

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff

v.

d a Com)8.7(p)BT(2.33 D TD(o)BT(r16 Tc-3e-2.33 TD0 T08KEVI-0 T08j-15 -erm)8.6(ane3 Injunction and Other Equitable R

settlement of the Commission's Complaint against Defendants; Defendants expressly deny liability for any of the matters alleged in the Complaint. 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 Northern District of Illinois is proper.

2. The Complaint states a claim upon which relief can be granted, and the Commission has the authority to seek the relief which is stipulated to in this Order.

3. The acts and practices of Defendants were and are in or affecting commerce, as defined in Section 4 of the FTC Act, 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.

7. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of this Order are binding upon Defendants, and their officers, agents, servants, employees and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise.

### **DEFINITIONS**

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

A. “Assets” means any legal or equitable interest in, right to, or claim to, any real or personal property, including, without limitation, chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash, wherever located.

B. “Assisting others” means knowingly providing any of the following services to any person or entity: (a) performing customer service functions for any person or entity, including, but not limited to, receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other advertising or marketing material for any person or entity; or (c) performing advertising or marketing services of any kind for any person or entity.

C. “Commerce” means as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

D. “Competent and reliable scientific evidence” means 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 professions to yield accurate and reliable results.



exclusive.

N. The term “including” in this Order means “including without limitation.”

## **PROHIBITED BUSINESS ACTIVITIES**

### **I.**

**IT IS ORDERED** that Defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other entity, and their officers, agents, servants, employees, and all persons and entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any target product, in or affecting commerce, are hereby permanently restrained and enjoined from making, or assisting others in making, directly or by implication, including through the use of endorsements, any representation that:

- A. such product is an effective treatment or cure for any and/or all forms of cancer;
- B. such product is an effective treatment or cure for multiple sclerosis, lupus, and/or other autoimmune diseases;
- C. such product is an effective treatment or cure for heart disease and/or chronic high blood pressure;
- D. a daily serving size of such product provides the same amount of bioavailable calcium as two gallons of milk;
- E. the body absorbs significantly more, and in some cases as much as 100 times more, of the calcium contained in such product,

F. scientific research published in the Journal of the American Medical Association (JAMA), the New England Journal of Medicine, and other reputable medical journals prove that calcium supplements are able to reverse and/or cure any or all forms of cancer in the human body.

## **II.**

**IT IS FURTHER ORDERED** that Defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other entity, and their officers, agents, servants, employees, and all persons and entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any dietary supplement, in or affecting commerce, are hereby permanently restrained and enjoined from misrepresenting, in any manner, expressly or by implication, including through the use of endorsements, that such dietary supplement can prevent, treat, or cure any disease.

## **III.**

**IT IS FURTHER ORDERED** that Defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other entity, and their officers, agents, servants, employees, and all persons and entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, 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 restrained and enjoined from making any representation, in any manner, expressly or by implication, including through the use of endorsements, about the health benefits, performance, or efficacy of any

covered product or service unless the representation is true, non-misleading, and, at the time the representation is made, Defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation.





other agreement between any of the Defendants and Trustar Global Media Ltd., Shop America (USA), LLC, Shop America, PLC, Shop America Marketing Group, LLC, Shop America (Australasia), Ltd., Trucom LLC, K.T. Corporation, LLC, Kevin Trudeau, or any entity owned by or held directly or indirectly for the benefit of Kevin Trudeau.

B. Within five (5) days of receipt of any money or other assets paid to any of the Defendants, directly or indirectly, or paid to any other third party on behalf of the Defendants, after the date of entry of this Order pursuant to the terms of the agreement entered into on May 17<sup>th</sup>, 2002 between Trustar Global Media Ltd. and Robert R. Barefoot, including any addendums to such agreement, and under the terms of any other agreement between any of the Defendants and Trustar Global Media Ltd., Shop America (USA), LLC, Shop America, PLC, Shop America Marketing Group, LLC, Shop America (Australasia) Ltd., Trucom LLC, K.T. Corporation Ltd., Kevin Trudeau, or any entity owned by or held directly or indirectly for the benefit of Kevin Trudeau, Defendants shall: (1) notify the Commission in writing of such money or assets; and (2) pay, transfer, or assign such money or assets to the Commission.

C. Any payments pursuant to this Part shall be made by certified check or other guaranteed funds payable to and delivered to the Commission, or by wire transfer in accord with the instructions provided by the Commission.

D. All assets and funds paid to, assigned to, or collected by the Commission 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.

E. 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 consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement.

Defendants shall have no right to challenge the Commission's choice of remedies under this Paragraph. Defendants shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payments or assets assigned under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.

F. Defendants relinquish all dominion, control, and title to the assets and funds paid to, assigned to, or collected by the Commission, for use according to the terms of this Order. Defendants shall make no claim to or demand for the return of the assets or funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of any defendant, Defendants acknowledge that the assets and funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

G. In accordance with 31 U.S.C. § 7701, Defendants are hereby required, unless they have done so already, to furnish to the Commission their respective taxpayer identifying numbers (social security numbers or employer identification numbers) which shall be used for the purposes of collecting and reporting on any delinquent amount arising out of Defendants' relationship with the government.

## **RIGHT TO REOPEN**

### **VIII.**

**IT IS FURTHER ORDERED** that, within five (5) days after the date of entry of this

Order, Defendant Barefoot, individually and on behalf of Defendants Deonna and Karbo, in the form shown in Exhibit A, shall execute and submit to the Commission a truthful sworn statement that shall acknowledge receipt of this Order, and shall reaffirm as to the truth, accuracy and completeness of financial information previously submitted to the Commission. The Commission's agreement to this Order is expressly premised on the truthfulness, accuracy, and completeness of Defendants' financial condition as represented in the deposition of Defendant Barefoot on September 8, 2003, reports prepared by Certified Public Accountants, and financial statement(s) previously submitted to the Commission, including, but not limited to, the Financial Statement of Individual Defendant Robert R. Barefoot and attachments (Bates Number RB001 to RB036), the Corporate Financial Statements of Karbo Enterprises, Inc. and Deonna Enterprises, Inc. and attachments (K001 to K020 and D001 to D053), the Financial Condition of Robert R. Barefoot, and Karen L. Barefoot July 31, 2003; Karbo Enterprises, Inc. Financial Statements July 31, 2003 and May 28, 2003; Deonna Enterprises, Inc., Financial Statements July 31, 2003 and December 31, 2003, and the Statements of Monthly Income and Line-Item Expenses Exceeding \$5,000 July 2003 for Robert R. Barefoot and Karen L. Barefoot, Karbo Enterprises, Inc, and Deonna Enterprises, Inc and additional financial statements provided by Defendants' counsel on October 14, 2003. If, upon motion by the Commission, the Court finds that a defendant's financial statement(s) failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission, the Court shall enter judgement for consumer redress against Defendants, jointly and severally, in favor of the Commission, in the amount of three million dollars (\$3,000,000), which the Defendants stipulate is the amount of their unjust enrichment generated from the Coral Calcium Supreme infomercial;

*provided, however*, that in all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court; and, *provided further*, that proceedings instituted under this provision would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the Commission may initiate to enforce this Order. For purposes of this Paragraph VIII, Defendants waive any right to contest any of the allegations in the Complaint.

### **COOPERATION WITH COMMISSION COUNSEL**

#### **IX.**

**IT IS FURTHER ORDERED** that Defendants must, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the Commission's Complaint, cooperate in good faith with the Commission's reasonable requests for documents and testimony. Defendants or their representatives shall appear at such places and times as the Commission shall reasonably request for interviews, conferences, pretrial discovery, review of documents, and for such other matters, after written notice to Defendants and their counsel of record. Defendants or their representatives will make themselves available for trial consistent with the Federal Rules of Civil Procedure. Defendants also shall produce such documents and information in a manner as may be reasonably requested by the Commission, after written notice to Defendants and to their counsel of record.

### **DISTRIBUTION OF ORDER**

#### **X.**

**IT IS FURTHER ORDERED** that Defendants Deonna and Karbo, and any business

where (1) defendant Barefoot is the majority owner of the business or directly or indirectly manages or controls the business, and (2) the business is engaged in advertising, marketing, promotion, offering for sale, distribution, or sale of any covered product or service, shall:

A. Within thirty (30) days after service of this Order, deliver a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, each of their current principals, officers, and directors, and to all current managers, employees, representatives, and

A. Send, within twenty (20) days of entry of this Order, by first class mail, postage prepaid and return receipt requested, an exact copy of the notice attached hereto as Exhibit B, showing the date of mailing, to each distributor or reseller who purchased the target products between September 1, 2002 and the date of entry of this Order. This mailing shall not include any other document or enclosures.

B. Notify, immediately, each distributor or reseller that Defendants will stop doing business with that distributor or reseller if it continues to use any advertisement or promotional material that contains any representation prohibited by this Order, in the event Defendants become aware that the distributor or reseller is using or disseminating any such advertisement or promotional material subsequent to receipt of Exhibit B.

C. Terminate any distributor or reseller within ten (10) days after it becomes aware that the distributor or reseller has continued to use any advertisement or promotional material that contains any representation prohibited by this Order after receipt of the notice required by subparagraph B of this Part.

## **COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

### **XII.**

**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, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in any Defendants' possession or

direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor Defendants' compliance with this 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 proscribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
- (2) posing as consumers and suppliers to Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part by any defendant, without the necessity of identification or prior notice;

*Provided* 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)).

C. Defendants shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

## **COMPLIANCE REPORTING**

### **XIII.**

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this

Order may be monitored:

- A. Defendant Barefoot, within ten (10) business days of service of this Order, shall notify the Commission in writing of (1) his residence address and mailing address; (2) his home telephone number; (3) the name, address, and telephone number of his employer; (4) if applicable, the names of his supervisors; (5) a description of his employer's activities; and (6) a description of his duties and responsibilities.
- B. For a period of five (5) years from the date of service of this Order,
  - (1) Defendant Barefoot shall notify the Commission of the following:
    - (a) Any changes in defendant Barefoot's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
    - (b) Any changes in defendant Barefoot's employment status (including self-employment) within ten (10) days of the date of such change. Such notice shall include the name and address of each business that defendant Barefoot is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of defendant Barefoot's duties and responsibilities in connection with the business; and
    - (c) Any changes in defendant Barefoot's name or use of any aliases or fictitious names.
  - (2) Defendants Deonna and Karbo shall notify the Commission of any



changes in corporate structure 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 filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which defendant Deonna or Karbo learns less than thirty (30) days prior to the date such action is to take place, that defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

C. Sixty (60) days after the date of service of this Order, Defendants each shall provide a written report to the Commission, 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.

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of service of this Order, Defendants Deonna and Karbo, if engaging or assisting others engaged in the advertising, marketing, promotion, offering for sale, distribution or sale of any covered product or service, in or affecting commerce, and any business where (1) defendant Barefoot is a majority owner or an officer or director of the business, or directly or indirectly manages or controls the business and where (2) the business engages, or assists others engaged in, the advertising, marketing, promotion, offering for sale, distribution or sale of any covered product or service, in or affecting commerce, and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, 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, telephone 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 response to those complaints or requests;

E. Copies of all advertisements, promotional materials, sales scripts, training



**XVI.**

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

**IT IS SO ORDERED**, this \_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

**SO STIPULATED:**

\_\_\_\_\_  
DANIEL KAUFMAN  
LAURA M. SULLIVAN  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Mail Drop NJ-3212  
Washington, D.C. 20580  
(202) 326-2675, -3327 (voice)  
(202) 326-3259 (fax)  
[dkaufman@ftc.gov](mailto:dkaufman@ftc.gov) or [lsullivan@ftc.gov](mailto:lsullivan@ftc.gov)

TODD M. KOSSOW  
KAREN DODGE  
Federal Trade Commission  
55 East Monroe Street, Suite 1860  
Chicago, IL 60603-5701  
(312) 960-5616, -5608 (voice)  
(312) 960-5600 (fax)  
[tkossow@ftc.gov](mailto:tkossow@ftc.gov)

ATTORNEYS FOR PLAINTIFF

\_\_\_\_\_  
LEWIS ROSE  
Collier Shannon Scott, PLLC  
3050 K Street, N.W., Suite 400  
Washington, D.C. 20007  
(202) 342-8821 (voice)  
(202) 342-8451 (fax)  
[Lrose@colliershannon.com](mailto:Lrose@colliershannon.com)

DAVID L. SCHIAVONE  
Sonnenschein Nath & Rosenthal  
8000 Sears Tower  
233 South Wacker Drive  
Chicago, IL 60606  
(312) 876-8000 (voice)  
(312) 876-7934 (fax)

ATTORNEYS FOR DEFENDANTS  
ROBERT BAREFOOT, DEONNA  
ENTERPRISES, INC., AND KARBO,  
INC.