

111 F.T.C. 387, 1989 WL 1126762

FEDERAL TRADE COMMISSION (F.T.C.)

IN THE MATTER OF
GENERAL NUTRITION, INC.

**CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION
OF SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT**

Docket No. 9175

Complaint Date: ^a March 20, 1984

Decision, February 2, 1989

***1 This consent order requires, among other things, a Pittsburgh, Pa. corporation, that manufactures and sells food supplements, to pay a total of \$600,000 for research, and prohibits respondent from making false and unsubstantiated claims for products. The order also requires respondent to divide the \$600,000 equally among certain organizations for research in nutrition, obesity, or physical fitness.**

Appearances

For the Commission: Robert C. Cheeks.

For the respondent: Robert V. Dunn, in-house counsel, Pittsburgh, Pa. and Robert Ullman, Bass, Ullman & Lustigman, New York City.

AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that General Nutrition Incorporated, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its office and principal place of business located at 921 Penn Avenue, Pittsburgh, Pennsylvania.

PAR. 2. Respondent is now and for some time in the past has been engaged in the manufacture, offering for sale, and sale of various nutritional supplements, such as "Healthy Greens," "Challenge Growth and Training Vita-Pak," "Challenge Free Form Amino Acids," "Life Expander Growth Hormone Releaser," "24 Hour Diet Plan," "L-Arginine," and "L-Ornithine."

PAR. 3. Respondent has caused to be prepared and placed for publication and has caused the dissemination of advertising and promotional material, including, but not limited to, the advertising and promotional materials attached hereto as Attachments A through P, to promote the sale of "Healthy Greens," "Challenge Growth and Training Vita-Pak," "Challenge Free Form Amino Acids," "Life Expander Growth Hormone Releaser," "24 Hour Diet Plan," "L-Arginine," "L-Ornithine" and other nutritional supplements.

PAR. 4. Respondent maintains, and has maintained, a substantial course of business, including the acts and practices set forth herein, in or affecting commerce, as commerce is defined in the Federal Trade Commission Act.

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PAR. 5. In the course and conduct of its business, respondent has disseminated and caused the dissemination of advertisements for nutritional supplements, including “Healthy Greens,” “Challenge Growth and Training Vita-Pak,” “Challenge Free Form Amino Acids,” “Life Expander Growth Hormone Releaser,” “24 Hour Diet Plan,” “L-Arginine,” and “L-Ornithine,” which are “foods” or “drugs” within the meaning of Section 12 of the Federal Trade Commission Act, by various means in or affecting commerce, including inter alia national magazines and newspapers distributed by the mail and across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products.

*2 PAR. 6. Typical statements in said advertisements and promotional materials, disseminated as previously described, but not necessarily inclusive thereof, are found in advertisements and promotional materials attached hereto as Attachments A through P. Specifically, the aforesaid advertisements and promotional materials contain the following statements:

A. In regard to “Healthy Greens”:

- (1) “What do these vegetables have to do with cancer? They may help reduce the risk of developing it, says the National Research Council.”
- (2) “The hedge against cancer.”
- (3) “And judging from the NRC study for the National Cancer Institute ... just possibly your best hedge against cancer.”
- (4) “By taking Healthy Greens you may reduce your chances of getting cancer.”
- (5) “... [F]ortified by vitamins A, C, and E ... Research is now under way to determine the full benefits of these nutritional factors. Although the final results are not in, early reports indicate they play important roles in reducing the risk of cancer.”
- (6) “Can these 60 tablets with 6 vegetables and 5 nutrients help reduce the risk of cancer?”
- (7) “The National Cancer Institute asked the National Research Council (NRC) to study the question of diet and cancer.... The committee ... recommended that we increase the amounts of fruits, whole grain cereals and vegetables, especially vegetables rich in beta-carotenes like cabbage, brussel sprouts, cauliflower, and broccoli.... HEALTHY GREENS combines cabbage, spinach, brussel sprouts, carrots, cauliflower, and broccoli.... Healthy Greens is not a cancer cure, but there is good sense in decreasing risks.”
- (8) “[T]he evidence is coming in, and it all points to Healthy Greens as being an important ingredient to your well-being, and that of your family and friends.”
- (9) “[M]illions of people can now help safeguard their well-being with the greens that the National Research Council recommends we eat more of.”
- (10) “Vitaly Important Government Study. Diet, Nutrition, and Cancer point the way for you to reduce cancer.... Diet, Nutrition and Cancer, Committee on Diet, Nutrition, and Cancer, Assembly of Life Sciences, National Research Council. National Academy Press, Washington, D.C. 1982.”

B. In regard to “Challenge Growth and Training Vita-Pak” or “Challenge Free Form Amino Acids”:

- (1) “STEROID FREE! Natural Plan To Help YOU Achieve Maximum Muscle Mass & Body Size!”

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- (2) “Challenge Is For All Serious Athletes Who Want A Steroid Alternative.”
- (3) “[The] ornithine and arginine [components are] ... often called Growth Hormone Releasers; important to the creation of anabolic activity in the body.”
- (4) “[A] scientific plan for all serious athletes who are looking for a sensible alternative to the danger of steroids.”
- (5) “[A]dult formulation of nutritional supplements constructed to help the athlete get maximum muscle mass and body size.”
- *3 (6) “The bigger you want to get, the faster you want to run, the better the fuel you need. And when you're serious, you'll seriously consider Challenge Growth and Training Vita-Pak.”
- (7) “All the strengths of steroid—none of the weaknesses.”

C. In regard to “Life Expander Growth Hormone Releaser”:

- (1) “Weight Control & Reduction Without Dieting! ... Burn Fat Away!” “Because Growth Hormone Releaser works by attacking the fat in your body, it's a totally different, revolutionary method of weight control and reduction. You can eat normally! You don't have to worry about special foods, calorie counting, fad diets or starving yourself. Growth Hormone Releaser does the work for you!” “Certain amino acids—L-Ornithine, L-Arginine, and L-Tryptophane—have the ability to stimulate body production of the Growth Hormone. By taking Growth Hormone Releaser, you supplement your body's intake of these three important amino acids. Together they form a potent combination of ingredients which have been known to stimulate the release of Growth Hormone that directs your body to burn fat for needed energy. Obviously, a very desirable factor when you're trying to lose weight!”
- (2) “Growth hormone is also important in building muscle tissue—very important in the healing process or for those interested in body building.”
- (3) “Growth Hormone Releaser,” is part of the name of the product.”

D. In regard to the “24 Hour Diet Plan”;

- (1) “Lose Weight Even As You Sleep.” “Amino FB burns away fat while you sleep. These amino acid tablets taken before bedtime have been known to stimulate the production of growth hormones which direct your system to burn fat for energy instead of protein or carbohydrates—a reversal of the usual process. This action is continuously effective, even during sleep.”
- (2) “The 24 Hour Diet Plan Pack contains directions and 42 easy-to-use packets that make weight control a physical science, not a challenge for your will power.”
- (3) “The **GNC** Research Staff had a difficult assignment ... to develop a weight loss program that puts its demands on science rather than human will power. They screened all the most effective plans and aids now known, and combined the best of the best. Although nobody expected a miracle, a lot of people are describing this three-part program as just that.”

E. In regard to “L-Ornithine” and “L-Arginine”:

- (1) “L-Ornithine and L-Arginine stimulate the body's production of growth hormone and growth hormone has some pretty amazing functions in the body.

Growth Hormone Directs Body To Burn Fat!

Growth hormone moves large amounts of fatty acids out of storage in fat tissue. This fat is then burned by the body as the main source of energy for body cells. Therefore, body fat is burned saving valuable muscle protein and stored carbohydrate.

Growth Hormone Helps Carbohydrate Energy Storage

Many athletes know that glycogen, the storage form of carbohydrate energy, is valuable for endurance type activities. Growth hormone, by directing the body to burn fat, 'spares' the breakdown of glycogen."

*4 (2) "Arginine is one of the nutritionally essential amino acids that is a 'building block' of protein. But even more important is the scientific discovery that it can stimulate the release of growth hormone! Growth hormone is important in the healing process—a process of obvious importance to long life."

F. In regard to arginine/ornithine-based nutrient supplements in **GNC's** "Life Expander" series ["Life Expander Arginine Powder" and "Life Expander Growth Hormone Releaser"]:

(1) "A totally new, healthful and exciting product series designed to take advantage of scientific discoveries that could add quality years to your life!"

(2) "The Life Expander Series is a specific program that provides a revolutionary approach to the preservation and expansion of human life. It is a total program for anyone truly interested in doing something for themselves to promote a quality, maximum, healthful long life."

PAR. 7. Through the use, inter alia, of the statements referred to in paragraph six, and other representations contained in advertisements or promotional materials not specifically set forth herein, respondent has represented, and now represents, directly or by implication, that:

A. The findings of the National Research Council's Diet, Nutrition and Cancer Report support the claim that use of "Healthy Greens," or food supplements of dehydrated vegetables such as "Healthy Greens," is associated with a reduction in the incidence of certain cancers in humans.

B. Research indicates that Vitamin E plays an important role in reducing the risk of cancer.

C. The use of "Healthy Greens" is associated with a reduction in the incidence of certain cancers in humans.

D. Vitamin E plays an important role in reducing the risk of cancer.

E. Ornithine, arginine or tryptophane, taken by mouth in the dosages found in respondent's products, will stimulate the body to produce or release significantly greater amounts of human growth hormone in users than in non-users.

F. Users of the "24 Hour Diet Plan" will experience greater weight loss during sleep than non-users.

G. Users of "Life Expander Growth Hormone Releaser" will have a greater release of human growth hormone in the body than non-users.

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H. Those “Life Expander” series nutritional supplements or other foods containing ornithine, arginine, or tryptophane can extend or prolong life or retard aging.

I. Users of the “Challenge Growth and Training Vita-Pak” and “Challenge Free Form Amino Acids” will achieve results similar to or superior to the kind generally believed by bodybuilders to be achievable through the use of anabolic steroids. i.e., rapid or substantial muscular development.

PAR. 8. In truth and in fact:

A. The representation referred to in paragraph seven A is false for the reason, inter alia, that the findings of the Diet, Nutrition and Cancer Report do not support the claim that the use of “Healthy Greens” or food supplements of dehydrated vegetables such as “Healthy Greens” is associated with a reduction in the incidence of certain cancers in humans.

*5 B. The representation referred to in paragraph seven B is false for the reason, inter alia, that no research indicates that Vitamin E plays an important role in reducing the risk of cancer.

C. The representation referred to in paragraph seven E is false for the reason, inter alia, that ornithine, arginine or tryptophane, taken by mouth in the dosages found in respondent's products will not stimulate the body to produce or release significantly greater amounts of human growth hormone in users than in non-users.

D. The representation referred to in paragraph seven F is false for the reason, inter alia, that users of the “24 Hour Diet Plan” will not experience greater weight loss during sleep than non-users.

E. The representation referred to in paragraph seven G is false for the reason, inter alia, that users of “Life Expander Growth Hormone Releaser” will not have a greater release of human growth hormone in the body than non-users.

F. The representation referred to in paragraph seven H is false for the reason, inter alia, that those “Life Expander” series nutritional supplement/foods containing ornithine, arginine, or tryptophane cannot extend or prolong life or retard aging.

G. The representation referred to in paragraph seven I is false for the reason, inter alia, that users of the “Challenge Growth and Training Vita-Pak” and “Challenge Free Form Amino Acids” will not achieve results similar to or superior to the kind generally believed by bodybuilders to be achievable through the use of anabolic steroids, i.e., rapid or substantial muscular development.

PAR. 9. Through the use, inter alia, of the statements referred to in paragraph six, and other representations contained in advertisements or promotional materials not specifically set forth herein, respondent has represented, directly or by implication, that it possessed and relied upon a reasonable basis for the representations set forth in paragraph seven C through seven I, at the time the initial dissemination of the representations and each subsequent dissemination.

PAR. 10. In truth and in fact, at the time of the initial dissemination of the representations and each subsequent dissemination, respondent did not possess and rely upon a reasonable basis for making such representations. Therefore, respondent's making and dissemination of said representations as alleged, constituted and now constitute unfair and deceptive acts or practices.

PAR. 11. The use by respondent of the aforesaid statements, representations, acts, and practices, directly or by implication, and the placement in the hands of others of the means and instrumentalities by and through which others may have used the aforesaid statements, representations, acts, and practices, have had and now have the capacity and tendency to mislead consumers into the erroneous and mistaken belief that said statements and representations were and are true and complete and to induce such persons to purchase “Healthy Greens,” “Challenge Growth and Training Vita-Pak,” “Challenge Free Form Amino Acids,” “Life

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Expander Growth Hormone Releaser,” “24 Hour Diet Plan,” “L–Arginine” and “L–Ornithine,” by reason of said erroneous and mistaken belief.

*6 PAR. 12. The aforesaid acts or practices of respondent, herein alleged as deceptive, were and are to the prejudice and injury of the public and constituted and now constitute unfair and deceptive acts or practices in or affecting commerce and false advertisements in violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended.

Commissioners Oliver and Azcuenaga were recorded as voting in the negative.

ATTACHMENT A

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

ATTACHMENT B

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

ATTACHMENT C

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

ATTACHMENT D

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

ATTACHMENT E

DEAR

CAN OUR ALL NEW HEALTHY GREENS WITH SIX VEGETABLES AND FIVE NUTRIENTS HELP YOU REDUCE THE RISK OF CANCER READ ON.

MAYBE MOM WAS RIGHT AFTER ALL HOW MANY TIMES DO YOU REMEMBER HEARING WHEN YOU WERE A KID EAT YOUR VEGETABLES THEY'LL MAKE YOU HEALTHY AND STRONG OR EAT YOUR SPINACH IT GIVES YOU MUSCLES....

WELL, AFTER TWO YEARS MR WILLIAMSON, AND IMPORTANT GOVERNMENT STUDY HAS REPORTED A SERIES OF RECOMMENDATIONS THAT SHOW STRONG EVIDENCE, THAT WHAT WE EAT DURING OUR LIVES DOES IN FACT INFLUENCE THE CHANCES OF DEVELOPING CERTAIN TYPES OF CANCER. THIS IMPORTANT GOVERNMENT STUDY REQUESTED BY THE NATIONAL CANCER INSTITUTE SAID IT RECOMMENDS WE INCREASE AMONG OTHER THINGS OUR AMOUNTS OF SPECIFIC VEGETABLES TO HELP SAFEGUARD OUR BODIES AGAINST THE RISKS OF CERTAIN FORMS OF CANCER. THEY ARE CABBAGE, BRUSSELS SPROUTS, CAULIFLOWER, BROCCOLI, CARROTS, AND SPINACH MOM WAS RIGHT.

REALIZING THE IMPORTANCE OF THIS STUDY, WE TOOK ALL THESE VEGETABLES, AND COMBINED ALL OF THEM INTO POTENT EASY TO TAKE TABLETS CALLED HEALTHY GREENS. WE ALSO FORTIFIED THEM WITH VITAMINS C, E, AND A PLUS SELENICM AND BETA CAROTENE. MR WILLIAMSON, HEALTHY GREENS IS THE EASY WAY TO GET THE GREENS YOU NEED. MOM SAID EAT YOUR VEGETABLES AND NOW SCIENCE

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HAS PROVEN HER RIGHT. ORDER YOUR HEALTHY GREENS NOW ... 60 TABLET BOTTLE NO. 0760-11 IS ONLY \$12.95 ... THEY ARE IMPORTANT ...

ATTACHMENT F

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

ATTACHMENT G

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

ATTACHMENT H

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

ATTACHMENT I

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ATTACHMENT J

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ATTACHMENT P

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

a. An amended complaint was issued by the Commission March 14, 1988.

DECISION AND ORDER

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The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

*7 The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with § 3.25(c) of its Rules; and

The Commission having considered the matter 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 § 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. General Nutrition, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 921 Penn Avenue, in the City of Pittsburgh, Commonwealth of Pennsylvania.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That respondent General Nutrition Incorporated, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of "Healthy Greens," or any substantially comparable product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, contrary to fact, that any finding of the National Research Council, National Cancer Institute, American Cancer Society, or U.S. Government, or any finding contained in the Report entitled Diet, Nutrition, and Cancer, supports the claim that use of such product is associated with a reduction in incidence of any type of cancer.

II.

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting in any manner, directly or by implication, the purpose, content, sample, reliability, results or conclusions of any scientific test, research article, or any other scientific opinion or data, with respect to such product's ability to cure, treat, prevent or reduce the risk of developing any disease in humans.

III.

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It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of “Challenge Growth and Training Vita-Pak,” “Challenge Free Form Amino Acids,” “Life Expander Growth Hormone Releaser,” or “24 Hour Diet Plan,” or any other free form amino acid nutrient supplement containing arginine, ornithine, tryptophane or a combination thereof, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

*8 A. Any such nutrient supplement will stimulate greater production or release of human growth hormone in users than in non-users;

B. Any such nutrient supplement will aid a user in achieving greater or faster muscular development than a non-user or will aid a user in achieving muscular development similar to or superior to the kind generally believed by bodybuilders to be achievable through the use of anabolic steroids, e.g., rapid or substantial muscular development;

C. Any such nutrient supplement will burn away fat or otherwise alter human metabolism to use up or “burn” stored fat, rather than stored carbohydrates, or will aid a user in attaining greater weight loss during sleep than a non-user; or

D. Any such nutrient supplement will expand, extend, or prolong life, or retard aging.

IV.

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary division or other device, do forthwith cease and desist from using the expression “Growth Hormone Releaser,” or other expressions of similar meaning as a brand name or description for any product, unless such product stimulates the body to produce, or the pituitary gland to release, significantly greater amounts of human growth hormone in users than in non-users and, at the time of using such expression, respondent possesses and relies upon reliable and competent scientific evidence that substantiates the representation. “Reliable and competent scientific evidence” shall mean for purposes of paragraphs IV and V of this order those tests, analyses, research, studies, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession or science to yield accurate and reliable results.

V.

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale or distribution of any product in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication:

A. Concerning such product's ability to cure, treat, prevent or reduce the risk of developing any disease in humans;

B. That such product assists or enables a user to lose or control weight or fat, or suppress appetite;

C. That such product expands, extends, or prolongs life or retards aging; or

D. That such product aids a user in achieving greater or faster muscular development than a non-user or aids a user in achieving greater endurance, strength, power or stamina or shorter exercise recovery or recuperation time than a non-user.

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unless, at the time of making such representation (V A–D above), respondent possesses and relies upon reliable and competent scientific evidence that substantiates the representation.

*9 Provided however, that respondent shall not be liable under this paragraph for any representation contained on a package label or package insert for a product that meets all of the following conditions:

1. The product is manufactured and distributed by a third party and is not manufactured or distributed exclusively for respondent;
2. The product is generally available at competing retail outlets;
3. The product is not identified with respondent and does not contain respondent's name or logo;
4. The product was not developed or manufactured at the instigation or with the assistance of respondent; and
5. The product representation is not otherwise advertised or promoted by respondent.

VI.

It is further ordered, That respondent shall pay, in lieu of redress, the aggregate sum of six hundred thousand dollars (\$600,000.00) divided in three equal parts to the American Diabetes Association, Inc., the American Cancer Society, Inc., and the American Heart Association. These funds shall be designated for the support of research or fellowships in the fields of nutrition, obesity or physical fitness. Respondent shall make payment in three installments, each installment to be divided equally among the recipients: the first installment in the amount of \$300,000.00 within 30 days of the date of service of this order; the second in the amount of \$200,000.00 within one year and 30 days of the date of service of this order; and, the third in the amount of \$100,000.00 within two years and 30 days of the date of service of this order. In the event any default in payment occurs and continues for 10 days beyond the due date of payment and the giving of notice of such default, the entire remaining amount shall then become due and payable.

VII.

It is further ordered, That for three (3) years after the last date of dissemination of the representation, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying copies of:

1. All materials that were relied upon by respondent in disseminating any representation covered by this order; and
2. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question any representation made by respondent that is covered by this order.

VIII.

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

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IX.

It is further ordered, That respondent shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

X.

*10 It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions and to all distributors of products manufactured or marketed by respondent.

Commissioner Azcuenaga dissenting. Commissioner Machol was recorded as not participating.

DISSENTING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

I dissent from the Commission's decision to accept a proposed consent order with General Nutrition, Inc. ("GNC") because the order leaves GNC free to sell products that it knows are deceptively labeled.

The proviso to Paragraph V of the consent order provides that GNC would not necessarily be liable for unsubstantiated claims appearing on the labels of the products sold at its stores even if it was clear that the company had actual knowledge that those claims were unsubstantiated. I believe that the order should hold GNC liable if it knows that the packaging of these products contains unsubstantiated claims.

Mary L. Azcuenaga
Commissioner

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