## Analysis of Proposed Consent Order to Aid Public Comment In the Matter of NBTY, Inc., File No. 102 3080

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing conset order from NBTY, Inc., NatureSmart LC, and Rexall Sundown, flc. (collectively, "Respondents".

The propose consent ordenas ben placed on the publicercoid for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments recised, and will deide whethe it should withdraw from the agreement and take propriate action or make finishe agreement's proposed der.

This matter involves the advertising and promotion of the following products in Respondents' Disney/Marvel line of children's multivitamin and mineral dietary supplements 1) DisneyPrincess Complete; 2) DisneyPrincess Gummies; 3) DisneyWar Cas Gummies; 4) DisneyWinnie the Pooh Gummies; 5) Disneyigger & Pooh Gummies; 6) DisneyWixar Finding Nemo Gummies; 7) DisneyWixar Wall-E Gummies; 8) DisneyWixar ToyStoryGummies; 9) Marvel Heroes Complete; and 10) Marel Heroes Gummies (adlectively, the "NBTY Products").

According to the FTC complaint, Respondents resented, in advetisements, that the NBTY Products confined a significant amount of DHA (docsahexaenoiccaid, a polyunsaturate Omega-3 fatty acid) or an amount compartale to 100 mg of DHA. The complaint allegs that this claim is false or mistering because in fact, a daily serving of the NBTY products only contained ither 0.1 mgof DHA (which is one thousandth of 100 mg or 0.05 mg of DHA (which is five tenthousandths of 100 mg

The Co Ise or misleading because

Respondents failed to what evidence to substantiate it.

The proposed consent ordecontains provisions designate prevent Respondents from engaging in similar acts and practices in the future. Part I of the proposed order prohibits Respondents from misrepresenting that any product contains a specific ingredient or specific numerical amount of any ingredient.

Part II of the proposed order prohibits Respondents from making any representations in advertising for any product about the health benefits, performance, or efficacy of the product, unless the representation is true and non-misleading. In addition, Respondents must possess competent and reliable scientific evidence sufficient in quality and quantity, when considered in light of the entire bodyof relevant and eliable scientific evidence, to support schoolaims as true.

Part II of the propose orderstates that the ordeoes not prohibit Respondents from making representations for any drug that are permitted in labeling for that drug under any tentative or in last and ard purpulgated by the FDA, or under any new drug application approved by the FDA. This part of the proposed order also states that the order does not prohibit Respondents from making representations for any product that are specifically permitted in labeling for that poduct by regulations issued by he FDA under the Nutrition Labeling and Education Act of 1990.

Part IV of the proposed orderequires Respondents to planyo million, one hundre thousand dollars (\$2,100,0000) the Commission to be used forquitable relief, including restitution, consumer deess, and any attendant repenses of the administration of sub equitable elief.

Parts V through VIII of the proposed orderrequire Respondents to keep pries of relevant advertisements and materials substantiating daims made in the advertisements, to provide copies of the order to certain personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part IX provides that the other will terminate after twenty (20) years, with certain exceptions.