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United States Attorney

Daniel Gibbons

Assistant
Federal Office of the United States Attorney
Peter W. Rodino Federal Building
7th Floor
970 Broad Street
Newark, NJ 07102

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIV. ACTION
BAYER CORPORATION

NO. 07-01 (HAA)

CTION

Defendant

CONSENT DECREE

Plaintiff, the United States of America, has commenced this action by filing

defendant, Bayer Corporation, has waived service of the Summons and

the Complaint herein

WILREAS

THEREFORE, on the joint motion of plaintiff and defendant, it is hereby ORDERED and

IT IS SO ORDERED AS FOLLOWS:

Section 3 of the Federal Trade Commission Act, 15 U.S.C. § 45 (1)-(3)(B) and (3)(C).

U.S.C. § 45 (1)-(3)(B) and (3)(C).

DEFINITIONS

Bayer Corporation means Bayer Corporation and all of its divisions and subsidiaries,

including, but not limited to, Bayer HealthCare LLC.

Commerce means as defined in Section 4 of the Federal Trade Commission Act,

U.S.C. § 44.

analys in the relevant area, that has been

offer evidence based on the expertise of profess

by persons qualified to do so, and

conduct and evaluated in an objective manner

proceedures shall be accepted if the profession is with accuracy, reliability,

FTC or Commission means the Federal Trade Commission.

U.S.C. § 45 (1)-(3)(B) and (3)(C).

reached here as Exhibit A-330 in a part of this Consent Decree

person means natural persons or organizations, other legal entities, including

partnership, corporation, proprietorship, association, cooperative, or any other

entity, however organized.

to promote means any or all of the following: (a) to promote the sale of

to prevent, fight, gain, or produce a different collection of

The terms "and" and "or" in this consent decree shall be construed conjunctively or disjunctively, as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

The term "including" in this consent decree means "including, with

CIVIL PENALTY

IT IS FURTHER ORDERED that:

Pursuant to Section 501 of the FTC Act (15 U.S.C. § 4501), defendant Bayer shall

pay a monetary civil penalty of \$3,000,000 to the Federal Trade Commission, its successors and assigns, and

three million two hundred thousand dollars (\$3,200,000) to the United States Department of Justice, its successors and assigns, shall

make the payment required by this consent decree to the Federal Trade Commission, its successors and assigns, and

its provisions shall be enforceable by the Federal Trade Commission, its successors and assigns, and the United States Department of Justice, its successors and assigns.

31 The Office of Consumer Inigation, Division of Enforcement, Department of Justice, Washington, DC 20530.

non payment with default continues for 30 days.

and the debt is payable with interest at the rate of 18% per annum from the date of default to the date of payment, or thereafter with

28 U.S.C. § 1961 from the date of default to the date of payment, or thereafter with interest at the rate of 6% per annum.

It becomes due and payable.

VIOLATING FTC ORDER

PROHIBITION AGAINST

that defendant Bayer Corporation, and its successors and

IT IS FURTHER ORDERED that

anyone who is in violation of this consent decree shall be liable to the Federal Trade Commission, its successors and assigns, and the United States Department of Justice, its successors and assigns, for the civil penalties provided herein.

consent decree shall be enforceable by the Federal Trade Commission, its successors and assigns, and the United States Department of Justice, its successors and assigns.

directly or through any corporation, subsidiary, division, or other agency, any provision of the

FTC Order, provided, however, that, in the event that the FTC Order is herca

defendant's compliance with such Order as set forth

Part

WARRANTY REPRESENTATIONS

PROHIBITED INSURANCE

defendant Bayer Corporation, and its successors and

LIST OF PROHIBITED

atives, and employees, and all persons in active

assigns, and their officers, agents, represen

persons service or otherwise directly or through any corporation, subsidiary,

Decree by

Manufacturer weight control products in interstate commerce are:

lifted 35 One-A-Day We

representation, including through endorsement,

never permanently enjoined from making a

or trade name, expressly or by implication,

product or any of its ingredients,

increases metabolic rate,

helps prevent some of the weight gain associated with

metabolism in users over age 30.

users control their weight by enhancing their metabolism,

weight maintenance.

6. Can or will cure, treat, or prevent any disease, or

or any of its ingredients;

at the time the representation is made, defendant Bayer Corporation possesses and relies

IV. REGULATORY

FOOD AND DRUG ADMINISTRATION

IT IS FURTHER ORDERED that nothing in this Consent Decree prohibits de

Bayer Corporation from making:

Any representation for any drug that is permitted in the labeling for such

regulated by the Food and Drug

Administration, and any new drug application approved by the Food and

such as the regulations promulgated by the Food and Drug Administration

V.

DISTRIBUTION OF CONSENT DECREE BY DEFENDANT

of the (30) days from the date of entry of the Consent Decree and FTC Order and obtain a signed and dated acknowledgment of receipt from each of the personnel, whether such persons are designated as employees, consultants, independent contractors or otherwise, having supervisory responsibilities with respect to the advertising or promotion of any product or program covered by the Consent Decree and FTC Order shall be delivered to current personnel, past and future personnel within thirty (30) days after the person assumes such position or responsibilities; and

THIS FURTHER ORDER of the Commission is that the Defendant shall provide a copy of the Consent Decree and FTC Order to current personnel, past and future personnel within thirty (30) days after the person assumes such position or responsibilities; and

representatives of the Commission, the original signed and dated acknowledgment of receipt required in Subpart A of this Part.

maintain for a period of three (3) years after the date of entry of the Consent Decree and FTC Order, and make such records available to representatives of the Commission for inspection and copying.

VI.
RECORD-KEEPING PROVISIONS

DEFENDANT shall maintain for a period of three (3) years after the date of entry of the Consent Decree and FTC Order, and make such records available to representatives of the Commission for inspection and copying.

THIS FURTHER ORDER of the Commission is that the Defendant shall maintain for a period of three (3) years after the date of entry of the Consent Decree and FTC Order, and make such records available to representatives of the Commission for inspection and copying.

demonstrating compliance with the terms and provisions of this Consent Decree and FTC Order, and such records shall not be limited to:

A. Accounting records that reflect the cost of products and programs sold, revenues generated and the disbursement of such revenues;

B. Defendant's personnel records accurately reflecting each person's name, address, and telephone number.

... independent contractors or affiliates having supervisory responsibilities with respect to the advertising or promotion of any product or program covered by this Consent Decree; that person's job title

... person commenced work, and the date that person's position was terminated, and the reason for the person's termination, if applicable;

... any representation covered by this Consent Decree, including any written or oral representation, including any advertisement or promotional material, including any videotape or audiotape of any radio advertisement;

... consent decree, including any written or oral representation, including any videotape or audiotape of any radio advertisement;

... audiotape of any radio advertisement;

... All materials that were relied upon in disseminating such representation; and

... All materials that were relied upon in disseminating such representation; and

... All materials that were relied upon in disseminating such representation; and

... All materials that were relied upon in disseminating such representation; and

... All materials that were relied upon in disseminating such representation; and

... All materials that were relied upon in disseminating such representation; and

VII.

COMPLIANCE REPORTING BY

IT IS FURTHER ORDERED that:

... years from the date of entry of this Consent Decree, Defendant shall notify the

... and its successors and assigns, shall notify the defendant Bayer Corp

... are not to be construed as compliance with the obligations arising out of

... Consent Decree, including the obligations arising out of

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 the acts or practices subject to this Consent, if

at least 10 days prior to the filing of any such

change, provided that with respect to any proposed change in control which defendant has initiated, (b) defendant to the date such action is taken defendant shall notify the Commission as soon as practicable obtaining such knowledge;

(c) Within 90 days after receipt of a written request by a representative of the Commission, defendant Bayer Corporation, and its successors and assigns, shall submit written reports (under oath if requested) and produce documents relevant to any conduct subject to this Consent.

(d) Defendant Bayer Corporation shall cooperate with the IRS (under oath if requested) to the Commission its taxpayer identification number, employee identification number, and will be used for purposes of collecting and reporting on any delinquent amount arising out of defendant's relationship with the government.

VII.

WRITTEN NOTIFICATIONS BY DEFENDANT

Associate Director of Enforcement

EUGENE M. THIROLF
Director
Office of Consumer Litigation

Jeffrey A. Alger

Jeffrey A. Alger
Attorney
Office of Consumer Litigation
Civil Division
U.S. Department of Justice
Washington, D.C. 20536
(202)-307-0047

FOR THE FEDERAL TRADE COMMISSION: =

JAMES A. KOHM

Assistant Director for Enforcement

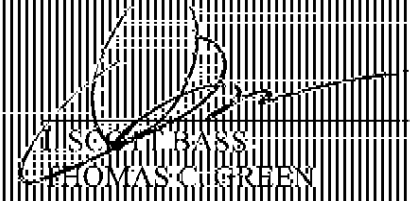
ROBERT FRISBY

Assistant Director for Enforcement

FOR THE DEFENDANT:

BAYER CORPORATION

By 

By 
THOMAS C. GREEN
SIDLEY AUSTIN LLP

Sidley Austin LLP