

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 04-C-6915
	)	Judge James B. Moran
AVS MARKETING, INC., and	)	Magistrate Judge Geraldine Soat Brown
	)	
WILLIAM R. HEID,	)	
	)	
Defendants.	)	
	)	

**STIPULATED FINAL JUDGMENT AND ORDER FOR  
PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

WHEREAS plaintiff, the Federal Trade Commission ("Commission" or "FTC"), has commenced this action by filing the Complaint herein; defendants AVS Marketing, Inc. and William R. Heid 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 defendants admitting liability for any of the matters alleged in the Complaint;

THEREFORE, upon stipulation of plaintiff and defendants, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

**FINDINGS**

- A. This Court has jurisdiction over the subject matter of this case and jurisdiction over all parties.
- B. Venue in the Northern District of Illinois is proper under 15 U.S.C. § 53(b) and 28

U.S.C. § 1391(b).

C. The activities of defendants are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.

D. The Complaint states a claim upon which relief can be granted against the defendants under Sections 5(a), 12, and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 52, and 53(b).

E. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendants also waive any claims that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of entry of this Order.

F. Each party shall bear its own costs and attorneys' fees.

G. Entry of this Order is in the public interest.

#### **DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

A. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

B. "Person" shall mean a natural person, organization, or other legal entity, including a partnership, corporation, proprietorship, association, cooperative, or any other group acting together as an entity.

C. "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 have 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.

D. "Weight loss product" shall mean any product, program, or service designed, used, or purported to produce weight loss, reduction or elimination of fat, change in body composition, slimming, or caloric deficit; or to prevent weight gain, in a user of the product, program, or service.

E. "Covered product or service" shall mean any health-related service or program, weight loss product, dietary supplement, food, drug, or device.

F. "Food," "drug," and "device" shall mean as "food," "drug," and "device" are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.

G. "Endorsement" shall mean as defined in 16 C.F.R. § 255.0(b).

H. "Assisting others" shall mean knowingly providing any of the following goods or services to another entity: (1) serving as an owner, partner, officer, director, or manager; (2) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (3) formulating or providing, or arranging for the formulation of any product; (4) providing names of, or assisting in the generation of, potential customers; (5) performing advertising or marketing services of any kind; or (6) performing financial services of any kind, including, but not limited to, providing merchant accounts, processing credit card charges or chargebacks, and providing or arranging loans or other extensions of credit.

I. A requirement that defendants "notify the Commission" shall mean that the defendants shall send the necessary information via first class mail, costs prepaid, to the Regional Director, Midwest Region, Federal Trade Commission, 55 E. Monroe Street, Suite 1860, Chicago, Illinois 60603, Attn: FTC v. AVS Marketing, Inc., et al., Case No. 04-C-6915 (N.D. Illinois).

J. The term "including" in this Order shall mean "including, without limitation."

K. The terms “and” and “or” in this Order shall be construed conjunctively or disjunctively, as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

**ORDER**

**I. PROHIBITED REPRESENTATIONS**

**IT IS THEREFORE ORDERED** that:

A. Defendants AVS Marketing, Inc. and William R. Heid, and each of their successors, assigns, officers, directors, agents, servants, employees, subsidiaries, and affiliates, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Himalayan Diet Breakthrough or any nonprescription drug, dietary supplement, topical cream, wrap, device, or patch, in or affecting commerce, are hereby permanently enjoined from representing, in any manner, expressly or by implication, including through the use of endorsements or trade name, that such product:

1. causes rapid or substantial weight loss without the need to reduce caloric intake or increase exercise;
2. causes substantial weight loss even if users eat substantial amounts of high calorie foods;
3. causes substantial weight loss by burning body fat, or by preventing the absorption or formation of body fat;
4. causes substantial weight loss for all users; or
5. enables users to safely lose as much as 37 pounds in 8 weeks.

B. Defendants AVS Marketing, Inc. and William R. Heid, and each of their successors, assigns, officers, directors, agents, servants, employees, subsidiaries, and affiliates, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, in or affecting commerce, are hereby permanently enjoined from making any representation, expressly or by implication, including through the use of endorsements or trade name:

1. That any such covered product or service:
  - a. Causes weight loss;
  - b. Causes rapid and substantial weight loss;
  - c. Reduces or eliminates body fat;
  - d. Enables users to lose weight by blocking the absorption of fat or calories or increases metabolism; or
  - e. Enables users to lose weight or fat without the need to increase exercise or reduce caloric intake; or
2. About the health benefits, performance, efficacy, safety or side effects of such covered product or service;

unless, at the time the representation is made, the representation is true, and they possess and rely upon competent and reliable scientific evidence that substantiates the representation.

C. Defendants AVS Marketing, Inc. and William R. Heid, and each of their successors, assigns, officers, directors, agents, servants, employees, subsidiaries, and affiliates, and those persons

in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any goods or services, in or affecting commerce, are hereby permanently enjoined from misrepresenting, expressly or by implication, including through the use of endorsements or trade name, any fact material to a consumer's decision to purchase such goods or services.

## **II. FOOD AND DRUG ADMINISTRATION**

**IT IS FURTHER ORDERED** that nothing in this Order shall prohibit defendants AVS Marketing, Inc. and William R. Heid from making any representation for any drug that is permitted in the labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration ("FDA"), or under any new drug application approved by the FDA. Nothing in this Order shall prohibit defendants from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the FDA pursuant to the Nutrition Labeling and Education Act of 1990.

## **III. MONETARY RELIEF**

**IT IS FURTHER ORDERED** that:

A. Judgment is hereby entered in favor of plaintiff, and against defendants AVS Marketing, Inc. and William R. Heid in the amount of four million, nine hundred sixty thousand, two hundred fifty four dollars (\$4,960,254.00); *provided, however*, that upon the fulfillment of the payment obligations of Section III.B and Section III.C of this Order, this judgment shall be suspended until further order of this Court; *and provided further* that this judgment shall be subject

to the conditions set forth in Section IV of this Order.

B. Defendants AVS Marketing, Inc. and William R. Heid shall be jointly and severally liable for payment of equitable monetary relief, including, but not limited to, consumer redress and/or disgorgement, and for paying any attendant expenses of administration of any redress fund, in the amount of four hundred thousand dollars (\$400,000.00). Within five (5) days of the signing of this Order by Defendants, Defendants shall cause that amount (\$400,000.00) to be transferred to an escrow account controlled by Defendants' counsel of record in this action, who shall immediately provide the Commission with proof of said transfer. Defendants' counsel shall hold the entire sum in the escrow account for no purpose other than payment to the Commission upon entry of this Order by the Court. Within five (5) days of receipt of notice of entry of this Order, Defendants' counsel shall transfer the entire sum in the form of a wire transfer or certified or cashier's check made payable to the Federal Trade Commission. The check or written confirmation of the wire transfer shall be delivered to: Regional Director, Federal Trade Commission, Midwest Region, 55 E. Monroe Street, Suite 1860, Chicago, Illinois 60603. The cover letter accompanying the check shall include the title and case number of this case. Upon receipt of these funds by the Commission, the freeze on the assets of Defendants shall be lifted.

C. Time is of the essence for the payment specified above. In the event that defendants do not fulfill, or only partially fulfill, the payment obligations set forth in this Section, defendants AVS Marketing, Inc. and William R. Heid shall be immediately liable for payment of four million, nine hundred sixty thousand, two hundred fifty four dollars (\$4,960,254.00), which is the entire amount of the judgment, plus interest computed pursuant to 28 U.S.C. § 1961, as amended, less any payments already made. Notwithstanding any other provision of this Order, defendants AVS

Marketing, Inc. and William R. Heid agree that, if they fail to meet the payment obligations set forth in this Section, the facts as alleged in the Complaint filed in this matter shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Order, including, but not limited to, a nondischargeability complaint in any subsequent bankruptcy proceeding.

D. The Commission's agreement to and the Court's approval of this Order are expressly premised upon representations of Defendants that they owe federal and state income taxes for the tax year 2004 (hereinafter referred to as "owed taxes"), and that the total of the owed taxes is \$187,473.00. In the event that the amount paid by defendants in final satisfaction of the owed taxes, is less than \$187,473.00, Defendants shall pay to the Commission the difference between \$187,473.00 and the amount actually paid. Defendants, unless they already have done so, shall provide to the Commission copies of all instruments used to pay such owed taxes, including without limitation copies of all tax returns, amended tax returns, and checks paid to or received from taxing authorities, within ten (10) days of each such payment being made, each such tax return or amended tax return being filed, or each such check being sent or received. In the event that Defendants receive or become entitled to receive any refund or partial refund of any amount paid for the owed taxes, the Defendants shall pay the monetary equivalent to the Commission within thirty (30) days.

E. All funds paid pursuant to this Section or Section IV shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. If the Commission determines, in its sole discretion, that redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to



be reasonably related to the practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Paragraph. The Commission and Defendants acknowledge and agree that this judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.

F. Any redress administrator shall destroy all records relating to this matter six (6) years after the transfer of any remaining redress funds to the FTC Treasury account or the closing of the account from which such funds were disbursed, whichever is earlier, *provided* that no records shall be destroyed unless and until a representative of the Commission has received and approved the administrator's final accounting report. Records shall be destroyed in accordance with disposal methods and procedures to be specified by the Commission. The Commission may, in its sole discretion, require that such records, in whole or in part, be transferred, in lieu of destruction, to the Commission.

G. In accordance with 31 U.S.C. § 7701, Defendants are hereby required, unless they already have done so, to furnish to the Commission their respective taxpayer identifying numbers (social security numbers or employer identification numbers), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendants' relationship with the government. Defendant William R. Heid is further required to provide the Commission with clear, legible and full-size photocopies of all valid driver's licenses that he possesses, which will be used for reporting and compliance purposes.

H. Defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true, without further proof, in the event of any subsequent proceedings or litigation to

enforce this Order or to collect amounts due pursuant to this Section or Section IV, including, but not limited to, a non-dischargeability complaint in any bankruptcy case.

I. Proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

#### **IV. TERMINATION OF SUSPENSION**

##### **IT IS FURTHER ORDERED** that:

A. The Commission's agreement to and the Court's approval of this Order are expressly premised upon the truthfulness, accuracy, and completeness of the financial statements, dated November 4, 2004, and accompanying attachments and information, that Defendants AVS Marketing, Inc. and William R. Heid provided to the Commission, which contain material information relied upon by the Commission in negotiating and agreeing to the terms of this Order.

B. If the Commission should have evidence that the above-referenced financial statements and information failed to disclose any material asset the value of which exceeds \$1,000.00, materially misrepresented the value of any asset, or made any other material misrepresentation or omission, the Commission may move that the Court reopen this Order for the sole purpose of allowing the Commission to modify the monetary liability of defendants. If the Court finds that any defendant failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission in the above-referenced financial statements and information, the Court shall reinstate the suspended judgment against such defendant, in favor of the Commission, in the amount of four million, nine hundred sixty thousand, two hundred fifty four dollars (\$4,960,254.00), which the defendants AVS Marketing, Inc. and

William R. Heid and the Commission stipulate is the amount of consumer injury caused by the defendants, as set forth in Section III of this Order. *Provided, however*, that in all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court. Any proceedings instituted under this Paragraph shall be in addition to and not in lieu of any other proceedings the Commission may initiate to enforce this Order. For the purposes of reopening or enforcing this Paragraph, defendants waive any right to contest any of the allegations set forth in the Complaint filed in this matter.

#### **V. COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating compliance with any provision of this Order:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, AVS Marketing, Inc. and William R. Heid each shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including, but not limited to, the following:

1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
2. Posing as consumers and suppliers to: AVS Marketing, Inc. or William R. Heid, AVS Marketing, Inc.'s or William R. Heid's employees, or any other entity managed or controlled in whole or in part by AVS Marketing, Inc. or William R. Heid, without

the necessity of identification or prior notice; and

C. AVS Marketing, Inc. and William R. Heid shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

*Provided, however,* that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

## **VI. COMPLIANCE REPORTING BY DEFENDANTS**

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Order may be monitored:

- A. For a period of three (3) years from the date of entry of this Order,
  1. William R. Heid shall notify the Commission of the following:
    - a. Any changes in residence, mailing addresses, and telephone numbers of William R. Heid, within ten (10) days of the date of such change;
    - b. Any changes in employment status (including self-employment) of William R. Heid, and any change in the ownership of William R. Heid in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that William R. Heid is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of William R. Heid's

duties and responsibilities in connection with the business or employment;  
and

c. Any changes in William R. Heid's name or use of any aliases or fictitious names; and

2. AVS Marketing, Inc. and William R. Heid shall notify the Commission of any changes in corporate structure of AVS Marketing, Inc. or any business entity that William R. Heid directly or indirectly control(s), or has an ownership interest in, 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 entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which the defendant learns less than thirty (30) days prior to the date such action is to take place, defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. Sixty (60) days after the date of entry of this Order, AVS Marketing, Inc. and William R. Heid each shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order.

This report shall include, but not be limited to:

1. For William R. Heid:

a. The then-current residence address, mailing addresses, and telephone

numbers of William R. Heid;

- b. The then-current employment and business addresses and telephone numbers of William R. Heid, a description of the business activities of each such employer or business, and the title and responsibilities of William R. Heid, for each such employer or business; and
- c. Any other changes required to be reported under Section VI.A.

2. For AVS Marketing, Inc. and William R. Heid:

- a. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Section VIII.D; and
- b. Any other changes required to be reported under Section VI.A.

C. For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Director, Midwest Regional Office  
Federal Trade Commission  
55 E. Monroe Street, Suite 1860  
Chicago, Illinois 60603  
Re: FTC v. AVS Marketing, Inc., et al., No. 04-C-6915 (N.D. Ill.).

D. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with AVS Marketing, Inc. or William R. Heid.

## **VII. RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of six (6) years from the date of entry of this Order, for any business where a Defendant is the majority owner of the business or directly or indirectly controls the business, AVS Marketing, Inc. and William R. Heid, and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or

participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

D. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests;

E. Copies of all advertisements, promotional materials, sales scripts, training materials, or other materials utilized in the advertising, labeling, promotion, offering for sale, distribution or sale of any product, service, or program;

F. All materials that were relied upon in making any representations contained in the materials identified in Section VII.E;

G. All other documents evidencing or referring to the accuracy of any claim therein or to the safety or efficacy of any product, service, or program, including, but not limited to, all tests, reports, studies, demonstrations, or other evidence that confirm, contradict, qualify, or call into question the safety or efficacy of any such product, service, or program;

H. Records accurately reflecting the name, address, and telephone number of each manufacturer or laboratory engaged in the development or creation of any testing obtained for the purpose of advertising, labeling, promoting, offering for sale, distributing, or selling any product, service, or program; and

I. All records and documents necessary to demonstrate full compliance with each provision of this Order, including, but not limited to, copies of acknowledgments of receipt of this Order, required by Section VIII.D, and all reports submitted to the FTC pursuant to Sections V and VI.

### **VIII. DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of this Order, Defendants shall deliver copies of the Order as directed below:

A. AVS Marketing, Inc. must deliver a copy of this Order to all of its principals, officers, directors, and managers. AVS Marketing, Inc. also must deliver copies of this Order to all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

B. For any business that William R. Heid controls, directly or indirectly, or in which William R. Heid has a majority ownership interest, William R. Heid must deliver a copy of this Order to all principals, officers, directors, and managers of that business. William R. Heid also must deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to



them assuming their responsibilities.

C. For any business where William R. Heid is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, William R. Heid must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

D. AVS Marketing, Inc. and William R. Heid must secure a signed and dated statement acknowledging receipt of this Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

**IX. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

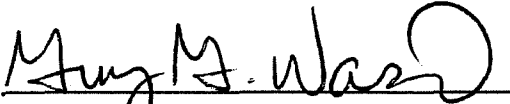
**IT IS FURTHER ORDERED** that each Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

**X. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

**SO STIPULATED:**

William Blumenthal  
General Counsel

  
\_\_\_\_\_  
David A. O'Toole  
Guy G. Ward  
Federal Trade Commission  
55 E. Monroe St., Suite 1860  
Chicago, IL 60603  
(312) 960-5634; Fax: (312) 960-5600  
Attorneys for Federal Trade Commission

Dated: 6/10/05

James M. Lancheros

Dated: 4/27/05

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Attorneys for Defendants  
AVS Marketing, Inc., and William R. Heid

William R. Heid

Dated: 4/27/05

William R. Heid, as President and CEO  
of AVS Marketing, Inc.

William R. Heid

Dated: 4/27/05

William R. Heid, Individually

**IT IS SO ORDERED.**

**JUDGMENT IS THEREFORE ENTERED** in favor of plaintiff and against defendants

AVS Marketing, Inc. and William R. Heid, pursuant to all the terms and conditions recited above.

Dated: June 13, 2005

James B. Moran  
Honorable James B. Moran  
United States District Judge