

IN THE MATTER OF

CC POLLEN COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3419. Complaint, March 16, 1993--Decision, March 16, 1993

This consent order prohibits, among other things, a Phoenix-based firm, and its owners, from making false claims about the effect consumption of their bee pollen products has in regard to allergies, aging, impotence, sexual dysfunction, weight loss and antibiotic treatment, and requires that they have scientific evidence to support any other health-benefit claims they make about any food or other product for human consumption, in the future. In addition, the respondents are prohibited from producing or distributing any advertisement that is represented to be something other than a paid ad, and are required to prominently disclose in all future infomercials they create that the programs are paid ads. Finally, the respondents are required to pay \$200,000 as disgorgement of profits.

Appearances

For the Commission: *Brinley H. Williams, Michael Milgrom and Melissa R. Sternlicht.*

For the respondents: *Daniel C. Smith, Arent, Fox, Kintner, Plotkin & Kahn, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that CC Pollen Company, a corporation, and Bruce R. Brown, Carol M. Brown, and Royden Brown, individually and as officers and/or directors of said corporation (“respondents”) have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent CC Pollen Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its office or principal place of business located at 3627 East Indian School Road, Suite 209, Phoenix, Arizona.

Respondents Bruce R. Brown, Carol M. Brown, and Royden Brown are officers and/or directors of the corporate respondent named herein. They formulate, direct and control the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. Their addresses are the same as that of the corporation.

PAR. 2. Respondents have advertised, offered for sale, sold and/or distributed food products, including bee pollen products (various products containing bee pollen, and/or bee propolis, and/or royal jelly) intended for human consumption. Bee pollen products are "foods" or "drugs" within the meaning of Section 12 of the Federal Trade Commission Act, 15 U.S.C. 52.

PAR. 3. The acts and practices of respondents alleged in this Complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

PAR. 4. Respondents have disseminated or caused to be disseminated advertisements for bee pollen products. These advertisements have been disseminated by various means in or affecting commerce, including, but not limited to, television signals transmitted across state lines, for the purpose of inducing the purchase of bee pollen products by members of the public. These advertisements include, but are not necessarily limited to, two television productions, "The Search for the Fountain of Youth" (transcript attached hereto as Exhibit A, copy of program attached as Exhibit D) and "TV Insiders" (transcript attached hereto as Exhibit B, copy of program attached as Exhibit C), and the print advertisements attached hereto as Exhibits E and F.

PAR. 5. The aforesaid television productions contain the following statements and depictions:

(A) MR. MURPHY: Ladies and gentlemen, the show you're about to see was first broadcast a few months ago. Since that time, we have received literally thousands of letters, some of which I'd like to share with you. But let us first watch the show that changed the lives of so many people. (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(B) Norman Errington Productions Presents "The Search for the Fountain of Youth." (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(C) MR. MURPHY: Welcome to our program to explore new ways to improve your life. I'm your host, Paul Murphy. (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(D) MR. MURPHY: Across the world's cultures, we found similarities in their style of living that seem to unlock some of the mysteries of longevity. Many of these cultures have groups who have extended their years, and we found that each of these cultures has a common link. And we'll be exploring these similarities. (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(E) MR. MURPHY: "The Search for the Fountain of Youth" is not offering any medical miracles, nor are we making any medical claims at all in this report. We're simply going to present the facts as we have found them, so you can explore this phenomenon with us. (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(F) MR. MURPHY: We'll be back in a minute with more information on our search for the Fountain of Youth. First, we'll meet Noel Johnson, who is turning back the pages of time. (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(G) Title of 30-minute television program: "TV Insiders." (Exhibit B, transcript; Exhibit C, video tape of "TV Insiders.")

(H) MR. INNEO: Hello, I'm Vince Inneo, your inside information investigator. Welcome to this very special edition of "TV Insiders." No matter what walk of life or what the subject, it's no secret that having inside information keeps you steps ahead of the others. That's why we're here. This installment is critically important. Many of you have written possibly the most valuable inside information we have yet uncovered. Here are some of the hundreds of letters asking us or telling us about a 73-year-old Phoenix, Arizona man who many of you have claimed has rediscovered nature's formula for youth. Listen to some of these amazing stories. (Exhibit B, transcript; Exhibit C, video tape of TV Insiders.)

(I) MR. INNEO: Let me restate something. It's your cards and your letters alerting "TV Insiders" to new discoveries, interesting people and inside information. We need inside information. You tell me the stories and what you've heard, we will research it, investigate it, and we will share our findings with everyone. If we use your information, we will send you a "TV Insiders"

investigator's card. This you can count on. So until next mission, this is your inside investigator, Vince Inneo, wishing you good health and God's blessings. (Exhibit B, transcript; Exhibit C, video tape of "TV Insiders.")

(J) Statements and depictions of apparent unpaid, spontaneous, and unscripted interviews between Vince Inneo and Dr. Gary Null, Ms. Carol Brown, and Mr. Royden Brown. (Exhibit B, transcript; Exhibit C, video tape of "TV Insiders.")

(K) Statements and depictions that portray individuals as users of bee pollen products who have submitted unsolicited testimonials to "TV Insiders." (Exhibit B, transcript; Exhibit C, video tape of "TV Insiders.")

(L) All materials, whether real or recreated, represent factual events. (Exhibit B, transcript; Exhibit C, video tape of "TV Insiders.")

PAR. 6. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph five, including, but not necessarily limited to, the advertisements attached as Exhibits A, B, C and D, respondents have represented, directly or by implication, that "The Search for the Fountain of Youth" and "TV Insiders" are not paid-for advertisements, but rather are independent and objective documentary or news programs.

PAR. 7. In truth and in fact, "The Search for the Fountain of Youth" and "TV Insiders" are paid-for advertisements and not independent and objective documentary or news programs.

Therefore, the representations set forth in paragraph six, above, were and are false and misleading.

PAR. 8. The aforesaid advertisement also contains the following statements:

(A) MR. MURPHY: Across the world's cultures, we found similarities in their style of living that seem to unlock some of the mysteries of longevity. Many of these cultures have groups who have extended their years, and we found that each of these cultures has a common link. And we'll be exploring these similarities. (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(B) DR. JENSEN: There's no doubt in my mind that bee pollen is the one thing I have found in all of my travels and in all of my experience that brings on long life and good health. (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(C) UNIDENTIFIED SPEAKER: Now, for the first time, the magic of High Desert Bee Pollen is available with this television offer. If you want to feel a

renewed vitality and increased energy, then you may wish to order today. (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(D) UNIDENTIFIED SPEAKER: If you order today, we will also include a thirty-day supply of chewable royal jelly tablets for longevity. (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(E) MR. MURPHY: Bee pollen is the answer to mankind's quest for the Fountain of Youth. Bee pollen is the activating substance which rejuvenates and slows the aging process. (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(F) MR. MURPHY: Leading British medical authority, Dr. G. J. Binding, provides a scientific viewpoint: "Pollen is the finest, most perfect food. A giant germ killer in which bacteria simply cannot exist." (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(G) DR. JENSEN: There's no doubt in my mind that the High Desert Bee Pollen is one thing that I have felt will bring more health, more longevity, a greater power in that body, for the rest of your life. (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(H) MR. MURPHY: Dr. Jensen speaks as an expert. He has spent a lifetime looking for ways to increase longevity. He's traveled to hundreds of places on earth where longer lives share a common thread with each of these cultures. And that thread is bee pollen. (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(I) MR. ROYDEN BROWN: . . . Royal Jelly is the greatest rejuvenating and sex stamina food known to man, and you certainly want to have, be active sexually all the rest of your life. (Exhibit B, transcript; Exhibit C, video tape of "TV Insiders.")

(J) MR. INNEO: For those people who are allergic to pollen, will they be able to use Mountain-High Bee Pollen?

MR. BROWN: Bee pollen according to Leo N. Conroy, M.D. in Denver, Colorado, an allergist, says that bee pollen is the best reliever of allergies that he's ever found. He's had, he had over 60 thousand patients documented and 94 percent of them were completely relieved of the symptoms by ingesting the bee pollen.

MR. INNEO: Never have pollen-related allergies again?

MR. BROWN: Never have pollen allergy symptoms again, rest of their lives. (Exhibit B, transcript; Exhibit C, video tape of "TV Insiders.")

(K) MR. INNEO: I've heard from people that Mountain-High Bee Pollen helps them lose weight. Can you tell me how?

MR. BROWN: Well, Mountain-High Bee Pollen has all the nutrients you need for perfect health. So when you eat the Mountain-High Bee Pollen before each meal, it satisfies your appetite. As a result, you eat a little less food with each meal you eat and you lose weight constantly as long as you're eating the

Mountain-High Bee Pollen. (Exhibit B, transcript; Exhibit C, video tape of “TV Insiders.”)

(L) Propolis is considered the strongest of the natural antibiotics. . . . Propolis is widely recommended by natural health-care practitioners in preference to chemical antibiotics in many conditions where an antibiotic is useful. . . . [Propolis] is being enthusiastically welcomed as the strongest of the natural “preventative” medicines. (Exhibit E, portion of CC Pollen Company printed advertisement.)

(M) Extra High Potency High Desert Honeybee Pollens:

- 6. Weight Control . . .
- 10. Increased Sexual Stamina & Endurance . . .
- 11. Long Lives are attained by bee pollen users . . .

(Exhibit F, topic headings, portion of CC Pollen Company printed advertisement.)

PAR. 9. Through the use of the statements contained in paragraph eight, above, including, but not necessarily limited to, the advertisements attached as Exhibits A, B, C, D, E and F, respondents have represented, directly or by implication, that:

(A) Consumption of any bee pollen product cannot result in an allergic reaction;

(B) Consumption of CC Pollen Company’s bee pollen products will permanently alleviate all of the consumer’s pollen allergy symptoms;

(C) Consumption of bee pollen products slows or prevents or reverses the aging process;

(D) Consumption of bee pollen products can cure, or prevent, or alleviate impotence and/or sexual dysfunction;

(E) Consumption of bee pollen products causes weight loss;

(F) Bee pollen products, such as those advertised by CC Pollen Company, are an effective antibiotic for human use.

PAR. 10. In fact and in truth:

(A) Consumption of a bee pollen product can result in an allergic reaction;

(B) Consumption of CC Pollen Company's bee pollen products will not permanently alleviate all of the consumer's pollen allergy symptoms;

(C) Consumption of bee pollen products does not slow or prevent or reverse the aging process;

(D) Consumption of bee pollen products cannot cure, or prevent, or alleviate impotence and/or sexual dysfunction;

(E) Consumption of bee pollen products does not cause weight loss;

(F) Bee pollen products, such as those advertised by CC Pollen Company, are not an effective antibiotic for human use.

Therefore, the representations set forth in paragraph nine, above, were and are false and misleading.

PAR. 11. Through the use of the statements set forth in paragraph eight and others not specifically set forth herein, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph nine, respondents possessed and relied upon a reasonable basis for each such representation.

PAR. 12. In truth and in fact, at the time respondents made the representations set forth in paragraph nine, they did not possess and rely upon a reasonable basis for making each such representation. Therefore, respondents' representation as set forth in paragraph eleven was and is false and misleading.

PAR. 13. The acts and practices of respondents as alleged in this complaint, and the placement in the hands of others of the means and instrumentalities by and through which others may have used said acts and practices, constitute unfair and deceptive acts or practices in or affecting commerce, and the dissemination of false advertisements, in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

206

Complaint

EXHIBIT A

AUDIO TEXT

VIDEO STATEMENTS

Norman Errington Productions Presents The Search for the Fountain of Youth

MURPHY: Ladies and gentlemen, the show you're about to see was first broadcast a few months ago. Since that time, we have received literally thousands of letters, some of which I'd like to share with you. But let us first watch the show that changed the lives of so many people.

MURPHY: Welcome to our program to explore new ways to improve your life. I'm your host, Paul Murphy. For centuries, mankind has searched for that elusive Fountain of Youth. Ponce de Leon spent his entire life searching. Others have traveled and visited ancient cultures, hoping to find clues and answers. For centuries, people have looked for ways to renew that youthful vitality, and for ways to live longer and more productive lives.

What we're about to present to you may change your life. Across the world's cultures, we found similarities in their style of living that seem to unlock some of the mysteries of longevity. Many of these cultures have groups who have extended their years, and we found that each of these cultures has a common link. And we'll be exploring these similarities.

The locations of these cultures range from the mountains of Tibet to the rich heritage of Aztec and Mayan civilizations, in Europe and to the Orient. One thing we've found is that America is behind in reaching for those lessons to provide longer and healthier lives.

The man who has obviously bathed in the Fountain of Youth is this nearly 90-year-old man they call "Superman." Twenty-five years ago he was not able to walk and his son wanted him to go to a nursing home because of poor health. We're going to meet Noel Johnson. Not only did he stay out of the nursing home and prove his doctors wrong, this Superman is the oldest person to ever complete the New York Marathon. He's treated like a king in Thailand; he's appeared on hundreds of television programs, and he's a national treasure for his ability to overcome aging. He improves his condition with every marathon he runs.

We'll meet Bob Kite. He's an athlete who doesn't fit the mold. Due to his heavy business schedule, he's unable to work out on a regular basis, so he relies on an energy source to carry him to victory in some of the toughest endurance races in the world.

In the next few minutes, we'll also meet the father of the health food movement today, Dr. Bernard Jensen. Dr. Jensen has traveled the world searching for the answers to provide information on how all of us can live more vital lives. He's studied cultures across the world, and you'll be surprised at his findings.

And we'll meet a man who has devoted the past 30 years to a mission, to find the Fountain of Youth. His travels led him down many roads. He's developed a company devoted to providing the Fountain of Youth.

The Search for the Fountain of Youth

"The Search for the Fountain of Youth" is not offering any medical miracles, nor are we making any medical claims at all in this report. We're simply going to present the facts as we have found them, so you can explore this phenomenon with us. It's not surprising today that people are turning away from medicines to treat the sick and turning to wellness efforts to ensure the well-being of people before they become sick.

This is a story that begins almost a half-century ago in war-torn England. An American from Eaton, Colorado, volunteered to assist the Royal Canadian Air Force in England. His story will have a remarkable effect on the American quest for vitality. Royden Brown was first introduced to the opportunity for improvements in health through nutrition in 1943 at an officers' dining table. He was introduced to a food that changed his life and changed others'.

MURPHY: Royden, are the benefits of bee pollen a recent discovery?

BROWN: Bee pollen was on earth before man. It's as old as antiquity. Bee pollen and the products of the beehive are ... were ... found in the tombs of the pharaohs of Egypt, five and six thousand years ago. The products of the beehive have been revered in all major religions. The Torah, the code of Islam, the scrolls of the middle east, the writings of China, everywhere, the products of the beehive have been held in reverence.

For example, in the St. James version of the Bible, they're mentioned 68 times. And, of more recent vintage, the risen Jesus Christ, when He came back to earth, the first food He ate was bee pollen. God had Him eat bee pollen, symbolically, for the reason that Man was supposed to make bee pollen an integral part of his life.

MURPHY: Why haven't we heard more about the positive aspects of bee pollen?

BROWN: Mainly because the pharmaceutical companies cannot patent bee pollen and make their 40- and 50-times markup of their cost. Bee pollen is a low-profit food.

MURPHY: Let's find out a little more about the magic of bee pollen. In every corner of the earth, we're blessed with flowers. Ever wonder about the purpose of flowers? They provide beauty to the eye and a lift to the spirit. Scientists have found a far greater purpose. Wildflowers provide a source for honeybees who must visit 1,500 individual flowers to collect just one granule of bee pollen. Just one tablet of bee pollen can contain pollen from as many as 100,000 flowers. Bee pollen has been called "Nature's perfect food" because it has

