

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Federal Trade Commission,

Plaintiff,

vs.

NourishLife, LLC, and Mark Nottoli,
individually and as an officer of NourishLife,
LLC,

Defendants.

Case Number :

COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER EQUITABLE
RELIEF

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), for its

Complaint alleges:

1. The orgement of ill-

ef for Defendants’ acts or practices in violation of

5 U.S.C. §§ 45(a) and 52, in connection with the

ution, and sale of children’s dietary supplements that

ch and language capacity

3. Venue in the United States District Court for the Northern District of Illinois

6. Defendant Mark Nottoli (“Nottoli”) is the president and manager of NourishLife. Nottoli also is a majority owner of NourishLife, LLC through his ownership share in PharmaNutrients, Inc., of which he is the president and majority shareholder. At other times material to this Complaint, Nottoli was a majority owner of NourishLife through his ownership share in Revolution Works, Ltd., of which he was the president and the principal shareholder. He is an Illinois resident. At all times material to this Complaint, acting alone, or in concert with others, Nottoli has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of NourishLife, including the acts and practices set forth in this Complaint. In connection with the matters alleged herein, he transacts or has transacted business in this District and throughout the United States.

COMMERCE

7. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ COURSE OF CONDUCT

8. Speak is a dietary supplement containing Omega-3 and -6 fatty acids, Vitamin E, Vitamin K, and other ingredients. The Speak formula was developed by a research scientist employed by the Children’s Hospital and Research Center Oakland (“CHRCO”). On or around June 3, 2008, Defendants acquired the rights from CHRCO to market the Speak formula in the United States and world-wide.

9. Speak is available in liquid, softgel, and twist-off-capsule forms. Consumers can purchase a 60-count bottle of Speak softgels or capsules for approximately \$71.95, and a

30-tablespoon bottle of a liquid form called “Speak Smooth” for \$76.95. Defendants also offered one-box and two-box “Monthly Saver Plans,” where one or two boxes respectively shipped every thirty days for a recurring, monthly charge of approximately \$56.95 and \$54.95 per box for Speak softgels or capsules, and approximately \$61.95 and \$59.95 per bottle for Speak Smooth. Defendants recommend daily dosages between two to four capsules (one to two tablespoons of Speak Smooth) for toddlers and four to six capsules (two to three

11. To induce consumers to purchase Speak, Defendants have disseminated or caused to be disseminated, advertisements and promotional materials for Speak, including but not limited to, the attached Exhibits A through L. These advertisements contained the following statements and depictions, among others:

A. www.SpeechNutrients.com, August 13, 2013 (excerpts attached as Exhibit A1-A9).

A1

[Home Page, excerpts]

Nutritional support for healthy speech development

SPEECHNUTRIENTS SPEAK™ SMOOTH

Speak™ Smooth is a nutritional formula developed by a pediatrician to support normal and healthy speech development and maintenance.

Mounting clinical evidence and hundreds of parental reports indicate thi

* * *

The Oxford-Durham Schools Trials

Initial Trial results summary:

The most comprehensive and thorough trial yet of how omega-3 may be applied in the classroom . . .

* * *

A3

[Products Page]

* * *

SPEAK

Hypo-allergenic, Pediatrician Formulated

The pediatrician formulated omega-3 and vitamin E speech development formula that provides the precise serving and ratio

take a breath, and she was generally becoming more talkative and interactive. Early this fall, I overheard her have a 20-minute conversation with a peer. I was absolutely amazed – that had never happened in her whole life! I absolutely love what Speak is doing for Eliza — when I hear her talk at regular speed and fluency, my heart practically sings. It has been almost miraculous — I doubt I would have believed the difference it has made if I hadn't seen it for myself.

Colleen, MD

* * *

A5

[Parents' testimonials continued as one scrolls down the page]

THIS TO ME WAS MIRACULOUS AND ASTOUNDING

I learned about Speak from an online support group made up of parents facing similar issues as my son; I wrote to the parents in the group in late December out of concern regarding the lack of speech development in my 3.5 year old son. . . . After upping the dosage to 4 capsules a day for the 3 year old and two a day for the 1 year old, in the last few days I have seen an increase in attempts at meaningful expressive language in the boys . . . I realized that there was something to this product when for the first time this past weekend, my 3.5 year old came up to me, looked me in the face and said, "I want something to eat" . . . later on the same day he came to the kitchen and said "I want something to drink"! [sic] This to me was miraculous and astounding . . . given we have been trying to get him to point at what he wants or just say "juice" or "cookie" just to indicate what he wants (we have been modeling sentences and or [sic] sign

Becky, Portland

* * *

A8

UNPROMPTED SPEECH

I received samples at the Autism One Conference. We just went to 2 capsules after a week and we are thrilled. We lost any little speech our son had about 2 years ago. He is now 9. We upped the cod liver oil we were using as well as TMG but got whispers at best ~ infrequently. We now have some speech again with little prompting and his receptive language is stellar!!! (insert big grin here)
.....

Heather M.

* * *

A9

[Press release, excerpts, in “Media/Press” section]

03/19/2013 – KRISTIN’S KORNER BLOG: THE VITAMIN E OMEGA-3 CONNECTION

* * *

[page 2 of 3, excerpts]

In fact, many of the symptoms of vitamin E deficiency mirror those of verbal apraxia including speech production problems. . . . Resolution of the Vitamin E deficiency has been shown in hundreds of cases to relieve these conditions. . . .

* * *

The improvements responders show to higher doses of omega 3 and vitamin E typically include improved speech (new sounds, words, improved narrative,

more age-appropriate speech). . . .

* * *

A10

[May 15, 2012 Newsletter, excerpts, in “Community Resources” section]

Introducing New Smooth Travel Packs

Same delicious taste . . . now great for on the go!

* * *

Travel sized and ready for life on the go, they’re the easiest way to make sure

www.SpeechNutrients.com Order your supply today!

C. Facebook page, “Speak” account, January 7, 2014, excerpts (attached as

Exhibit C):

[May 21, 2013 Facebook post]

Tuesday tip: We’ve had some good questions regarding the storage of our speak Smooth. . . . Read more about speak smooth at: [URL]

[depiction of Speak package on the right, omitted]

SpeechNutrients speak™
www.speechnutrients.com

speak™ Smooth is a patented nutritional formula developed by a pediatrician to support normal and healthy speech development and maintenance.

D. Rotating-banner ad appearing on 2013 AutismOne Conference website, May 9, 2013, excerpts (attached as Exhibit D1-D4):

[www.autismone.org/Conference-Sponsors-Autismone-Conference-2013]

D1

nourishlife
SpeechNutrients

speak™

PROVEN
Omega-3, Vitamin E
Formulation for
Speech Development

D2

* * *

Only formulation that provides precise doses and ratios of 7 key ingredients

* * *

D3

TARGETED BENEFITS:

- Nutritional support of verbal/motor skills

* * *

D4

[depiction of speak packages, affixed to the

A study published in *Alternative Therapies in Health and Medicine*¹ reported data on 187 children supplementing with an omega-3 and vitamin E combination (as found in the speak formulation). 97% of the children showed dramatic improvements in speech, behavior, sensory issues, imitation, coordination, and eye contact. Supplementation with this omega-3, vitamin E combination is believed to reduce inflammation and oxidative stress.⁺

To read the study in its entirety, go to apraxiaresearch.com

[stand-alone text, located at right-hand-side, top]

What is SpeechNutrients speak?

SpeechNutrients speak™ is a patented formulation that provides a precise dose & ratio of the important nutrients needed for normal and healthy speech and coordination development. . . .

* * *

The nutrients in SpeechNutrients speak™ provide targeted benefits, including but not limited to:⁺

- Nutritional support of verbal and motor skills . . .

* * *

[parent testimonial, located at left-hand-side, bottom corner]

The main difference is that she is trying and willing to put three words together on her own with no prompting. . . .

Tracey in Illinois

* * *

[parent testimonial, located at right-hand side, center]

We were really amazed when Ben started singing along with a song on the radio. . . . and he was singing 3+ word phrases, not just one word here & there. When I pick up Ben from school now, he is talking a lot & consistently answers questions. His teachers report he answers them consistently as well, even with open-ended questions if they aren't too far in the future.

Dorianne in California

* * *

[page 2 of 2, excerpts]

Why is this particular formulation effective?

* * *

Research has shown that these nutrients play an important role in speech and coordination development, and thousands of children have experienced positive outcomes while taking these nutrients. Due to potential issues with malabsorption, some children may be deficient in Vitamin E and at the same time may not absorb it well. In fact, many of the symptoms associated with speech issues mirror vitamin E deficiency.

* * *

[parent testimonial, located at right-hand side, center]
[parent testimonial, located at right-hand side, center]

K. Front and side panel of Speak Softgels (Natural Orange) package.

12. Defendants also have entered into agreements with Google to preferentially display a textual link or “sponsored link” to a website marketing Speak, in response to searches that consumers perform on Google’s search engine about childhood speech and language development. As a result, if consumers entered terms such as “toddler speech problems,” “help my child talk,”

Healthy Speech for Child – SpeechNutrients speak Supplement
[URL]
Formulated by a Pediatrician

* * *

K2

[search term: “help my child talk,” December 20, 2013]

of parents like you have tried speak™ and have been astonished at the results.

* * *

[Parent testimonials continued as one scrolls down the page]

[Image of mother observing daughter reading, and to the right:]

That formula has done wonders for her! Her speech is within the normal range and the Vitamin E greatly helped. It's the formula we need in 2 capsules instead of 6.

-- *Katie M., New Jersey*

* * *

[Image of child hugging a smiling mother, and to the right:]

I believe she is speaking in more complex sentences and she is less gittery [sic], more focused. We are very impressed with her conversational speech and she is making progress.

-- *Ali R., West Virginia* (REDACTED)

investigate an “omega 3/vitamin E speech supplement.” Parents who applied to participate in this study group received a free product trial for Defendants’ Speak and, if not accepted into the study group, coupons to purchase Speak at a discounted price. The Apraxia Research website did not disclose that Defendant NourishLife was the owner, developer, and operator of the website. The website, excerpts of which are attached as Exhibit M, included, among others, the following statements and depictions:

A. www.apraxiaresearch.com, July 2, 2013, excerpts (attached as Exhibit M1-M3).

M1

[Home page of Apraxia Research website]

Progressing information and research in the treatment of Apraxia

Welcome to ApraxiaResearch.com. This site provides resources and information for parents and professionals regarding past and present research developments for the treatment of verbal, oral and motor Apraxia. In cooperation with researchers, ApraxiaResearch is leading an initiative seeking to understand how certain nutrients play a key role in reducing inflammation and oxidation which appears to be a formidable issue in individuals with this challenging speech disorder.

* * *

Participate in an ongoing Study Group

ApraxiaResearch is providing the opportunity for a select group of families to receive an omega-3/vitamin E speech supplement complimentary for a 2 month

study period. . . .

* * *

Clinical Research

Recently published research regarding omega-3 and vitamin E supplementation and the role it plays in Verbal Apraxia.

* * *

M2

[Testimonials

The patented omega 3/vitamin E speech supplement is miraculous!! He has gotten the best reports ever from school. It is impossible to not see the difference in him. . . . The best way to explain it is that he is now like any other 3 year old, only with a significant speech delay and some low tone. . . . The changes are not subtle at all. We took [him] to a big Chanukah party at our country club where in previous years he would just shut down, this year he participated, sat nicely, and was talking! . . .

-- Melissa G . . ., NJ

* * *

M3

[Web page displayed upon clicking box entitled “New Study Published!” or “Clinical Research” tabs on home page (*see* Exhibit M1)]

* * *

Breakthrough Study on Verbal Apraxia

The study Syndrome of Allergy, Apraxia, and Malabsorbtion: Characterization of a Neurodevelopmental Phenotype that Responds to Omega 3 and Vitamin E Supplementation published in the July/August 2009 journal of Alternative Therapies in Health and Medicine describes the improvements noted in 97% of participants while taking a nutritional formulation comprised of omega-3 and vitamin E.

The study identifies the symptoms of vitamin E deficiency as mirroring those of Apraxia and the concurrent need for higher doses of vitamin E in addition to omega-3.

* * *

M4

[Web page displayed upon clicking the tab, on left-hand side, labelled “Research Publications” (*see* Exhibit M1)]

* * *

One of ApraxiaResearch's ongoing goals is the dissemination of information on Apraxia and related disorders in children. We hope that these research publications, articles and study findings will help you in your quest.

* * *

14. Through the Apraxia Research website and the SpeechNutrients website, as well as other means, Defendants recruited parents to participate in a product trial for Speak. Parents who were accepted to participate received a free, two6(ec d,()]1JaE0(ex4()]r)5(tib)58d [i(nsA)

February, 2012. Advertisements and promotional materials for Speak products containing Ms. Gonzalez's product endorsement and her blog discussion on the benefits of Vitamin E and Omega-3 supplementation have not disclosed Ms. Gonzalez's receipt of free products from Defendants.

DEFENDANTS' VIOLATIONS OF THE FTC ACT

16. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce.

17. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a), prohibits the dissemination of any false advertisement in or affecting commerce for the purpose of inducing, or which is likely to induce, the purchase of food, drugs, devices, services, or cosmetics. For the purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, Defendants' Speak is either a "food" or "drug" as "food" and "drug" are defined in Section 15(b) and (c) of the FTC Act, 15 U.S.C. § 55(b), (c).

COUNT I

False or Unsubstantiated Efficacy Claims

18. Through the means described in Paragrapw 5.53cds Fbe -0.(as) 13,

B. Speak treats or mitigates verbal apraxia and communication and behavioral deficits in children who have autism spectrum disorders, among other developmental conditions; and

C. Children who use Speak, including children who have apraxia and autism spectrum disorders, among other developmental conditions, are likely to obtain the rapid and significant speech, language, and other behavioral improvements reported by parent endorsers who appear in Defendants' advertisements;

19. The representations set forth in Paragraph 18 were false and misleading, or were not substantiated at the time the representations were made.

20. Therefore, the making of the representation as set forth in Paragraph 18 of this Complaint constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT II

False Proof Claim

21. Through the means described in Paragraphs 11 through 13, Defendants have represented, expressly or by implication, that Speak is clinically proven to develop and maintain normal, healthy speech and language capacity in children, including children who have apraxia and autism spectrum disorders, among other developmental conditions.

22. The representation set forth in Paragraph 21 is false.

23. Therefore, the making of the representations as set forth in Paragraph 21 of this Complaint constitutes a deceptive act or practice and the making of false

advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT III

Means and Instrumentalities

24. Defendants have provided advertisements and promotional materials to third-party distributors and resellers for use in the marketing and sale of Speak, including Exhibits H through J.

25. Through the means described in Paragraph 24, Defendants have provided means

28. Therefore, the making of the representation as set forth in Paragraph 26 of this Complaint constitutes a deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT V

Failure to Disclose Material Connections

29. Through the means described in Paragraph 13, Defendants have represented, expressly or by implication, that the Apraxia Research website provides research and other information relating to the treatment of apraxia and Omega-3 fatty acid and Vitamin E supplementation.

30. In numerous instances in which Defendants have made the representation set forth in Paragraph 29 of this Complaint, Defendants have failed to disclose, or disclose adequately, that Defendants owned, developed, and operated the Apraxia Research website.

31. Through the means described in Paragraphs 11 through 13, Defendants have represented, expressly or by implication, that parent and other endorsers appearing in advertising for Speak are satisfied users of Speak.

32. In numerous instances in which Defendants have made the representations set forth in Paragraph 31 of this Complaint, Defendants have failed to disclose, or disclose adequately, that certain of the parent and other endorsers appearing in their advertising were compensated in connection with their endorsement, including through the means described in Paragraphs 14 and 15. (a)4(ph 29 o)-10(f)3(i)-12(on wh4(r)3(ou(h t)10(e)42.3 Td [()4(e)4(s))-1(de)4B)3

34. Defendants' failure to disclose the material information described in Paragraphs 30 and 32, above, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act,

B. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

C. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

JONATHAN NUECHTERLEIN
General Counsel

Dated: January 7, 2015

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