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CLERK US DISTRICT COURT  
DISTRICT OF NEVADA

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MAR - 4 2004	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: <u>MS</u>	DEPUTY

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23 UNITED STATES DISTRICT COURT  
24 DISTRICT OF NEVADA

25 FEDERAL TRADE COMMISSION,

26 Plaintiff,

27 v.

28 SEASILVER USA, INC.,  
AMERALOE, INC., BELA BERKES,  
JASON BERKES, BRETT  
RADEMACHER, individually, and d/b/a  
Netmark International and NetmarkPro,  
and DAVID R. FRIEDMAN, D.C.,

Defendants.

CV-S-03-0676-RLH-(LRL)

**STIPULATED FINAL  
JUDGMENT AND ORDER  
FOR PERMANENT  
INJUNCTION AND OTHER  
EQUITABLE RELIEF RE  
David R. Friedman, D.C.**

29 Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), commenced  
30 this action on June 12, 2003, by filing its Complaint for Injunctive and Other Equitable

1 Relief ("Complaint") pursuant to Section 13(b) of the Federal Trade Commission Act  
2 ("FTC Act"), 15 U.S.C. § 53(b), charging Defendants Seasilver USA, Inc., Americalo, e,  
3 Inc., Bela Berkes, Jason Berkes, Brett Rademacher, also doing business as Netmark  
4 International and NetmarkPro, and David R. Friedman, D.C., with violating Sections 5  
5 and 12 of the FTC Act, 15 U.S.C. §§ 45 and 52.

6 The Commission, by and through its counsel, and Defendant David R. Friedman,  
7 by and through his counsel, have agreed to the entry of this Stipulated Final Judgment  
8 and Order for Permanent Injunction and Other Equitable Relief ("Final Judgment") by  
9 this Court in order to resolve all matters arising out of the facts alleged in the Complaint  
10 and in dispute in this action. The Commission and Defendant David R. Friedman have  
11 consented to entry of this Final Judgment without trial or adjudication of any issue of law  
12 or fact herein, and without Defendant David R. Friedman admitting liability or  
13 wrongdoing for the offenses alleged in the Complaint.

14 **NOW THEREFORE**, the Commission and Defendant David R. Friedman having  
15 requested this Court to enter this Final Judgment, **IT IS HEREBY ORDERED**,  
16 **ADJUDGED, AND DECREED** as follows:

#### 17 **FINDINGS**

18 1. This is an action instituted by the Commission under Sections 5 and 12 of  
19 the FTC Act, 15 U.S.C. §§ 45 and 52, and the Commission has the authority to seek the  
20 relief it requested.

21 2. This Court has jurisdiction over the subject matter of this case and  
22 jurisdiction over all parties, and venue in this district is proper.

23 3. The Commission's Complaint states claims upon which relief may be  
24 granted against Defendant David R. Friedman under Sections 5(a) and 12 of the FTC  
25 Act, 15 U.S.C. §§ 45(a) and 52.

26 4. The activities of Defendant David R. Friedman, as alleged in the  
27 Complaint, are in or affecting commerce, as defined in Section 4 of the FTC Act, 15  
28 U.S.C. § 44.



1           2.     “Covered product” means any food, drug, or device as defined in Section  
2 15 of the FTC Act, 45 U.S.C. § 55, or any dietary supplement, or any ingredient or aspect  
3 of any such food, drug, device, or dietary supplement, including but not limited to  
4 Seasilver, however formulated, or any product containing aloe vera, phyto-silver, sea  
5 vegetables, or the herb Pau D’Arco.

6           3.     “Distributor” shall mean any purchaser or other transferee of any covered  
7 product who acquires such product from any Defendant for resale, with or without  
8 valuable consideration, or any person or entity that offers or sells, or has offered or sold,  
9 such product to other sellers or to consumers, including but not limited to individuals,  
10 retail stores, or catalogs.

11           4.     The terms “and” and “or” in this Final Judgment shall be construed  
12 conjunctively or disjunctively as necessary, to make the applicable sentence or phrase  
13 inclusive rather than exclusive.

14 **I.     PROHIBITED BUSINESS ACTIVITIES**

15           **IT IS HEREBY ORDERED** that Defendant David R. Friedman, and any entity  
16 through which he does business, and his officers, directors, agents, servants, employees,  
17 salespersons, distributors, corporations, subsidiaries, affiliates, successors, assigns, and  
18 those persons or entities in active concert or participation with him who receive actual  
19 notice of this Final Judgment by personal service, facsimile, or otherwise, are hereby  
20 enjoined from making, or assisting others in making, expressly or by implication,  
21 including through the use of endorsements, any false or misleading oral or written  
22 statement or representation in connection with the advertising, marketing, labeling,  
23 promotion, offer for sale, distribution, or sale of Seasilver or any covered product,  
24 including but not limited to:

25           A.     Misrepresenting that any covered product cures or treats cancer, including  
26 but not limited to multiple myeloma, non-Hodgkin’s lymphoma, lung, breast, and  
27 prostate cancer, and brain tumors;

28           B.     Misrepresenting that any covered product treats or cures diabetes or

1 enables diabetes patients to reduce or eliminate their insulin medication;

2 C. Misrepresenting that any covered product is clinically or scientifically  
3 proven to be effective in treating or curing over 650 diseases, including cancer and  
4 AIDS;

5 D. Misrepresenting that any covered product is clinically or scientifically  
6 proven to be effective in treating or curing typhoid or anthrax;

7 E. Misrepresenting that any covered product is clinically or scientifically  
8 proven to be non-toxic;

9 F. Misrepresenting the ingredients of any covered product;

10 G. Misrepresenting the contents, validity, results, conclusions, or  
11 interpretations of any test or study;

12 H. Making any representation that any covered product causes rapid,  
13 substantial, or permanent weight loss without reducing caloric intake; and

14 I. Making any representation about the health benefits, efficacy, or safety of  
15 any covered product, or the performance of the product as it relates to health benefits,  
16 efficacy or safety, including but not limited to that such product:

- 17 1. Causes rapid, substantial, or permanent weight loss;
- 18 2. Enables users to lose weight, or any specific amount of weight, or  
19 assists in maintaining weight loss;
- 20 3. Is effective in the treatment or cure of any disease, including but not  
21 limited to cancer, AIDS, obstructive pulmonary disease, lyme  
22 disease, heart disease, and diabetes;
- 23 4. Reduces blood pressure; and
- 24 5. Is safe, has no side effects, or is non-toxic;

25 unless, at the time of making such representation, Defendant David R. Friedman  
26 possesses and relies upon competent and reliable scientific evidence that substantiates the  
27 representation. For purposes of this provision, "competent and reliable scientific  
28 evidence" shall mean tests, analyses, research, studies, or other evidence based on the

1 expertise of professionals in the relevant area, that have been conducted and evaluated in  
2 an objective manner by persons qualified to do so, using procedures generally accepted in  
3 the profession to yield accurate and reliable results.

4 For the purposes of this Section, the term "endorsement" shall mean as defined in  
5 16 C.F.R. § 255.0(b).

6 **Provided, however, that nothing in this Final Judgment shall prohibit Defendant**  
7 **David R. Friedman from making any representation for any drug that is permitted in**  
8 **labeling for any such drug under any tentative final or final standard promulgated by the**  
9 **Food and Drug Administration, or under any new drug application approved by the Food**  
10 **and Drug Administration. Nor shall it prohibit Defendant David R. Friedman from**  
11 **making any representation that is specifically permitted in labeling for any product by**  
12 **regulations promulgated by the Food and Drug Administration pursuant to the Nutrition**  
13 **Labeling and Education Act of 1990.**

14 **IT IS FURTHER ORDERED** that Defendant David R. Friedman, and any entity  
15 through which he does business, and his officers, directors, agents, servants, employees,  
16 salespersons, distributors, corporations, subsidiaries, affiliates, successors, assigns, and  
17 those persons or entities in active concert or participation with him who receive actual  
18 notice of this Final Judgment by personal service, facsimile, or otherwise, are hereby  
19 enjoined from providing to any person or entity the means and instrumentalities that  
20 contain any claim prohibited under this Section. For purposes of this Section, "means  
21 and instrumentalities" shall mean any information, including but not necessarily limited  
22 to any advertising, labeling, or promotional materials, for use by distributors in their  
23 marketing or sale of any covered product.

24 **II. MONETARY JUDGMENT AND CONSUMER REDRESS**

25 **IT IS FURTHER ORDERED** that

26 A. Judgment is hereby entered against Defendant David R. Friedman in the  
27 amount of Two Million Eight Hundred Thousand Dollars (\$2,800,000); **provided,**  
28 **however, that all of this amount except for One Million Dollars (\$1,000,000) shall be**

1 suspended.

2 B. Defendant David R. Friedman shall pay to the Commission the sum of One  
3 Million Dollars (\$1,000,000) not later than five (5) days after the date of entry of this  
4 Final Judgment, such payment to be made in cash by electronic funds transfer to the  
5 Commission, or to such agent as the Commission may direct, pursuant to instructions  
6 provided by the Commission. Payments may be made from frozen accounts.

7 C. All funds paid pursuant to this Final Judgment shall be deposited into a  
8 fund administered by the Commission or its agent to be used for equitable relief,  
9 including but not limited to consumer redress and any attendant expenses for the  
10 administration of any redress fund. In the event that direct redress to consumers is  
11 wholly or partially impracticable or funds remain after redress is completed, the  
12 Commission may apply any remaining funds for such other equitable relief (including  
13 consumer information remedies) as it determines to be reasonably related to the  
14 defendants' practices alleged in the Complaint. Any funds not used for such equitable  
15 relief shall be deposited in the United States Treasury as disgorgement. Defendant David  
16 R. Friedman shall have no right to challenge the Commission's choice of remedies under  
17 this Section or the manner of distribution chosen by the Commission.

18 D. All money paid pursuant to this Final Judgment is irrevocably paid to the  
19 Commission for purposes of settlement between the Commission and Defendant David  
20 R. Friedman, and Defendant David R. Friedman relinquishes all right, title, and interest  
21 to assets held by the Commission in connection with this case.

22 E. No portion of the payment as herein provided shall be deemed payment of  
23 any fine, penalty, forfeiture, or punitive assessment.

24 F. In the event of any default by Defendant David R. Friedman of any  
25 obligation imposed on him under this Section, including but not limited to the failure to  
26 timely and completely fulfill the payment obligations set forth in Subsection II. B, the  
27 suspension of the judgment amount set forth in Subsection II. A shall be vacated as to  
28 Defendant David R. Friedman, and the full amount of that judgment shall immediately

1 become due, plus interest from the date of entry of this Final Judgment pursuant to 28  
2 U.S.C. § 1961, less any payments already made.

3 G. Defendant David R. Friedman agrees that, if he fails to timely and  
4 completely fulfill the payment and other obligations set forth in this Final Judgment, the  
5 facts as alleged in the Complaint filed in this matter shall be taken as true in any  
6 subsequent litigation filed by the Commission to enforce its rights pursuant to this Final  
7 Judgment, including but not limited to, a nondischargeability complaint in any  
8 bankruptcy case.

9 H. Defendant David R. Friedman is hereby required, in accordance with 31  
10 U.S.C. § 7701, to furnish to the Commission his taxpayer identifying numbers (social  
11 security number or employer identification number), which shall be used for purposes of  
12 collecting and reporting on any delinquent amount arising out of this judgment.

13 **III. RIGHT TO REOPEN**

14 **IT IS FURTHER ORDERED** that, within five (5) business days after the date of  
15 entry of this Final Judgment, Defendant David R. Friedman shall submit to the  
16 Commission a truthful sworn statement that shall reaffirm and attest to the truthfulness,  
17 accuracy and completeness of the financial statements submitted to the Commission by  
18 him dated July 25, 2003.

19 The Commission's agreement to this Final Judgment is expressly premised on the  
20 truthfulness, accuracy, and completeness of such financial statements. Such financial  
21 statements contain material information upon which the Commission relied in  
22 negotiating and agreeing to this Final Judgment. If, upon motion by the Commission, the  
23 Court finds that such financial statement contains any material misrepresentation or  
24 omission, the suspended judgment entered pursuant to Subsection A of Section II of this  
25 Final Judgment shall become immediately due and payable by Defendant David R.  
26 Friedman, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as  
27 amended, shall immediately begin to accrue on the unpaid balance; **provided, however,**  
28 **that** in all other respects this Final Judgment shall remain in full force and effect unless



1 otherwise ordered by the Court; and, **provided further, that** proceedings instituted under  
2 this provision would be in addition to, and not in lieu of, any other civil or criminal  
3 remedies as may be provided by law, including but not limited to contempt proceedings,  
4 or any other proceedings that the Commission or the United States may initiate to enforce  
5 this Final Judgment. For purposes of this Section, and any subsequent proceedings to  
6 enforce payment, including, but not limited, to a non-dischargeability complaint filed in a  
7 bankruptcy proceeding, Defendant David R. Friedman agrees not to contest any of the  
8 allegations in the Commission's Complaint.

9 **IV. LIFTING OF ASSET FREEZE**

10 **IT IS FURTHER ORDERED** that upon entry of this Final Judgment and  
11 completion of the payment required under Section II above, the freeze on Defendant  
12 David R. Friedman's assets, as ordered in the Preliminary Injunction entered by this  
13 Court on July 15, 2003, shall be dissolved.

14 **V. MONITORING DISTRIBUTORS**

15 **IT IS FURTHER ORDERED** that

16 A. Defendant David R. Friedman shall not disseminate to any distributor any  
17 advertisement containing any representations prohibited by this Final Judgment.

18 B. Defendant David R. Friedman shall not, directly or indirectly, authorize or  
19 encourage any distributor to make any representations prohibited under this Final  
20 Judgment.

21 **VI. COMPLIANCE REPORTING BY DEFENDANT**

22 **IT IS FURTHER ORDERED** that, in order that compliance with the provisions  
23 of this Final Judgment may be monitored,

24 A. Within ten (10) business days after the date of entry of this Final Judgment,  
25 Defendant David R. Friedman shall notify the Commission in writing of (1) his residence  
26 address and mailing address; (2) his home telephone number; (3) the name, address, and  
27 telephone number of each of his employers; (4) if applicable, the names of his  
28 employment supervisors; (5) a description of each employer's activities; and (6) a

1 description of his duties and responsibilities in connection with such employment.

2 B. For a period of four (4) years from the date of entry of this Final Judgment,  
3 Defendant David R. Friedman shall notify the Commission in writing of the following:

- 4 1. Any changes in his residence, mailing addresses, and telephone  
5 numbers, within ten (10) days of the date of such change;
- 6 2. Any changes in his employment status (including self-employment)  
7 within ten (10) days of the date of such change. Such notice shall  
8 include the name and address of each business that he is affiliated  
9 with, employed by, or performs services for; a statement of the  
10 nature of the business; and a statement of his responsibilities in  
11 connection with the business; and
- 12 3. Any changes in his name or use of any aliases or fictitious names  
13 within ten (10) days of the date of such change or use; and

14 C. Sixty (60) days after the date of entry of this Final Judgment, Defendant  
15 David R. Friedman shall provide a written report to the FTC, sworn to under penalty of  
16 perjury, setting forth in detail the manner and form in which he has complied and is  
17 complying with this Final Judgment.

18 D. The report referred to in Subsection C above shall include, but not be  
19 limited to, any changes required to be reported pursuant to Subsection B above.

20 E. For the purposes of this Final Judgment, Defendant David R. Friedman  
21 shall, unless otherwise directed by the Commission's authorized representatives, mail all  
22 written notifications to the Commission to:

23 Associate Director, Division of Advertising Practices  
24 Federal Trade Commission  
25 600 Pennsylvania Avenue, NW  
26 Washington, DC 20580  
27 Re: FTC v. Seasilver USA, Inc., et al., Civil Action No. CV-S-03-0676-  
28 RLH-(LRL).

F. For purposes of the compliance reporting required by this Section, the  
Commission is authorized to communicate directly with Defendant David R. Friedman.

1 **VII. COMPLIANCE MONITORING**

2 **IT IS FURTHER ORDERED** that, for the purpose of monitoring and  
3 investigating compliance with any provision of this Final Judgment,

4 A. Within ten (10) days of receipt of written notice from a representative of  
5 the Commission, Defendant David R. Friedman shall submit additional written reports,  
6 sworn to under penalty of perjury; produce documents for inspection and copying; appear  
7 for deposition; or provide entry during normal business hours to any business location in  
8 his possession or direct or indirect control to inspect the business operation.

9 B. In addition, the Commission is authorized to monitor compliance with this  
10 Final Judgment by all other lawful means, including but not limited to the following:

- 11 1. Obtaining discovery from any person, without further leave of court,  
12 using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34,  
13 36, and 45; and
- 14 2. Posing as consumers and suppliers to Defendant David R. Friedman  
15 or any other entity managed or controlled in whole or in part by him  
16 without the necessity of identification or prior notice.

17 **Provided that** nothing in this Final Judgment shall limit the Commission's lawful use of  
18 compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and  
19 57b-1, to obtain any documentary material, tangible things, testimony, or information  
20 relevant to unfair or deceptive acts or practices in or affecting commerce (within the  
21 meaning of 15 U.S.C. § 45(a)(1)).

22 C. Defendant David R. Friedman shall permit representatives of the  
23 Commission to interview any employer, consultant, independent contractor,  
24 representative, agent, or employee who has agreed to such an interview, relating in any  
25 way to any conduct subject to this Final Judgment. The person interviewed may have  
26 counsel present.

27 **VIII. RECORD KEEPING PROVISIONS**

28 **IT IS FURTHER ORDERED** that, for a period of seven (7) years from the date

1 of entry of this Final Judgment, in connection with any business involved in the  
2 advertising, marketing, promotion, offer for sale, distribution, or sale of any covered  
3 product, or any other health-related product, operated by Defendant David R. Friedman,  
4 or where Defendant David R. Friedman is a majority owner of the business or directly or  
5 indirectly manages or controls such a business, Defendant David R. Friedman and his  
6 agents, employees, officers, corporations, successors, and assigns, and those persons in  
7 active concert or participation with him who receive actual notice of this Final Judgment  
8 by personal service or otherwise, are hereby restrained and enjoined from failing to create  
9 and retain the following records:

10       A.     Accounting records that reflect the cost of goods or services sold, revenues  
11 generated, and the disbursement of such revenues;

12       B.     Personnel records accurately reflecting the name, address, and telephone  
13 number of each person employed in any capacity by such business, including as an  
14 independent contractor; such person's job title or position; the date upon which such  
15 person commenced work; and the date and reason for such person's termination, if  
16 applicable;

17       C.     Customer files containing the names, addresses, phone numbers, dollar  
18 amounts paid, quantity of items or services purchased, and description of items or  
19 services purchased, to the extent such information is obtained in the ordinary course of  
20 business;

21       D.     Complaints and refund requests (whether received directly, indirectly, or  
22 through any third party) and any responses to those complaints or requests;

23       E.     Copies of all advertisements, promotional materials, sales scripts, training  
24 material, or other marketing material utilized in the advertising, marketing, promotion,  
25 offering for sale, distribution, or sale of any covered product; and

26       F.     All materials that were relied upon in making any representations contained  
27 in the materials identified in Subsection E, including all documents evidencing or  
28 referring to the accuracy of any claim therein or to the efficacy of any covered product,

1 including but not limited to all tests, reports, studies, demonstrations, or other evidence  
2 that confirm, contradict, qualify, or call into question the accuracy of any claim about a  
3 covered product or the efficacy of such covered product, including complaints and other  
4 communications with consumers or with governmental or consumer protection agencies.

5 **IX. DISTRIBUTION OF FINAL JUDGMENT BY DEFENDANT**

6 **IT IS FURTHER ORDERED** that, for a period of four (4) years from the date of  
7 entry of this Final Judgment, in the event that Defendant David R. Friedman becomes  
8 employed by, enters into a contract for personal services with, or becomes a distributor  
9 for, any business involved in the advertising, marketing, promotion, offer for sale,  
10 distribution, or sale of any covered product, or any other health-related product, he shall,  
11 within thirty (30) days of entering into such relationship, deliver a copy of the Final  
12 Judgment to the principals, officers, directors, and managers of such business, and to any  
13 employees of such business who have responsibilities with respect to the subject matter  
14 of this Final Judgment and who are under the control of or supervised by Defendant  
15 David R. Friedman, and shall secure from each such person a signed and dated statement  
16 acknowledging receipt of the Final Judgment.

17 **X. ACKNOWLEDGMENT OF RECEIPT OF FINAL JUDGMENT BY**  
18 **DEFENDANT**

19 **IT IS FURTHER ORDERED** that Defendant David R. Friedman, within five (5)  
20 business days of receipt of this Final Judgment as entered by the Court, shall submit to  
21 the Commission a truthful sworn statement acknowledging receipt of this Final  
22 Judgment.

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1 **XI. RETENTION OF JURISDICTION**

2 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this  
3 matter for purposes of construction, modification and enforcement of this Final  
4 Judgment.

5 **IT IS SO ORDERED:**

6   
7 UNITED STATES DISTRICT JUDGE

8 DATED: 4 March 2004

9  
10 **So stipulated:**

11 **FOR THE FEDERAL TRADE COMMISSION**

12 Dated: March 2, 2004

13 By: David M. Newman  
14 David M. Newman  
15 Janice L. Charter  
16 Christa Vecchi  
17 Matthew Daynard  
18 Karen Muoio  
19 Edward F. Glennon

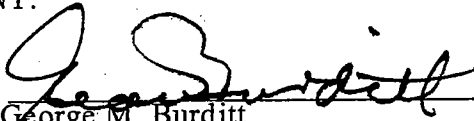
Attorneys, Federal Trade Commission

18 Dated: 2/4/04

19   
20 DAVID R. FRIEDMAN, D.C.

21 **APPROVED AS TO FORM AND CONTENT:**

22 Dated: 2/6/04

23   
24 George M. Burditt  
25 Bell, Boyd & Lloyd  
26 Three First National Plaza  
27 70 West Madison Street, Suite 3300  
28 Chicago, IL 60602-4207  
Attorney for Defendant David R. Friedman