

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MEMO ENDORSED

P 22
of 22

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Civil No. 04-CV-8686
(Hon. R. Berman) (ECF CASE)

9

On November 26, 2004, Defendants filed their Answer to the Complaint. On

15

November 26, 2004, Defendants filed their Answer to the Complaint. On April 12, 2005,

the Court held a hearing on the motion to dismiss the Complaint.

advertising of a second product, **Hammeln Breast Cream**.

4

The Amended Complaint states a claim upon which relief may be granted against the

Defendants under Sections 53(b), 17, and 174A of the FTC Act, 15 U.S.C. §§ 53(b), 17, and 174A.

53(b);

5 Defendants have entered into this Order freely and without coercion. Defendant(s)

B. "Corporate Defendants" shall mean CHK Trading Corp. and CHK Trading Co., Inc., corporations doing business as Hanmeilin Cosmetics and Shangrila, and their
successors, officers, affiliates, subsidiaries,

Chong H. Kim and Charles Kim individually and as president and owner of the

Corporate Defendants.

D. "Defendants" shall mean the Corporate Defendants and the Individual Defendant, and each of them, and any entity through which they do business.

E. "Assisting others" shall mean knowingly providing any of the following goods or

including, but not limited to Hammelin Breast Cream, or any other substantially similar product.

G. "Cellulite treatment product" shall mean any product that is advertised, marketed,

promoted, offered for sale, distributed, or sold with express or implied representations that the product will or may cause reduction or elimination of cellulite, including, but not limited to, Hammelin Cellulite Cream, or any other substantially similar product.

H. "Commerce" shall mean, as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I. "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 field, and that

accurate and reliable results

M. "Person" shall mean a natural person, organization, or other legal entity, including a partnership, corporation, limited liability company, proprietorship, association

cooperative, or any other group acting together as an entity.

PROHIBITED REPRESENTATIONS

IT IS THEREFORE ORDERED that:

A. Defendants and each of their successors, assigns, officers, directors, agents, servants, employees, subsidiaries, and affiliates, and those persons in active concert or

affecting commerce, are hereby permanently enjoined from representing, in any manner,

upon competent and reliable scientific evidence that substantiates the representation.

D. Defendants and each of their successors, assigns, officers, directors, agents, servants, employees, subsidiaries, and affiliates, 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 entity, corporation, subsidiary, division, affiliate or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any goods or services, is hereby

enjoined from misrepresenting expressly or by implication

III.

MONETARY RELIEF

IT IS FURTHER ORDERED that

A. Judgment is hereby entered in favor of plaintiff, and against Defendants in the

[REDACTED]

entire amount of the judgment, plus interest, less any payments already made. Notwithstanding any other provision of this Order, Defendants agree that, if they fail to meet the payment obligations set forth in this Paragraph, the facts as alleged in the Amended Complaint filed in this matter 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 nondischargeability complaint in any subsequent bankruptcy proceeding.

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

G. Defendants expressly waive their rights to litigate the issue of

Defendants acknowledge and agree that all money paid pursuant to this Order is irrevocably paid

to the Commission for purposes of

relinquish all right, title, and interest to assets held by the Commission or its agents in connection with this case.

H. Defendants shall also furnish to the Commission, in accordance with 31 U.S.C. § 7701, their taxpayer identification numbers (Social Security number

number or Revenue Canada Identifi

15, 2004; Defendants' accounting, dated November 15, 2004, submitted pursuant to the
Stipulation and Order of Preliminary Injunction, Granting Plaintiff an Immediate Accounting

Defendants' banking records, sales orders and corporate and individual tax returns, submitted as
part of Defendants' Responses and Objections to First Request for Production of Documents by
Plaintiff Federal Trade Commission, dated November 22, 2004 ("Defendants' Production");
Defendants' information and documentation supplementing Defendants' Production, as set forth
in and accompanying letters from Defendants' counsel to the FTC, dated January 18 and 24,
2005; and Defendants' accounting of sales of Hammeilin Breast Cream, dated March 21, 2005,
with related sales orders, all of which contain material information called 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

Defendants waive any right to contest any of the allegations set forth in the Amended Complaint filed in this matter.

V.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED

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

to such an interview, relating in any way to any conduct which is the subject of

interviewed may have counsel present.

Provided, however, that nothing in this Order shall limit the Commission's lawful use of

compulsory process, subject to the following:

obtain any documentary material, tangible things, testimony, or information relevant to

deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C.

§ 45(a)(1)).

statement of his duties and responsibilities in connection with the business

c. Any changes in his name or use of any aliases or fictitious names; and

?

the Corporate Defendants or any business entity that the Individual Defendant directly or indirectly control(s), or has an ownership interest in

compliance obligations arising under this Order including

1. For the Individual Defendant:

a. The then-current residence address, mailing addresses, and telephone numbers of the Individual Defendant.

b. The then-current employment and business addresses and telephone numbers of the Individual Defendant, a description of the business activities of each such employer or business, and the title and responsibilities of the Individual Defendant.

D. For purposes of the compliance reporting and monitoring required by this Order

Friedman, located at 225 Broadway, Suite 1804, New York, NY 10007 or such other

contractors that provide information

C. Customer files containing the name and address of

I. All records and documents necessary to demonstrate full compliance with each provision of this Order, including, but not limited to, copies of acknowledgments of receipt of this Order received from _____

VI

VIII

DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendants shall deliver copies of the Order as directed below:

A. The Corporate Defendants must deliver a copy of this Order to all of their principals, officers, directors and _____

(5) days of service of this Order upon the Individual Defendant. For new personnel delivery

shall occur prior to them, assuming their responsibilities.

C. The Individual Defendant as employee or non-control person: For any business where the Individual Defendant is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, the Individual Defendant must deliver a copy

of this Order to all principals and managers of such business before

D. The Corporate and Individual Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty days of delivery from all persons

receiving a copy of the Order pursuant to this Paragraph.

IX.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that each Defendant, within five (5) business days of

SO ORDERED:

On Consent

all

RMB

JUDGMENT IS THEREFORE ENTERED in favor of Plaintiff and against

Defendants _____ and _____, pursuant to all the

terms and conditions of the judgment.