

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS:

Robert Pitofsky, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle

In the Matter of

NEW VISION INTERNATIONAL, INC., and
NVI PROMOTIONS, L.L.C., corporations, and
JASON P. BOREYKO and
BENSON K. BOREYKO,
individually and as officers of the corporations.

DOCKET NO. C-3856

DECISION AND ORDER

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 respondents with violation 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 of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1.a. Respondent New Vision International, Inc. ("New Vision") is an Arizona corporation with its principal office or place of business at 7762 East Gray Road, Suite 500, Scottsdale, AZ 85260.

1.b Respondent NVI Promotions, L.L.C., is an Arizona corporation with its principal office or place of business at 7762 East Gray Road, Suite 500, Scottsdale, AZ 85260.

1.c. Respondent Jason P. Boreyko is an officer of the corporate respondents. Individually

or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporations. His principal office or place of business is the same as that of the corporations.

1.d. Respondent Benson K. Boreyko is an officer of the corporate respondents. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporations. His principal office or place of business is the same as that of the corporations.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest..

ORDER

DEFINITIONS

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

1. "God's Recipe" shall mean the following New Vision products, as sold or advertised in combination: "OPC Grape Seed Extract with an Herbal Blend," "Essential Minerals," and "Multi-Enzymes with Alfalfa/Barley Sprouts."
2. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
3. Unless otherwise specified, "Respondents" shall mean New Vision International, Inc., and NVI Promotions, L.L.C., corporations, their successors and assigns and their officers; Jason P. Boreyko and Benson K. Boreyko, individually and as officers of the corporations; and each of the above's agents, representatives and employees.
4. "Drug" shall mean as defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.
5. "Food" shall mean as defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.
6. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondents, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of "God's Recipe," or any food, drug or dietary supplement, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that:

- A. Such products can cure, prevent, treat or mitigate Attention Deficit Disorder or its symptoms;
- B. Such products can cure, prevent, treat or mitigate Attention Deficit Hyperactivity Disorder or its symptoms; or
- C. Such products are an effective alternative treatment to the prescription drug Ritalin for Attention Deficit Disorder and Attention Deficit Hyperactivity Disorder; unless, at the time the representation is made,

respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, shall not represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless:

- A. At the time the representation is made, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation; or
- B. Respondents disclose, clearly and prominently, and in close proximity to the endorsement or testimonial, either:
 - 1. what the generally expected results would be for users of the product, or
 - 2. the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

For purposes of this Part, "endorsement" shall mean as defined in 16 C.F.R. 255.0(b).

III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any food, drug or dietary supplement, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, regarding:

- A. The safety of such product; or
- B. The ability of such product to treat, cure, alleviate the symptoms of, prevent, or reduce the risk of developing any disease or disorder; unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

IV.

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

V.

Nothing in this order shall prohibit respondents from 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.

VI.

IT IS FURTHER ORDERED that respondents, and their successors and assigns shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that came into their possession from a distributor or any other source that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VII.

IT IS FURTHER ORDERED that respondents New Vision International, Inc., and NVI Promotions, L.L.C., and their successors and assigns, shall, for a period of five (5) years from the date of service of this order, deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VIII.

IT IS FURTHER ORDERED that respondents New Vision International, Inc., and NVI Promotions, L.L.C., and their successors and assigns, shall:

- A. Deliver a dated and signed notification letter in the form set forth in Appendix A to this order to each independent distributor who receives compensation from New Vision International, Inc., any time during the three (3) months immediately following the date of service of this order. Such notification shall be inserted into the envelope containing the compensation check to be mailed to the independent distributors; and
- B. For a period of five (5) years from the date of service of this order, deliver a dated and signed notification letter in the form set forth in Appendix B to this order to each future independent distributor within thirty (30) days after the person assumes such a position. Respondent New Vision shall be in compliance with this subparagraph with respect to notifying future independent distributors if such notification letter is included in each

starter kit provided to each future distributor.

IX.

IT IS FURTHER ORDERED that respondents New Vision International, Inc., and NVI Promotions, L.L.C., and their successors and assigns, shall:

A. Institute a reasonable program of continuing surveillance adequate to reveal whether the representations of each of respondents' independent distributors conform to the requirements of this order. Such program must include, at a minimum, the following:

1. A requirement that all independent distributors submit advertising to respondents for pre-approval;
2. A mechanism for suspending or terminating business dealings with any independent distributor who fails to submit advertising for pre-approval;
3. A reminder once every six months of the requirement that all advertising must be submitted for pre-approval. Such reminder shall be delivered to each independent distributor who will receive compensation from respondents any time during the month immediately following the date of service of this order, and once during each sixth month thereafter. Such reminder may be inserted into envelopes containing compensation checks, product shipments or company mailings ; and
4. A monthly search of the World Wide Web for independent distributor advertising. Such a search shall use a commercial search engine, and include the search terms "New Vision" and the brand names of each of respondents' products.

B. Promptly investigate any complaint about any independent distributor and maintain records of any such complaint, investigation and disposition of the complaint for five (5) years from the date of the complaint, such records to be furnished to the Commission upon request.

C. Discontinue dealing with any independent distributor once respondents have actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such distributor is making a representation prohibited by any part of this order, unless, upon notification by respondents, such distributor immediately ceases making any such representation. If respondents obtain actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such distributor has not permanently ceased making any representation prohibited by any part of this order, respondents must immediately discontinue dealing with such distributor.

X.

IT IS FURTHER ORDERED that respondents Jason P. Boreyko and Benson K. Boreyko, for a period of five (5) years after the date of issuance of this order, shall each notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include

respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

XI.

IT IS FURTHER ORDERED that respondents New Vision International, Inc., and NVI Promotions, L.L.C., and their successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

XII.

IT IS FURTHER ORDERED that respondents, and their successors and assigns, shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XIII.

This order will terminate on March 3, 2019, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

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 and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Donald S. Clark
Secretary
ISSUED: March 3, 1999

APPENDIX A

[date]

Dear Team Member:

New Vision believes that the best way to promote its products is in strict accordance with federal and state laws. To maintain the integrity of the New Vision program and to ensure compliance with the law, including the Federal Trade Commission Act and the Food, Drug and Cosmetic Act, New Vision has adopted policies and procedures that it will strictly enforce. New Vision would like to remind you of a few of the policies and procedures set forth in the "Team Member Policies and Procedures" section of your Life Planner.

1. No Team Member may make any claim regarding the therapeutic or curative properties of New Vision products, except those officially approved by New Vision. Therefore, unless officially approved in writing by New Vision, no Team Member may make any claims, in advertising, promotional materials, labeling, or presentations to prospective members, that New Vision products are useful in the prevention, diagnosis or cure of any disease or disorder.
2. All advertising for New Vision products must be pre-approved by New Vision. Therefore, no Team Member may promote New Vision Products via the use, production, or sale of any sales aid, tapes, third-party literature, or any other materials unless those items have been either provided by New Vision or approved, in writing, by New Vision.

New Vision has implemented company policies, rules, regulations and compensation plan requirements (as found in the Team Member Kit) to prevent improper, abusive or illegal acts. Any violation of the Company's policies and procedures, especially those related to advertising and promoting the product or the compensation plan, will be grounds for an immediate suspension or termination of the Team Member's relationship with New Vision.

[signature]

APPENDIX B

[date]

Dear New Team Member:

New Vision believes that the best way to promote its products is in strict accordance with federal and state laws. To maintain the integrity of the New Vision program and to ensure compliance with the law, including the Federal Trade Commission Act and the Food, Drug and Cosmetic Act, New Vision has adopted policies and procedures that it will strictly enforce. New Vision would like to underscore for you a few of the policies and procedures set forth in the "Team Member Policies and Procedures" section of your Life Planner.

1. No Team Member may make any claim regarding the therapeutic or curative properties of New Vision products, except those officially approved by New Vision.

Therefore, unless officially approved in writing by New Vision, no Team Member may make any claims, in advertising, promotional materials, labeling, or presentations to prospective members, that New Vision products are useful in the prevention, diagnosis or cure of any disease or disorder.

2. All advertising for New Vision products must be pre-approved by New Vision. Therefore, no Team Member may promote New Vision Products via the use, production, or sale of any sales aid, tapes, third-party literature, or any other materials unless those items have been either provided by New Vision or approved, in writing, by New Vision.

New Vision has implemented company policies, rules, regulations and compensation plan requirements (as found in the Team Member Kit) to prevent improper, abusive or illegal acts. Any violation of the Company's policies and procedures, especially those related to advertising and promoting the product or the compensation plan, will be grounds for an immediate suspension or termination of the Team Member's relationship with New Vision.

[signature]