

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

FEDERAL TRADE COMMISSION and)
STATE OF MAINE,)
)
Plaintiffs,) Case No. 1:17-cv-00067-NT
)
v.)
) STIPULATED FINAL ORDER
) FOR PERMANENT INJUNCTION
) AND OTHER EQUITABLE
XXL IMPRESSIONS LLC a limited liability) RELIEF AS TO DEFENDANT
company, also d/b/a BETTER HEALTH) RONALD JAHNER
NUTRITIONALS,)

Plaintiffs ~~W(KH)HGHUDO7UDGHRPPLVLRQ~~ and the State of ~~ODLH~~ ~~QDVUHSUHVHQVHGLQKLVDPDWWHUEWKH2ILFHRIWKHSWRUQH~~ ~~UDORI0DLH0DLH~~ ~~8DLQ~~ ~~LIIV~~, filed a Complaint for Permanent Injunction and Other Equitable Relief against Defendants pursuant to Section 13(b) of the Fed ~~HUDO7UDGHRPPLVLRQ~~ ~~37EW~~ 15 U.S.C. § 53(b), ~~DQSXUVXDQWR6HFWLRRIWKH0DLH8DLU7UDGH3UDFWLFHVFWDLH~~ 873§ 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 ~~DFWVRUSUDFWLFHVLQRODWLRRI6HFWLRQD~~ 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 purported to provide relief from joint and back pain and to prevent or mitigate cognitive decline.

The Commission, the State of Maine, and Defendant Ronald Jahner ³ Defendant Jahner) stipulate to the entry of this Final Order for Permanent Injunction and Other Equitable Relief as to Defendant Jahner.

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendant Jahner 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, 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 purported to provide pain relief and to prevent or mitigate cognitive decline.

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

4. Defendant Jahner 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.

text or other visual elements so that it is easily noticed, read, and understood;

- C. An audible disclosure, including by radio, telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it;
- D. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable
- E. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears;
- 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

and combination of additional ingredients is unlikely to impede or inhibit the effectiveness of the ingredients in the Essentially Equivalent Product.

8.

- D. Helps rebuild damaged joints or cartilage;
- E. Reverses, mitigates or prevents cognitive or mental decline;
- F. Improves memory;
- G. Restores lost memory capacity;
- H. Cures, mitigates, or treats any disease

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

II.

PROHIBITED REPRESENTATIONS: OTHER HEALTH-RELATED CLAIMS

IT IS FURTHER ORDERED THAT Defendants, HealthCare 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, distribution of any Covered Product other than a representation covered by Section I of this Order, are permanently restrained and enjoined from making, or assisting others in making, expressly or by implication, including through the use of a product or program name, endorsement, depiction, or illustration, any representation about the health benefits, safety, performance, or efficacy of any Covered Product, unless the representation is not misleading, and, at the time of making such representation, Defendant possesses and relies upon competent and reliable 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, as 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 that (1) 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 such experts to yield accurate and reliable results; and (3) are randomized, double-blind, and placebo controlled human clinical testing of the Covered Product, or of an Essentially Equivalent Product, which experts would generally require such human clinical testing to substantiate that the representation is true.

IV.

Relief, Cartilage Rebuilding, Cognitive Decline, Memory Improvement, And Disease Claims and Section III of this Order, entitled Prohibited Representation: Other Health Related Claims, above, unless he possesses the represented expertise and he possesses upon:

- 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 and which is generally accepted in the relevant profession to yield accurate and reliable results

VI.

DISCLOSURE OF MATERIAL CONNECTIONS

IT IS FURTHER ORDERED that Defendant, Defendant's 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, promoting, offering for sale, sale, or distribution of any good or service, are permanently restrained and enjoined from making any representation, expressly or by implication, including through the use of a product name, Endorsement, depiction, or illustration, about and/or of a good or service unless they disclose, Clearly and Conspicuously, and in close proximity to the representation, a Material Connection, when one exists, between such endorser and Defendant or any other individual or entity manufacturing, labeling, advertising, promoting, offering for sale, selling, or distributing such good or service.

VII .

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 this case and 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. XSRQ GD\VT ZULWWHQ QRWLFH RU RWKHU UHDVRQDEOH Commission or Maine AG representative may designate, without the service of a subpoena.

VII I.

ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendant acknowledge receipt of this Order within 7 days of entry of this Order. Such acknowledgment must be sworn under penalty of perjury and must be submitted to the Commission and the State of Maine upon receipt of this Order. Additionally,

A. For 10 years after entry of this Order, Defendant must, for any business involved in the sale or marketing of Covered Product that Defendant is the majority owner or controls directly or indirectly, must deliver a copy of this

Order to:

1. All principals, officers, directors, LP 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.

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

IX.

COMPLIANCE REPORTING

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

A. 60 days after entry of this Order Defendant

other Defendant (which Defendant must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how Defendants 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 by Plaintiffs.

2. Additionally, Defendant must: (a) identify all telephone numbers and all physical, postal, or electronic addresses of Defendant and all persons involved in the alleged violation of the law.

perform services whether as an employee or otherwise any entity
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 years, Defendant must submit to the Commission
the Maine AG notice of the filing of any bankruptcy petition, insolvency

ME 04330. The subject line must begin with "Order in re State of Maine v. XXL Impressions LLC et al." and must identify the Court and docket number of this Order as ordered by the Court.

X.

RECORDKEEPING

IT IS FURTHER ORDERED that in connection with the sale of a Covered Product Defendant must create certain records for 10 years after entry of the Order, and retain each such record for 5 years. Specifically, Defendant must, for any business that Defendant 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. Personnel records showing, for each person providing services, whether as an employee or other person, the person's name, title, position, dates of service; and (if applicable) the reason for termination;

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, Plaintiffs are authorized to communicate directly with Defendant. Defendant must permit 3 O D L Q W L I I V ¶ 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 & R P P L V V L R Q ¶ V O D Z I X O X V H R I F R P S X O V R U \ S U R F H V V S the FTC Act, 15 U.S.C. §§ 49, 57b Nothing in this Order limits the Maine \$ * ¶ V lawful use of compulsory process, pursuant to section 211 of the Maine UTPA 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 or information produced by Defendant pursuant to section 211 of the Maine UTPA, whether

