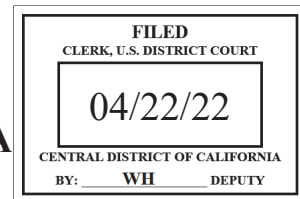


1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA



3 FEDERAL TRADE COMMISSION,

4 Plaintiff,

5 v.

6 QYK BRANDS LLC d/b/a Glowyy, et  
7 al.

8 Defendants.

Case No. 8:20-cv-01431-PSG-KES

JS-6

~~[PROPOSED]~~ FINAL ORDER FOR  
PERMANENT INJUNCTION AND  
MONETARY JUDGMENT

9 On August 4, 2020, Plaintiff, the Federal Trade Commission (“FTC”), filed  
10 its Complaint for Permanent Injunction and Other Equitable Relief pursuant to  
11 Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15  
12 U.S.C. §§ 53(b) and 57b, and the FTC’s Trade Regulation Rule Concerning the  
13 Sale of Mail, Internet, or Telephone Order Merchandise (“MITOR” or the “Rule”),  
14 16 C.F.R. Part 435. Plaintiff filed its First Amended Complaint on May 19, 2021  
15 (ECF No. 73, “FAC”). On February 14, 2022, Plaintiff filed its Motion for  
16 Summary Judgment (“Motion”), as well as its Statement of Undisputed Facts, as  
17 supported by declarations, stipulation, admissions, interrogatory answers, or other  
18 materials submitted in support of the Motion. Having considered the Motion and  
19 supporting materials in the record and any oppositions thereto, the Court finds  
20 there is no genuine dispute of material fact, and the FTC is entitled to judgment  
21 against all Defendants as a matter of law. The Court’s reasoning and specific  
22 findings are detailed in the Minute Order dated April 6, 2022 (ECF No. 212).  
23  
24  
25  
26  
27  
28

1           **THEREFORE, IT IS ORDERED** as follows:

2                           **FINDINGS**

3           A.     This Court has jurisdiction over the subject matter of this case, and  
4 there is good cause to believe that it will have jurisdiction over all parties hereto  
5 and that venue in this district is proper.

6           B.     The Complaint alleges that Defendants participated in deceptive and  
7 unfair acts or practices in violation of Sections 5 and 12 of the FTC Act, 15 U.S.C.  
8 § 45 and § 52, and of the Commission’s Trade Regulation Rule Concerning the  
9 Sale of Mail, Internet or Telephone Order Merchandise, 16 C.F.R. Part 435  
10 (“MITOR”), by representing they would ship goods, including Personal Protective  
11 Equipment (“PPE”) and hand sanitizer, within certain timeframes but having no  
12 reasonable basis to expect to ship the goods within the advertised timeframes;  
13 failing to ship goods within the timeframe required by MITOR; failing to offer  
14 consumers the opportunity to consent to a delay in shipping or to cancel their order  
15 and receive a prompt refund upon becoming aware of their inability to ship goods  
16 within the time advertised; and, after receiving cancellation and refund requests,  
17 failing to provide consumers with a prompt refund. The Complaint also charges  
18 that Defendants participated in deceptive acts or practices in violation of Section 5  
19 of the FTC Act, 15 U.S.C. § 45, by misrepresenting that they: (1) would ship  
20 orders “Today”; or would ship within 7 days; (2) had certain PPE and hand  
21 sanitizer in stock and ready to ship; and (3) would ship the goods consumers  
22 ordered; and that they further violated Sections 5 and 12 of the FTC Act by  
23 participating in deceptive acts and practices by misrepresenting that their product,  
24 Basic Immune IGG, could treat, prevent, or reduce risk of contracting COVID-19,  
25 and that it was clinically shown and approved by the FDA to do so.

26           C.     Defendants’ activities are in or affecting commerce, as defined in  
27 Section 4 of the FTC Act, 15 U.S.C. § 44.  
28

1 D. Corporate Defendants violated Section 5 of the FTC Act, 15 U.S.C. §  
2 45, and MITOR, 16 C.F.R. Part 435, by representing they would ship goods,  
3 including hand sanitizer and PPE, within certain timeframes but having no  
4 reasonable basis to expect to ship the goods within the advertised timeframes;  
5 failing to ship goods within the timeframe required by MITOR; failing to offer  
6 consumers the opportunity to consent to a delay in shipping or to cancel their order  
7 and receive a prompt refund upon becoming aware of their inability to ship goods  
8 within the time advertised; and, after receiving cancellation and refund requests,  
9 failing to provide consumers with a prompt refund. Corporate Defendants further  
10 violated Section 5 of the FTC Act, 15 U.S.C. § 45, by misrepresenting that they:  
11 (1) would ship orders “Today”; or would ship within 7 days; (2) had certain PPE  
12 and hand sanitizer in stock and ready to ship; and (3) would ship the goods  
13 consumers ordered; and that they further violated Sections 5 and 12 of the FTC Act  
14 by participating in deceptive acts and practices by misrepresenting that their  
15 product, Basic Immune IGG, could treat, prevent, or reduce risk of contracting  
16 COVID-19, and that it was clinically shown and approved by the FDA to do so.

17 E. Individual Defendants Rakesh Tammabattula and Jacqueline Thao  
18 Nguyen participated in and had authority to control the Corporate Defendants’  
19 deceptive marketing and sale of hand sanitizer, PPE products, and Basic Immune  
20 IGG.

21 F. In light of Defendants’ conduct, there is a cognizable danger that they  
22 will continue to engage in activities that violate the FTC Act unless enjoined from  
23 such acts and practices.

### 24 DEFINITIONS

25 For the purpose of this Order, the following definitions apply:  
26  
27  
28

1           A.     **“Applicable Time Period”** means the time stated in Defendants’  
2 solicitation or within 30 days of Receipt of a Properly Completed Order if no time  
3 is stated in the solicitation.

4           B.     **“Clearly and Conspicuously”** means that a required disclosure is  
5 difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary  
6 consumers, including in all of the following ways:

7                 1.     In any communication that is solely visual or solely audible, the  
8 disclosure must be made through the same means through which the  
9 communication is presented. In any communication made through both  
10 visual and audible means, such as a television advertisement, the disclosure  
11 must be presented simultaneously in both the visual and audible portions of  
12 the communication even if the representation requiring the disclosure is  
13 made in only one means.

14                 2.     A visual disclosure, by its size, contrast, location, the length of  
15 time it appears, and other characteristics, must stand out from any  
16 accompanying text or other visual elements so that it is easily noticed, read,  
17 and understood.

18                 3.     An audible disclosure, including by telephone or streaming  
19 video, must be delivered in a volume, speed, and cadence sufficient for  
20 ordinary consumers to easily hear and understand it.

21                 4.     In any communication using an interactive electronic medium,  
22 such as the Internet or software, the disclosure must be unavoidable.

23                 5.     The disclosure must use diction and syntax understandable to  
24 ordinary consumers and must appear in each language in which the  
25 representation that requires the disclosure appears.

26                 6.     The disclosure must comply with these requirements in each  
27 medium through which it is received, including all electronic devices and  
28 face-to-face communications.

1           7.     The disclosure must not be contradicted or mitigated by, or  
2     inconsistent with, anything else in the communication.

3           8.     When the representation or sales practice targets a specific  
4     audience, such as children, the elderly, or the terminally ill, “ordinary  
5     consumers” includes reasonable members of that group.

6           C.     **“Corporate Defendant(s)”** means QYK Brands LLC d/b/a Glowyy,  
7     DrJsNatural LLC, Theo Pharmaceuticals, Inc., and EASII, Inc., and each of their  
8     subsidiaries, affiliates, successors, and assigns.

9           D.     **“Covered Dietary Supplement”** means any Dietary Supplement,  
10    Food, or Drug, including Basic Immune IGG.

11          E.     **“Defendants”** means all of the Individual Defendants and the  
12    Corporate Defendants, individually, collectively, or in any combination.

13          F.     **“Dietary Supplement”** means: (1) any product labeled as a dietary  
14    supplement or otherwise represented as a dietary supplement; or (2) any pill, tablet,  
15    capsule, powder, softgel, gelcap, liquid, or other similar form containing one or  
16    more ingredients that are a vitamin, mineral, herb or other botanical, amino acid,  
17    probiotic, or other dietary substance for use by humans to supplement the diet by  
18    increasing the total dietary intake, or a concentrate, metabolite, constituent, extract,  
19    or combination of any ingredient described above, that is intended to be ingested,  
20    and is not represented to be used as a conventional food or as a sole item of a meal  
21    or the diet.

22          G.     **“Document”** is synonymous in meaning and equal in scope to the  
23    usage of “document” and “electronically stored information” in Federal Rule of  
24    Civil Procedure 34(a), Fed. R. Civ. P. 34(a), and includes writings, drawings,  
25    graphs, charts, photographs, sound and video recordings, images, Internet sites,  
26    web pages, websites, electronic correspondence, including e-mail and instant  
27    messages, contracts, accounting data, advertisements, FTP Logs, Server Access  
28    Logs, books, written or printed records, handwritten notes, telephone logs,

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