UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF WISCONSIN

FEDERAL TRADE COMMISSION Plaintiff, v. SUPPLE, LLC, PETER APATOW, JR., and MONITA POUDYAL, Defendants.	)	Civil Action No. 1:16-cv-01325-WCG

STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), filed its Complaint for Permanent Injunction and Other Equitable Relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b). The Commission and Defendants Supple, LLC, Peter Apatow, Jr., and Monita Poudyal 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 and false advertisements in violation of Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45(a)

nutritional supplement, Supple.

3. Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction.

and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

C. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

D. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

E. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.

F. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

G. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

H. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, "ordinary consumers" includes reasonable members of that group.

2. "Close Proximity" means that the disclosure is very near the triggering representation. For example, a disclosure made through a hyperlink, pop-up, interstitial, or other similar technique is not in close proximity to the triggering representation.

3. "Commerce" means as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

4. "Continuity Program" means any plan, arrangement, or system under which a

consumer receives periodic shipments of products or the provision of services without prior notification by the seller before each shipment or service period, regardless of any trial or approval period allowing the consumer to return or be reimbursed for the product or service.

5. "Corporate Defendant" means Supple, LLC and its successors and assigns.

6. "Covered Product" means any dietary supplement, food, or drug, including, but not limited to, Supple.

7. "Defendants" means the Individual Defendant and the Corporate Defendant, and each of them.

8. "Drug" and "food" mean as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.

9. "Endorsement" means as defined in 16 C.F.R. § 255.0(b).

10. "Essentially Equivalent Product" means a product that contains the identical ingredients, except for inactive ingredients (e.g., binders, colors, fillers, excipients), in the same form and dosage, and with the same route of administration (e.g., orally, sublingually), as the Covered Product; provided that the Covered Product may contain additional ingredients if reliable scientific evidence generally accepted by experts in the field indicates that the amount and combination of additional ingredients is unlikely to impede or inhibit the effectiveness of the ingredients in the Essentially Equivalent Product; and provided further that for purposes of substantiating claims pursuant to this Order, oral ingestion of glucosamine or chondroitin in a liquid or powder shall be deemed the same form and route of administration as oral ingestion of glucosamine or chondroitin in a pill, tablet, or capsule if reliable scientific evidence generally accepted by experts in the field indicates that the difference is unlikely to impede or inhibit the effeen 3s

credibility of any endorsement and that would not reasonably be expected to be discovered by consumers.

13. "Person" means a natural person, an organization, or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

14. "Pre-existing Supple Continuity Program" means any Continuity Program in existence on or before the date of issuance of this Order.

15. "Reliably Reported," for a human clinical test or study ("test"), means a report of the test has been published in a peer-reviewed journal, and such published report provides sufficient information about the test for experts in the relevant field to assess the reliability of the results.

16. The term "including" in this Order means "including without limitation."

I.

PROHIBITED REPRESENTATIONS: PAIN RELIEF AND EFFICACY CLAIMS

IT IS ORDERED that Defendants, Defendants' officers, agents, employees, and all and

permanent y restrained and enjo

by any form of arthritis and fibromyalgia

C. repairs cartilage;

D. rebuilds joints and entire joint structures;

E. restores mobility and joint function to consumers with severe mobility restrictions, such that they can engage in strenuous physical activities like downhill skiing and playing tennis; or

F. cures, mitigates, or treats any disease;

unless the representation is non-misleading and, at the time of making such representation, Defendants possess and rely upon competent and reliable scientific evidence substantiating that the representation is true. For purposes of this Section, competent and reliable scientific evidence shall consist of human clinical testing of the Covered Product, or of an Essentially Equivalent Product, that is sufficient in quality and quantity based on standards generally accepted by experts in the relevant disease, condition, or function to which the representation relates, 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, double-blind, and placebo-controlled; 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 field as relevant to an assessment of such tests 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 Plaintiffs. Defendants shall have the burden of proving that a product satisfies the definition of Essentially Equivalent Product.

studies 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 must be available for inspection and production to the Commission. Defendants shall have the burden of proving that a product satisfies the definition of Essentially Equivalent Product.

III.

PROHIBITED MISREPRESENTATIONS: REGARDING TESTS OR STUDIES

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, and employees, and all other persons in active concert or participation with any of them, who receive

IV.

FDA APPROVED CLAIMS

IT IS FURTHER ORDERED that nothing in this Order shall prohibit Defendants from:

A. Making any representation for any drug that is permitted in labeling for such drug under any tentative or final monograph promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration; and

B. Making any representation for 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 or permitted under Sections 303-304 of the Food and Drug Administration Modernization Act of 1997.

V.

PRESERVATION OF RECORDS RELATING TO COMPETENT AND RELIABLE HUMAN CLINICAL TESTS OR STUDIES

IT IS FURTHER ORDERED that, with regard to any human clinical test or study ("test") upon which Defendants rely to substantiate any claim covered by this Order, Defendants shall secure and preserve all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of the test, including, but not necessarily limited to:

A. All protocols and protocol amendments, reports, articles, write-ups, or other accounts of the results of the test, and drafts of such documents reviewed by the test sponsor or any other person not employed by the research entity;

B. All documents referring or relating to recruitment; randomization; instructions, including oral instructions, to participants; and participant compliance;

C. Documents sufficient to identify all test participants, including any participants who did not complete the test, and all communications with any participants relating to the test; all raw data collected from participants enrolled in the test, including any participants who did not complete the test; source documents for such data; any data dictionaries; and any case report forms;

D. All documents referring or relating to any statistical analysis of any test data, including, but not limited to, any pretest analysis, intent-to-treat analysis, or between-group analysis performed on any test data; and

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 ingredient 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 Corporate Defendant's size and complexity, the nature and scope of Defendants' activities, and the sensitivity of the personal information collected from or

expressly or by implication, including through the use of a product name, Endorsement, depiction, or illustration, about any expert Endorser, consumer Endorser, or user of such product unless they disclose, Clearly and Conspicuously, and in Close Proximity to the representation, a material connection, when one exists, between such Endorser or user and Defendants or any

representations") submitted to the Commission, namely:

1. the Financial Statement of Defendant Supple signed by Supple CEO Peter Apatow on March 1, 2016, including the attachments;
2. the Financial Statement of Defendant Apatow signed on March 8, 2016, including the attachments; and
3. the additional documentation submitted from Defendants' counsel Linda Goldstein and La Toya Sutton to Commission counsel Elizabeth Sanger and Tawana Davis, including: (1) the letter dated February 2, 2016, attaching a schedule showing Supple's monthly sales revenue minus returns for the period 2011-2015; (2) the letter dated February 17, 2016, attaching tax returns for 2013 and 2014 for Defendant Apatow, and balance sheets for Defendant Supple from 2013-2015; and (3) the email dated March 31, 2016, attaching information about Defendant Apatow's defined benefit plan and Defendant Supple's financial activity in the first quarter of 2016.

E. The suspension of the judgment will be lifted as to Defendant Supple or Defendant Apatow if, upon motion by the Commission, the Court finds that such 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.

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

XI.

ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this Order:

A. Each Defendant, within seven days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For ten years after entry of this Order,

report, sworn under penalty of perjury.

1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which the Individual Defendant must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission;

2. Additionally, each Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which such Defendant performs services whe

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, each 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 services, whether as an employee or otherwise, and any entity in which such Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580. The subject line must begin: *FTC v. Sprye., et al*, **[insert X number]**.

XIII.

RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that Defendants must create certain records for 10 years after entry of the Order, and retain each such record for five years. Specifically, for any Defendant and the individual Defendant

Commission, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents, for inspection and copying. The Commission also is authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

XV.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED:

DATED _____ _____
UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED.

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8/18/16

ATTACHMENT A
[On Supple letterhead]

[on envelope]

IMPORTANT NOTICE ABOUT YOUR SUPPLE ACCOUNT

[content of letter, 16-point font]

Dear [Recipient]:

The Federal Trade Commission (FTC), the nation's consumer protection agency, has sued us for deceptive advertising related to our promises that Supple eliminates joint pain caused by serious health conditions.

To settle the lawsuit, we have agreed to:

- stop claiming that Supple provides complete and long-lasting relief from joint pain;
- stop claiming that Supple treats or relieves chronic or severe pain, including chronic or severe pain caused by any form of arthritis and fibromyalgia; and
- stop claiming that Supple repairs cartilage and rebuilds joints unless these claims can be supported by scientific evidence. The FTC says these claims are not currently backed by scientific evidence. You can find out more about the FTC's lawsuit at [URL].

You are free to cancel future shipments of Supple at any time. To cancel your subscription, call us at [number] or email us at [email address]. If we don't hear from you, we will continue to bill your credit card and ship Supple to you on a regular basis.

Sincerely,
[Supple signatory]