

## **Bogdana Corporation Stipulated Final Judgment**

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*Jeffrey A. Babener, principal attorney in the Portland, Oregon, law firm Babener & Associates, and editor of [www.mlmllegal.com](http://www.mlmllegal.com), represents many of the leading direct selling companies in the United States and abroad.*

## **Bogdana Corporation Stipulated Final Judgment**

**Case:** Bogdana Corporation Stipulated Final Judgment (1998)

**Subject Category:** Consent Order

**Agency Involved:** Federal Trade Commission

**Complaint Synopsis:** The Federal Trade Commission alleged deceptive trade practices by the Bogdana Corporation in marketing two nutritional supplements.

**Consent Details:** The Consent Order requires Bogdana to cease advertising that its Cholestaway supplement significantly effects cholesterol, fat, or triglycerides, and can result in significant weight loss. It is also prohibited from using the Cholestaway trade name. In the distribution of Flora Source, the company is prohibited from making claims that the product reduces the risk of illness, including AIDS, and that it has weight loss effects. The company must also label any television paid programming as advertisements, and keep records of all advertisements, to be made available to the FTC for inspection.

**Practical Importance to Business of MLM/Direct Sales/Direct Selling/Network Marketing/Party Plan/Multilevel Marketing:** The FTC takes unsupported health claims very seriously.

**Bogdana Corporation Stipulated Final Judgment**, File No: 952-3235 (1998): The Consent Order requires Bogdana to cease advertising that its Cholestaway supplement significantly effects cholesterol, fat, or triglycerides, and can result in significant weight loss. It is also prohibited from using the Cholestaway trade name. In the distribution of Flora Source, the company is prohibited from making claims that the product reduces the risk of illness, including AIDS, and that it has weight loss effects. The

company must also label any television paid programming as advertisements, and keep records of all advertisements, to be made available to the FTC for inspection.

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UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

*In the Matter of*

BOGDANA CORPORATION, a corporation, and JOSEPH L. GRUBER and BOGDA GRUBER, individually and as officers of Bogdana Corporation.

FILE NO. 952-3235

#### AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission has conducted an investigation of certain acts and practices of Bogdana Corporation, a corporation, and Joseph L. Gruber and Bogda Gruber, individually and as officers of Bogdana Corporation ("proposed respondents"). Proposed respondents, having been represented by counsel, are willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Bogdana Corporation, by its duly authorized officers, and Joseph L. Gruber and Bogda Gruber, individually and as officers of Bogdana Corporation, and counsel for the Federal Trade Commission that:

- 1.a. Proposed respondent Bogdana Corporation is a California corporation with its principal office or place of business at 8929 Wilshire Boulevard, Third Floor, Beverly Hills, California 90211.
- 1.b. Proposed respondent Joseph L. Gruber is an officer of Bogdana Corporation. Individually or in concert with others, he formulates, directs or controls the policies, acts, or practices of Bogdana Corporation. His principal office or place of business is the same as that of Bogdana Corporation.
1. c. Proposed respondent Bogda Gruber is an officer of Bogdana Corporation. Individually or in concert with others, she formulates, directs or controls the policies, acts, or practices of Bogdana Corporation. Her principal office or place of business is the same as that of Bogdana Corporation.
2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondents waive:
  - a. Any further procedural steps;
  - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of sixty (60) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and decision and order to proposed respondents by any means specified in Section 4.4 of the Commission's Rules shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the draft complaint and consent order. They understand that they may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

#### ORDER

#### DEFINITIONS

For 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 Bogdana Corporation, a corporation, its successors and assigns and its officers; Joseph L. Gruber and Bogda Gruber, individually and as officers of the corporation; 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, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Cholestaway or any other food, dietary supplement or drug, as "food" 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:

- A. That such product significantly lowers or has any other effect on serum cholesterol levels, with or without changes in diet;
- B. That such product significantly lowers serum cholesterol levels or causes significant weight loss even if users eat foods high in fat, including fried chicken and pizza;
- C. That such product substantially reduces or eliminates or has any other effect on the body's absorption of dietary fat;
- D. That such product lowers low density lipoprotein cholesterol or improves the high density lipoprotein cholesterol to low density lipoprotein cholesterol ratio;
- E. That such product is effective in the treatment of hardening of the arteries or heart disease;
- F. That such product causes significant weight loss or has any other effect on weight, with or without changes in diet;
- G. That such product significantly reduces or has any other effect on blood triglyceride levels;
- H. That such product significantly reduces or has any other effect on blood pressure levels; 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 ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Flora Source or any other food, dietary supplement or drug, as "food" 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:

- A. That such product replaces the natural intestinal flora that are lost due to illness, prescription drugs or antibiotics;

B. That such product reduces the risk of developing any illness, including but not limited to chronic fatigue syndrome (Epstein-Barr syndrome), AIDS, or any other immunosuppression disease;

C. That such product improves the body's absorption of nutrients, including B vitamins;

D. That such product enhances the body's immune response or is effective in the treatment of immunosuppression diseases, including AIDS;

E. That such product prevents weight gain;

F. That such product is effective in the prevention or treatment of anorexia; or

G. That such product is effective in the prevention or treatment of gastrointestinal disorders or symptoms including food sensitivities, constipation, diarrhea, dyspepsia, abdominal pain, bloating or gas, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any food, dietary supplement or drug, as "food" 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, concerning the product's efficacy, performance, safety or benefits, 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, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Cholestaway or any substantially similar product in or affecting commerce, shall not use the name "Cholestaway" or any other name that represents, expressly or by implication, that the product will lower serum cholesterol levels, 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, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product 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.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, shall not represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless:

A. At the time it is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or

B. Respondents disclose, clearly and prominently, and in close proximity to the endorsement or testimonial, either:

1. what the generally expected results would be for users of the product, or
2. the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

For purposes of this Part, "endorsement" shall mean as defined in 16 C.F.R. § 255.0(b).

VII.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product in or affecting commerce, shall not create, produce, sell or disseminate:

A. Any advertisement that misrepresents, expressly or by implication, that it is not a paid advertisement;

B. Any television commercial or other video advertisement fifteen (15) minutes in length or longer or intended to fill a broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer that does not display visually, clearly and prominently, and for a length of time sufficient for an ordinary consumer to read, within the first thirty (30) seconds of the advertisement and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

"THE PROGRAM YOU ARE WATCHING IS A PAID ADVERTISEMENT FOR [THE PRODUCT OR SERVICE]."

Provided that, for the purposes of this provision, the oral or visual presentation of a telephone number, e-mail address or mailing address for viewers to contact for further information or to place an order for the product or service shall be deemed a presentation of ordering instructions so as to require the display of the disclosure provided herein; or

C. Any radio commercial or other radio advertisement five (5) minutes in length or longer that does not broadcast, clearly and audibly, within the first thirty (30) seconds of

the advertisement and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

"THE PROGRAM YOU ARE LISTENING TO IS A PAID ADVERTISEMENT FOR [THE PRODUCT OR SERVICE]."

Provided that, for the purposes of this provision, the presentation of a telephone number, e-mail address or mailing address for listeners to contact for further information or to place an order for the product or service shall be deemed a presentation of ordering instructions so as to require the announcement of the disclosure provided herein.

VIII.

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.

IX.

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.

X.

IT IS FURTHER ORDERED that respondent Bogdana Corporation, and its successors and assigns, and respondents Joseph L. Gruber and Bogda Gruber 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.

XI.

IT IS FURTHER ORDERED that respondent Bogdana Corporation, and its successors and assigns, and respondents Joseph L. Gruber and Bogda Gruber shall deliver a copy of this order to all current and future principals, 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. Respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying a copy of each signed statement acknowledging receipt of the order.

XII.

IT IS FURTHER ORDERED that respondent Bogdana Corporation and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a 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 corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent 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.

XIII.

IT IS FURTHER ORDERED that respondents Joseph L. Gruber and Bogda Gruber, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his or her current business or employment, or of his or her affiliation with any new business or employment. 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 or 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.

XIV.

IT IS FURTHER ORDERED that respondent Bogdana Corporation, and its successors and assigns, and respondents Joseph L. Gruber and Bogda Gruber 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.

XV.

This order will terminate twenty (20) years from the date of its issuance, 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 effect 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 respondents 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.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_

BOGDANA CORPORATION

By: \_\_\_\_\_

JOSEPH L. GRUBER

Chief Executive Officer

\_\_\_\_\_  
JOSEPH L. GRUBER, individually and as an officer of the corporation

\_\_\_\_\_  
BOGDA GRUBER, individually and as an officer of the corporation

\_\_\_\_\_  
KIRKPATRICK W. DILLING

KAREN WEAVER

Dilling and Dilling

Attorneys for respondents

\_\_\_\_\_  
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APPROVED:

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\_\_\_\_\_  
JOAN Z. BERNSTEIN

Director

Bureau of Consumer Protection

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