

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

))
FEDERAL TRADE COMMISSION and))
STATE OF MAINE,))
	)	Case No.	F Y 17
Plaintiffs,))
))
v.	)	STIPULATED FINAL JUDGMENT)
	)	AND ORDER FOR PERMANENT)
	)	INJUNCTION AND OTHER)
XXL IMPRESSIONS LLC a limited liability	)	EQUITABLE RELIEF AS TO)
company, also d/b/a BETTER HEALTH	)	DEFENDANT BRAZOS MINSHEW,)
NUTRITIONALS,	)	A/K/A SAMUEL BRANT)
))
JEFFREY R. POWLOWSKY, individually))
and as an owner and officer of XXL))
IMPRESSIONS LLC,))
))
J2 RESPONSE L.L.P., a limited liability))
))
	)	SYNERGIXX, LLC, a limited liability)
	)	company, also d/b/a CTF MEDIA,)
))
	)	CHARLIE R. FUSCO, individually)
	)	and as an owner and officer of SYNERGIXX,)
	)	LLC,)
))
	)	RONALD JAHNER, and)
))
	)	BRAZOS MINSHEW a/k/a SAMUEL BRANT,)
))
	)	Defendants.)
))
))

Plaintiffs, the Federal Trade Commission (“FTC” “Commission”) and the State of Maine, as represented in this matter by the Office of the Attorney General of Maine (“Maine AG”) (“Plaintiffs”), filed a Complaint for Permanent Injunction and Other Equitable Relief against Defendants pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and pursuant to Section 209 of the Maine Unfair Trade Practices Act (“Maine UTPA”), ME. REV. STAT. tit. 5, § 209, to obtain permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants’ acts or practices in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, and in violation of Section 207 of the Maine UTPA, ME. REV. STAT. tit. 5, § 207, in connection with the labeling, advertising, marketing, distribution, and sale of products that purported to provide

3. Defendant Minshew neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Order. Defendant Minshew admits the facts necessary to establish jurisdiction only for purposes of this action.

4. Defendant Minshew waives any claim that he may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agrees to bear his own costs and attorney fees.

5. Defendant Minshew and Plaintiffs waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

1. "Defendant" means Brazos Minshew, a/k/a Samuel Brant.
2. "Covered Product" means any Dietary supplement, Food, or Drug, including but not limited to CogniPrin.
3. "Dietary supplement" means:
 - A. any product labeled as a dietary supplement or otherwise represented as a dietary supplement; or
 - B. any pill, tablet, capsule, powder, softgel, gelcap, liquid, or other similar form containing one or more ingredients that are vitamin, mineral, herb or other botanical, amino acid, probiotic, or other dietary substance for use by humans to supplement the diet by increasing the total dietary intake, or a concentrate, metabolite, constituent, extract, or combination of any ingredient described above, that is intended to be ingested, and is not

represented to be used as a conventional food or as a sole item of a meal or the diet.

4. “Drug” means: (1) 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; (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; (3) articles (other than food) intended to affect the structure or any function of the body of humans or other animals; and (4) articles intended for use as a component of any article specified in (1), (2), (3); but does not include devices or their components, parts, or accessories.

5. “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 (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.

6. “Food” means: (1) any article used for food or drink for humans or other animals; (2) chewing gum; and (3) any article used for components of any such article.

7. “Including” means including but not limited to.

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

I.

PROHIBITED REPRESENTATIONS: MITIGATION OF COGNITIVE DECLINE,
MEMORY IMPROVEMENT, AND DISEASE CLAIMS

are randomized, double-blind, and placebo-controlled human clinical testing of the Covered Product, or of an Essentially Equivalent Product, when

Defendant's officers, agents, employees, and attorneys, or all other persons in active concert or participation with any of them, from:

- A. For any drug, making any representation that is approved 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. For any product, making a representation that is specifically authorized for use 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

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- A. Competent and reliable scientific evidence required for the particular representation, as set forth in Sections I and above; and
- B. An actual exercise of the represented expertise, in the form of an evaluation or test of such product conducted and evaluated in an objective manner and which is generally accepted in the relevant profession to yield accurate and reliable results

VI.

COOPERATION WITH FTC AND MAINE

IT IS FURTHER ORDERED that Defendant must fully cooperate with representatives of the Commission, the Maine AG, and any of their representatives in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. Defendant must provide truthful and complete information, evidence, and testimony. Defendant must appear for interviews, discovery, hearings, trials, and any other proceedings that a representative of the Commission or the Maine AG may reasonably request upon 5 days' written notice, or other reasonable notice, at such places and times as a

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, Defendant must report any change~~(a)~~: names, including aliases or fictitious name~~s~~ or residence address~~es~~, or (b) titles or roles in any business activity, including any business for which Defendant performs services whether as an employee or otherwise and any entity in which Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.
- C. For a period of 10 year~~s~~, Defendant must submit to the Commission and the Maine AG notice of the filing of any bankruptcy petition, insolvency proceeding, or similar~~ly~~ proceeding by or against Defendant within 14 days of its filing.
- D. Any submission to the Commission or the Maine AG 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, N.W., Washington, D.C. 20580.

The subject line must begin with "FTC v. XXL Impressions LLC et al," and the number X_____.

- F. Unless otherwise directed by a Maine AG representative in writing, all submissions to the Maine AG pursuant to this Order must be sent by overnight courier (not the U.S. Postal Service) to: Office of the Attorney General of Maine, Consumer Protection Division, 111 Sewall Street, 6

Order, including all submissions to the Commission and the Maine AG

- E. A copy of each unique advertisement or other marketing material.

X.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant's compliance with this Order:

- A. Within 14 days of receipt of a written request from a representative of the Commission or the Maine AG, 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. Plaintiffs are also 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 Plaintiffs are authorized to communicate directly with Defendant. Defendant must permit Plaintiffs' representatives to interview any employee or other person affiliated with Defendant who has agreed to such an interview. The person interviewed may have counsel present.
- C. Plaintiffs may use all other lawful means, including posing, through their representatives, as consumers, suppliers, or other individuals or entities, to Defendant or any individual or entity affiliated with Defendant 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-~~Nothing~~ in this Order limits the Maine AG's lawful use of compulsory process, pursuant to section 211 of the Maine UTPA, ME. REV. STAT. tit. 5, § 211. Defendant hereby consents to the disclosure by the Maine AG to any law enforcement agency and any representative of the State of Maine of any material~~formation~~ information produced by Defendant pursuant to section 211 of the Maine UTPA, whether produced before or after the date of this Order.

- D. Upon written request from a representative of the Commission or the State of Maine, any consumer reporting agency must furnish consumer reports concerning Defendant Minshew, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

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XI.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED

IT IS SO STIPULATED this ____ day of February, 2017.

JANET T. MILLS
Attorney General, State of Maine

/s/Brendan F.X. O'Neil
Brendan F.X. O'Neil
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Office of the Attorney General of Maine
6 State House Station
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Telephone: 207-626-8842
Facsimile: 207-624-7730
Email: brendan.oneil@maine.gov

IT IS SO STIPULATED this ____ day of February, 2017.

IT IS SO STIPULATED this ___ day of February, 2017.

JANET T. MILLS
Attorney General, State of Maine

/s/ Brendan F.X. O'Neil
Brendan F.X. O'Neil
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IT IS SO STIPULATED this 10 day of February, 2017.


