

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
William E. Kovacic
J. Thomas Rosb
Edith Ramirez
Julie Brill

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In the Matter of)	
NBTY, INC.,)	DOCKET NO. C-4318
a corporation,)	
NATURESMART LLC,)	DECISION AND ORDER
a limited liability company, and)	
REXALL SUNDOWN, INC.,)	
a corporation.)	
_____)	

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violations of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, or that any of the facts as alleged in such complaint, other than jurisdictional facts, are true, and waives and other provisions as required by the Commission's Rules; and

The Commission h

receipt and consideration of public comments, and having duly considered the comments received from interested persons, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and issues the following order

1. Respondent NBTY, Inc. is a Delaware corporation with its principal place of business located at 2100 Smithtown Ave., Ronkonkoma, New York 11779.
2. Respondent NatureSmart LLC is a Colorado limited liability company with its principal place of business at 2100 Smithtown Ave., Ronkonkoma, New York 11779.
3. Respondent Rexall Sundown, Inc., also doing business as Sundown, Inc., is a Florida corporation with its principal place of business at 2100 Smithtown Ave., Ronkonkoma, New York 11779.
4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents and this proceeding is in the public interest.

ORDER

DEFINITIONS

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

1. Unless otherwise specified, "respondents" means NBTY, Inc., NatureSmart LLC, and Rexall Sundown, Inc., also doing business as Sundown, Inc., and their successors and assigns, and their officers, and each of the above's agents, servants, representatives, and employees.
2. The "NBTY Products" means, collectively, the children's multivitamin and mineral chewable table products manufactured, promoted, advertised, distributed, and sold by respondents under the names Disney Princess Complete and Marvel Heroes Complete and the following children's multivitamin and mineral gummy products: Disney Princess Gummies; Disney Pixar Cars Gummies; Disney Winnie the Pooh Gummies; Disney Tigger & Pooh Gummies; Disney Pixar Finding Nemo Gummies; Disney Pixar Wall-E Gummies; Disney Pixar Toy Story Gummies; and Marvel Heroes Gummies.
3. "Commerce" means as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. "Product" means any good that is offered for sale, sold or distributed to the public by respondents, their successors and assigns, under any brand name of respondents, their successors and assigns, or under the brand name of any third party. "Product" also means any product sold or distributed to the public by third parties under any brand name of respondents, or under private labeling agreements with respondents, their successors and assigns. "Product" shall include, but not be limited to, the NBTY Products.

5. "Food" and "drug" mean as defined in Section 15 of the FDCA Act, 15 U.S.C. § 55.
6. "DHA" means docosahexaenoic acid, a polyunsaturated Omega-3 fatty acid.
7. The term "including" in this order means "including without limitation."
8. The terms "and" and "or" in this order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase operative inclusive rather than exclusive.

I.

IT IS ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name

- B. 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.

IV.

IT IS FURTHER ORDERED that within five (5) days from the date of service of this order, respondents, jointly and severally, shall pay to the Commission by electronic funds transfer the sum of two million, one hundred thousand dollars (\$2,100,000) in accordance with instructions provided by the Commission.

- A. In the event of default on any obligation to make payment under this order, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment. In the event such default continues for ten (10) calendar days beyond the date that payment is due, the entire amount shall immediately become due and payable. Respondents shall be jointly and severally liable for all payments required by this Subpart and any interest on such payments.
- B. All funds paid to the Commission pursuant to this order shall be deposited into an account administered by the Commission or its agents to be used for equitable relief, including, but not limited to, consumer redress, including restitution, and any attendant expenses for the administration of such equitable relief. In the event that direct redress to consumers (which shall be the first priority for dispersing the funds set forth above) is wholly or partially impracticable or funds remain after the redress to consumers 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 respondents' practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited in the United States Treasury as disgorgement. Respondents shall have no right to challenge the Commission's choice of remedies under this Part. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payment under this Part shall be deemed payment of any fine, penalty, or punitive assessment.
- C. Respondents relinquish all dominion, control, and title to the funds paid pursuant to this Part to the fullest extent permitted by law. Respondents shall make no claim to or demand for the return of the funds, directly or indirectly, through counsel or otherwise. In the event of bankruptcy of any respondent, respondents acknowledge that the funds paid are not part of the debtor's estate nor does the estate have any claim or interest therein.
- D. Respondents agree that the facts as alleged in the complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent

date such action is to take place, each respondent, and its successors and assigns, shall notify the Commission as soon as is practicable after obtaining such knowledge. For the purposes of this order, respondents shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling or the date such dismissal or ruling is upheld on appeal.

By the Commission.

Donald S. Clark
Secretary

ISSUED: March 22, 2011