

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

LEARNINGRX FRANCHISE CORP.,

and

KEN GIBSON, individually and as an officer of  
LEARNINGRX FRANCHISE CORP.,

Defendants.

Civil Action No. 3<38/ex/337;

[PROPOSED] STIPULATED  
FINAL JUDGMENT AND ORDER  
FOR PERMANENT INJUNCTION  
AND OTHER EQUITABLE  
RELIEF AGAINST DEFENDANTS  
LEARNINGRX FRANCHISE  
CORP. AND KEN GIBSON

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint for Permanent Injunction and Other Equitable Relief against Defendants LearningRx Franchise Corp. and Ken Gibson (“Defendants”), pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), alleging unfair or deceptive acts or practices and false advertisements in violation of Section 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

The Commission and Defendants stipulate to the entry of this Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

## FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants participated in deceptive acts or practices in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, in connection

4. "Advertising" and "promotion" mean any written or verbal statement, illustration, or depiction designed to effect a sale or create interest in the purchasing of products 4.





- A. improves performance at work or in athletics;
- B. delays or protects against age-related decline in memory or other cognitive function, including mild cognitive impairment, dementia, or Alzheimer's disease; or
- C. reduces cognitive impairment or improves cognitive function of individuals with health conditions, including attention deficit hyperactivity disorder (ADHD), autism, traumatic brain injury (TBI), or stroke;

unless the representation is non misleading, and, at the time such representation is made, Defendants possess and rely upon competent and reliable scientific evidence to substantiate that the representation is true. For purposes of this Section, competent and reliable scientific evidence shall consist of human clinical testing of such product that is sufficient in quality and quantity, based on standards generally accepted by experts in the relevant field, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. Such testing shall be (1) randomized, controlled, and blinded to the maximum extent practicable; and (2) conducted by researchers qualified by training and experience to conduct such testing. In addition, all underlying or supporting data and documents generally accepted by experts in the relevant field as relevant to an assessment of such testing as described in the Section entitled Preservation of Records Relating to Competent and Reliable Human Clinical Tests or Studies must be available for inspection and production to the Commission.

II.

PROHIBITED REPRESENTATIONS: OTHER BENEFITS

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offer for sale, sale, or distribution of any Covered Product, are permanently restrained and enjoined from making, expressly or by implication, any representation, other than representations covered under Section I of this Order, about the performance, benefits, or efficacy of Covered Product, including improvement in school grades or scores on standardized academic tests, performance on everyday tasks, increased income, or superiority to academic tutoring, unless the representation is non-misleading, and, at the time of making such representation, Defendants possess and rely upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true.

For purposes of this Section, competent and reliable scientific evidence means tests, analyses, research, or studies (1) that have been conducted and evaluated in an objective manner by qualified persons; (2) that are generally accepted in the profession to yield accurate and reliable results; and (3) as to which, when they are human clinical tests or studies, all underlying or supporting data and documents generally accepted by experts in the field as relevant to an

assessment of such testing as set forth in the Section entitled Preservation of Records Relating to Competent and Reliable Human Clinical Tests or Studies are available for inspection and production to the Commission.

III.

PROHIBITED REPRESENTATIONS: TESTS OR STUDIES

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offer for sale, sale, or distribution of any Covered Product, are permanently restrained and enjoined from misrepresenting, in any manner, expressly or by implication:

- A. The existence, contents, validity, results, conclusions, or interpretations of any test, study, or research; or
- B. That the benefits of any Covered Product are scientifically proven.

IV.

PROHIBITIONS CONCERNING PROVIDING MEANS AND INSTRUMENTALITIES

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offer for sale, sale, or distribution of any Covered Product, are permanently restrained and enjoined from providing to others the means



Family Limited Partnership (September 25, 2015); LearningRx-Colorado Springs North (September 28, 2015); and LearningRx-Colorado Springs South (September 28, 2015).

2. Profit and Loss Statements for LearningRx Franchise Corporation (October 2014-March 2016); LearningRx, Inc. (January 2012-March 2016); Ken Gibson Consulting, LLC (January 2015-April 6, 2016); The Ken Gibson Family Limited Partnership (January 2012-March 2016); and LearningRx-Colorado Springs (January 2012-September 26, 2015; January-March 2016).
3. Balance Sheets for LearningRx Franchise Corporation (August 5, 2015); LearningRx, Inc. (year-end 2012-2014 and August 14, 2015); The Ken Gibson Family Limited Partnership (year-end 2012-2014 and August 14, 2015); and LearningRx-Colorado Springs (year-end 2012-2014 and September 28, 2015).
4. Financial Reports for LearningRx Franchise Corporation (2012-2014).
5. U.S. Income Tax Returns for LearningRx Franchise Corporation (2011-2013); LearningRx, Inc. (2012-2015); The Ken Gibson Family Limited Partnership (2012-2014); and Ken Gibson (2012-2014).
6. Correspondence from Defendants' counsel dated April 14, 2015; October 22, 2015 (including attachment); September 29, 2015; October 26, 2015 (including attachments); February 23, 2016 (including attached spreadsheet); March 4, 2016 (including attached spreadsheet and bank account statements); March 10, 2016;

April 4, 2016 (including attached spreadsheet); April 7, 2016 (including attachments); and April 8, 2016.

7. Letter from Jerry A. Lomax, President, 180 Accounting, regarding LearningRx's financial outlook, dated March 3, 2016.

D. The suspension of the judgment will be lifted as to Corporate Defendant if, upon motion by the Commission, the Court finds that Corporate Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.

E. If the suspension of the judgment is lifted, the judgment becomes immediately due as to Corporate Defendant in the amount specified in Subsection A above (which the parties stipulate only for purposes of this Section represents consumer injury), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

## VI.

### ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER ORDERED that:

- A. Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.
- B. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission to enforce its rights to any

payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

- C. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.
- D. Corporate Defendant acknowledges that its Taxpayer Identification Numbers (Employer Identification Number), which it previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.
- E. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the United States Treasury as disgorgement. Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

VII.

REQUIREMENT TO PROVIDE CUSTOMER LIST

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, are permanently restrained and enjoined from ~~directly~~ indirectly failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress. If a representative of the Commission requests in writing any information related to redress, Defendants must provide it, in the form prescribed by the Commission, within fourteen days.

VIII.

ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants ~~and~~ acknowledge receipt of this Order:

- A. Each Defendant, within seven days of entry of this Order, must submit to the

Delivery must occur within seven days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

- C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must obtain, within thirty days, a signed and dated acknowledgment of receipt of this Order.

Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission;

2. Additionally, Individual Defendant must: (a) identify all telephone numbers and all email, Internet, physical, and postal addresses, including all residences; (b) identify all titles and roles in all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For ten years following entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within fourteen days of any change in the following:

1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of the Corporate Defendant or any entity that Defendant has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Order, including: the creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
2. Additionally, Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which such Defendant performs



X.

#### RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for ten years after entry of the Order, and retain each record for five years. Specifically, Corporate Defendant and Individual Defendant for any business that such Defendant, individually or collectively with any other Defendant, is a majority owner or directly or indirectly controls, must create and retain the following records:

- A. Accounting records showing the revenues from all products or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;
- C. Complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- E. A copy of each advertisement or other marketing material.

XI.

PRESERVATION OF RECORDS RELATING TO COMPETENT AND RELIABLE

E. All documents referring or relating to the sponsorship of the test, including all communications and contracts between any sponsor and the test's researchers.

Provided, however, the preceding preservation requirement shall not apply to a Reliably Reported test, unless the test was conducted, controlled, or sponsored, in whole or in part by: (1) any Defendant; (2) any Defendant's officers, agents, representatives, or employees; (3) any other person or entity in active concert or participation with any Defendant; (4) any person or entity affiliated with or acting on behalf of any Defendant; (5) any supplier of any component contained in the product at issue to any of the foregoing or to the product's manufacturer; or (6) the supplier or manufacturer of such product.

For any test conducted, controlled, or sponsored, in whole or in part, by Defendants, Defendants must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of any personal information collected from or about participants. These procedures shall be documented in writing and shall contain administrative, technical, and physical safeguards appropriate to Defendants' size and complexity, the nature and scope of Defendants' activities, and the sensitivity of the personal information collected from or about the participants.



of the Commission, any necessary cooperation, and any other request from a representative

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Section 204(D) of the Fair Credit Reporting Act, 15 U.S.C. § 1681c(D)

XIII.

DETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for

the purposes of construction, modification, and enforcement of this Order.

SO ORDERED this 18th day of May, 2016.

UNITED STATES DISTRICT COURT

OFFICE OF THE CLERK ■ DISTRICT COURT OF COLORADO

Ken Gibson

4/9/16

/s/ K.G.

KEN GIBSON, individually and as an officer of  
LearningRx Franchise Corp.