

## In the Matter of Nu Skin International Inc. (1997)

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## In the Matter of Nu Skin International Inc. (1997)

**Case:** In the Matter of Nu Skin International Inc. (1997)

**Subject Category:** Consent Decree

**Agency Involved:** FTC

**Complaint Synopsis:** The FTC alleged that NU Skin had violated a previous consent decree with the Commission. The company had previously agreed to cease claiming that their nutritional supplements were effective in the absence of reliable and competent scientific evidence. The FTC claimed that Nu Skin had resumed this practice in violation of the earlier agreement. Violations carried a penalty of \$10,000 per occurrence.

**Consent Details:** Nu Skin agreed to pay a fine of \$1.5 million, and to an injunction against additional order violations, in exchange for the FTC withdrawing it's complaint against the company. The company had resumed making unsupported product efficacy claims in violation of a previous consent decree with the FTC, the commission claimed. Rather than go to trial, the company settled for a fine and injunction against additional violations.

**Practical Importance to Business of MLM/Direct Sales/Direct Selling/Network Marketing/Party Plan/Multilevel Marketing:** Violation of a previous consent decree is a serious event. Nu Skin settled for

\$1.5 million, suggesting that the potential fine after a trial would have been higher. A company's legal obligations should be strictly adhered to.

**In the Matter of Nu Skin International Inc. (1997)**, FTC Docket No. C-3489 : Nu Skin agreed to pay a fine of \$1.5 million, and an injunction against additional order violations, in exchange for the FTC withdrawing its complaint against the company. The company had resumed making unsupported product efficacy claims in violation of a previous consent decree with the FTC, the commission claimed. Rather than go to trial, the company settled for a fine and injunction against additional violations.

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## Consent Decree

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION  
UNITED STATES OF AMERICA

*In the Matter of*

NU SKIN INTERNATIONAL, INC., a corporation

CONSENT DECREE

WHEREAS: Plaintiff, the United States of America, has commenced this action by filing the Complaint herein; defendant Nu Skin International, Inc., has waived service of the Summons and Complaint; the parties have been represented by the attorneys whose names appear hereafter; and the parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law and without defendant admitting liability for any of the matters alleged in the Complaint;

THEREFORE, on the joint motion of plaintiff and defendant, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. This Court has jurisdiction over the subject matter and the parties.
2. The Complaint states a claim upon which relief may be granted against the defendant under Sections 5(l), 9, 13(b), and 16(a) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(l), 49, 53(b), and 56(a).
3. The following definition shall apply to this Consent Decree: "Commission's Order" shall mean the Federal Trade Commission ("Commission") Order in FTC Docket No. C-3489 (1994), a copy of which is attached herewith as Exhibit A and made a part of this Consent Decree.

#### CIVIL PENALTY

4. Pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), defendant Nu Skin International, Inc., its successors and assigns, shall pay to plaintiff a civil penalty of One Million Five Hundred Thousand Dollars (\$1,500,000). Defendant shall make this payment to the United States Treasury within ten (10) days of the date of entry of this Consent Decree by electronic fund transfer in accordance with the instructions provided by the Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, D.C. 20530. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the entire unpaid penalty, together with interest, as computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, shall immediately become due and payable.

#### INJUNCTION AGAINST ORDER VIOLATIONS

5. Defendant Nu Skin International, Inc., its successors and assigns, and its officers, agents, representatives, and employees, and all persons in active concert or participation with any one or more of them who receive actual notice of this Consent Decree by personal service or otherwise, are hereby enjoined from ever violating, directly or through any corporation, subsidiary, division, or other device, any provision of the Commission's Order.

6. In the event that the Commission's Order is hereafter modified, defendant's compliance with such Order as so modified shall not be deemed a violation of this injunction.

7. Nothing in this Consent Decree shall prohibit defendant 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 Nutritional Labeling and Education Act of 1990.

#### PERSONS AFFECTED; CONTINUING JURISDICTION

8. Defendant Nu Skin International, Inc., its successors and assigns, shall, within thirty (30) days of the entry of this Consent Decree: A) provide this Consent Decree to each of its current officers and managers, and to its agents, representatives, and employees having responsibilities with respect to the subject matter of this Decree, and secure from each such officer, manager, agent, representative, and employee a signed statement acknowledging receipt of this Consent Decree; and B) provide a dated and signed notification letter in the form set forth in Exhibit B to this Consent Decree to each of its distributors who: (1) are located in the United States; and

(2) either received a commission check or placed an order for products or services from defendant during the year immediately preceding the entry of this Consent Decree. Within ten (10) days of complying with this paragraph, defendant, its successors and assigns, shall file an affidavit with the Court and serve the Commission, by mailing a copy thereof, to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Avenue, N.W.,

Washington, D.C. 20580, setting forth the fact and manner of its compliance, including the name and title of each person to whom a copy of the Consent Decree has been provided. For a period of five (5) years from the date of entry of this Consent Decree, defendant, its successors and assigns, shall: A) provide this Consent Decree to each of its future officers and managers, and to its future agents, representatives, and employees having responsibilities with respect to the subject matter of this Decree, within three (3) days after the person assumes the position; and B) provide a dated and signed notification letter in the form set forth in Exhibit B to this Consent Decree to each of its future distributors who are located in the United States within three (3) days after the distributor assumes the position.

9. For a period of five (5) years from the date of entry of this Consent Decree, Defendant Nu Skin International, Inc., its successors and assigns, shall maintain and make available to the Commission, within thirty (30) days of the date of receipt of a written request, business records demonstrating compliance with the terms and provisions of this Consent Decree.

10. This Court shall retain jurisdiction of this matter for the purpose of enabling any of the parties to this Consent Decree to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for interpretation or modification of this Consent Decree, for the enforcement of compliance therewith, or for the punishment of violations thereof.

JUDGMENT IS THEREFORE ENTERED in favor of plaintiff and against defendant, pursuant to all of the terms and conditions recited above.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

UNITED STATES DISTRICT JUDGE

The parties, by their respective counsel, hereby consent to the terms and conditions of the Consent Decree as set forth above

and consent to the entry thereof. Defendant waives any rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412.

FOR THE UNITED STATES OF AMERICA

FRANK W. HUNGER  
Assistant Attorney General  
Civil Division  
U.S. Department of Justice  
United States Attorney  
District of Utah

BY: \_\_\_\_\_  
Assistant United States Attorney  
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FOR THE FEDERAL TRADE COMMISSION:

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FOR THE DEFENDANT:  
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By:  
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BY:  
RICHARD L. ROSEN, ESQ.  
RANDAL M. SHAHEEN, ESQ.  
Members of the Firm

EXHIBIT B

Dear U.S. Distributor:

In 1994 Nu Skin International, Inc. (NSI) consented to the issuance of a cease and desist order (Order) by the Federal Trade Commission (FTC). The FTC now alleges that NSI did not have competent and reliable scientific evidence, as required by the Order, to substantiate certain claims made by NSI and its distributors that chromium picolinate and L-carnitine reduce body fat and/or promote muscle development. These claims have appeared in advertising and promotional materials for Metabotrim, OverDrive, Glycobar, Appeal Lite, and Breakbars.

As a result of discussions with the FTC, NSI has agreed to the entry of a consent decree (Decree) in the United States District Court in Utah. The Decree is for settlement purposes only and does not constitute an admission of violations of the Order by NSI. Pursuant to the Decree, NSI has agreed to the payment of a \$1.5 million civil penalty and an injunction prohibiting future violations of the Order. The injunction applies to NSI, its officers, agents, representatives, and employees, and all persons in participation with any of the above who receive actual notice of the Decree. Accordingly, NSI has withdrawn and destroyed all prior materials containing the contested claims. We suggest that you do the same.

The Decree requires that NSI provide a copy of this notice to each of its current and future distributors.

If you have questions or would like a copy of the Decree, you may contact NSI at (801) 345-. Thank you for your cooperation.

Sincerely yours,

NSI

<http://www.mlmllegal.com/legal-cases/InTheMatterofNuSkinInternationalInc-1997.php>