

WILLIAM E. KOVACIC

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed a Complaint for permanent injunction and other relief against Defendants Christopher Enterprises, Inc., Norman Bacalla, and Ruth Christopher Bacalla, pursuant to 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b).

The Commission and Defendants, without Defendants admitting liability for any of the violations alleged in the Complaint, have stipulated to the entry of the following Stipulated Final Order for Permanent Injunction and Settlement of Claims for Monetary Relief (“Order”) in settlement of the Commission's complaint against Defendants. The Court, being advised in the premises, finds:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and jurisdiction over all parties. Venue in the District of Utah is proper.
2. The Complaint states a claim upon which relief can be granted, and the Commission has authority to seek the relief it has requested.
3. The activities of Defendants are in or affecting commerce, as defined in 15 U.S.C. § 44.
4. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendants also waive any claim that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order.
5. Each party shall bear its own costs and attorneys’ fees.

6. Entry of this Order is in the public interest.

DEFINITIONS

For the 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 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.
2. "Defendants" means Christopher Enterprises, Inc., Norman Bacalla, Ruth Christopher Bacalla, and their successors, assigns, officers, agents, directors, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any affiliate, corporation, subsidiary, division or other device.
3. "Distributor" shall mean any purchaser or other transferee of any product covered by this Order who acquires such product directly or indirectly from Defendants with or without valuable consideration, and who sells, or who has sold, such product to other sellers or to consumers, including but not limited to individuals, retail stores, or catalogs.
4. "Food" and "drug" shall mean "food" and "drug" as defined in Section 15 of the FTC Act, 15 U.S.C. § 55(b)-(c).
5. "Comfrey product" shall mean any product consisting of, containing, or including, or represented by Defendants to consist of, contain, or include as an ingredient, any of the following plants, any part of the following plants, or any extract or derivative of the following plants: *Symphytum*

officinale (also known as common comfrey), *Symphytum asperum* (also known as prickly comfrey), or *Symphytum x uplandicum* (also known as Russian comfrey).

6. "Clearly and prominently" shall mean as follows:
 - a. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and

IV. NOTIFICATION TO DISTRIBUTORS

IT IS FURTHER ORDERED that:

- A. Defendants Christopher Enterprises, Inc., Norman Bacalla, and Ruth Christopher

include any other documents. Defendants shall require each distributor to execute and return the original of the letter as a condition of remaining or becoming a distributor for Defendants.

E. Defendants Christopher Enterprises, Inc., Norman Bacalla, and Ruth Christopher Bacalla shall institute a reasonable program of surveillance adequate to reveal whether any of Defendants' distributors are disseminating advertisements or promotional materials or making any oral statement that contain any representation prohibited by this Order.

F. Defendants Christopher Enterprises, Inc., Norman Bacalla, and Ruth Christopher Bacalla shall terminate all sales of any food, drug, device, service, or dietary supplement to any distributor who is using or disseminating any advertisement or promotional material or making any oral statement that contains any representation prohibited by this Order, once Defendants know or should know that the distributor is or has been engaged in such conduct. Defendants shall immediately provide, by certified mail, all relevant information, including name, address, and telephone number of the distributor at issue, the nature of the violation, and any relevant materials used or disseminated, to the Regional Director, Federal Trade Commission, Southwest Region, 1999 Bryan Street, Suite 2150, Dallas, TX 75201. Attn: FTC v. Christopher Enterprises, Inc., et al. (D. Utah).

V. JUDGMENT

IT IS FURTHER ORDERED that judgment is hereby entered against Defendants Christopher Enterprises, Inc., Norman Bacalla, and Ruth Christopher Bacalla, jointly and severally, in the amount of ONE MILLION, FOUR HUNDRED THOUSAND DOLLARS (\$1,400,000.00), provided, however, that upon the fulfillment of the payment obligations of

Paragraph VI of this Order, this judgment shall be suspended; and, provided, further, that this judgment shall be subject to the conditions set forth in Paragraph VII of this Order.

VI. MONETARY RELIEF

A. **IT IS FURTHER ORDERED** that Defendants Christopher Enterprises, Inc., Norman Bacalla, and Ruth Christopher Bacalla shall be jointly and severally liable for payment of equitable monetary relief in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).

B. Within ten (10) days of their execution of this Order, the Defendants shall transfer

D. Time is of the essence for the payments specified above. In the event that Defendants do not fulfill, or only partially fulfill, the payment obligations set forth in this Paragraph, Defendants Christopher Enterprises, Inc., Norman Bacalla, and Ruth Christopher Bacalla shall be immediately liable for payment of the entire amount due, plus interest, less any payments already made. Notwithstanding any other provision of this Final Order, Defendants agree that, if they fail to meet the payment obligations set forth in this Paragraph, the facts as alleged in the Complaint in this action shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Order, including, but not limited to, a non-dischargeability complaint in any subsequent bankruptcy proceeding, and Defendants waive any right to contest any of the allegations set forth in the Complaint filed in this matter.

E. All funds paid pursuant to this Order 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, and any attendant expenses for the administration of such equitable relief. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the

any fine, penalty, or punitive assessment.

VII. RIGHT TO REOPEN WITH SUM CERTAIN

A. **IT IS FURTHER ORDERED** that the Commission's agreement to and the Court's approval of this Order is expressly premised upon the truthfulness, accuracy, and completeness of the financial statements and information provided by Defendants Christopher Enterprises, Inc., Norman Bacalla, and Ruth Christopher Bacalla to the Commission on or about June 11, 2001, which contain material information relied upon by the Commission in negotiating and agreeing to the terms of this Order.

B. If the Commission should have evidence that the above-referenced financial statements and information of any Defendant failed to disclose any material asset the value of which exceeds one thousand dollars (\$1,000), materially misrepresented the value of any asset, or made any other material misrepresentation or omission, the Commission may move that the Court reopen this Order for the sole purpose of allowing the Commission to modify the monetary liability of such Defendant. If the Court finds that any Defendant failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission in the above-referenced financial statements and information, the Court shall reinstate the judgment against such Defendant, in favor of the Commission, in the amount of ONE MILLION, FOUR HUNDRED THOUSAND DOLLARS (\$1,400,000.00), and the entire judgment shall become immediately due and payable, less any redress amounts previously paid. Should this judgment be modified as to the monetary liability of Defendants, this Order, in all other respects, shall remain in full force. Any proceedings instituted under this

IT IS FURTHER ORDERED that Defendants Christopher Enterprises, Inc., Norman Bacalla, and Ruth Christopher Bacalla, for a period of five (5) years after the last date of dissemination of any representation covered by this Order, shall maintain and upon request make available to the Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- 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, custody, 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.

X. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants, for a period of five (5) years after the date of entry of this Order, 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. Defendants shall deliver this Order to current personnel within thirty (30) days after entry of this Order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Defendants shall maintain and, upon request, make available to the Commission for inspection and copying each such signed and dated statement for a period of five (5) years.

of compliance authorized by this Order, the Commission is authorized to communicate directly with each of the Defendants.

XIV. ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that within ten (10) days from the date of entry of this Order, Defendants shall submit to the Commission a truthful sworn statement, in the form shown on Appendix B, that shall acknowledge receipt of this Order.

XV. 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.

SO ORDERED:

DATED: _____

UNITED STATES DISTRICT JUDGE

SO STIPULATED:

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