

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,  
IN AND FOR BROWARD COUNTY, FLORIDA

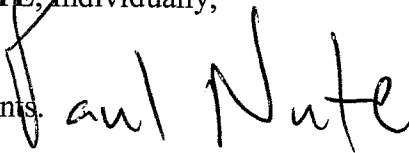
**OFFICE OF THE ATTORNEY GENERAL,  
DEPARTMENT OF LEGAL AFFAIRS,  
STATE OF FLORIDA,**

Plaintiff,  
vs.

Case No.: 10-14769 CACE (05)  
JUDGE: Richard Eade

**RNR MEDIA LLC**, a Florida Limited  
Liability Company and **RAUSCHER BEKKE LLC**,  
a Florida Limited Liability Company a/k/a  
CLEANWHITES and a/k/a CLEANWHITESPRO  
and a/k/a ADVANCE CLEANWHITES and a/k/a  
STAYWHITE and HEALTHCLNS and a/k/a  
JUN CLEANSE and a/k/a JUN SLEEPWELL and  
a/k/a VP WEIGHT SECRET and a/k/a VP BEAUTY  
SECRET and a/k/a VP MIRACLE IMPROVE  
HEALTH and a/k/a BEVERLY HILLS SMILE  
and a/k/a DAZZLE 4 ME and a/k/a PREMIUM  
WHITE and a/k/a SUP\*TEETHWHITE and a/k/a  
SUP\*SMILEBRIGHT and a/k/a INTERNATIONAL  
SERVICE FEE and **GREEN BRACKET LLC**,  
a Florida Limited Liability Company a/k/a  
DERMAPRIL and **JESSE STEIN**, Individually  
and **PAUL NUTE**, Individually,

Defendants.



**AGREED FINAL CONSENT JUDGMENT**

Plaintiff, **OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL  
AFFAIRS, STATE OF FLORIDA**, (hereinafter referred to as "Plaintiff"), and **RAUSCHER  
BEKKE LLC, JESSE STEIN**, Individually and **PAUL NUTE**, Individually, (hereinafter  
collectively referred to as "Defendants"), and it having been represented that the Parties are  
willing to enter into this Agreed Final Consent Judgment without any admission that Defendants

have violated the law and for the purpose of settlement in this matter only. Defendants acknowledge that they are aware of their right to a trial in this matter and that they hereby waive that right. Defendants admit the jurisdiction of the Court and consent to the entry of this Agreed Final Consent Judgment. Defendants state that no promise of any kind or nature whatsoever (other than the written terms of this Agreed Final Consent Judgment) was made to induce them to enter into this Agreed Final Consent Judgment and that they have entered into this Judgment freely and voluntarily. The Parties, therefore, being in agreement, agree to the entry of this Judgment, and further agree and stipulate to the following:

### **STIPULATED FACTS**

1. Defendants sell/sold teeth whitening products on their websites.
2. Plaintiff filed this action seeking injunctive and other statutory and civil relief against the Defendants, contending that they had engaged in misleading and deceptive practices in violation of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), Chapter 501, Part II, Fla. Stat. (2008).
3. Defendants make no admission that they engaged in any wrongdoing or committed any violation of FDUTPA and specifically deny the allegations set forth herein. Instead, the defendants state that they are consenting to this Agreed Final Consent Judgment in the spirit of compromise solely to voluntarily resolve their differences with Plaintiff without the necessity of further costly and unnecessary litigation and to indicate their intent to ensure that their business practices will be in compliance with the law. This Agreed Final Consent Judgment contains neither findings of fact nor conclusions of law.
4. Defendants and the Plaintiff desire to resolve all issues arising during the course of this investigation and the Matters Investigated (as defined below).

5. This Agreed Final Consent Judgment is based upon the stipulated facts set forth above. The Plaintiff shall not be estopped from taking further action in this matter should the stipulated facts described herein be shown to be incorrect in any material way, or the Agreed Final Consent Judgment not be complied with in full by Defendants.

### **MATTERS INVESTIGATED**

6. Beginning in September of 2009, the Department initiated an investigation into the practices of Defendants as a result of complaints received from consumers. Said complaints alleged the following:

- a. automatically renewed the product without the knowledge or consent of the consumer;
- b. refused or failed to cancel the product upon consumer requests;
- c. refused or failed to refund monies to consumers after a request to cancel had been made; and
- d. made it impracticable or impossible to cancel the product.

7. The purpose of the above recitation is to define the scope of the Office of the Attorney Generals investigation. Defendants by entry into this Consent Judgment, do not admit to the allegations contained in the consumer complaints.

### **DEFINITIONS**

8. "Advertising" (including "advertisement" and "advertise") means any message disseminated to the public or any segment thereof which promotes or is likely to promote directly or indirectly any good, merchandise, property, product, commodity, service, or any person. The term "advertising" includes messages conveyed by the name under which a person operates, and includes, but is not limited to, messages conveyed visually, orally, or in writing:

a. in a newspaper, magazine, periodical, leaflet, flyer, catalog, brochure, circular, on or in packaging; in telefacsimile material; on an internet website; in any direct mail literature, including but not limited to notices, invoices and forms; in any other written, graphic, pictorial, illustrated or printed material;

b. on any recording, radio, television, video, computer, by telephonic transmission, telex, facsimile or telecopier transmission, internet or other electronic transmission or during any other transmission;

c. during any in-person appearance or otherwise during any personal contact including telephone contact, with the public or any segment thereof.

9. "Clear and Conspicuous" (including "clearly and conspicuously") means that a statement, representation, claim or term being conveyed is readily noticeable and reasonably understandable by the persons to whom it is directed. The following, without limitation, shall be considered in determining whether a statement, claim, term, or representation is clear and conspicuous:

a. whether it is presented to the person(s) to whom it is directed in a coherent and meaningful sequence with respect to other terms, representations, claims, or statements being conveyed;

b. whether it is in close proximity to any statement, representation, claim, or term it clarifies, modifies, explains, or to which it otherwise relates;

c. whether it is contradictory to any representation, statement, claim or term it purports to clarify, modify or explain, or is otherwise contradictory or confusing in relation to any other term, statement, claim or representation being conveyed;

d. whether abbreviations are used and, if so, whether they are commonly understood by the public or approved by federal or state law;

e. whether it is legible;

f. whether it is of sufficient prominence in terms of print, size, placement, color, and contrast, as compared with accompanying statements, claims, terms, or representations so as to be readily noticeable and reasonably understandable by the person(s) to whom it is directed;

g. whether, if in association with a Negative Option Plan as defined herein, the terms and conditions of the Negative Option Plan are segregated from other terms and conditions of the offer;

h. whether, if oral, it is at a decibel level equal to the highest decibel level used and is at a speed equal to or slower than any other statement, claim, representation or term conveyed so as to be readily noticeable and reasonably understandable by the person(s) to whom it is directed;

i. whether, if written, it appears for a duration sufficient to allow viewers to have a reasonable opportunity to notice, read, or otherwise understand, and

j. whether the language and terms used are commonly understood by the reasonable consumer in the context in which they are used.

10. “Clearly and Prominently” means that a disclosure is made Clearly and Conspicuously and is the most prominent of all Offer Terms, (as such term is defined herein) in a Negative Option Plan offer, provided however that to the extent multiple Offer Terms are required to be disclosed Clearly and Prominently, disclosure of all such Offer Terms with equal prominence shall be sufficient to satisfy the requirements of this definition.

11. “Promotional Material” refers to an advertisement containing or accompanying any ordering device or similar material that a Consumer sends to Defendants to request acceptance of or enrollment in a Negative Option Plan (“Ordering Device”).

12. “Offer Terms” shall mean the material terms and conditions of a Negative Option Plan that are specifically required to be disclosed pursuant to the terms and conditions paragraphs 15, 16 and 17 under the “General Terms” of this Consent Judgment.

13. “Effective Date” as used herein shall mean the date of execution of this Agreed Final Consent Judgment by the last signatory hereto.

14. “Express Informed Consent” means an affirmative act that is clear and unambiguous evidence of a person’s acceptance of the Offer Terms following disclosure of the Terms in the manner set forth in this Agreed Final Consent Judgment. In order to be unambiguous, the act of consent must clearly apply to the Offer Terms for the Negative Option Plan and not some other offer or other terms of the offer. With respect to telemarketing transactions, “Express Informed Consent” shall be as described in the Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(6) and by the courts and the Federal Trade Commission in interpretations of such Rule.

15. “Initial Representation” as used herein shall include all sponsored links, organic links, email subject lines, banner ads, pop-ups and any and all other primary impressions created or presented by Defendants, or any Third Party Affiliate/Advertiser as defined in paragraph 21 of this Agreed Final Consent Judgment.

16. “Pretend Blogs or Flogs” shall mean a web page or web site styled as a blog representing personal experiences with products and/or services, that appears to originate from a credible, non-biased source and contains no clear and conspicuous disclosures to the contrary,

but which in fact is created by a third party company or organization for the purpose of marketing a product or service.

17. “Unordered Merchandise” shall mean merchandise mailed without the prior expressed request or consent of the recipient.

18. “Matters Investigated” as used herein shall mean Plaintiff’s investigation of Defendant’s advertising, marketing, promoting, offering for sale, and selling to Florida Consumers directly or through any third party, teeth whitening products and services sold by Defendants, including Cleanwhites, Clean Whites Pro, Clean Whites Advanced, Stay Whites, and Smilewhites Pro, hereinafter referred to collectively as “products or services,” pursuant to a Negative Option Plan, and billing and collection efforts related to such products or services.

19. A “Negative Option” as used herein is any type of sales term or condition that imposes on consumers the obligation of rejecting goods or services that sellers offer for sale in order to avoid further obligation.

20. A “Negative Option Plan” or “Plan” is a contractual plan or an arrangement to sell or provide goods or services under which the customer’s silence or failure to take an affirmative action to reject the goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer. Negative Option Plans as used herein include, but are not limited to, the following:

a) a “Trial Conversion Offer” as used herein means an offer to provide a trial period of products or services to consumers where, as a result of accepting the trial period, consumers are required to contact Defendants before the expiration of the trial period to avoid receiving additional products or services or incurring a financial obligation.

b) a “Continuity Plan” as used herein means an arrangement, plan or system pursuant to which a consumer receives, or agrees to receive, periodic shipments of products or recurrent delivery of services without prior notification of each shipment or delivery, regardless of any trial or approval period allowing the consumer to return or be reimbursed for the products or services.

21. “Third-Party Affiliate/Advertiser” means a person or entity other than Rauscher Bekke who pursuant to a contract with Rauscher Bekke, advertises, promotes, offers for sale or sells either directly or through third parties (“Indirect Advertisers”) Rauscher Bekke’s goods or services to Florida Consumers and accepts orders for Rauscher Bekke’s goods or services generated in response to those offers or directs online traffic to Rauscher Bekke.

22. “Florida Consumer” or “Consumer” is a consumer that Defendants have billed or to whom Defendants have delivered products, at an address located within the State of Florida.

It is, therefore, **ORDERED AND ADJUDGED** as follows:

1. Defendants shall provide the Plaintiff, within 30 days of request, any documentation that would assist the Plaintiff in determining Defendants’ compliance with the present Agreed Final Consent Judgment. An extension may be granted upon agreement of the parties.

2. Pursuant to the requirements of Florida Rule of Civ. Pro. 1.560(b) that the judgment debtor shall complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments, and serve it on the Plaintiff’s attorney within 45 days from the date of this final judgment, unless the final judgment is satisfied or post-judgment discovery is stayed. This Court retains jurisdiction to enter further orders that are



appropriate to compel Defendants to complete form 1.977, including all required attachments, and to serve it on Plaintiff's attorney.

3. Defendants shall be responsible for making the substantive terms and conditions of this Agreed Final Consent Judgment known to all successors and assigns, in the event any exist or should be created. The parties agree that the entry of this Agreed Final Consent Judgment in the docket by the Court will constitute notice to them of the terms and conditions of said Consent Judgment.

4. By agreement and stipulation of the parties, Defendants RNR MEDIA, LLC and GREEN BRACKET, LLC are hereby dismissed with prejudice from this case.

#### **GENERAL TERMS**

5. The Defendants RAUSCHER BEKKE, LLC., JESSE STEIN, Individually and PAUL NUTE, Individually are permanently enjoined from, directly or through any person, corporation, subsidiary, division, entity or other device in connection with the manufacturing, labeling, advertising, promoting, marketing, offering for sale, sale, or distribution of any product or service:

- a. from using Pretend Blogs or Flogs to promote any product or service;
- b. misrepresenting, directly or by implication, or failing to disclose any fact material to a consumer's decision to purchase or use said product or service;
- c. misrepresenting, directly or by implication, the benefits, performance, or efficacy of any product or service;
- d. when a consumer endorsement or testimonial is used, failing to disclose, clearly and prominently, and in close proximity to the endorsement or testimonial, either:
  - i. the generally expected results for users of the product or service; or

ii. the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

e. entering into any agreement with Third Party Affiliate/Advertiser which does not include a provision requiring the third party affiliate to comply with the terms of this Agreed Final Consent Judgment relating to clear and conspicuous disclosures and to the prohibition against any of the Defendants from using Pretend Blogs or Flogs or unauthorized contents in advertising. Said contracts must contain provisions that no payments will be due to the third party affiliate for any sales based on advertising which violates this Agreed Final Consent Judgment.

6. Defendants, in connection with the advertising, promoting, offering for sale, selling or providing of products or services to Florida Consumers, shall not, directly or through any third party, bill or charge customers for late fees or represent that late fees are due or owing on any account, unless Defendants have Clearly and Conspicuously disclosed to Florida Consumers prior to or with the first invoice, that such fees would be imposed, under what circumstances the fees will be imposed, and the amount of the fee that will be imposed.

7. Defendants shall not send a product or service to a Florida Consumer, on preview or otherwise, as a result of a gift purchased for that Florida Consumer by another consumer, unless such product is free and without any obligation whatsoever to the recipient of that product or service, including returning the product or contacting Defendants.

8. Defendants, in connection with the advertising, promoting, offering for sale, selling or providing of products or services to Florida Consumers, shall not:

a. send products or deliver services to Consumers without the prior Express Informed Consent of the recipient, unless the product or service is Clearly and Conspicuously marked as a free sample and has attached to it a Clear and Conspicuous statement that the recipient may treat the product or service as a gift and may retain, use, discard or dispose of it in any manner without any obligation whatsoever;

b. send to any recipient of unordered products or services, a bill, invoice, or any writing that would reasonably be interpreted as a bill or invoice, or dunning communication, that seeks to obtain payment for products shipped, or services delivered, without the prior Express Informed Consent of the recipient.

9. Defendants in connection with the advertising, marketing, promoting, offering for sale or selling to Florida Consumers, directly or through Third Party Affiliates/Advertiser, products or services pursuant to a Negative Option Plan in which the Consumer must pay the shipping and mailing cost to return the product(s) in order to cancel the participation in the Plan or to reject a particular product or service, shall Clearly and Conspicuously disclose such obligation in Ordering Device.

10. Defendants, in connection with the advertising, marketing, promoting, offering for sale or selling to Florida Consumers, directly or through Third Party Affiliates/Advertiser, products or services pursuant to a Negative Option Plan, shall not represent that the Consumer's enrollment in the Negative Option Plan will only continue if the Consumer takes further affirmative action, if that is not the case.

11. Defendants, in connection with the advertising, marketing, promoting, offering for sale or selling to Florida Consumers, directly or through Third Party Affiliates/Advertiser, shall obtain the Consumer's Express Informed Consent to enrollment in the Negative Option

Plan on the terms and conditions described before enrolling the Consumer in the Negative Option Plan, sending any products or services pursuant to such Plan, or billing or charging a Consumer for such products or services.

12. Defendants, in connection with advertising, promoting, offering for sale or selling to Florida Consumers, directly or through Third Party Affiliates/Advertiser, shall, in any Promotional Material containing an offer that includes one or more Negative Option Plan(s) and that represents that a product or service is offered as “Free”, “Free Trial”, “Risk Free” or words of similar meaning and import, and in the Ordering Device, Clearly and Conspicuously make disclosures as required under this Agreed Final Consent Judgment, in close proximity to at least one prominent representation of “Free”, “Free Trial”, “Risk Free” or words of similar meaning or import, for each Negative Option Plan offered.

13. Defendants, in connection with advertising, promoting, offering for sale or selling to Florida Consumers, directly or through Third Party Affiliates/Advertiser, shall, in any Promotional Material that offers a free product or service to a consumer as an inducement to enroll in a Negative Option Plan, Clearly and Conspicuously disclose in close proximity to at least one prominent use of the term “free”, that receipt of the free item is conditioned upon enrollment in the Negative Option Program.

14. Defendants, in connection with the advertising, marketing, promotion, offering for sale or selling of products and services in Negative Option Plans to Florida Consumers, or in billing or collection efforts related to such Plans, shall not represent that the recipient of a product or service sent or delivered without the prior Express Informed Consent of the recipient is required, or otherwise obligated, to pay for the products or services or to return the product.

### **Trial Conversion Offers**

15. Defendants, in connection with the advertising, marketing, promoting, offering for sale, or selling products or services to Florida Consumers, directly or through Third Party Affiliates/Advertiser, products or services pursuant to a Trial Conversion Offer, shall:

16. Clearly and Prominently disclose, in Promotional Materials and in any Ordering Device that may result in enrollment in the Trial Conversion Offer shall disclose all Offer Terms as follows:

- i. a description of the product or service for which the trial period is offered;
- ii. the action that the Consumer must take in order not to be billed or charged for a product or service under the Trial Conversion Offer, such as contacting the Defendant to cancel or return the product;
- iii. if true, to the extent not disclosed pursuant to subparagraph (ii) above, that if the Consumer does not cancel or return the product before the end of the trial period, whichever is applicable, the Consumer will be billed for products shipped or services delivered, or other appropriate description of the payment method described to the Consumer or chosen by the Consumer in the device or other material the Consumer returns or transmits that will result in enrollment and the event or time period that will trigger each bill or charge for the cost of the product or service offered under the Trial Conversion Offer;
- iv. if true, the Consumers who accept the Trial Conversion Offer or make an initial purchase are automatically enrolled in a Negative Option Plan if they fail to cancel within the prescribed period and the event or time period that

will trigger each subsequent bill or charge for the cost of the product or service under the Negative Option Plan.

- v. the length of the trial period;
- vi. the dollar amount of the first payment and when it will be charged, withdrawn or become due;
- vii. the costs for shipping and handling of the product if there will be any such costs.

### Continuity Plans

17. Defendants, in connection with the advertising, marketing, promotion, offering for sale or selling of products or services to Florida Consumers, directly or through a Third Party Affiliate/Advertiser, pursuant to a Continuity Plan, shall Clearly and Prominently disclose, in Promotional Materials and in any Ordering Device that will result in enrollment in a Continuity Plan:

- a. the approximate interval between shipments or delivery of services, and the maximum number of products that will be shipped or services delivered in any one year period, if applicable;
- b. any obligation assumed by the Consumer to purchase a minimum number of products or services;
- c. a description of the products or services included in the Continuity Plan sufficient to provide notice to Consumers of the kind of products that will be shipped or services delivered in the Plan;

d. the date or time period by which the Consumer must notify Defendant to cancel enrollment in the Plan in order to avoid the next shipment of products or delivery of services;

e. a statement of the Consumer's right to cancel enrollment in the Continuity Plan, including the method by which the Consumer can cancel and the time frame in which cancellation must be made in order to avoid further shipments or delivery;

f. whether the Consumer has a right to return or reject products or services provided under the Continuity Plan, and if so, the procedure to be used by the consumer in order to do so.

18. The provisions relating to Trial Conversion Offers and Continuity Plans referenced above apply to all Defendants in addition and not exclusive of the General Terms of the present Agreed Final Consent Judgment.

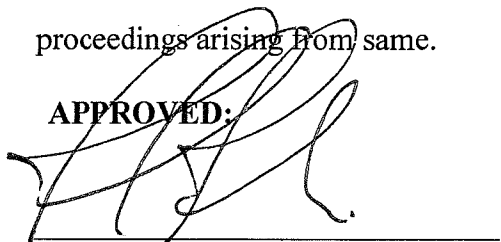
19. The Parties have stipulated that the Defendants shall pay to the Plaintiff, within thirty days after submission to Plaintiff of this Agreed Final Consent Judgment, with the notarized signatures of Defendants the sum of \$275,000.00 for Plaintiff's attorney's fees, costs, and past and future investigative costs. The check for this payment shall be made payable to The State of Florida, Department of Legal Affairs Revolving Trust Fund. On the condition that this payment is made as herein described, no judgment will be entered for said costs and fees. In the event no such payment is made, the agreement is void and the present cause shall proceed.

20. Defendants' customers have received approximately \$163,000, in the form of refunds credited or paid directly by Defendants or chargebacks processed through customers' credit cards, in response to complaints made by such customers to the Office of the Attorney General for the State of Florida, the Better Business Bureau, and/or Miami-Dade County,

Florida. Defendants confirm and represent that, to the best of their knowledge and belief, the amounts reflected in Exhibit A to this Agreed Final Consent Judgment, attached and incorporated herein, accurately represent such restitution paid to customers prior to the date of this Agreed Final Consent Judgment. Defendants further represent that, to the best of their knowledge and belief, this restitution amount constitutes the total amount of consumer claims reflected in complaints made by consumers to the Office of the Attorney General for the State of Florida, the Better Business Bureau, and/or Miami-Dade County, Florida, but does not include refunds or credits that Defendants may have issued directly to consumers absent a complaint from any of those sources.

21. The Court shall retain jurisdiction for the purpose of enforcing compliance with the terms and conditions of this Agreed Final Consent Judgment and for any potential contempt proceedings arising from same.

**APPROVED:**



ROBERT R. JULIAN  
Special Counsel  
Office of the Attorney General  
110 SE 6<sup>th</sup> St., Tenth Floor  
Ft. Lauderdale, FL 33301



PATRICIA CONNERS  
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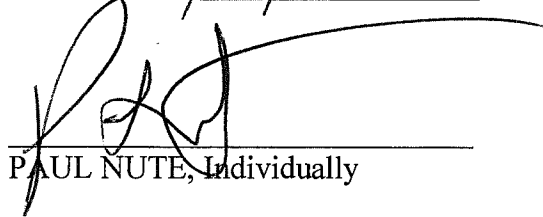
Date: 8/12/11



PAUL NUTE,  
Rauscher Bekke, LLC

Date: 2 August 2011

Date: 8/18/11



PAUL NUTE, Individually

Date: 2 August 2011

*me Paul Nute personally appeared before me 8/2/11*



*JESSE STEIN*

JESSE STEIN, Managing Member  
Rauscher Bekke, LLC

Date: 8/3/11

*JESSE STEIN*

GREEN BRACKET, LLC.

Date: 8/3/11

*JESSE STEIN*

JESSE STEIN, Individually

Date: 8/3/11

*JESSE STEIN*

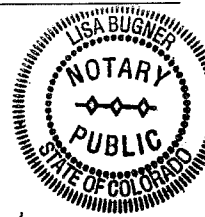
RNR Media, LLC.

Date: 8/3/11

State of Colorado  
County of Pitkin

Jessie Stein appeared before me and provided his Florida Dr. license as proof of identity and signed the above document on Aug. 3, 2011. *Lisa Bugner*

Approved and Entered in Chambers in Fort Lauderdale, Broward County, Florida.



*My commission expires 12/12/2011*

RICHARD D. EADE

AUG 23 2011

RICHARD EADE  
Circuit Judge

TRUE COPY

Date: \_\_\_\_\_