

In the Matter of Leeka Products (1997)

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In the Matter of Leeka Products (1997)

Case: In the Matter of Leeka Products (1997)

Subject Category: Consent Decree

Agency Involved: FTC

Complaint Synopsis: The FTC alleged that Leeka Products and Rogerio Monteiro and Eliana Crema made false or misleading claims in promoting a weight loss supplement and a hair loss supplement. The FTC claimed that the company represented that Chromium Picolinate was effective in burning fat, when reliable and competent scientific evidence existed to the contrary.

Consent Details: The Company and its officers agreed to stop representing in advertisements that its products were effective at promoting weight loss and reducing hair loss. They also agreed to stop using product names that represented the product's effect without scientific support, and to notify the FTC of the officer's employment statuses for 10 years following the agreement.

Practical Importance to Business of MLM/Direct Sales/Direct Selling/Network Marketing/Party Plan/Multilevel Marketing: Reliable scientific support is required for any product effectiveness claims.

In the Matter of Leeka Products (1997), Docket No. C-3767: The Company and its officers agreed to stop representing in advertisements that its products were effective at promoting weight loss

and reducing hair loss. They also agreed to stop using product names that represented the product's effect without scientific support, and to notify the FTC of the officer's employment statuses for 10 years following the agreement.

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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

ROGERIO MONTEIRO, individually and doing business as Leeka Products, and ELIANA CREMA,
individually and doing business as Leeka Products.

DOCKET NO. C-3767

COMMISSIONERS:

Robert Pitofsky, Chairman

Mary L. Azcuenaga

Janet D. Steiger

Roscoe B. Starek, III

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Dallas Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint; or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the

procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1a. Respondent Rogerio Monteiro is owner of Leeka Products, a sole proprietorship with its principal office or place of business at 1614 South Central Avenue, Glendale, California 91204.

1b. Respondent Eliana Crema is owner of Leeka Products, a sole proprietorship with its principal office or place of business at 1614 South Central Avenue, Glendale, California 91204.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

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

1. "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.
2. Unless otherwise specified, "respondents" shall mean Rogerio Monteiro and Eliana Crema, individually and doing business as Leeka Products, and each of the above's agents, representatives, and employees.
3. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondents, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Super Formula Reductora, Crema Sudadora Perfect Shape, Tratamiento para Combatir la Caida del Cabello or any food, dietary supplement, cosmetic or drug, as "food," "cosmetic" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that:

A. Such product controls and regulates metabolism;

B. Such product reduces appetite;

C. Such product burns or dissolves fat;

D. Such product causes better results from exercise;

E. Such product increases calories burned during exercise;

F. Such product provides any weight loss, fat loss, weight regulation, weight control, or weight maintenance benefits; or

G. Such product will prevent or retard hair loss

unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any hair care product or drug, as "drug" is defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not represent that any product prevents hair loss, unless the product is the subject of an approved new drug application for such purpose under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq., provided that, this requirement shall not limit the requirements of Order Part I herein.

III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Super Formula Reductora, Crema Sudadora Perfect Shape, Tratamiento para Combatir la Caida del Cabello or any other food, dietary supplement, cosmetic or drug, as "food," "cosmetic" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the benefits, performance, or efficacy of such product, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

IV.

IT IS FURTHER ORDERED that respondents directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Tratamiento para Combatir la Caida del Cabello or any substantially similar product in or affecting commerce, shall not use the name "Tratamiento para Combatir la Caida del Cabello" or any other name that represents, expressly or by implication, that the product will prevent or retard hair loss, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

V.

IT IS FURTHER ORDERED that respondents directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

VI.

Nothing in this order shall prohibit respondents 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.

VII.

Nothing in this order shall prohibit respondents 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.

VIII.

IT IS FURTHER ORDERED that respondents, and their successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

IX.

IT IS FURTHER ORDERED that respondents shall deliver a copy of this order to all current and future principals, partners, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

X.

IT IS FURTHER ORDERED that respondents, and their successors and assigns, shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in Leeka Products that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the company name or address. Provided, however, that with respect to any proposed change in the company about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

XI.

IT IS FURTHER ORDERED that respondent Rogerio Monteiro, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment or of his affiliation with any new business or employment which involves the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any food, dietary supplement, cosmetic or drug, as "food," "cosmetic" and "drug" are defined in Section 15 of the Federal Trade Commission Act. The notice shall include respondent's new business address and telephone number, and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

XII.

IT IS FURTHER ORDERED that respondent Eliana Crema, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of her current business or employment or of her affiliation with any new business or employment which involves the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any food, dietary supplement, cosmetic or drug, as "food," "cosmetic" and "drug" are defined in Section 15 of the Federal Trade Commission Act. The notice shall include respondent's new business address and telephone number, and a description of the nature of the business or employment and her duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

XIII.

IT IS FURTHER ORDERED that respondents shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XIV.

This order will terminate on September 12, 2017, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Donald S. Clark
Secretary

ISSUED: September 12, 1997

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