

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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STATE OF IOWA, : C.E. NO. 30-17365  
Plaintiff, :  
vs. :  
HEALTH CARE PRODUCTS, INC., :  
RONALD E. ANDERSON, CARL :  
ANDERSON AND BARBARA LARKIN, : CONSENT DECREE  
Defendants. :

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WHEREAS, the Plaintiff, State of Iowa, and Defendants, Health Care Products, Inc., Carl Anderson, Ronald Anderson and Barbara Larkin (hereafter "Defendants"), have filed a Stipulation pursuant to Iowa R.Civ.P. 226 agreeing to entry of this Consent Decree under the terms and conditions provided for in the Stipulation, and whereas this Court has examined the file in this case and is fully advised in the premises:

FINDINGS OF FACT

1. The Plaintiff, State of Iowa ex rel Thomas J. Miller, has authority to initiate this action to seek restitution, costs and injunctive relief to restrain violations of Iowa Code §714.16.

2. The Court has jurisdiction over the parties and the subject matter to enter this Consent Decree, pursuant to Iowa Code §714.16(7).

3. Plaintiff alleges that Defendants have made false, deceptive or misleading advertising representations in violation of Iowa Code §714.16. Further, the Plaintiff alleges that Defendants are marketing products in violation of the Federal Food, Drug and Cosmetic Act, and that this also constitutes a violation of §714.16 of the Iowa Code. Finally, Plaintiff alleges that the marketing of certain products by Defendants constitutes a violation of the Iowa Food, Drug and Cosmetic Act, Iowa Code Chapter 203A.

4. Defendants expressly deny that they have violated any Iowa or Federal law, and they further deny any and all liability for any alleged violations of the afore-mentioned statutes, or any other law.

5. The parties desire to settle this dispute without further litigation and pursuant to the terms and conditions of this proposed Consent Decree. Neither the Stipulation nor the Consent Decree shall be construed as, or be evidence of, any violation of any Iowa or Federal law, nor shall the Stipulation nor the proposed Consent Decree be considered as an admission by any Defendant of liability. Pather, this settlement shall be considered merely as a compromise of a disputed claim.

IT IS THEREFORE ORDERED that Defendants and their partners, officers, employees, successors and all other persons,

corporations and other entities acting on Defendants' behalf who have actual or constructive notice of the Court's injunction are hereby permanently enjoined from promoting, selling or advertising for sale in Iowa "Cal-Ban 3000" or any other weight loss product or plan or "Sun Bronz" or any other tanning product.

IT IS FURTHER ORDERED that Defendants shall not be in violation of the above solely because an advertisement appears in advertising directed at consumers in other states and which necessarily has to run in Iowa due to the circulation of the publication or the broadcast area of a particular radio or television station or channel provided, however, that all such advertising shall clearly and conspicuously state "NOT AVAILABLE IN IOWA" or "NO ORDERS ACCEPTED FROM IOWA" and provided that no order is mailed or shipped to any Iowa address and no order is accepted by Defendants or their partners, officers, employees or successors if they know the consumer is ordering from Iowa. Notwithstanding the above, Defendants shall not place any advertisement with any newspaper, magazine or television station or other enterprise if the advertisement is intended for circulation primarily within the State of Iowa.

IT IS FURTHER ORDERED that in order to comply with the general clear and conspicuous requirements set out above, if any advertisement requiring the above-referenced disclosure is in print, the disclosure shall be in medium-boldface, upper case and

smaller case type, with upper case being no smaller than 3/8 the height of the telephone number used by customers to place an order. The disclosure shall be placed in close proximity to the telephone number. In television or other video advertising, the disclosure shall appear for at least as long as the order information is given or five seconds, whichever is less, and must be in upper case and smaller case print with upper case being no smaller than 3/8 the height of any telephone number given for orders. If the order number is given by a voice alone, the voice must also state that the product is "NOT AVAILABLE IN IOWA" or that "ORDERS ARE NOT ACCEPTED FROM IOWA".

IT IS FURTHER ORDERED that Health Care Products, Inc. shall contact its advertisers within two weeks of the date of this Decree and request that the above-required disclosure be included within all Cal-Ban 3000 advertisements that will run in Iowa. The disclosure shall appear in all advertisements run in Iowa as soon as is practically feasible, accommodating the schedules of Health Care Products, Inc.'s advertisers and in any event shall appear in all advertisements run in Iowa within six months from the date of this Decree.

IT IS FURTHER ORDERED that the Defendants shall deposit an adequate sum in an interest bearing account ("Segregated Account") at an Iowa financial institution forthwith upon filing of this Consent Decree. The Segregated Account shall be set up

so that no money can be withdrawn from the account without the consent of both Plaintiff and Defendants' attorneys, or until further Court order resolving any differences, if any, between the parties related to distribution of the Segregated Account. The amount deposited shall be for the purpose of assuring payment of 1987 and 1988 restitution amounts as hereafter required and shall be in such an amount as the parties shall agree.

IT IS FURTHER ORDERED that the Defendants shall pay <sup>27<sup>th</sup></sup> *J.R. Judge* \$20,000.00 to the State of Iowa prior to February 13, 1990 to cover the State's cost of investigation and litigation of this matter, and to cover the State's costs of administering restitution.

IT IS FURTHER ORDERED that Health Care Products shall offer to re-purchase all Cal-Ban that General Nutrition Centers has in stock in Iowa as of the date of filing of this Consent Decree, unless Defendants can make other arrangements with General Nutrition Centers to halt General Nutrition's sales of Cal-Ban in Iowa. Defendants shall provide a copy of this Consent Decree to General Nutrition Centers and request that General Nutrition Centers provide a copy of the Consent Decree to each of their Iowa stores. Defendants shall provide Plaintiff with a copy of the letter.

IT IS FURTHER ORDERED that the Defendants shall provide to the State of Iowa prior to the time of filing of this Consent

Decree a complete list of all Iowans who have purchased the Cal-Ban diet pill from the Defendants in 1989, including name, address, date of purchase, amount of purchase and amount of refund, if any, to the extent said records exist.

IT IS FURTHER ORDERED that Plaintiff will send a copy of the letter attached as Exhibit 1 to each consumer on the Cal-Ban customer list provided by Defendants. Letters will not be sent to consumers who have already received refunds or where a C.O.D. order was undeliverable. Such letter will permit customers three weeks from the date of the letter to respond by returning to Plaintiff a postcard attached in the form of Exhibit 2. Plaintiff will pay for this mailing from the \$20,000.00 Defendants pay to the Plaintiff as reimbursement of costs. AND IT IS FURTHER ORDERED that Plaintiff will compile a list of customers submitting timely responses to the mailing described above. A response received by Plaintiff within 10 days of the deadline is to be deemed timely. AND IT IS FURTHER ORDERED that within 30 days of receipt from Plaintiff of the list of timely customer responses, Defendants will mail a refund check to each customer for the full amount of the consumer's purchase as shown on the Cal-Ban customer list. In doing so, the Defendants will include no other communication of any sort with the refunds, with the exception of the letter attached as Exhibit 3. Defendant

will pay all expenses associated with mailing refund checks to consumers with the exception of printing of the letter attached as Exhibit 3 which Plaintiff shall supply to Defendants with the list of consumers to receive refunds. Immediately upon completion of the mailings of all refund checks, Defendants shall provide Plaintiff with the affidavit of Carl Anderson and Barbara Larkin stating that said mailing has been completed pursuant to the terms of this Consent Decree and that to the best of affiants' knowledge, all refunds due to all intended recipients have been mailed and that there are sufficient funds in the account the checks are drawn on for all checks to clear.


IT IS FURTHER ORDERED that after expiration of the grace period for consumers to respond to Plaintiff's notification of eligibility for refunds, the total dollar amount of refunds owed to consumers shall be calculated and expressed as a percentage of Health Care Product's 1989 Iowa Cal-Ban sales less refunds previously made by Health Care Products ("Refund Percentage"). AND IT IS FURTHER ORDERED that restitution amounts for 1987 and 1988 shall be calculated by multiplying the refund percentage by Health Care Product's estimated 1987 and 1988 Iowa Cal-Ban 3000 sales figures. Defendants have provided the Court with financial documentation substantiating these figures for in camera review. The restitution amounts calculated for 1987 and 1988 shall be added together and shall constitute the "Restitution Fund". AND IT IS FURTHER ORDERED that such amount of principal and interest from the Segregated Account as is necessary shall be used to

fully fund the Restitution Fund and shall be paid to the Plaintiff within a reasonable time after Plaintiff turns the consumer refund list over to the Defendants and the amount of the Restitution Fund can be calculated. If there is any money remaining in the Segregated Account after the Restitution Fund has been fully funded, this amount shall be promptly returned to the Defendants providing that Defendants provide Plaintiff with an affidavit that they have mailed all refund checks and that they will ensure that funds will be available for all refund checks to clear.

IT IS FURTHER ORDERED that since the 1987 and 1988 Cal-Ban consumers are unknown, and since the cost of identifying these consumers and administering restitution would most likely exceed the amount of the Restitution Fund, the first \$50,000.00 of the Restitution Fund (or whatever amount under \$50,000.00 that makes up the Restitution Fund) shall be paid to the State's Consumer Education Fund. All amounts in excess of \$50,000.00, if any, in the Restitution Fund shall be given to a non-profit organization to be selected by the Plaintiff subject to Court approval.

IT IS FURTHER ORDERED that the Court retain jurisdiction of this matter for purposes of enforcement of this Consent Decree.

Dated this 23<sup>rd</sup> day of February, 1990.

  
\_\_\_\_\_  
JUDGE  
FIFTH JUDICIAL DISTRICT OF IOWA



(letterhead of the Attorney General's Office)

IMPORTANT REFUND NOTICE  
from Iowa Attorney General Thomas J. Miller

TO: Past buyers of "Cal-Ban" from Health Care Products, Inc.

RE: Refund Eligibility

DATE: \_\_\_\_\_, 1990

According to records which have been provided to this office, you bought Cal-Ban from Health Care Products, Inc. sometime within the last year or so.

The Iowa Attorney General believes that the advertisements used to sell this product were misleading and violated Iowa's Consumer Protection and Drug laws. While Health Care Products, Inc. believes that its advertising is not misleading and maintains that it did not violate any law, Health Care Products, Inc. has agreed to resolve the concerns of the Iowa Attorney General by renewing its offer to provide a full refund to each Iowa purchaser who is dissatisfied with the product.

If you were dissatisfied with the product you bought, sign and return the enclosed postcard BY \_\_\_\_\_, 1990, and the company has agreed to refund your money.

If you have any questions, contact Nancy Dudak or Ray Johnson of the Attorney General's office, at the phone number above. Thanks for your cooperation.

(Postcard for dissatisfied consumers to return)

[side one]

I made a purchase from Health Care Products, Inc. and I am dissatisfied with the product. I want a refund.

\_\_\_\_\_  
(Your signature)

Your Name (please print):

\_\_\_\_\_

Current address:

\_\_\_\_\_

City, State, Zip:

\_\_\_\_\_

Phone:

\_\_\_\_\_

[side 2]

Consumer Name  
and address

Iowa Attorney General's Office  
Consumer Protection Division  
1300 East Walnut  
Hoover Building, 2nd Floor  
Des Moines, IA 50319

EXHIBIT A-2

(letterhead of the Attorney General's Office)

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EXHIBIT 1

(Postcard for dissatisfied consumers to return)

[side one]

I made a purchase from Health Care Products, Inc. and I am dissatisfied with the product. I want a refund.

\_\_\_\_\_  
(Your signature)

Your Name (please print): \_\_\_\_\_

Current address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

[side 2]

Consumer Name  
and address

Iowa Attorney General's Office  
Consumer Protection Division  
1300 East Walnut  
Hoover Building, 2nd Floor  
Des Moines, IA 50319

EXHIBIT 2

(Letterhead of the Attorney General's Office)

Enclosed herewith please find refund for purchase of Cal-Ban  
3000.

EXHIBIT 3