

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

MIKEY & MOMO, INC., formerly d/b/a
MIKEY & MOMO LLC, also d/b/a
AROMAFLAGE, a corporation,

MICHAEL FENSTERSTOCK, individually and
as an officer of MIKEY & MOMO, INC., and

MELISSA MATARESE FENSTERSTOCK,
individually and as an officer of MIKEY &
MOMO, INC.

FILE NO. 162-3234

AGREEMENT CONTAINING
CONSENT ORDER

The Federal Trade Commission (“Commission”) has conducted an investigation of certain acts and practices of Mikey & Momo, Inc., and Michael Fensterstock and Melissa Fensterstock, individually and as officers of Mikey & Momo, Inc., collectively “Proposed Respondents”). The Commission’s Bureau of Consumer Protection (“BCP”) has prepared a draft of an administrative Complaint (“draft Complaint”). BCP and Proposed Respondents, individually or through their duly authorized officers, enter into this Agreement Containing Consent Order (“Consent Agreement”) to resolve the allegations in the attached draft Complaint through a proposed Decision and Order to present to the Commission, which is also attached and made a part of this Consent Agreement.

IT IS HEREBY AGREED by and between Proposed Respondents and BCP, that:

1. The Proposed Respondents are:

- a. Proposed Respondent Mikey & Momo, Inc., formerly doing business as Mikey & Momo LLC, also doing business as Aromaflage, a Delaware corporation with its principal office or place of business in Englewood, New Jersey.
- b. Proposed Respondent Michael Fensterstock is an officer of the Proposed Corporate Respondent, Mikey & Momo, Inc. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the Proposed Corporate Respondent. His principal office or place of business is the same as that of the Proposed Corporate Respondent.
- c. Proposed Respondent Melissa Matarese Fensterstock is an officer or member of the Proposed Corporate Respondent, Mikey & Momo, Inc. Individually or in concert with others, she formulates, directs, or controls the policies, acts, or practices of the Proposed

Corporate Respondent. Her principal office or place of business is the same a

8. Each Proposed Respondent agrees to comply with the terms of the proposed Decision and Order from the date it signs this Consent Agreement. Proposed Respondents understand that they may be liable for civil penalties and other relief for each violation of the Decision ~~Order~~ after it becomes final.

MIKEY & MOMO, INC.

FEDERAL TRADE COMMISSION

By: _____
Michael Fensterstock
Chief Executive Officer

By: _____
Karen Mandel
Shira D. Modell
Mary L. Johnson
Attorneys
Division of Advertising Practices

Date: _____

MICHAEL FENSTERSTOCK

APPROVED:

By: _____
Michael Fensterstock, individually and as
an officer of Mikey & Momo, Inc.

By: _____
Mary K. Engle
Associate Director
Division of Advertising Practices

Date: _____

MELISSA MATARESE FENSTERSTOCK

By: _____
J. Reilly Dolan
Acting Director
Bureau of Consumer Protection

By: _____
Melissa Matarese Fensterstock, individually
and as an officer of Mikey & Momo, Inc.

Date: _____

Date: _____

Kristi L. Wolff
Dana B. Rosenfeld
Kelley Drye & Warren LLP
3050 K St. NW, Ste. 400
Washington, DC 20007
Attorneys for Proposed Respondents

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. The Respondents are:
 - a. Respondent Mikey & Momo, Inc., formerly doing business as Mikey & Momo LLC, also doing business as Aromaflage, is a Delaware corporation with its principal office or place of business in Englewood, New Jersey.
 - b. Respondent Michael Fensterstock is an officer of the Corporate Respondent, Mikey & Momo, Inc. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the Corporate Respondent. His principal office or place of business is the same as that of the Corporate Respondent.
 - c. Respondent Melissa Matarese Fensterstock is an officer or member of the Corporate Respondent, Mikey & Momo, Inc. Individually or in concert with others, she formulates, directs, or controls the policies, acts, or practices of the Corporate Respondent. Her principal office or place of business is the same as that of the Corporate Respondent.
2. The Commission has jurisdiction over the subject matter of this proceeding over the Respondents, and the proceeding is in the public interest.

ORDER

Definitions

For purposes of this Order, the following definitions apply:

- A. "Clearly and conspicuously" means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
 1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure ("triggering representation") is made through only one means.
 2. A visual disclosure, by its size, contrast, location, the length of time it appears, and

3. An audible disclosure, including by telephone or streaming video, must be delivered

3. intended to affect the structure or any function of the body of humans or other animals, and

which does not achieve any of its principal intended purposes through chemical action within or on the body of humans or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

- F. "Drug" means: (a) articles recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; (c) articles (other than food) intended to affect the structure or any function of the body of humans or other animals; and (d) articles intended foend (es i)-6 (n)-4 (t)-6 (h)-4 -1
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D. That such product repels mosquitoes or other insects better than or as well as DEET or any other product or ingredient; or

E. About the health benefits, performance, efficacy, safety, or side effects of such product;

unless the representation is misleading, including that at the time such representation made, Respondents possess and rely upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted by experts in the field of insect repellency 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 Provision, "competent and reliable scientific evidence" means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by experts in the field of insect repellency (1) are generally accepted by such experts as accurate and reliable results; and (2) are-7c [(unl)-2 (e)4 (s)-1 (s)-1 (r)-2 (he)4 (-r)3 (e)4 (pr)-7 (e)4 2 t

III. 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”)

IV. Prohibited Representations Regarding Endorsements

IT IS FURTHER ORDERED that Respondents, and Respondents' 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, offering for sale, sale, or distribution of any covered product or any food, drug, device, or cosmetic for which health-related benefit, efficacy, performance, or safety claims are made, must not make any misrepresentation, expressly or by implication, about the status of any endorser or person providing a review of the product, including a misrepresentation that the endorser or reviewer is an independent or ordinary user of the product.

V. Required Disclosures of Material Connections

IT IS FURTHER ORDERED that Respondents, and Respondents' 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, offering for sale, sale, or distribution of any covered product or any food, drug, device, or cosmetic for which health-related benefit, efficacy, performance, or safety claims are made, must not make any representation, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, about any consumer or other endorser of such product without disclosing, clearly and conspicuously, and in close proximity to that representation, any unexpected material connection between such endorser and (1) any Respondent, (2) any other individual or entity affiliated with the product.

For purposes of this Provision, "unexpected material connection" means any relationship that might materially affect the weight or credibility of the testimonial or endorsement and that would not reasonably be expected by consumers.

VI. Acknowledgments of the Order

IT IS FURTHER ORDERED that each Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

VII . Compliance Reports and Notices

IT IS FURTHER ORDERED that Respondents make timely submissions to the Commission:

- A. One hundred and eighty days after the issuance date of this Order, each Respondent must submit a compliance report, sworn under penalty of perjury, which:
 1. Each Respondent 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 Respondent; (b) identify all of that Respondent's businesses, as well as all of their names, telephone numbers, and physical,

- postal email, and Internet address(es) describe the activities of each business including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Respondent (which Individual Respondents must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Respondent complies with each Provision of this Order including a discussion of all of the changes the Respondent made to comply with the Order; and (e) provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.
2. Additionally, each Individual Respondent must: (a) identify all his or her telephone numbers and all his or her physical, postal, email and Internet addresses, including all residences; (b) identify all his or her business activities, including any business for which such Respondent performs services whether as an employee or otherwise and any entity in which such Respondent has any ownership interest; and (c) describe in detail such Respondent's involvement in each such business activity including title, role, responsibilities, participation, authority, control, and any ownership.
- B. For 3 years after the issuance date of this Order, each Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
1. Each Respondent must submit notice of any change in: (a) any designated point of contact; or (b) the structure of Corporation or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: 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 Respondent must submit notice of any change in: (a) name, including alias or fictitious name, or residence address; or (b) title or role in any business activity, including (i) any business for which such Respondent performs services whether as an employee or otherwise and (ii) any entity in which such Respondent has any ownership interest over which such Respondent has direct or indirect control. For each such business activity, also identify its name, physical address, and any Internet address.
- C. Each Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Respondent 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, DC 20580. The subject line must begin: **Mikey & Momo, Inc., C-_____**.

VIII. Recordkeeping

IT IS FURTHER ORDERED that Respondents must create certain records and retain each such record for 5 years. Specifically, Corporate Respondent and each Individual Respondent for any business that such Respondent, individually or collectively with any other Respondents, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. Accounting records showing the revenues from all goods or services sold;

upheld on appeal, then the ~~order~~ will terminate according to this Provision 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 and the date such dismissal or ruling is upheld on appeal.

By the Commission

Donald S. Clark
Secretary

SEAL:
ISSUED: