

[REDACTED]

of Default Judgment Against Defendants is hereby granted, and **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** as follows:

WITNESSETH

[REDACTED]

1. This Court has jurisdiction over the subject matter of this case and the parties hereto.

2. Venue and service of process are proper.

3. Defendants ~~have engaged in activities in or affecting commerce~~ as "commerce"

[REDACTED]

stipulated that they "received service of the Complaint, Summons and TRO[.]" Defendants further stipulated that this Court has subject matter jurisdiction and personal jurisdiction over Defendants.

8. On November 6, 2007, the Court adopted the parties' proposed discovery dates and issued a scheduling order. The Court's scheduling order required that initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) be tendered on or before November 6, 2007. On December 10, 2007, Magistrate Judge Denlow granted the FTC's motion to compel Defendants to tender their initial disclosures, and ordered Defendants to serve their initial disclosures on or before December 19, 2007 or be barred from calling any witnesses or producing any documents in defense of this case. Defendants still have not tendered their initial disclosures.

9. On January 8, 2008, the Court granted the FTC's motion for entry of default. The FTC is therefore entitled to a default judgment pursuant to Rule 55(b) of the Federal Rules of Civil Procedure.

- (A) clear and conspicuous notice of the opportunity to decline to receive further commercial electronic mail messages from the sender; and/or
- (B) a functioning return e-mail address or other internet-based mechanism, clearly and conspicuously displayed, that a recipient could use to submit a reply requesting not to receive future commercial e-mail from Defendants, and that remains capable of receiving such messages for no less than 30 days after the transmission of the original message.

in violation of Sections 5(a)(5)(A)(ii) and/or 5(a)(3) of CAN-SPAM, 15 U.S.C. § 7704(a)(5)(A) and/or § 7704(a)(3).

15. The Court further finds that Defendants have initiated the transmission of commercial e-mail messages to protected computers that fail to provide the senders' valid physical postal address in violation of Section 5(a)(5)(A)(iii) of CAN-SPAM, 15 U.S.C. § 7704(a)(5)(A)(iii).

16. The Court further finds that Defendant McDaid is the sole officer of Sili Neutraceuticals and has formulated, directed, controlled or participated in the acts or practices set forth above. Defendant McDaid is thus individually liable for the violations attributed to Defendant Sili Neutraceuticals described above. *See FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 573-74 (7th Cir. 1989).

17. It is proper in this case to issue a permanent injunction prohibiting Defendants from making, or assisting in making, false or misleading statements or representations with the advertising, marketing, offering for sale, or sale of any good or service, or from further violations of CAN-SPAM. *See FTC v. Febre*, 128 F.3d 530, 534 (7th Cir. 1997); *Amy Travel*, 875 F.2d at 572.

18. It is proper in this case to enter equitable monetary relief against Defendants for

consumer injury caused by Defendants' violation of the FTC Act for the deceptive sale of

[REDACTED]

Hoodia and HGH Products through illegal spam email messages. *See Febre*, 128 F.3d at 534, 537 (court may “order repayment of money for consumer redress as restitution” and may order

disbursement of all net proceeds to consumers if the defendant from being unjustly enriched by the

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reasonably usable form. A draft or non-identical copy is a separate document within the meaning of this term.

5. **“Electronic mail address”** “means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the ‘local part’) and a reference to an Internet domain (commonly referred to as the ‘domain part’)”

redaction cannot disclose to which an electronic mail message can be sent or delivered” 15

whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby restrained and enjoined from making, or assisting others in making, expressly or by implication, including through the use of a trade name or endorsement, any false

~~misrepresentation, false representation, or omission in connection with the production,~~

advertising, promotion, offering for sale, sale or provision of any Hoodia- or HGH-related Products, or any other products or services, including, but not limited to:

- A. Misrepresenting that the Hoodia Products cause rapid and substantial weight loss, including as much as forty pounds in a month;
- B. Misrepresenting that the Hoodia Products cause users to lose safely three or more pounds per week for multiple weeks;
- C. Misrepresenting that the Hoodia Products cause permanent weight loss;
- D. Misrepresenting that scientific research establishes that the Hoodia Products cause substantial weight loss;
- E. Representing that the HGH Products contain human growth hormone and/or cause a statistically significant and clinically meaningful increase in a consumer's growth hormone levels;
- F. Misrepresenting that the HGH Products will turn back or reverse the aging

H. Making any representation about the health benefits, performance, efficacy, or safety of any product unless, at the time of making such representation, Defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation;

I. Misrepresenting any other fact material to a consumer's decision to purchase any product; and

J. Assisting others who violate any provision of Paragraphs A through I of this Section.

II.

PROHIBITIONS AGAINST VIOLATIONS OF CAN-SPAM

IT IS FURTHER ORDERED that Defendants and their officers, agents, servants

employees, and attorneys, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby restrained and enjoined from violating, or assisting others in violating, the provisions contained in Sections 5 and 6 of CAN-SPAM, as currently promulgated or as it may hereafter be amended, or any rule, regulation, or requirement adopted pursuant thereto,

C. Fails to include a clear and conspicuous notice of the opportunity to decline to

receive further electronic mail messages from the sender; or

D. Fails to include a valid physical postal address of the sender.

III.

EQUITABLE MONETARY RELIEF

IT IS FURTHER ORDERED that

A. Judgment is hereby entered against Defendants, jointly and severally, in the amount of two million, five hundred and sixty nine thousand, eight hundred and fifty one dollars and seventy seven cents (\$2,569,851.77) as equitable monetary relief for violations of the FTC Act and the CAN-SPAM Act. This monetary judgment shall become immediately due and payable by Defendants upon entry of this Order, and

shall have no right to challenge the FTC's choice of remedies under this Subsection. The Commission, in its sole discretion, may use a designated agent to administer consumer redress. This judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.

IV.

ASSETS HELD BY THIRD PARTIES

IT IS FURTHER ORDERED that Defendants shall have no right, title and interest to approximately \$300,000 in assets frozen pursuant to Section V of the Stipulated Preliminary Injunction entered by the Court on August 27, 2007, including assets held by Bank of America, Central Bancard, Citadel Federal Credit Union, PayPal, and Scottrade. In order to partially satisfy the monetary judgment set forth in Section III above, any financial or brokerage institution, escrow agent, title company, commodity trading company, automated clearing house,

affirmed under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business

operation of Defendant's business. Defendant is directed to inspect the

business operation;

B. The Commission is authorized to monitor compliance with this Order

by all other lawful means, including but not limited to the following:

1. obtaining discovery from any person, without further leave of Court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36 and 45; and
2. posing as consumers and suppliers to Defendants, any of Defendants' employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice; and

C. Defendants shall permit representatives of the Commission to interview any

independent contractor, representative, agent, or employee who

VI.

COMPLIANCE REPORTING BY DEFENDANTS

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this

Order may be monitored:

A. For a period of three (3) years from the date of entry of this Order

1. Defendant Brian McDaid shall notify the FTC of the following:

- (a) Any changes in residence, mailing addresses and telephone numbers, within ten (10) days of the date of such change;

(b) Any change in employment status (including self-employment)

and any change in the ownership in any business entity within ten (10) days of such change. Such notice shall include the name and address of each business Defendant is affiliated with or employed by, creates or forms, or performs services for; a statement of the

emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, provided that with respect to any such change the Commission

about what Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order, Defendants shall provide a written report to the Commission, sworn to under penalty of

perjury, setting forth in detail the measures and forms in which each Defendant has

- (a) A copy of each acknowledgment of receipt of this Order obtained by Defendants pursuant to Section VIII; and

(b) Any other changes required to be reported under paragraph A

of this Section.

- C. For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director of Enforcement
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
Re: *FTC v. Sili Neutraceuticals*, 07 C 4541 (N.D. Ill.);

- D. For purposes of the compliance reporting required by this Section, representatives of the Commission are authorized to communicate directly with Defendant, unless Defendant indicates that he is represented by counsel and provides the name and address of such counsel to the Commission.

VII.

MONITORING COMPLIANCE WITH SALES PERSONNEL

IT IS FURTHER ORDERED that Defendants, in connection with any business in

- A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Sections I and II of this Order;
- B. Failing to investigate promptly and fully any consumer complaint received by any business to which this Section applies; and
- C. Failing to take corrective action with respect to any sales person whom any Defendant determines is not complying with this Order, which may include training, disciplining, and/or terminating such sales person.

VIII.

DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, Defendants shall deliver a copy of this Order as directed below:

A. Corporate Defendant Defendant SUN Microsystems, Inc. Defendant Sili

this Order to all of its principals, officers, directors, and managers. Defendant Sili

copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon the Defendant. For

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C. **Defendant as employee or non-control person:** For any business where Defendant McDaid is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, the Defendant must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

D. Defendants must secure a signed and dated statement acknowledging receipt of

[REDACTED]

Accounting records that reflect the cost of goods or services sold, revenues

generated, and the disbursement of such revenues;

8. Names and telephone numbers of each

person employed in connection with such business, including as an independent

XI.

ENTRY OF THIS JUDGMENT

IT IS FURTHER ORDERED that, as there is no just reason for delay of entry of this judgment, pursuant to Fed. R. Civ. P. 54(b), the clerk shall enter this Order immediately.

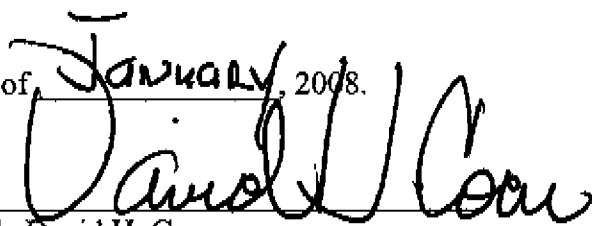
XII.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction over this matter

for all purposes.

IT IS SO ORDERED, this 23rd day of January, 2008.



Honorable David H. Coar
United States District Judge

Respectfully submitted by:

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