

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.

FEDERAL TRADE COMMISSION,

Plaintiff

v.

GARDEN OF LIFE, INC. AND
JORDAN S. RUBIN,

Defendants.

**STIPULATED FINAL ORDER AND JUDGMENT FOR
PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”) filed a Complaint for Permanent Injunction and Other Equitable Relief against defendants Garden of Life, Inc. and Jordan S. Rubin (“defendants”) pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), alleging deceptive acts or practices and false advertisements in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

The Commission and defendants have stipulated to the entry of this Order in settlement of the Commission’s allegations against defendants. The Court, being advised in the premises, finds:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and jurisdiction over all parties. Venue in the Southern District of Florida is proper.
2. The complaint states a claim upon which relief can be granted, and the Commission has the authority to seek the relief it has requested.

3. The acts and practices of defendants were and are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

4. The Commission and defendants stipulate and agree to this Order, without trial or final adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising from defendants' course of conduct related to the sale of dietary supplements up to the date of entry of this Order. By entering this stipulation, defendants do not admit or deny any of the allegations set forth in the complaint, other than jurisdictional facts. Nothing in this stipulation shall be considered or construed to be an admission of liability by defendants.

5. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendants also waive any claim that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order.

6. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of this Order are binding upon defendants, and their officers, agents, servants, representatives, employees, and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise.

7. Nothing in this Order obviates defendants' obligation to comply with Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45 and 52.

8. This Order was drafted jointly by plaintiff and defendants and reflects the negotiated agreement of the parties.

9. The paragraphs of this Order shall be read as the necessary requirements for compliance and not as alternatives for compliance and no paragraph serves to modify another paragraph unless expressly so stated.

10. Each party shall bear its own costs and attorneys' fees.
11. Entry of this Order is in the public interest.

ORDER

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. Unless otherwise specified, "defendants" shall mean:
 - a. Garden of Life, Inc. ("Garden of Life"), a corporation, its divisions and subsidiaries, and its successors and assigns; and
 - b. Jordan S. Rubin, individually and in his capacity as a director or officer of Garden of Life.
2. "Commerce" shall mean "commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
3. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
4. "Covered product" shall mean any: dietary supplement, including but not limited to Primal Defense, RM-10, Living Multi, and FYI-For Your Inflammation; food; drug; or any program that includes any dietary supplement, food, or drug.
5. "Endorsement" shall mean as defined in 16 C.F.R. § 255.0(b).
6. "Food" and "drug" shall mean "food" and "drug" as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.

7. The term “including” in this Order shall mean “without limitation.”

8. The terms “and” and “or” in this Order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

CONDUCT PROHIBITIONS

I. REPRESENTATIONS CONCERNING COVERED PRODUCTS

IT IS HEREBY ORDERED that defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, representatives, employees, and all persons or entities in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product, in or affecting commerce, are hereby permanently restrained and enjoined from making, or assisting others in making, directly or by implication, including through the use of any trade name or endorsement, any representation:

A. That such product treats immune system disorders, asthma, irritable bowel syndrome, chronic fatigue syndrome, arthritis, lupus, colds, flu, or Crohn’s disease;

B. That such product reduces or helps lower users’ blood cholesterol levels;

C. That such product treats cancer;

D. That such product prevents or treats cardiovascular disease;

E. That such product reduces the risk factors for diabetes or prevents diabetic-related syndromes;

- F. That such product reduces the risk of age-related neuro-degeneration;
 - G. That such product reduces the risk of obesity;
 - H. That such product reduces, treats, or prevents inflammation, including inflammation caused by arthritis, inflammatory bowel disease, sports injuries, asthma, allergies, fibromyalgia, lupus, scleroderma, or other inflammatory conditions;
 - I. That such product mitigates, treats, prevents, or cures any disease or illness; or
 - J. About the absolute or comparative health benefits, efficacy, performance, safety, or side effects of such product;
- unless, at the time the representation is made, defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II.
MISREPRESENTATION OF TESTS OR STUDIES

IT IS FURTHER ORDERED that defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, representatives, employees, and all persons or entities in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, 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 trade name or endorsement, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

III.
FDA APPROVED CLAIMS

IT IS FURTHER ORDERED that:

A. Nothing in this Order shall prohibit defendants from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration; and

B. Nothing in this Order shall prohibit defendants from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

IV.
MONETARY JUDGMENT AND CONSUMER REDRESS

IT IS FURTHER ORDERED that:

A. Judgment is hereby entered in favor of the Commission and against defendants Garden of Life and Jordan S. Rubin, jointly and severally, in the amount of Two Hundred and Twenty-Five Thousand Dollars (\$225,000) for consumer redress. Payment shall be made to the Commission within ten (10) days after the date of entry of this Order by wire transfer in accord with instructions that will be provided by the Commission not later than five (5) days after the date of entry of this Order.

B. All funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agents to be used for equitable relief, including but not limited to consumer redress, and any attendant expenses for the administration of such equitable relief. In

the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to defendants' practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Part. Defendants shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payments under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.

C. Defendants relinquish all dominion, control, and title to the funds paid into the account established pursuant to this Order, and all legal and equitable title to the funds shall vest in the Treasurer of the United States unless and until such funds are disbursed to consumers. Defendants shall make no claim to or demand for the return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of any defendant, defendants acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

D. Defendants Garden of Life and Jordan S. Rubin agree that, if they fail to timely and completely fulfill the payment and other obligations set forth in this Order, the facts as alleged in the complaint filed in this matter shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Order, including but not limited to a non-dischargeability complaint in any bankruptcy case.

E. In accordance with 31 U.S.C. § 7701, defendants are hereby required, unless they

have done so already, to furnish to the Commission their taxpayer identifying numbers and/or social security numbers, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of defendants' relationship with the government.

F. Proceedings instituted under this Part are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

**V.
RIGHT TO REOPEN**

IT IS FURTHER ORDERED that the Commission's agreement to the monetary judgment set forth in Part IV is expressly premised on the truthfulness, accuracy, and completeness of the financial statements submitted to the Commission by defendants dated April 12, September 27, and October 21, 2004, and April 22, May 13, June 1, August 1, and August 3, 2005. Such financial statements contain material information upon which the Commission relied in negotiating and agreeing to the monetary judgment. If, upon motion by the Commission, the Court finds that such financial statement of any such defendant contains any material misrepresentation or omission, the Court shall enter judgment for consumer redress against such defendant, in favor of the Commission, in the amount of Forty-Seven Million, Five Hundred and Seventy-One Thousand, Three Hundred and Five Dollars (\$47,571,305), which defendants stipulate is the amount of gross sales of Primal Defense, RM-10, Living Multi, and FYI prior to entry of this Order. The judgment shall become immediately due and payable by such defendant, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance; *provided, however*, that in all other respects

this Order shall remain in full force and effect unless otherwise ordered by the Court; and, *provided further*, that proceedings instituted under this provision would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including but not limited to contempt proceedings, or any other proceedings that the Commission or the United States may initiate to enforce this Order. For purposes of this Part, and any subsequent proceedings to enforce payment, including but not limited to a non-dischargeability complaint filed in a bankruptcy proceeding, defendants agree not to contest any of the allegations in the Commission's complaint.

**VI.
ACKNOWLEDGMENT OF RECEIPT OF ORDER**

IT IS FURTHER ORDERED that each defendant, within seven (7) business days after receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement in the form shown on Appendix A, acknowledging receipt of this Order.

**VII.
NOTICE TO AND MONITORING OF RESELLERS AND DISTRIBUTORS**

IT IS FURTHER ORDERED that defendants Garden of Life and Jordan S. Rubin, in his capacity as director, officer, or other control-person of a business, shall:

A. Within twenty (20) days of the date this Order becomes final, send an exact copy of the notice attached hereto as Appendix B, showing the date of mailing, to each reseller or distributor who purchased any covered product manufactured by or purchased from defendants, between January 1, 2001 and the date of entry of this Order. This mailing shall not include any other document, information, or enclosures. The notice shall be sent as follows:

1. By first class mail, postage prepaid and return receipt requested, to the

resellers and distributors who together comprise ninety percent (90%) of Garden of Life's total sales revenue; and

2. By electronic mail in a non-alterable digital form to the remaining resellers and distributors, *provided*, that if this method does not produce a return receipt for a particular reseller or distributor, the notice must be resent to that reseller or distributor by first class mail, return receipt requested;

B. Institute a reasonable program of surveillance adequate to reveal whether any of defendants' resellers or distributors are disseminating any advertisement or promotional material that contains any representation prohibited by this Order.

C. Notify, immediately, each such reseller or distributor that defendants will stop doing business with that reseller or distributor if it continues to use any advertisement or promotional material that contains any representation prohibited by this Order.

D. Terminate all sales to any reseller or distributor within twenty (20) days if the distributor or reseller has continued to use any advertisement or promotional material that contains any representation prohibited by this Order after receipt of the notice required by Subpart C of this Part.

VIII. COMPLIANCE MONITORING BY DEFENDANTS

IT IS FURTHER ORDERED that defendants Garden of Life, its successors and assigns, and Jordan S. Rubin in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product manufactured by or purchased from defendants, in or affecting commerce, shall in accordance with applicable laws:

