6. “**Commerce**” has the meaning set forth in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
7. “**Advertising**” means any written or verbal statement, illustration, or depiction that is designed to effect a sale or create interest in the purchasing of goods or services, whether it appears in a brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, newsletter, catalogue, poster, chart, billboard, public transit card, point of purchase display, packaging,

package insert, label, film, slide, radio, television or cable television, audio program transmitted over a telephone system, program-length commercial (“infomercial”), Internet website (including metatags), or in any other medium, wherever located.

8. **“Weight loss product”** means any product, program, or service that is advertised, marketed, promoted, offered for sale, distributed, or sold with express or implied representations that the product will or may cause weight loss, reduction or elimination of fat, reduction of dress or other clothing size, slimming, or calorie deficit, or will or may prevent weight gain in a user of the product, program, or service, including, but not limited to, Chinese Diet Tea, the Bio-Slim Patch, or any other substantially similar product.
9. **“Covered product or service”** means any weight-loss product, service or program, dietary supplement, food, drug, or device.
10. **“Food,” “drug,” and “device”** have the meanings set forth in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.
11. **“Endorsement”** has the meaning set forth in 16 C.F.R. § 255.0(b).
12. **“Person”** means a natural person, an organization, or other legal entity, including, but not limited to, a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or other group or combination acting as an entity.
13. The term **“including”** in this Order means “including, without limitation.”
14. The terms **“and”** and **“or”** in this Order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

II. PROHIBITED BUSINESS ACTIVITIES

It is further ordered that Defendants, and their officers, directors, agents, servants, employees, salespersons, distributors, corporations, subsidiaries, affiliates, successors, assigns, and those persons in active concert or participation with them who receive actual notice of this Order, whether acting directly or through any trust, corporation, subsidiary, division or other device, including, but not limited to, fictitious business names, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, in or affecting commerce, are hereby permanently enjoined from making, expressly or by implication, any material false or misleading oral or written statement or representation in connection with the advertising, marketing, promotion, offer for sale, distribution, or sale of any weight-loss product, including but not limited to:

- A. Representing, in any manner, expressly or by implication, including through the use of endorsements or trade name, that such product or service:
 - 1. causes rapid or substantial weight loss without the need to reduce caloric intake or increase physical activity;
 - 2. causes substantial weight loss even if users eat substantial amounts of high calorie foods, including foods high in sugar or animal fat;
 - 3. causes substantial weight loss by blocking the absorption of fat or calories;
 - 4. causes substantial weight loss for all users;
 - 5. causes substantial weight loss when worn on the body; or
 - 6. is clinically proven to cause rapid or substantial weight loss without the need to reduce caloric intake or increase physical activity.
- B. Representing, in any manner, expressly or by implication, including through the use of endorsements or trade name, that Chinese Diet Tea or the Bio-Slim Patch or any ingredient contained in either product causes rapid or substantial weight loss or any specific amount of weight loss.

- C. Making any representation, in any manner, expressly or by implication, including through the use of a trade name or endorsements, regarding the efficacy of any weight-loss product, unless at the time of making such representation, Defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation; and
- D. Misrepresenting, in any manner, expressly or by implication, including through the use of endorsements, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research; and
- E. Misrepresenting any other fact material to a consumer's decision to purchase any weight-loss product.

III. RECORD KEEPING PROVISIONS

It is further ordered that, for a period of eight (8) years from the date of entry of this Order, Defendants, whether acting directly or through any trust, corporation, subsidiary, division or other device, including, but not limited to, fictitious business names, and any business where (1) Defendant Martin Howard is the majority owner, an officer, or director of the business and where (2) the business engages, or assists others engaged in the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, and their agents, employees, officers, corporations, and those persons in active concert or participation with them who receive actual notice of this Order, are hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if

applicable;

- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly, indirectly, or through any third party) and any responses to those complaints or requests;
- E. Copies of all advertisements, promotional materials, sales scripts, training materials, or other materials utilized in the advertising, labeling, promotion, offering for sale, distribution or sale of any product, service, or program;
- F. All materials that were relied upon in making any representations contained in the materials identified in Subsection E;
- G. All other documents evidencing or referring to the accuracy of any claim therein or to the safety or efficacy of any product, service, or program, including, but not limited to, all tests, reports, studies, demonstrations, or other evidence that confirm, contradict, qualify, or call into question the safety or efficacy of any such product, service, or program;
- H. Records accurately reflecting the name, address, and telephone number of each manufacturer or laboratory engaged in the development or creation of any testing obtained for the purpose of advertising, labeling, promoting, offering for sale, distributing, or selling any product, service, or program; and
- I. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order required by the Sections titled "Distribution of Order" and "Acknowledgment of Receipt of Order" and all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting."

IV. COMPLIANCE MONITORING

It is further ordered that, for the purpose of monitoring and investigating compliance with any provision of this Order:

- A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendants each shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in each Defendant's possession or direct or indirect control to inspect the business operation;
- B. In addition, the Commission is authorized to use all other lawful means, including but not limited to:
 - 1. obtaining discovery from any person, without further leave of this court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69;
 - 2. posing as consumers and suppliers to Defendants, their employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice;
- C. Defendants each shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, involved in any way with any conduct subject to this Order. The person interviewed may have counsel present.

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

V. COMPLIANCE REPORTING

In order that compliance with the provisions of this Order may be monitored, it is further ordered that:

- A. For a period of five (5) years from the date of entry of this Order,
 1. Each Defendant shall notify the Commission of the following:
 - a. Any changes in such Defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
 - b. Any changes in such Defendant's employment status (including self-employment), and any change in such Defendant's ownership in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that such Defendant is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of such Defendant's duties and responsibilities in connection with the business or employment; and
 - c. Any changes in such Defendant's name or use of any aliases or fictitious names.
 2. Defendants shall notify the Commission of any changes in ownership structure of any Corporate Defendant or any business entity that any Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject

to this Order; or a change in the business name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the business entity about which a Defendant learns less than thirty (30) days prior to the date such action is to take place, such Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order and annually thereafter for a period of five (5) years, Defendants each shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

1. For Defendant Martin Howard:
 - a. such Defendant's then-current residence address, mailing addresses, and telephone numbers;
 - b. such Defendant's then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that such Defendant is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of such Defendant's duties and responsibilities in connection with the business or employment; and
 - c. Any other changes required to be reported under Subsection A of this Section.
2. For all Defendants:
 - a. A copy of each acknowledgment of receipt of this Order, obtained

pursuant to the Section titled “Distribution of Order;” and

- b. Any other changes required to be reported under Subsection A of this Section.
- C. Each Defendant shall notify the Commission of the filing of a bankruptcy petition by such Defendant within fifteen (15) days of filing.
- D. For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission’s authorized representatives, send by overnight courier all reports and notifications required by this Order to the Commission, to the following address:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room NJ-2122
Washington, D.C. 20580
RE: FTC v. Bronson Partners, LLC

Provided that, in lieu of overnight courier, Defendants may send such reports or notifications by first-class mail, but only if Defendants contemporaneously send an electronic version of such report or notification to the Commission at:

DEBrief@ftc.gov.

- E. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with each Defendant.

VI. MONETARY JUDGMENT

It is further ordered that judgment is hereby entered as follows:

- A. Defendants Bronson Partners, LLC, H&H Marketing, LLC, and Martin Howard jointly and severally shall pay equitable monetary relief to the Commission in the amount of one million, nine hundred forty-two thousand, three hundred twenty-five dollars (\$1,942,325).

VII. USE OF CONSUMER REDRESS AND DISGORGEMENT FUNDS

It is further ordered that:

- A. The Commission shall deposit all funds paid pursuant to this Order into a fund administered by the FTC or its agent to be used for equitable relief, including but not limited to consumer redress 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 FTC may apply any remaining funds to such other equitable relief (including consumer education remedies) as it determines to be reasonably related to the Defendants' practices alleged in the Amended Complaint. Any funds not used for such equitable relief shall be deposited as disgorgement to the United States Treasury. This judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture. The Commission shall have full and sole discretion to:
1. Determine the criteria for participation by individual claimants in any consumer redress program implemented pursuant to this Order;
 2. Determine the manner and timing of any notices to be given to consumers regarding the existence and terms of such programs; and
 3. Delegate any and all tasks connected with such redress program to any individuals, partnerships, or corporations, and pay the fees, salaries, and expenses incurred thereby from the payments made pursuant to this Order;
- B. In order to enable the Commission to implement the consumer redress program described in Subsection A above, Defendants shall provide to the Commission a complete list of known purchasers of Chinese Diet Tea and the Bio-Slim Patch. Such list shall include, for each purchaser, the name, most recent address, telephone number, date of purchase, product purchased, and amount paid (less refunds already provided).

VIII. NON-DISCLOSURE OF CONSUMER LISTS

It is further ordered that Defendants, and their officers, agents, employees, and corporations, and all other persons in active concert or participation with them who receive actual notice of this Order are permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, email address, or other identifying information of any person who paid any money to any Defendant in this action, at any time prior to entry of this Order, in connection with the advertising, marketing, or sale of any covered product or service, including through the Internet, the World Wide Web, or any web site. *Provided, however,* that Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

IX. DISTRIBUTION OF ORDER

It is further ordered that, for a period of five (5) years from the date of entry of this Order, Defendants shall deliver copies of the Order as directed below:

- A. Entity Defendant: Each Entity Defendant must deliver a copy of this Order to (1) all of its principals, officers, directors, and managers; (2) all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in ownership structure set forth in Subsection A.2 of the Section titled “Compliance Reporting.” For current personnel, delivery shall be within five (5) days of service of this Order upon such Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in ownership structure set forth in Subsection A.2 of the Section titled “Compliance Reporting,” delivery shall be at least ten (10) days prior to the change in ownership structure.
- B. Individual Defendant as Control Person: For any business that an Individual

Defendant controls, directly or indirectly, or in which such Defendant has a majority ownership interest, such Defendant must deliver a copy of this Order to (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in ownership structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon such Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in ownership structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in ownership structure.

- C. Individual Defendant as employee or non-control person: For any business where an Individual Defendant is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, such Defendant must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.
- D. Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

X. ACKNOWLEDGMENT OF RECEIPT OF ORDER

It is further ordered that each Defendant and Relief Defendant, within five (5) business days of receipt of this Order as entered by the Court, must execute and submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

XI. RETENTION OF JURISDICTION

It is further ordered that this Court shall retain jurisdiction of this matter for purposes of

construction, modification, and enforcement of this Order.

XII. SCOPE OF ORDER

It is further ordered that this Order resolves only claims against the named Defendants and Relief Defendants, and does not preclude the Commission from initiating further action or seeking any remedy against any other persons or entities, including, without limitation, persons or entities who may be subject to portions of this Order by virtue of actions taken in concert or participation with Defendants, and persons or entities in any type of indemnification or contractual relationship with Defendants.

It is so ordered.

Dated at Bridgeport, Connecticut, this 29th day of December 2009.

/s/ Stefan R. Underhill
Stefan R. Underhill
United States District Judge