

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
286

1 manner by persons qualified to do so, using procedures generally accepted
2 in the profession to yield accurate and reliable results.

3 4. “Defendant” means Jesse A. Stoff, M.D.

4 5. “Endorsement” and “expert” mean as defined in 16 C.F.R. § 255.0.

5 6. “Food” and “drug” mean as defined in Sections 12 and 15 of the Federal
6 Trade Commission Act, 15 U.S.C. §§ 52 and 55.

7 INJUNCTION

8 I. PROHIBITION AGAINST CERTAIN ADVERTISING CLAIMS FOR 9 CERTAIN PRODUCTS UNLESS TRUE AND SUBSTANTIATED

10 IT IS ORDERED that Defendant, his agents, representatives, employees and all
11 other persons or entities within the scope of Fed R. Civ. P. 65, and all persons in active
12 concert or participation with him who receive actual notice of this Consent Decree by
13 personal service or otherwise, directly or through any corporation, subsidiary, division, or
14 other device, in connection with the manufacturing, labeling, advertising, promotion,
15 offering for sale, sale or distribution of AG Immune or any food, drug, or dietary
16 supplement, in or affecting commerce, is hereby permanently enjoined from representing
17 or assisting others in representing, in any manner, expressly or by implication, that any
18 such product:

- 19 A. prevents, mitigates, treats, cures or improves the symptoms of any disease
20 including but not limited to: Allergies; AIDS; Asthma; Cancer; Candida;
21 Canker Sores; Chronic Fatigue Syndrome; Cold; Colon Disease; Crohn’s
22 Disease; Epstein Barr; Fibromyalgia; Flu; Heart Disease; Hepatitis B;
23 Hepatitis C; HIV; Hyperactive Thyroid; Infection; Irritable Bowel
24 Syndrome; Lupus; Mononucleosis; Poison Ivy; Rheumatoid Arthritis;
25 Shingles; Sinusitis; Toenail Fungus; and Ulcerative Colitis;
- 26 B. triggers or activates the immune system to prevent or treat diseases;
- 27 C. increases the activity and/or the production of natural killer (NK) or other
28 immune blood cells to prevent or treat diseases;

1

2

3

4

5

6

7

8

9

10

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

- 3 B. Making any representation for any product that is specifically permitted in
4 labeling for such product by regulations promulgated by the Food and Drug
5 Administration pursuant to the Nutrition Labeling and Education Act of
6 1990.

7 **IV. SUSPENDED MONETARY RELIEF AND RIGHT TO REOPEN**

8 **IT IS FURTHER ORDERED** that judgment is hereby entered against Defendant
9 Jesse A. Stoff in the amount of **THREE HUNDRED FIFTY-EIGHT THOUSAND**
10 **DOLLARS (\$358,000)**; *provided, however*, that this judgment shall be suspended until
11 further order of the Court, and *provided further* that this judgment shall be subject to the
12 following conditions:

- 13 A. Plaintiff's agreement to this Consent Decree is expressly premised on the
14 truthfulness, accuracy, and completeness of Defendant's sworn financial
15 statements and supporting documents submitted to the Commission,
16 including: Defendant's Financial Statement dated September 20, 2004;
17 Defendant's 2001 amended federal tax return and his 2002 and 2003 federal
18 tax returns; and the letters from Barry J. Cutler, Esq., dated November 5,
19 2004 and November 18, 2004. Such financial statement and supporting
20 documents contain material information upon which Plaintiff relied in
21 negotiating and agreeing to this Consent Decree.

- 22 B. If Plaintiff should have evidence that Defendant has failed to disclose any
23 material asset, or materially misrepresented the value of any asset, or made
24 any other material misrepresentation or omission in the financial statement
25 or supporting documents described above, the Plaintiff may move that the
26 Court reopen this Order for the sole purpose of allowing it to modify the
27 monetary liability of Defendant. If the Court finds that Defendant failed to
28 disclose any material asset, materially misrepresented the value of any

1 asset, or made any other material misrepresentation or omission in the
2 above-referenced financial statement or supporting documents, the Court
3 shall reinstate the suspended judgment against Defendant in favor of
4 Plaintiff, in the amount of THREE HUNDRED FIFTY-EIGHT
5 THOUSAND DOLLARS (\$358,000) in U.S. currency, which amount
6 would be rendered immediately due and payable. Interest computed at the
7 rate prescribed in 28 U.S.C. § 1961 shall immediately begin to accrue on
8 the balance. For the purposes of this Part and any subsequent proceedings
9 to enforce payment, Defendant waives any right to contest any of the
10 allegations in the Complaint filed in this action. *Provided, however*, that in
11 all other respects this Consent Decree remains in full force and effect unless
12 otherwise ordered by the Court; and *provided further*, that proceedings
13 instituted under this Paragraph are in addition to, and not in lieu of, any
14 other civil or criminal remedies that may be provided by law, including any
15 other proceedings the Plaintiff may initiate to enforce this Order.

16 C. All funds paid pursuant to this Part shall be deposited into a fund
17 administered by the Commission or its agent to be used for equitable relief,
18 including but not limited to, consumer redress and any attendant expenses
19 for the administration of any redress fund. The Commission shall have full
20 and sole discretion to administer any redress program implemented pursuant
21 to this Consent Decree. In the event that the Commission determines, in its
22 sole discretion, that direct redress to consumers is wholly or partially
23 impracticable or funds remain after redress is completed, the Commission
24 may apply any remaining funds for such other equitable relief (including
25 consumer information remedies) as it determines to be reasonably related to
26 Defendant's practices alleged in the Complaint. Any funds not used for
27 such equitable relief shall be deposited into the Treasury as disgorgement.
28 Defendant acknowledges and agrees that all money paid pursuant to this

1 Part is irrevocably paid to the Commission. Defendant shall have no right
2 to challenge the Commission's choice or administration of remedies under
3 this Part. No portion of this judgment shall be deemed a fine, penalty or
4 punitive assessment, or forfeiture.

5 **V. ACKNOWLEDGMENT OF RECEIPT OF CONSENT DECREE**

6 IT IS FURTHER ORDERED that Defendant, within five (5) business days of
7 receipt of this Consent Decree as entered by the Court, shall submit to the Commission a
8 truthful sworn statement acknowledging receipt of this Consent Decree.

9 **VI. DISTRIBUTION OF CONSENT DECREE**

10 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of
11 entry of this Consent Decree, Defendant shall deliver copies of the Consent Decree as
12 directed below:

- 13 A. For any business that Defendant controls, directly or indirectly, or in which
14 Defendant has a majority ownership interest, Defendant must deliver a copy
15 of this Consent Decree to all principals, officers, directors, and managers of
16 that business. Defendant must also deliver copies of this Consent Decree to
17 all employees, agents, and representatives of that business who engage in
18 conduct related to the subject matter of this Consent Decree. For current
19 personnel, delivery shall be within thirty (30) days of service of this
20 Consent Decree upon Defendant. For new personnel, delivery shall occur
21 prior to them assuming their responsibilities.
- 22 B. For any business where Defendant is not a controlling person and he
23 engages in the manufacturing, labeling, advertising, promotion, offering for
24 sale, sale or distribution of any food, drug or dietary supplement, Defendant
25 must deliver a copy of this Consent Decree to all principals and managers
26 of such business before engaging in such conduct.
- 27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

C. Defendant must secure a signed and dated statement acknowledging receipt

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6

- 1 (3) A copy of each acknowledgment of receipt of this Consent Decree
2 obtained pursuant to Part V.; and
3 (4) Any other changes required to be reported under subparagraph A of
4 this Part.

5 D. For purposes of this Consent Decree, Defendant shall, unless otherwise
6 directed by the Commission's authorized representatives, mail all written
7 notifications to the Commission to:

8 Associate Director for Enforcement
9 Bureau of Consumer Protection
10 Federal Trade Commission
11 600 Pennsylvania Avenue, NW
12 Washington, DC, 20580
13 Re: *United States v. Jesse A. Stoff, M.D.*, Civil Action No. _____

14 IX. COMPLIANCE MONITORING

15 **IT IS FURTHER ORDERED** that, for the purpose of monitoring and
16 investigating compliance with any provision of this Order,

- 17 A. Within thirty (30) days of receipt of written notice from a representative of
18 the Commission, Defendant shall submit additional written reports, sworn
19 to under penalty of perjury; produce documents for inspection and copying;
20 appear for deposition; and/or provide entry during normal business hours to
21 any business location in such defendant's possession or direct or indirect
22 control to inspect the business operation;
- 23 B. In addition, the Commission is authorized to monitor compliance with this
24 Order by all other lawful means, including but not limited to the following:
- 25 (1) obtaining discovery from any person, without further leave of court,
26 using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36,
27 and 45;
- 28 (2) posing as consumers and suppliers to Defendant's employees, or any
other entity managed or controlled in whole or in part by Defendant,
without the necessity of identification or prior notice; and

1
2
3
4
5
6
7
8
9
10
11
12

1 FOR THE UNITED STATES OF AMERICA:
2 PETER D. KEISLER
3 Assistant Attorney General
4 Civil Division
5 U.S. Department of Justice

6 DEBRA W. YANG
7 United States Attorney

8 By: _____
9 GARY PLESSMAN
10 Assistant United States Attorney
11 United States Attorney's Office
12 Room 7516, Federal Building
13 300 North Los Angeles Street
14 Los Angeles, California 90012
15 (213) 894-2474 (voice)
16 (213) 894-2380 (facsimile)

17 EUGENE M. THIROLF
18 Director
19 Office of Consumer Litigation

20 By: _____
21 ELIZABETH STEIN
22 Trial Attorney
23 Office of Consumer Litigation
24 U.S. Department of Justice
25 P.O. Box 386
26 Washington, DC 20044
27 (202) 307-0486
28 (202) 514-8742

FOR THE FEDERAL TRADE COMMISSION:

29 _____
30 ELAINE D. KOLISH
31 Associate Director
32 Division of Enforcement

33 _____
34 ROBERT M. FRISBY
35 Assistant Director
36 Division of Enforcement

37 _____
38 JOEL N. BREWER
39 Attorneys
40 Division of Enforcement
41 Federal Trade Commission
42 600 Pennsylvania Avenue, NW
43 Washington, DC 20580

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOR THE DEFENDANT:

JESSE A. STOFF, M.D.

BAKER AND HOSTETLER, LLP
1050 Connecticut Ave., N.W., Suite 1100
Washington, D.C. 20036-5304

By: _____
Barry J. Cutler
Julia A. Oas