

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 03-80051-CIV-PAINE/JOHNSON

FEDERAL TRADE COMMISSION,

Plaintiff

v.

SLIM DOWN SOLUTION, LLC, SLIM  
DOWN SOLUTION, INC., S.S.T.  
MANAGEMENT, INC., THE KARA

and Kathleen Alarcon as to Counts One through Three of the Complaint. The Court, having considered the FTC's motion and evidence as well as the defendants' opposition and evidence, hereby GRANTS the FTC's motion for summary judgment.

### **FINDINGS**

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.
2. The Commission has the authority to seek the relief it has requested.
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. The Complaint states a claim upon which relief may be granted against the defendants under Sections 5(a), 12, and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a), 52, and 53(b).

- b. Slim Down Solution causes substantial weight loss;
  - c. Slim Down Solution causes weight loss even if consumers eat substantial amounts of food high in fat, including hamburgers, chocolate, cheesecake, chicken nuggets, french fries, cheeseburgers, and chocolate cake; and
  - d. Slim Down Solution isolates up to 20 grams of dietary fat per dose, then binds it to be carried out of the body as waste.
7. Uncontroverted evidence establishes that defendants violated Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.
  8. There is a reasonable likelihood that defendants would continue to engage in the activities alleged in the Complaint unless permanently enjoined from such acts and practices.
  9. Plaintiff is entitled to judgment as a matter of law pursuant to Rule 56 of the Federal Rules of Civil Procedure.
  10. Entry of this Order is in the public interest.
  11. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of this Order are binding upon defendants, and their officers, agents, servants, representatives, 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.
  12. This action and relief awarded herein are in addition to, and not in lieu of, any other remedies, civil or criminal, that may be provided by law, including any proceedings the Commission may initiate to enforce this judgment.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

## **DEFINITIONS**

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

1. Unless otherwise specified, “defendants” shall mean:
  - A. Slim Down Solution, LLC (“SDS”), a limited liability company, its divisions and subsidiaries, its successors and assigns, and its officers, agents, servants, representatives, and employees;
  - B. Slim Down Solution, Inc. (“SDSI”), a corporation, its divisions and subsidiaries, its successors and assigns, and its officers, agents, servants, representatives, and employees;
  - C. S.S.T. Management, Inc. (“SST”), a corporation, its divisions and subsidiaries, its successors and assigns, and its officers, agents, servants, representatives, and employees;
  - D. The KARA Group, LLC, (“KARA”), a corporation, its divisions and subsidiaries, its successors and assigns, and its officers, agents, servants, representatives, and employees;

deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash, wherever located.

3. “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.
4. “Commerce” shall mean “commerce” as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
5. “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.
6. “Continuity program” shall mean any plan, arrangement, or system pursuant to which a consumer receives periodic shipments of products or the provision of services without prior notification by the seller before each shipment or service period, regardless of any trial or approval period allowing the consumer to return or be reimbursed for the product or service.
7. “Covered product or service” shall mean any dietary supplement, food, drug,

cosmetic, device, or service.

8. “Endorsement” shall mean as defined in 16 C.F.R. § 255.0(b).
9. “Food,” “drug,” “device,” and “cosmetic,” shall mean “food,” “drug,” “device,” and “cosmetic” as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.
10. “Target product” means Slim Down Solution, any substantially similar product containing D-glucosamine and/or chitosan, or any other product or service purporting to provide weight-loss benefits.
11. A requirement that any defendant “notify the Commission” shall mean that the defendant shall send the necessary information via first-class mail, costs prepaid, to:

Associate Director for Advertising Practices  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Washington, D.C. 20580  
Attn: *FTC v. Slim Down Solution, LLC, et al.*, (S.D. Fla.).

12. The term “including” in this Order shall mean “without limitation.”
13. 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.

## **CONDUCT PROHIBITIONS**

### **I.**

#### **MISREPRESENTATIONS REGARDING TARGET PRODUCTS**

IT IS HEREBY ORDERED that defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, representatives, employees, and all persons or 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, promo

any representation, in any manner, expressly or by implication, including through the use of any trade name or endorsement, about the absolute or comparative weight-loss or other health benefits, performance, efficacy, safety, or side effects 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.

### **III.**

#### **MISREPRESENTATION OF TESTS OR STUDIES**

IT IS FURTHER ORDERED that defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, representatives, employees, and all persons or 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, are hereby permanently restrained and enjoined from misrepresenting, in any manner, expressly or by implication, including through the use of any trade name or endorsement, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

### **IV.**

#### **FDA APPROVED CLAIMS**

IT IS FURTHER ORDERED that:

A. Nothing in this order shall prohibit defendants from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard



promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration; and

B. Nothing in this order shall prohibit defendants from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

## V.

### **MONETARY JUDGMENT AND CONSUMER REDRESS**

IT IS FURTHER ORDERED that:

A. Judgment is hereby entered in favor of the Commission and against defendants, jointly and severally, in the amount of Thirty Million, One Hundred and Thirty-Five Thousand , Seven Hundred and Eighty-Four dollars (\$30,135,784.00), with post-judgment interest, at the legal rate, for consumer redress.

B. All payments shall be made by certified check or other guaranteed funds payable to and delivered to the Commission, or by wire transfer in accord with instructions provided by the Commission.

C. 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 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 Part. Defendants shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payments under the judgement herein shall be deemed a payment of any fine, penalty, or punitive assessment.

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

whether located within the United States or outside the United States, that holds, controls, or maintains accounts or assets of, on behalf of, or for the benefit of, defendants SDS, SDSI, SST, or KARA, shall turn over such account or asset to the Commission within ten (10) business days of receiving notice of this Order by any means, including but not limited to via facsimile;

B. Defendants SDS, SDSI, SST, and KARA shall turn over title to all property traceable to proceeds of sales of the Slim Down Solution product to the Commission within ten (10) business days of entry of this Order.

### **VIII.**

#### **ACKNOWLEDGMENT OF RECEIPT OF ORDER**

IT IS FURTHER ORDERED that, within five (5) business days after receipt by defendants of this Order as entered by the Court, defendants shall execute and submit to the Commission a truthful sworn statement in the form shown on Appendix A, that shall acknowledge receipt of this Order.

### **IX.**

#### **NOTICE TO RESELLERS AND DISTRIBUTORS**

IT IS FURTHER ORDERED that defendants shall:

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 Appendix B, showing the date of mailing, to each distributor or reseller who purchased the target products between January 1, 2001 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 Appendix 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.

## **X.**

### **CUSTOMER LISTS**

**IT IS FURTHER ORDERED** that, except as provided in this Order, defendants, and their officers, agents, servants, employees, and attorneys and all other persons or entities who receive actual notice of this Order by personal service or otherwise, are permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who purchased any target product from defendants. *Provided, however,* that defendants may disclose such identifying information to any law enforcement agency, or as required by any law, regulation, or court order.

## **XI.**

### **DISTRIBUTION OF ORDER**

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 agents having responsibilities with respect to the subject matter of this Order;

B. For a period of five (5) years from the date of service of this Order, provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, each of their future principals, officers, and directors, and to all future managers, employees, representatives, and agents having responsibilities with respect to the subject matter of this Order, within thirty (30) days after the person assumes such responsibilities; and

C. Maintain for a period of five (5) years after creation, and upon reasonable notice make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Order, as required in Subparagraphs A and B of this Part.

## **XII.**

### **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, each defendant 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

Order may be monitored:

A. Defendants Ronald Alarcon and Kathleen Alarcon, within ten (10) days of service of this Order, shall notify the Commission in writing of (1) their respective residence addresses and mailing addresses; (2) their home telephone number; (3) the name, address, and telephone number of their employer(s); (4) if applicable, the names of their supervisor(s); (5) a description of their employer's activities; and (6) a description of their duties and responsibilities.

B. For a period of five (5) years from the date of entry of this Order,

1. Defendants Ronald Alarcon and Kathleen Alarcon shall notify the Commission of the following:

(a) Any changes in their residence address, mailing address, and/or telephone numbers, within ten (10) days of the date of such change;

(b) Any changes in their employment status (including self-employment) within ten (10) days of the date of such change.

Such notice shall include the name, address, and telephone number of each entity or person that they are affiliated with, employed by, or perform services for; a statement of the nature of the business; and a statement of their duties and responsibilities in connection with the business; and

(c) Any changes in their names or use of any aliases or fictitious names, within ten (10) days of the date of such change.

2. Defendants SDS, SDSI, SST, and KARA 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 such defendants learn less than thirty (30) days prior to the date such action is to take place, such defendants 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, each defendant 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. This report shall include, but not be limited to any changes required to be reported pursuant to subparagraph B above; and a copy of each acknowledgment of receipt of this Order obtained by each of the defendants pursuant to Paragraph XI of this Order.

D. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with defendants.

#### **XIV.**

#### **RECORD KEEPING PROVISIONS**

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of



this Order, defendants SDS, SDSI, SST, and KARA, 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 Ronald Alarcon or defendant Kathleen Alarcon is the 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, description of items or services purchased, and any documents, tape recordings, or information related to any continuity program purchase, 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 materials, or other marketing materials utilized in the advertising, marketing, promotion, offering for sale, distribution or sale of any covered product or service, to the extent such information is prepared in the ordinary course of business;

F. All materials that were relied upon in making any representations contained in the materials identified in Subparagraph E, including all documents evidencing or referring to the accuracy of any claim therein or to the efficacy of any covered product or service, including, but not limited to, all tests, reports, studies, demonstrations, as well as all evidence that confirms, contradicts, qualifies, or calls into question the accuracy of such claims regarding the efficacy of such product or service; and

G. 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, marketing, promoting, offering for sale, distributing, or selling any covered product or service.

## **XV.**

### **SERVICE OF ORDER BY THE COMMISSION**

IT IS FURTHER ORDERED that copies of this Order and the initial pleadings and papers filed in this matter may be served by employees or agents of the Commission, including without limitation private process servers, and by employees or agents of any other law enforcement agency, upon defendants, any agent or employee of defendants, or any other person, partnership, corporation, or other entity that may be in possession of any records, assets,



**APPENDIX A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 03-80051-CIV-PAINE/JOHNSON

FEDERAL TRADE COMMISSION,

Plaintiff

v.

SLIM DOWN SOLUTION, LLC, SLIM  
DOWN SOLUTION, INC., S.S.T.  
MANAGEMENT, INC., THE KARA  
GROUP, LLC, RONALD ALARCON,  
KATHLEEN ALARCON, MADERIA  
MANAGEMENT, INC.,  
POLYGLUCOSAMINE, LTD., AND  
STEPHEN PIERCE,

Defendants.

\_\_\_\_\_ /

**AFFIDAVIT OF DEFENDANT** \_\_\_\_\_

\_\_\_\_\_, being duly sworn, hereby states and affirms:

1. My name is \_\_\_\_\_. I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the matters discussed in this declaration, and if called as a witness, I could and would competently testify as to the matters stated herein. I am a defendant in the above captioned action.

2. My current business address is \_\_\_\_\_. My current business telephone number is \_\_\_\_\_. My current residential address is \_\_\_\_\_. My current residential telephone number is \_\_\_\_\_.

3. On (date) \_\_\_\_\_, 2004 I received a copy of the Order and Judgment for Permanent INJUNCTION and Other Equitable Relief Against Defendants Slim Down Solution, LLC, Slim Down Solution, Inc., S.S.T. Management, Inc., The Kara Group, LLC, Ronald Alarcon, and Kathleen Alarcon, which was entered by the Honorable James C. Paine, United States District Court Judge for the Southern District of Florida. A true and correct copy of the Order that I received is appended to this Affidavit.

I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date) \_\_\_\_\_, 2004 at (city, state) \_\_\_\_\_, \_\_\_\_\_.

(defendant's signature) /s/ \_\_\_\_\_

(defendant's name) \_\_\_\_\_

Defendant

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

BEFORE ME this day personally appeared \_\_\_\_\_, who being first duly sworn, deposes and says that s/he has read and understands the foregoing statement and that s/he has executed the same for the purposes contained therein.

SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of \_\_\_\_\_, 2004 by \_\_\_\_\_ . S/he is personally known to me or has presented (state identification) \_\_\_\_\_ as identification.

\_\_\_\_\_  
(print name)  
NOTARY PUBLIC  
Commission Number  
Affix Seal

**APPENDIX B**

**BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

**[To be printed on defendants' respective letterheads]**

[date]

Dear [purchaser for resale]:

As you may be aware, on January 21, 2003 the Federal Trade Commission ("FTC") filed a Complaint against Slim Down Solution, LLC, Slim Down Solution, Inc., S.S.T. Management, Inc., The KARA Group, LLC, Ronald Alarcon, Kathleen Alarcon, Maderia Management, Inc., Polyglucosamine, Ltd., and Stephen Pierce in the United States District Court for the Southern District of Florida. In its Complaint, the FTC alleged, among other things, that advertisements for Slim Down Solution marketed by these defendants have falsely claimed that D-glucosamine isolates dietary fat for elimination from the human body as waste and causes significant weight loss without diet or exercise. The Court decided in favor of the FTC and granted a permanent injunction against the defendants on [date].

The Injunction requires us to request that our distributors, wholesalers, and retailers stop using or distributing advertisements, packaging, or promotional materials containing claims challenged by the FTC. We are required to send you this letter, because you are one of our distributors, wholesalers, or retailers.

Among other things, the [injunction] requires that our distributors, wholesalers, and retailers stop using or distributing advertisements, packaging, or promotional materials containing claims challenged by the FTC. We are required to send you this letter, because you are one of our distributors, wholesalers, or retailers.