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CT- 2009-001

Chantal Fortin

for / pour

REGISTRAR / REGISTRAIRE

CT-2009-

OTTAWA, ONT.

0001

THE COMPETITION TRIBUNAL

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34 as amended;

AND IN THE MATTER OF an investigation by the Commissioner of Competition into certain marketing practices of Bioenergy Wellness Inc. (carrying on business as Energyworks Wellness Centre) and its director Alan Gordon;

AND IN THE MATTER of the filing and registration of a Consent Agreement pursuant to section 74.12 of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION

-and-

BIOENERGY WELLNESS INC., and ALAN GORDON

CONSENT AGREEMENT

WHEREAS the Commissioner of Competition (the “Commissioner”) is head of the Competition Bureau (the “Bureau”) and is responsible for the administration and the enforcement of the *Competition Act* (the “Act”) including the deceptive marketing practices provisions in Part VII.1 of the *Act*;

AND WHEREAS the Respondents, Bioenergy Wellness Inc. (carrying on business as Energyworks Wellness Centre), is a corporation incorporated under the laws of the Province of Alberta, and Alan Gordon, is the director of Bioenergy Wellness Inc.;

AND WHEREAS the Respondents operate several websites, including www.papimi.biz and www.magnapulse.ca, and operated a clinic located at 16736 - 111 Avenue, Edmonton, Alberta which until recently promoted the treatment and sales of their therapeutic Papimi, Magnapulse and Far Infrared Sauna devices by making representations to the public that these products were effective in preventing or treating cancer (the “representations”);

AND WHEREAS the Commissioner commenced an investigation into the marketing practices of the Respondents regarding the representations made about Papimi, Magnapulse and Far Infrared Sauna;

AND WHEREAS the Respondents acknowledge that they received information from a foreign third party supplier as to the efficacy and performance of the Papimi, Magnapulse and Far Infrared Sauna which was used in the representations made to the public in Canada without conducting their own, independent review to assess whether or not the information relied upon was adequate and proper support for the representations made by the Respondents;

AND WHEREAS the Commissioner has concluded that those representations were in the form of statements of the performance or efficacy of Papimi, Magnapulse and Far Infrared Sauna that were not based on an adequate and proper test, and constituted reviewable conduct under paragraph 74.01(1)(b) of the *Act*;

AND WHEREAS the Commissioner and the Respondents (the “Parties”) are satisfied that this matter can be resolved with the registration of this Consent Agreement (“Agreement”);

AND IT BEING UNDERSTOOD THAT although the Commissioner has come to the foregoing conclusions, and solely for the purposes of this Consent Agreement and its registration the Respondents do not contest the Commissioner’s conclusions, for greater certainty nothing in this Consent Agreement shall be taken as an admission now or in the future by the Respondents of any contravention of the *Act*;

AND WHEREAS the Parties agree that upon the signing of this Agreement, the Commissioner shall file it with the Competition Tribunal (the “Tribunal”) for immediate registration;

AND WHEREAS pursuant to section 74.12 of the *Act*, upon registration this Agreement shall have the same force and effect as if it were an order of the Tribunal;

NOW THEREFORE in order to resolve the Commissioner’s investigation into the marketing practices of the Respondents, the Parties hereby agree as follows:

I. INTERPRETATION

1. For the purpose of this Agreement, the following definitions shall apply:
 - a. “**Act**” means the *Competition Act*, R.S.C. 1985, c. C-34 as amended;
 - b. “**Agreement**” means this Consent Agreement entered into by the Respondents and the Commissioner pursuant to section 74.12 of the *Act*;
 - c. “**Commissioner**” means the Commissioner of Competition, appointed pursuant to section 7 of the *Act*, and her authorized representatives;
 - d. “**Respondents**” means Bioenergy Wellness Inc. (carrying on business as Energyworks Wellness Centre) and its director Alan Gordon;

- e. **“Parties”** means the Commissioner and the Respondents; and
- f. **“Tribunal”** means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c. 19 (2nd Supp.), as amended.

II. COMPLIANCE WITH THE DECEPTIVE MARKETING PRACTICES PROVISIONS OF THE COMPETITION ACT

- 2. The Respondents shall comply with the deceptive marketing practices provisions of the *Act*.
- 3. The Respondents shall not make, cause to be made, or permit to be made on their behalf, any representation to the public by any means, including on an Internet website, that Papimi, Magnapulse, Far Infrared Sauna or any similar product is effective in preventing or treating cancer.
- 4. The Respondents shall not make, cause to be made, or permit to be made on their behalf, any representation to the public by any means, including on an Internet website, in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of any product, that is not based on an adequate and proper test.

III. ACKNOWLEDGEMENT

- 5. The Respondents acknowledge that they must take all steps necessary to ensure that any representations regarding the performance or efficacy of a product are substantiated by adequate and proper tests, including but not limited to ensuring, with the assistance of appropriate expertise as required, that:
 - a. a test was actually conducted;
 - b. the test was adequate and proper, and was conducted independently by a reputable tester;
 - c. the test was conducted on the product about which the Respondents intend to make a representation;
 - d. any conclusions drawn from the test are fully supported by that test; and
 - e. any representations made about the performance or efficacy of the product are based on the results of that test.

IV. CORRECTIVE NOTICE

6. No later than 2 weeks after the date of this Agreement and for a period of at least 12 weeks, the Respondents shall post the corrective notice described in Appendix “A” of this Agreement.
 - a. The notice shall be posted at the Respondents’ clinic in a prominent location, easily visible by clients. The heading as seen in Appendix “A” shall be printed in 14-point bold font and the full corrective notice shall be in 12-point font.
 - b. The notice shall also be placed on any website maintained by the Respondents. The heading as seen in Appendix “A” shall be placed in a prominent location on the home page in 14-point bold font. The heading shall link to the full corrective notice on a web page maintained by the Respondents, in 12-point font and unembellished print, with the heading in 14-point bold font.
7. No later than 3 weeks after the date of this Agreement, the Respondents shall provide a notice to the Commissioner either confirming that the corrective notice has been posted on each website referred to in paragraph 6, or identifying and providing particulars of any breach of that provision.

V. RESTITUTION

8. The Respondents shall refund the purchase price of cancer prevention and/or treatment sessions and/or the cost of any units sold of the Papimi, Magnapulse and Far Infrared Sauna, including all taxes, to any person who:
 - a. purchased Papimi, Magnapulse and Far Infrared Sauna from the Respondents or had cancer prevention and/or treatment sessions at the Respondents’ clinic; and
 - b. within 16 weeks after the date of this Agreement, requests a refund and provides proof of purchase in the form of a credit card statement, sales receipt, email confirmation, product packaging or other proof of purchase.
9. The Respondents shall operate a phone number for consumers wishing to make a refund request during business hours (9 am to 5 pm Mountain Standard Time). The telephone number shall remain active until at least 36 weeks after the date of the Agreement.
10. No later than 20 weeks after the date of this Agreement, the Respondents shall provide to the Commissioner a written report indicating:
 - a. the number of refunds requested,
 - b. the number of refunds issued,

- c. in respect of each person who requested a refund,
 - i. their name and full contact information,
 - ii. the amount refunded, and
 - iii. if no refund was provided or if the refund was less than the amount claimed, the reasons for the refusal or reduction.

VI. DURATION

- 11. Except as otherwise specified, this Agreement applies for a period of 10 years following the date of this Agreement.

VII. NOTICES

- 12. Notices pursuant to this Agreement shall be in writing and shall be considered to be given if dispatched by personal delivery, or by registered mail or facsimile transmission to the Parties at the following addresses or facsimile numbers:

- (a) **The Commissioner:**
Commissioner of Competition
Competition Bureau
Place du Portage, Phase 1, 50 Victoria Street, 21st Floor
Gatineau, Quebec K1A 0C9
Telephone: (819) 997- 3301
Facsimile: (819) 953-5013
Attention: Deputy Commissioner (Fair Business Practices)

With a copy to:

Director, Competition Bureau Legal Services
Department of Justice
Place du Portage, Phase I, 50 Victoria Street, 22nd Floor
Gatineau, Quebec K1A 0C9
Telephone: (819) 953-3884
Facsimile: (819) 954-9267

- (b) **The Respondents:**

Bioenergy Wellness Inc. (Energyworks Wellness Center)
16736 - 111 Avenue
Edmonton, Alberta T5M 2S5

Telephone: (780) 486-2888
Attention: Alan Gordon

VI. GENERAL

13. This Agreement may be executed in two or more counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. In the event of any discrepancy between the English and French versions of this Agreement, the English version shall prevail.
14. In the event of a dispute as to the interpretation or application of this Agreement, any of the Parties may apply to the Tribunal for an order or directions. The Parties agree that the Tribunal has jurisdiction to make such order as is required to give effect to this Agreement.
15. The Parties consent to the registration of this Agreement by the Tribunal.

DATED at Edmonton, Alberta, this 2nd day of February, 2009.

[original signed by Alan Gordon]

Alan Gordon

[original signed by Alan Gordon]

Bioenergy Wellness Inc. (Energyworks Wellness Center)

per: Alan Gordon, Director

I have authority to bind the corporation.

DATED at Gatineau, Quebec this 19th day of February, 2009.

[original signed by Andrea Rosen]

Commissioner of Competition

Per: Andrea Rosen

Deputy Commissioner of Competition

APPENDIX “A” - CORRECTIVE NOTICE AND TERMS OF REFUND

(1) Heading

Notice regarding Papimi, Magnapulse and Far Infrared Sauna

(2) Corrective Notice

Notice regarding Papimi, Magnapulse and Far Infrared Sauna

Certain representations previously made by Bioenergy Wellness Inc. (Energyworks Wellness Center) may have stated or given the general impression that Papimi, Magnapulse and Far Infrared Sauna are effective in preventing or treating cancer. The Commissioner of Competition has concluded that these representations are not based on an adequate and proper test of Papimi, Magnapulse and Far Infrared Sauna, and therefore are reviewable under paragraph 74.01(1)(b) of the *Competition Act*.

Bioenergy Wellness Inc. (Energyworks Wellness Center) has entered into a consent agreement with the Commissioner of Competition regarding these representations. A copy of the agreement is available on the website of the Competition Tribunal at www.ct-tc.gc.ca.

Bioenergy Wellness Inc. (Energyworks Wellness Center) has agreed to stop making these representations, and to refund the treatment fees and the purchase price of Papimi, Magnapulse and Far Infrared Sauna to any person who was treated with or purchased any of these devices for cancer prevention or treatments from Bioenergy Wellness Inc. (Energyworks Wellness Center). If you have been treated with or have purchased Papimi, Magnapulse or Far Infrared Sauna for cancer prevention or treatment and would like to obtain a refund, send a refund request no later than May 22, 2009, including your name, proof of purchase and the address where you would like the refund to be sent, to:

Alan Gordon, Director
Bioenergy Wellness Inc. (Energyworks Wellness Center)
16736 - 111 Avenue
Edmonton, Alberta T5M 2S5

You must send proof of purchase to obtain a refund. Any of the following is acceptable:

- (i) a credit card statement or sales receipt denoting the purchase;
- (ii) an email confirmation of the purchase; or

- (iii) the product packaging.

Any questions about refunds should be directed to Bioenergy Wellness Inc.
(Energyworks Wellness Center) at 1-780-486-2888.