

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff,

vs.

Advanced Wellness Research, Inc., a Florida Corporation
Nicholas Molina, individually, and as President of
Advanced Wellness Research, Inc.; and Netalab, Inc.
as a successor corporation,

Defendants.

09CH29098

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

NOW COMES the Plaintiff, the People of the State of Illinois, by Lisa Madigan, Attorney General of Illinois, who brings this action complaining of the Defendants, Advanced Wellness Research, Inc. a Florida Corporation; Nicholas Molina, individually, and as President of Advanced Wellness Research, Inc.; and Netalab, Inc (hereinafter "Defendants") and states as follows:

I.

JURISDICTION

1. This action is brought for and on the behalf of the PEOPLE OF THE STATE OF ILLINOIS, by Lisa Madigan, Attorney General of Illinois, pursuant to the provisions of the Consumer Fraud and Deceptive Business Practices Act, (hereafter, "Consumer Fraud Act"), 815 ILCS 505/1 *et seq.*, the Uniform Deceptive Trade Practices Act, 815 ILCS 510/2 *et seq.* and her

common law authority as Attorney General of Illinois.

2. Venue for this action properly lies in Cook County, Illinois, pursuant to sections 2-101 and 2-102(a) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-101, 102(a) in that the corporate defendants, Advanced Wellness Research, Inc. and Netalab, Inc. are foreign corporations conducting business in Illinois without being registered to do so and are therefore considered non-residents, 735 ILCS 2-102 and as such, an action against these non-resident defendants may be commenced in any county, 735 ILCS 2-101.

II.

THE PARTIES

3. Plaintiff, THE PEOPLE OF THE STATE OF ILLINOIS, by Lisa Madigan, Attorney General of Illinois, is charged, *inter alia*, with enforcement of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 et seq.).

4. Defendant, Advanced Wellness Research, Inc. is a Florida Corporation that was incorporated on November 5, 2008, and has done business from 500 South Pointe Drive, Suite 230 Miami Beach, Florida, 33139.

5. Defendant, Advanced Wellness Research, Inc. also utilizes a fulfillment house in Illinois, at an address of 1261 N. Wood Dale Rd., Wood Dale, Illinois 60191 which they use as a return address when sending products to consumers under the Advanced Wellness Research and Netalab names.

6. Defendant, Nicholas Molina, is the President of Advanced Wellness Research, Inc. and has done business from 500 South Pointe Drive, Suite 230, Miami Beach, Florida, 33139. As President of Advanced Wellness Research, Inc., Defendant Nicholas Molina formulated, directed, controlled and had knowledge of the acts and practices of Advanced

Wellness Research, Inc. and at all relevant times hereto, was an officer, director, owner or agent of Advanced Wellness Research, Inc..

7. Defendant, Netalab, Inc. is a Florida corporation that does business from an address of 940 Lincoln Road, Miami Beach, Florida, 35766. Netalab, Inc. uses the same fulfillment center in Illinois as Advanced Wellness Research, Inc. and also shares a similar overseas address with Advanced Wellness Research. Netalab, Inc. also has had its domain names registered by Defendant Nicholas Molina and is engaged in the same business activities of other defendants. In recent weeks, all web traffic for Defendant Advanced Wellness Research, Inc. has been referred to Defendant, Netalab, Inc.

8. For purposes of this Complaint, any references to the acts and practices of Defendants shall mean that such acts and practices are by and through the acts of said corporations' officers, owners, directors, employees, or other agents.

9. To adhere to the fiction of separate corporate existence between the individual defendant Nicholas Molina, and the corporate defendants Advanced Wellness Research, Inc. and Netalab, Inc. would serve to sanction fraud and promote injustice.

III.

COMMERCE

10. Subsection 1(f) of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1(f) et seq.) defines "trade" or "commerce" as follows:

The terms 'trade' and 'commerce' mean the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this State.

IV.

DEFENDANTS' COURSE OF CONDUCT

11. Defendants were at all times relevant hereto, engaged in the trade or commerce in the state of Illinois by advertising, offering for sale, and selling dietary supplements through various Internet websites. Consumers clicking on such sites would be linked to Defendants' sites, including www.pureacaiberrypro.com and www.newpureacaiburn.com.

12. Defendants also used celebrity endorsements as a centerpiece of their online advertisements, such as "Acai berry rated #1 superfood by Rachel Ray". Multiple pages featuring the images of Oprah Winfrey or Dr. Mehmet Oz contain links to Defendant's websites.

13. Defendants also used pictures of celebrities such as Gweneth Paltrow, Courtney Love, and Eva Longoria-Parker touting significant weight loss and implying a connection to defendant's products.

14. Defendants also offered a "risk free trial offer" for a dietary supplement product sold free of charge to consumers, except for a shipping and handling fee for the delivery of the product.

15. Defendants require consumers to enter their credit card or debit card numbers online in order to receive the "free trial offer" and pay for shipping and handling.

16. Defendants also failed to clearly and conspicuously disclose all material terms and conditions that apply when a consumer purchased one of its products under a "risk free trial offer." Defendant buried the terms and conditions at the very bottom of the webpage in small print or via a web page link existing independent of the purchasing page.

17. Defendants automatically enrolled the consumers who accepted the Defendants'

“free trial offer” in a confusing subscription program to purchase dietary supplements whereby it would charge consumers for additional dietary supplement products unless the consumers contacted the Defendants to cancel the subscription program within 14 days from the date the consumers placed the “free trial offer.”

18. Defendants bill the consumer’s credit card number they have retained after billing for the shipping fee in the “free trial” offer.

19. Defendants failed to provide consumers adequate time to respond to the subscription program by not delivering the free trial product within a reasonable time, giving the consumers limited or no time in which to try the dietary supplement, or giving no time at all to cancel future delivery of the products as consumers received the trial offer product later than the 14 day trial period set forth in the hidden terms and conditions.

20. Defendants failed to provide adequate means for the consumers to cancel their orders and when the consumers called to cancel the “free trial offer” and Defendants ignored the consumers requests.

21. Defendants failed to clearly and conspicuously disclose to consumers that they were enrolling in the a subscription program if they failed to cancel their order within 14 days of placing said order.

22. Defendants continued to deliver the dietary supplement products to consumers and charged the consumers’ credit or debit card for each additionally delivered product, without the consumers’ knowledge or consent, despite the consumer’s repeated attempts to cancel any further delivery and refund the money.

23. Defendants have offered a free trial offer for a dietary supplement product free of charge to a consumer who paid a shipping and handling fee for the delivery of the product and

failed to deliver the product in a timely manner despite the consumer's repeated inquiries.

24. Because of Defendants' delays in shipping the trial offers, consumers were not able to try the product by the date they were supposed to cancel their order in a timely manner.

25. In response to refund requests, Defendants repeatedly ignored consumers and failed to make refunds despite consumers' demands.

26. To date, 51 complaints against Defendants have been filed with the Illinois Attorney General by Illinois consumers. The consumers have been billed by Defendants for various amounts ranging from \$59.95 a month to \$84.47 a month, totaling over \$8,000 in consumer losses of which the Illinois Attorney General's office is currently aware.

27. Consumers in most cases received no resolution from the Defendants despite their repeated efforts to communicate with the Defendants. Plaintiff reserves the right to prove that additional consumers have been injured as a result of said unlawful practices.

Consumer Illustrations

28. To date, the Illinois Attorney General has received 51 complaints against the Defendants as of the time this complaint is filed and intends to seek restitution for these complainants, as well as for all additional consumer complainants the Plaintiff discovers.

29. More specifically, but not by way of limitation, the following allegations are pled as illustrations of unlawful business practices of the Defendants and are not meant to be exhaustive. The Attorney General brings this lawsuit because it is in the public interest to restrain unfair or deceptive acts or practices taking place against consumers in Illinois. The unlawful activities of Defendants are ongoing and Plaintiff reserves the right to present other consumers as witnesses to demonstrate Defendants' unfair or deceptive practices.

Graciela Soto

30. On or about February 11, 2009, Graciela Soto of Aurora, Illinois saw an advertisement for an Acai berry dietary supplement product on Defendants' website, www.pureacaiberrypro.com. The advertisement featured references to Oprah Winfrey.

31. The Defendants' website offered a 14 day free trial offer for their acai berry product for a mere shipping and handling fee of \$1.99.

32. On or about February 11, 2009, Ms. Soto agreed to pay the one-time shipping and handling fee of \$1.99 for the delivery of the free product, and paid \$1.99 by providing her credit card information through the website.

33. When Soto received the confirmation email from Defendant Advanced Wellness Research, she noticed that the confirmation email stated that she would have to cancel the order within 14 days or she would be charged a larger amount.

34. On or about February 11, 2009, Soto cancelled her order.

35. Despite cancelling her order in a timely fashion, Soto received two charges on her March credit card statement totaling \$163.91 for two different accounts she allegedly opened.

36. Ms. Soto subsequently contacted the Defendants' Customer Service Number at 866-964-1011 and via their online customer service center.

37. Despite her repeated attempts to resolve her complaint with the Defendants, Ms. Soto was unable to have the charges removed from her credit card.

Linda Kruse

38. On or about February 9, 2009, Linda Kruse of Staten Island, New York saw an Internet advertisement for the Defendants' dietary supplement product on an independent internet

website.

39. She followed the link to the Defendants' website, www.newpureacaiburn.com.
(see Plaintiff's exhibit #1 attached).

40. Through the website, the Defendants offered a free "trial size" bottle of the product for free for a shipping and handling fee of \$4.95.

41. Mrs. Kruse ordered the product with her credit card and received the bottle several weeks later in a plain envelope with no invoice included.

42. On or about March 15, 2009, Kruse received her credit card bill and noticed a charge of \$78.81 billed to her by the Defendants.

43. For the next several weeks, Kruse made several phone calls to the toll free number provided by the defendants, but each time she received a recorded message that would then disconnect her phone call.

44. After Kruse filed a dispute with her credit card company, she was able to reach the defendants by telephone.

45. During that phone call, Defendants agreed to refund her \$40.00 as a "good will gesture", but they also advised her that she was going to be billed an additional \$83.80 for not cancelling her order in a timely fashion.

46. Despite calling the Defendants several times, Kruse was directed by Defendant to the "terms and conditions" page which appeared in smaller print at the very bottom of the webpage that required consumers to cancel their order within 14 days to avoid being enrolled in the Defendants' "program".

Philip Cooper

47. On or about May 21, 2009, Philip Cooper of Urbana, Illinois saw an advertisement featuring various celebrities for an Acai berry dietary supplement product on Defendants' website, www.acaiburn.com.

48. The Defendants' website offered a free trial supply for their acai berry product for free for a shipping and handling fee of \$4.95.

49. On or about May 21, 2009, Cooper agreed to pay the one-time shipping and handling fee of \$4.95 for the delivery of the free product, and paid \$4.95 by providing his credit card information through the website.

50. On that very same day, Defendants billed Cooper an amount of \$59.95 in addition to the \$4.95 that he agreed upon.

51. Upon calling Defendants to dispute the unauthorized charge, Cooper was informed that he could not cancel his order for at least two billing cycles.

52. Despite attempting to cancel his order in a timely fashion, Cooper was unable to do so and was charged an amount of two charges of \$59.95, which he did not authorize or agree to.

V.

APPLICABLE STATUTES

53. Section 2 of the Consumer Fraud Act provides, in pertinent part:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act," approved August 5, 1965, in the

conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby

815 ILCS 505/2.

VI.

VIOLATIONS

54. The Defendants engaged in a course of trade or commerce which constitutes unfair and deceptive acts or practices declared unlawful under Section 2 of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/2) by:

A. Representing, directly or by implication, that a product sample being offered as a “free trial offer”, or words of similar import, without disclosing clearly and conspicuously all of the material terms and conditions that a consumer must satisfy in order to receive the sample, particularly the fact that consumers must cancel before the end of the free trial because they will be billed on their credit or debit card ;

B. Representing, directly or by implication, that a product sample being offered as a “free trial offer”, when in many cases consumers are billed for additional products before the free trial has ended and therefore consumers are unable to cancel future product shipments in time to avoid future charges;

C. Implying endorsements of their products by celebrities when in fact no such relationship existed. (See Plaintiff’s exhibit 2 attached).

D. Failing to disclose all material terms and conditions to the consumers who placed the “free trial offer” by hiding the terms and conditions in a place clearly and conspicuous to the consumers;

E. Failing to disclose clearly and conspicuously the material fact that payment

information provided by consumers for shipping and handling charges will be used by defendants to charge consumers for automatic product shipments in the future;

F. Collecting money from consumers who placed the "free trial offer" and never delivering the goods to the consumers despite receiving the shipping and handling fee from the consumers;

G. Delivering and selling goods that did not match the description advertised by the Defendants;

H. Failing to make refunds upon the request of consumers when goods or products were never delivered or did not match the description advertised;

I. Failing to make refunds upon the request of consumers when goods or products not previously agreed by the consumers were delivered;

J. Failing to answer phone calls or emails from consumers wishing to cancel their order;

K. Failing to provide such consumers a reasonable time to respond and cancel any orders after a free trial;

L. Failing to let consumers cancel and by billing them after they did cancel; and

M. Failing to provide such consumers a clear and conspicuous notice of the continuity or re-billing program.

VII.

REMEDIES

55. Section 7 of the Consumer Fraud Act provides in relevant part:

Whenever the Attorney General ... has reason to believe that any person is using, has used, or is about to use any method, act or practice declared by this Act to be unlawful, and that proceedings would be in the public interest, he or she may bring an action in the name of the People of the State against such person to restrain by preliminary or permanent injunction the use of such method, act or practice. The Court, in its discretion, may exercise all powers necessary, including but not limited to: injunction; revocation; forfeiture or suspension of any license, charter, franchise, certificate or other evidence of authority of any person to do business in this State; appointment of receiver; dissolution of domestic corporations or association suspension or termination of the right of foreign corporations or associations to do business in this State; and restitution.

In addition to the remedies provided herein, the Attorney General ... may request and the Court may impose a civil penalty in a sum not to exceed \$50,000 against any person found by the Court to have engaged in any method, act or practice declared unlawful under this Act. In the event the court finds the method, act or practice to have been entered into with the intent to defraud, the court has the authority to impose a civil penalty in a sum not to exceed \$50,000 per violation.

815 ILCS 505/7.

VIII.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays for the following relief:

- A. A finding that Defendants have engaged in unfair or deceptive acts or practices in the conduct of trade or commerce in violation of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2;
- B. An order preliminarily and permanently enjoining Defendants from advertising and offering any healthcare or diet supplements for sale on the Internet;

C. An order preliminarily and permanently enjoining Defendants from advertising and offering any product for sale on the Internet that uses a phony blog (known also as “flogs”) or customized “news article” designed or written by defendant or an agent of defendant, including affiliate marketers and affiliate networks;

D. An order preliminarily and permanently enjoining Defendants from using the names or images of any celebrity or well known person in connection with the advertisement of any product manufactured, marketed, sold or shipped by Defendants;

E. An order preliminarily and permanently enjoining Defendants by any other name or through any other corporation, partnership or business entity in which Defendants have any interest, from engaging in the trade or commerce of advertisement or sales of dietary supplement;

F. An order preliminarily and permanently enjoining Defendants from using the words “free” “or free trial” or “no obligation” or words of similar import without clearly and conspicuously disclosing shipping and handling charges and whether the consumer may be enrolled in a continuity or re-billing program.

G. An order preliminarily and permanently enjoining Defendants from enrolling consumers in any continuity program.

H. An order requiring Defendants to pay restitution to all consumers who have suffered injury as a result of Defendant’s unlawful acts and practices;

I. An order requiring Defendants to pay a civil penalty of Fifty Thousand Dollars (\$50,000.00), and an additional penalty of Fifty Thousand Dollars (\$50,000.00) per violation of the Consumer Fraud and Deceptive Business Practices Act for such violations the Court finds that defendant committed with intent to defraud;

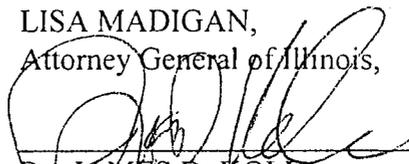
J. An order requiring Defendants to pay an additional civil penalty of Fifty

Thousand Dollars (\$50,000.00), per violation of the Consumer Fraud and Deceptive Business Practices Act found by the Court to have been committed against a person 65 years or older as provided by Section 7(c) of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 7(c);

K. An order requiring Defendants to pay all costs for the prosecution and investigation of this action, as provided by Section 10 of the Consumer Fraud Act, 815 ILCS 505/1 *et seq.*; and

L. An order granting any further relief that this Court deems just and necessary.

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN,
Attorney General of Illinois,



By: JAMES D. KOLE
Assistant Attorney General
Chief, Consumer Fraud Bureau



Adam Sokol
Assistant Attorney General

LISA MADIGAN
Attorney General

JAMES D. KOLE, Chief
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100 West Randolph, 12th Floor
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(312) 814-4309

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EXHIBIT
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Superfoods for the New Year!

"You'll be hearing a lot more about this rain forest fruit going forward. Acai is the one of the top chart for almost everything that kale is, in addition to naturally occurring Omega-3, 6 and 9 oils. It's not only good for you, but many world class athletes drink it while training because it's so loaded with nutrition and protein it can be a complete meal."



Food For Your Heart!

"Acai berries are among the most nutritious foods of the Amazon, rich in antioxidants, minerals, fiber, protein and fatty acids. Acai berries also contain Omega-9, a beneficial fat acid."

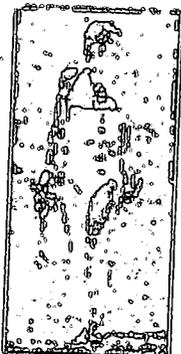


"At juice bars and health stores around the country, the hip new taste is acai, (pronounced ah-sigh-EE) a grape-size, deep-purple berry that grows atop palm trees in the Brazilian jungle."



"Studies have shown that this fruit is one of the most nutritious and powerful foods in the world. Acai is the high berry of a special Amazon palm. Hidden within its royal purple pigments is the magic that makes it nature's energy fruit. A synergy of monounsaturated (healthy) fats, dietary fiber and antioxidants to help promote cardiovascular and overall health."

WHAT HOLLYWOOD IS SAYING ABOUT ACAI BERRY



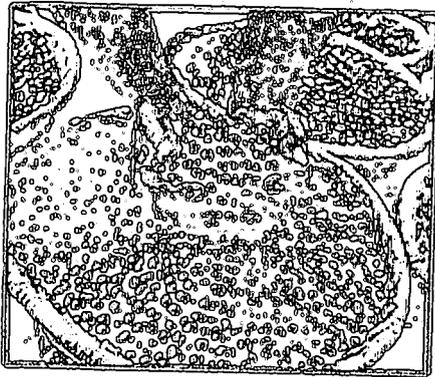
Gwyneth Paltrow and Courtney Love, dropped more than 50 lbs. Eva and Tony Go Acai Berry all the way.

The popularity of white tea is steadily increasing thanks to many high profile stars in Hollywood. Celebrities are now using acai berry to jumpstart their weight loss plans.

The weight loss comes from the boost in metabolism found in acai berry. As an added bonus, acai berry is known to rejuvenate the skin which leads to less wrinkles all over the body.



LOSE WEIGHT & GET A FLATTER TUMMY



You could have POUNDS and POUNDS of excess waste built up in your system now! This precise buildup can be the cause of noticeable daily lower energy, bloating, constipation, aches & cramps, and even excess gastronal discomfort. It can be a severe breeding ground for harmful bacteria's that live inside your body, increasing your chances of potentially harmful health problems. Pure Acai Berry Pro can help you Lock Better and Feel Better by flushing your body of all that excess waste weighing you down. Cleansing your system will give you increased Energy, Fight Fatigue, reduce Water Retention, and help you get a Firmer Flatter Midsection. Try it Risk Free, just pay \$49.

TESTIMONIALS



"I have been using Pure Acai Berry Pro for eight months now, and it's simply amazing! I have a higher level of energy all throughout the day! I've already lost 34 pounds, and I'm very happy with my results. Thank you for this amazing new product!"

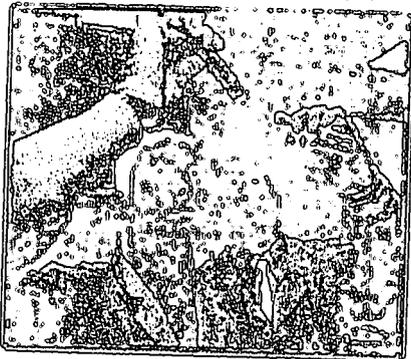
Beth - Atlanta, GA



"I'll say at first, I was skeptical about this new product, but I can honestly say that Pure Acai Berry Pro REALLY works! I've lost 22 lbs just in the last 2 months. I've got a lot of energy and I feel great without dragging my feet."

Tiffany - Miami Beach

CLINICAL RESEARCH



"A University of Florida study published in the Journal of Agricultural and Food Chemistry on Jan 12, 2006 found that Acai berries triggered a self-destruct response in up to 85 percent of leukemia cells tested in vitro. In the current UF study, six different chemical extracts were made from ACAI fruit pulp, and each extract was prepared at seven concentrations. Four of the extracts, were shown to kill significant numbers of leukemia cells when applied for 24 hours. Depending on the extract and concentration, anywhere from about 35 percent to 85 percent of the cells died."

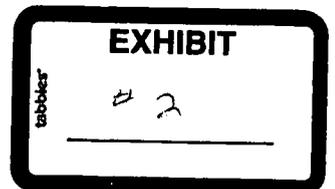
IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
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Advanced Wellness Research, Inc., a Florida Corporation)
Nicholas Molina, individually, and as President of)
Advanced Wellness Research, Inc.; and Netalab, Inc.)
as a successor corporation,)
)
Defendants.)
)

Affidavit of OW Licensing Company, LLC

I, Doug Pattison do hereby swear under oath that if called as a witness in the above captioned matter, I would competently testify as follows:

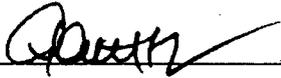
1. I currently am employed as VP and Treasurer for OW Licensing Company, LLC.
2. OW Licensing Company, LLC is a Delaware Limited Liability Company with its principal place of business in Chicago, Illinois..
3. OW Licensing Company, LLC is the holder of rights of publicity and related rights to Ms. Oprah Winfrey.
4. Ms. Oprah Winfrey is an individual residing in the State of Illinois.
5. She is the host of the nationally syndicated "The Oprah Winfrey Show".



6. Ms. Oprah Winfrey has never endorsed any acai berry supplement or acai related product by name.

7. Ms. Oprah Winfrey has never approved or agreed to have her image or name used in conjunction with the sale and marketing of any acai berry related product.

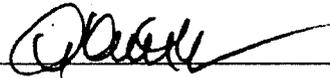
FURTHER AFFIANT SAYETH NOT



VP and Treasurer for OW Licensing Company, LLC

August 18, 2009
Date

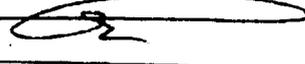
Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth are true and correct, except as to such matters stated therein stated to be on information and belief and to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



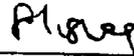
VP and Treasurer for OW Licensing Company, LLC

August 18, 2009
Date

FURTHER AFFIANT SAYETH NOT

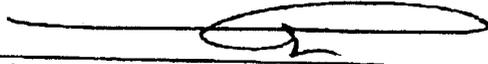


Dr. Mehmet C. Oz, MD

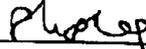


Date

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth are true and correct, except as to such matters stated therein stated to be on information and belief and to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



Dr. Mehmet C. Oz., MD



Date