

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.

FEDERAL TRADE COMMISSION,)
)
 Plaintiff,)
)
 v.)
)
 ALTERNATIVE MEDICAL)
 TECHNOLOGIES, INC.,)
 and)
 JOSE FERNANDEZ,)
)
 Defendants.)

1. This Court has jurisdiction over the subject matter of this case and jurisdiction over all parties. Venue in the Southern District of Florida is proper under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b).

2. The Complaint states a claim upon which relief can be granted against the defendants under Sections 5(a), 12, and 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 52, and 53(b).

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 claims 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 purposes of this Order, the following definitions apply:

7. “Clearly and prominently” means 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 software), the disclosure must be presented simultaneously in both the audio and visual portions of the advertisement. *Provided, however*, that in any advertisement presented solely through visual or audio means, the disclosure may be made through the same means in which the ad is presented. *Provided, further*, that in any advertisement communicated through interactive media which is

presented predominantly through visual or audio means, the disclosure may be made through the same means in which the ad is predominantly presented. The audio disclosure must be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual disclosure must be of a size and shade, with a degree of contrast to the background against which it appears, and must appear on the screen for a duration and in a location, sufficiently noticeable for an ordinary consumer to read and comprehend it.

- b. In a print advertisement, promotional material, or instructional manual, the disclosure must be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.
- c. On a product label, the disclosure must be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it and in print that contrasts with the background against which it appears. *Provided, however*, if a disclosure on a bottle label or package label is made in a location other than the principal display panel, the bottle label or package label must (i) include the statement, “**See important safety warning(s) on [insert disclosure location],**” in a type size and location on the principal display panel sufficiently noticeable for an ordinary consumer to read and comprehend it and in print that contrasts with the background against which it appears; and (ii) place the disclosure on the bottle label and, if applicable, the package label, within a border that is a color or shade that contrasts with the background against which it appears. *Provided further*, that in a multi-page insert, the disclosure must appear on the cover page or first page.

14. "Material connection" means any relationship that might materially affect the weight or credibility of an endorsement and w

II.

REPRESENTATIONS AND WARRANTIES PROHIBITED UNLESS TRUE AND SUBSTANTIATED

- B. That any such product, service, or program that contains or purports to contain ephedra:
 - 1. Can be taken safely for an indefinite period of time;
 - 2. Can be taken safely with other medicines, including prescription medicines; or
- C. About the benefits, performance, efficacy, safety, or side effects, of any such product, service, or program;

unless, at the time the representation is made, the representation is true, and they possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

PROHIBITED MISREPRESENTATIONS

IT IS FURTHER ORDERED that defendants, and their officers, agents, servants, employees, and attorneys, and all persons and entities 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 corporation, subsidiary, division, or other entity, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, service, or program, in or affecting commerce, are hereby permanently enjoined from making any misrepresentation, expressly or by implication, including through the use of endorsements:

- A. About any material connection, or lack thereof, between an endorser and any of the defendants; or
- B. About the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

IV.

REQUIRED DISCLOSURE: MATERIAL CONNECTION

IT IS FURTHER ORDERED that defendants, and their officers, agents, servants, employees, and attorneys, and all persons and entities 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 corporation, subsidiary, division, or other entity, in connection with the

WARNING: This product contains ephedra or ephedrine alkaloids, which can have dangerous effects on the central nervous system and heart and can result in serious injury. Risk of injury can increase with dose, and may even include heart attack, stroke, seizure or death. Consult a health care provider prior to use if you have high blood pressure, heart or thyroid disease, diabetes, difficulty urinating, prostate enlargement, or glaucoma, or are using any prescription drug. Do not use if you are taking a MAO inhibitor or any allergy, asthma, or cold medication containing ephedrine, pseudoephedrine or phenylpropanolamine. Discontinue use if you experience rapid heart beat, chest pain, severe headache, shortness of breath, dizziness, sleeplessness or nausea. This product is not recommended for use if you are or could be pregnant unless a qualified health care provider tells you to use it.

The product may not be safe for your developing baby.

unless defendants possess competent and reliable scientific evidence that such product is safe and produces no adverse side effects.

- B. In any television or radio advertisement for any product, service, or program containing ephedra, must make, clearly and prominently, the following disclosure:

WARNING: This product contains [insert name of ephedrine alkaloids contained in product, *e.g.*, Mahuang] which can have dangerous effects on the central nervous system and heart and can

1. The Financial Statement of Alternative Medical Technologies, Inc. dated January 12, 2004; the letter from Ray Garcia, Esq., dated January 27, 2004, including balance sheets and income statements attached thereto; and the letter from Ray Garcia, Esq., dated August 22, 2003, including U.S. Income Tax Returns and other financial disclosures attached thereto.
2. The Financial Statement of Jose Fernandez dated February 16, 2004; and the letter from Jose Fernandez dated December 12, 2003, including the U.S. Income Tax Return attached thereto.

Such financial statements and supporting documents contain material information upon which the Commission relied in negotiating and agreeing to this Order.

- B. If, upon motion by the Commission, a Court finds that any

remains in full force and effect unless otherwise ordered by the Court; and *provided further*, that proceedings instituted under this Paragraph VII are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

VIII.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that defendants, within five (5) business days of receipt of this Order as entered by the Court, must each execute and submit to the Commission a truthful sworn statement acknowledging receipt of this 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:

- A. Defendant AMT, and its successors and assigns, must deliver a copy of this Order to all principals, officers, directors, managers, employees, agents, and representatives, including AMT distributors, having responsibilities with respect to the subject matter of this Order, and must secure from each such person a signed and dated statement acknowledging receipt of the Order. Defendant AMT, and its successors and assigns, must deliver this Order to current personnel within thirty (30) days after the date of service of this Order, and to new personnel within thirty (30) days after the person assumes such position or responsibilities.

B. Defendant Fernandez must deliver a copy of this Order to the principals, officers, directors, managers and employees under defendant Fernandez's control for any business that (a) hires defendant Fernandez as an employee, consultant or independent contractor and (b) has responsibilities with respect to the subject matter of this Order. Defendant Fernandez must secure from each such person a signed and dated statement acknowledging receipt of the Order within thirty (30) days after the date of service of the Order or the commencement of the

2. Posing as consumers and suppliers to defendants, defendants' employees, or any other entity managed or controlled in whole or in part by defendants, without the necessity of identification or prior notice;

Provided that nothing in this Order limits 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 must permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee

- C. For the purposes of this Order, defendants must, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to: Associate Director for Enforcement, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. Attn: FTC v. Alternative Medical Technologies, Inc. et al., (S.D. Fla.).
- D. For purposes of the compliance reporting required by this Part, the Commission is authorized to communicate directly with defendants.

XII.

RECORD KEEPING PROVISIONS

- C. Customer files containing the names, addresses, telephone numbers, dollar amounts paid, quantity of products, services, or programs purchased, and description of products, services, or programs 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 Subpart 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; and
- 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.

XIII.

RETENTION OF JURISDICTION

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

XIV.

SCOPE OF ORDER

IT IS FURTHER ORDERED that this Order resolves only claims against the named 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.

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SO STIPULATED:

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

Dated this _____ day of _____, 2004

[NAME]

UNITED STATES DISTRICT JUDGE

FOR THE FEDERAL TRADE COMMISSION:

ELAINE D. KOLISH

Associate Director for Enforcement

JONI LUPOVITZ

Assistant Director for Enforcement

ANGELA FLOYD

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[NAME]

