

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE

STATE OF MAINE, )  
)  
ntiffs, )  
)  
)  
SSIONS LLC a limited liability )  
also d/b/a BETTER HEALTH )  
NALS, )  
)  
R. POWLOWSKY, individually )  
owner and officer of XXL )  
ONS LLC, )  
)  
NSE L.L.P., a limited liability )  
also d/b/a/ JRESPONSE, )  
)  
MANN, individually )  
artner of J2 RESPONSE L.L.P., )  
)  
EINLE, individually and as a )  
J2 RESPONSE L.L.P., )  
)  
XX, LLC, a limited liability )  
also d/b/a CTF MEDIA, )  
)  
R. FUSCO, individually )  
owner and officer of SYNERGIXX, )  
)  
)  
AHNER, and )  
)  
MINSHEW a/k/a SAMUEL BRANT, )  
)  
endants. )  
)  
\_\_\_\_\_ )

) Case No. 1:17-cv-00067NT  
)  
) STIPULATED FINAL JUDGMENT  
) AND ORDER FOR PERMANENT  
) INJUNCTION AND OTHER  
) EQUITABLE RELIEF AS TO  
) DEFENDANTS SYNERGIXX, LLC,  
) also d/b/aCTF MEDIA , and CHARLIE  
) R. FUSCO

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 16(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), pursuant to Section 4(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”) 15 U.S.C. § 6103(a), 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, the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6106-6108, the FTC’s Trade Regulation Rule entitled “Telemarketing Sales Rule” 16 CFR 312.1-1(s)-1, (a)-1 (nd k36 Tm (EV)Tj.C)2(.2.3 T3i)-2(e)va343.7Ac 7 6101

## FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants participated in deceptive acts or practices in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6106-6108, the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310, and Section 207 of the Maine Unfair Trade Practices Act, ME. STAT. tit. 5, § 207, in connection with the labeling, advertising, marketing, distribution, and sale of products purported to provide pain relief and to prevent or mitigate cognitive decline.
3. Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Defendants admit the facts necessary to establish jurisdiction only for purposes of this action.
4. Defendants represent that they have ceased taking orders for the products at issue in this Complaint.
5. Defendants waive any claim that they 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 agree to bear their own costs and attorney's fees.
6. Defendants 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. "Clear(ly) and conspicuous(ly)" means that a required disclosure is difficult to

miss (*f.e.*, easily noticeable) and easily understandable by ordinary consumers, including in all of

- F. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications;
- G. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication; and
- H. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.

2. “Close proximity” means that the disclosure is very near the triggering representation.

3. “Corporate Defendant” means Synergixx, LLC, d/b/a CTF Media, and its successors and assigns.

4. “Covered Product” means any Dietary Supplement, Food, or Drug, including, but not limited to FlexiPrin and CogniPrin

5. “Defendants” means the Individual Defendant and the Corporate Defendant, individually, collectively, or in any combination.

6. “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 is a vitamin, mineral, herb or other botanical, amino acid, probiotic, or other dietary substance 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 diet.

7. “Drug” means: (1) articles recognized in the official United States Pharmacopoeia, official Homeopathic 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; (4) articles intended for use as a component of any article specified in (1), (2), or (3); but does not include devices or their components, parts, or accessories.

8. “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.

9. “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.

10. “Including” means including, but not limited to.

11. “Individual Defendant” means Charlie R. Fusco.

12. “Negative Option Feature” means, in an offer or agreement to sell or provide any good, program, or service, a provision under which the consumer’s silence or failure to make

an affirmative action to reject goods or services, or to cancel the agreement, is interpreted by the seller or provider as acceptance of the offer.

13. "Person" means a natural person, an organization, or other 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: PAIN RELIEF , CARTILA GE

unless the representation is ~~not~~ misleading and, at the time of making such representation ~~they~~  
possess and rely upon competent and reliable scientific evidence ~~substantiating~~  
representation is true. For purposes of this Section, competent and reliable scientific evidence  
shall consist of human clinical testing of the Covered Product, or of an Essentially Equivalent



scientific evidence that is sufficient in quality and quantity based on standards generally accepted by experts in the relevant disease, condition, or function to which the representation relates 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 Section, competent and reliable scientific evidence means tests, analyses, research, or studies (1) that have been conducted and evaluated in an objective manner by experts in the relevant disease, condition, or function to which the representation relates; (2) that are generally accepted by experts to yield accurate and reliable results; and (3) that are randomized, double-blind, and placebo-controlled human clinical testing of the Covered Product, or of an Essentially Equivalent Product, when experts would generally require such human clinical testing to substantiate that the representation is true.

*Provided, however,* that in instances where any Defendant, on behalf of a client, brokers ad placements for a Covered Product participates or assists in brokering ad placements for a Covered Product, and does not: (1) have an ownership interest in such Covered Product; (2) own or license the right to advertise such Covered Product; (3) derive royalties or payments generated from the sale of such Covered Product; or (4) all be a defense hereunder for any Defendant if it can establish, after reasonable inquiry, that Defendant neither knew nor had reason to know that any representation covered by this Section was not supported by competent and reliable scientific evidence as required under this Section.

III.

PROHIBITED REPRESENTATIONS REGARDING TESTS, STUDIES,  
OR INGREDIENTS

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, and employees, 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 are hereby permanently restrained and enjoined from misrepresenting, in any manner, expressly or by implication, including through the use of any product name, endorsement, depiction, or illustration:

- A. That any Covered Product is clinically proven to rebuild joint cartilage, reduce back or joint pain, reduce stiffness, or reduce inflammation;
- B. That any Covered Product is clinically proven to restore or improve memory, or mitigate cognitive decline;
- C. That the performance or benefits of any Covered Product are scientifically proven; or
- D. The existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

#### IV.

B. For any product, making any representation that is specifically authorized for use

VI.

PROHIBITED REPRESENTATIONS  
RELATED TO ADVERTISING FORMAT

IT IS FURTHER ORDERED that Defendants and their officers, agents and employees and all other persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, sale or distribution of any good or service are hereby permanently restrained and enjoined from representing that paid commercial advertising is independent programming, including independent, educational programming, or an objective news report

They are further permanently restrained and enjoined from presenting radio advertisement 15 minutes in length or longer or intended to fill a time slot of 15 minutes in length or longer that does not state in the same language



- A. That consumers are receiving a money back guarantee, a free trial offer, a risk free trial offer, a free gift or a bonus;
- B. The total cost to purchase, receive, or use the good or service, including shipping, handling, processing, and any additional financial obligations that may be incurred as a result of accepting the free product, service, or offer
- C. The timing or manner of any charge or bill;
- D. Any material restrictions, limitations, or conditions to purchase, receive, or use the good or service;
- E. Any material aspect of the performance, efficacy, nature, or central characteristics of the good or service; and
- F. Any material aspect of the nature or terms of a refund, return, cancellation, exchange, or repurchase policy for the good or service, including the deadline (by date or frequency) by which the consumer must act.

IX.

REQUIRED DISCLOSURES

IT IS FURTHER ORDERED that, in connection with the advertising, marketing, promotion, offering for sale, sale or distribution of any good or service, Defendants and their officers, agents, and employees, 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, permanently restrained and enjoined from:

- A. Failing to Clearly and Conspicuously disclose, or assisting others in failing to Clearly and Conspicuously disclose, before consumers are asked to reveal billing information or to consent to any purchase in connection with any claim that a

good or service is free," has a minimal cost, or is being offered on a trial basis or at an introductory or limited time reduced cost, the following material terms and conditions of any offer:

1. In close proximity to such claim, the total cost to purchase, receive, or use any good or service that is the subject of the sales offer, including shipping, handling, and processing;
2. The amount, timing, and manner of payment of all fees, charges, or other amounts that a consumer will be charged or billed, and any additional financial obligations that may be incurred as a result of accepting the free product, service, or offer; and
3. The terms and conditions of any refund, cancellation, exchange, or purchase policy or policies, including the specific steps and means by d o

charges will be on a recurring basis, unless consumer timely takes steps to prevent or stop such charges;

2.









2017, together with attachments and supporting financial documents and explanations; and

9. Updated Synergix financial statements of corporate defendant dated May 10, 2017 and submitted to Plaintiffs on May 15, 2017, together with attachments and supporting financial documents and explanations submitted to Plaintiffs on September 6 and 10, 2016;

E. The suspension of the judgment will be lifted as to any Defendant if, upon motion by either of Plaintiffs, the Court finds that such Defendant failed to disclose any material asset or income, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified in Subsection D above.

F.

equitable remedies are wholly or partially impracticable, the remaining money shall be divided with the State of Maine. Any money not used by the FTC for

submit to Plaintiffs may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

XII.

#### COOPERATION WITH FTC AND MAINE

IT IS FURTHER ORDERED that Defendants must fully cooperate with representatives of the Commission, the Maine AG, and any of their representatives in this case and in any investigation related to

- B. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, Social Security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that any Defendant obtained prior to entry of this Order in connection with the labeling, advertising, marketing, distribution, or sale of any formulation of FlexiPrin or CogniPrin; and
- C. Failing to destroy such customer information in all forms in their possession, custody, or control within thirty (30) days after receipt of written direction to do so from representatives of both the Commission and the Maine Attorney General's Office.

*Provided, however,* that customer information need not be destroyed, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

#### XIV.

#### ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this Order:

- A. Each Defendant, within 7 days of entry of this Order, must submit to the Commission and the State of Maine an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 10 years after entry of this Order, Individual Defendant for any business involved in the sale or marketing of any Covered Product that

Defendant, individually or collectively with Corporate Defendants, the majority owner or control directly or indirectly, and Corporate Defendant, must deliver a copy of this Order to:

1. All principals, officers, directors, and LLC partners/managers and members;
2. All employees, agents, and representatives who participate in the manufacturing, labeling, advertising, marketing, distribution, or sale of any Covered Product or service; and
3. Any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting.

Delivery must occur within 7 days of entry of this Order for current personnel.

For all others, delivery must occur before they assume their responsibilities.

- C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of the Order.

#### XV.

#### COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants make timely submissions to the Commission and to the Maine AG

- A. Sixty days after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:
  1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number as designated points of contact, which



Plaintiffs' representatives may use to communicate with Defendant;

(b) identify all of that Defendant's businesses by all of their names, telephonenumber, and physical, postal, email, and Internet addresses;

(c) 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 Defendant (which Individual Defendant must describe if he knows or should know due to his own involvement);

(d) describe in detail whether and how that Defendant is in compliance with each Section of this Order, and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to Plaintiffs

2. Additionally, Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which such Defendant performs services whether as employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in(c))-8n/ es5o(e)-1 3 2 3 ( 1(d)Tj 3 0 Td 2(ne)-1(s)4(s)7

contact; (b) the structure of Corporate Defendant or any entity that Defendants have any ownership interest in or control 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, Individual Defendant must report any change in:
  - (a) name, including aliases or fictitious names and residence addresses
  - (b) titles or roles in any business activity, including any business for which such Defendant performs services whether as employee or otherwise and any entity in which such Defendant has ownership interest, and identify the name, physical address, and any Internet sites of the business or entity.

C. For a period of 10 years, each Defendant must submit to the Commission and the Maine AG notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such 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: *FTC v. XXL Impressions et al.*, and the number X170021.
- 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, 10th Floor, Augusta, ME 04330. The subject line must begin: *Order in re State of Maine v. XXL Impressions et al.*, and must identify the Court and docket number of this Order as ordered by the Court.

## XVI.

### RECORDKEEPING

IT IS FURTHER ORDERED that in connection with the sale of a Covered Product Defendants must create certain records for 10 years after entry of the Order, and retain each such record for 5 years. Specifically, Corporate Defendant and Individual Defendant for any business that such Defendant, individually or collectively with any other Defendants, 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, all costs incurred in generating those revenues, and the resulting net profit or loss;

B.

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 Defendants or any individual or entity affiliated with Defendants, without the

XVIII.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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United States District Court Judge

IT IS SO STIPULATED this 14<sup>th</sup> day of August 2017.

DAVID C. SHONKA  
Acting General Counsel

/s/ James A. Prunty  
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IT IS SO STIPULATED