

In the Matter of J&R Research Corp

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Jeffrey A. Babener, principal attorney in the Portland, Oregon, law firm Babener & Associates, and editor of www.mlmllegal.com, represents many of the leading direct selling companies in the United States and abroad.

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In the Matter of J&R Research Corp

Case: In the Matter of J&R Research Corp.

Subject Category: Consent Order

Agency Involved: FTC

Complaint Synopsis: The FTC alleged that the litany of claims J&R made in advertising the company's nutritional supplements were unsubstantiated by reliable and competent scientific evidence.

Consent Details: J&R Research and the FTC agreed that J&R would restrict the health claims advertised about J&R's products in exchange for the FTC withdrawing its complaint against the company. J&R made a variety of claims that its products cured or treated a significant number of health problems, such as diabetes, arthritis, lupus, stroke, high blood pressure, and others. The FTC claimed that there existed no competent scientific evidence that supported the company's effectiveness claims. In settling the dispute, J&R agreed to no longer advertise certain enumerated health benefits without corresponding scientific support. Additionally, the company agreed to cease using customer testimonials that are not typical or ordinary without disclosing the generally expected results or the limited applicability of the endorser's testimony.

Practical Importance to Business of MLM/Direct Sales/Direct Selling/Network Marketing/Party Plan/Multilevel Marketing: Claims about a product's effectiveness must be reasonably substantiated by competent and reliable support.

In the Matter of J&R Research Corp , Docket C-3961 : J&R Research and the FTC agreed that J&R would restrict the advertised health claims about J&R's products in exchange for the FTC withdrawing it's complaint against the company. J&R made a variety of claims that its products cured or treated a significant number of health problems, such as diabetes, arthritis, lupus, strokes, high blood pressure, and others. The FTC claimed that there existed no competent scientific evidence that supported the company's effectiveness claims. In settling the dispute, J&R agreed to no longer advertise certain enumerated health benefits without corresponding scientific support. Additionally, the company agreed to cease using customer testimonials that are not typical or ordinary without disclosing the generally expected results or the limited applicability of the endorser's testimony.

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Final Decision and Order

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS:

Robert Pitofsky, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

In the Matter of

J & R RESEARCH CORP., a corporation, and GERALD G. MCCARTHY, individually and as an officer of the corporation.

DOCKET NO. C-3961

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 Western Region 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 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 thirty (30) 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:

- 1.a Respondent J & R Research Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa , with its office and principal place of business at 109 Main Street, Massena, Iowa 50853.
- 1.b. Respondent Gerald G. McCarthy is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above stated address.
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 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 J & R Research Corporation, a corporation, its successors and assigns and its officers; Gerald McCarthy, individually and as an officer 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 pycnogenol or any other food, drug, or dietary supplement, 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, that such product:

- A. will treat or improve rheumatoid arthritis, osteoarthritis or rheumatism, including the elimination or reduction of inflammation or pain associated with these disorders;
- B. will reduce the amount of insulin needed to treat diabetes;
- C. will treat or improve health disorders associated with diabetes, including neuropathy, retinopathy, osteomyelitis, circulatory problems or heart problems;
- D. will help treat lupus, Parkinson's Disease, multiple sclerosis or fibromyalgia;
- E. will treat or improve digestive disorders, including Crohnes Disease or irritable bowel syndrome;
- F. will help prevent strokes or the recurrence of strokes;
- G. will improve physical disabilities caused by stroke;
- H. will help prevent heart disease, including arterial sclerosis;
- I. will reduce blood pressure;
- J. will improve or help prevent circulatory problems, including phlebitis, thrombophelbitis, blood clots, or varicose veins;
- K. will promote the shrinkage of tumors or help prevent tumor formation;
- L. will treat cancer or prolong the life of cancer victims;
- M. will reduce or eliminate inflammation of the prostate;
- N. will eliminate or reduce the incidence of asthma attacks and symptoms caused by allergies;
- O. will improve eyesight or treat disorders of the retina;
- P. will help rebuild joints and soft tissue;
- Q. will accelerate the healing time of injuries;
- R. will improve or cure skin conditions such as psoriasis and acne;
- S. will treat Attention Deficit Disorder or Attention Deficit Hyperactive Disorder;
- T. will reduce or eliminate the need for medication in individuals with Attention Deficit Disorder or Attention Deficit Hyperactive Disorder; or
- U. is more protective as an antioxidant than Vitamin C or Vitamin E;

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, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale,

sale, or distribution of any food, drug, or dietary supplement, 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, 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.

III.

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.

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 any food, drug, or dietary supplement, as "food" 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 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).

V.

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.

VI.

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.

VII.

IT IS FURTHER ORDERED that respondent J & R Research Corporation, and its successors and assigns, and respondent Gerald McCarthy 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 came into their possession from a distributor or any other source 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.

VIII.

IT IS FURTHER ORDERED that respondent J & R Research Corporation, and its successors and assigns, and respondent Gerald McCarthy 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.

IX.

IT IS FURTHER ORDERED that respondent J & R Research 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, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; 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 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.

X.

IT IS FURTHER ORDERED that respondent Gerald McCarthy, 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. 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.

XI.

IT IS FURTHER ORDERED that respondent J & R Research Corporation, and its successors and assigns, and respondent Gerald McCarthy 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.

XII.

This order will terminate on July 19, 2020, 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: July 19, 2000

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