

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

In the Investigation of:

Case # L09-3-1041

FWM Laboratories, a Florida Corporation
and its subsidiaries, Gold Standard Marketing Limited,
a foreign corporation and its subsidiaries,
and Brian Weiss, individually

Respondents.

ASSURANCE OF VOLUNTARY COMPLIANCE

PURSUANT to the provisions of FLA. STAT. Ch. 501, Part II, Florida's Deceptive and Unfair Trade Practices Act, and FLA. STAT. Ch. 501, **STATE OF FLORIDA, OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS** (hereinafter "Department"), has investigated the business practices of FWM Laboratories, Inc. **and their subsidiaries** (hereinafter, "**Respondent**"), which does business in the State of Florida, with its principal place of business located at 3007 Greene Street, Hollywood, Florida 33020.

IT APPEARS THAT Respondent is prepared to enter into this Assurance of Voluntary Compliance (hereinafter "AVC"), for the purpose of resolution of this matter only, and without any admission that Respondent has violated the law, and the Attorney General, by and through its undersigned Assistant Attorney General, and Deputy Attorney General, being in agreement, does accept this AVC in termination of this investigation, pursuant to FLA. STAT. § 501.207(6), and by virtue of the authority vested in the Attorney General by said statute.

I. DEFINITIONS

For purposes of this AVC, the following terms have the meanings set forth below:

1.1 “Negative Option Marketing” shall mean commercial transactions in which a seller interprets a customer’s failure to take an affirmative action, either to reject an offer or cancel an agreement, as assent to be charged for goods or services.

1.2 “Trial Offer” shall mean an auto delivery program that Respondent has used to sell its non-prescription dietary and health supplements since approximately October 2008. Under the terms of the Trial Offer, customers who ordered one of Respondent’s products were charged \$5.95 for shipping and handling and had a 15-day trial period from the date of shipment to decide whether to keep the trial bottle and continue receiving additional shipments of the product. Unless the customer contacted Respondent to cancel future orders, Respondent billed the customer for the trial bottle at the end of the trial period, and billed and shipped the customer a one month supply. Thereafter, Respondent billed and shipped the customer a one month supply approximately every 30 days unless the customer called to cancel future orders.

II. STIPULATIONS

IT IS AGREED that this AVC does not constitute an admission of any kind and, specifically, FWM denies any and all allegations of wrongdoing. This AVC does not constitute a finding of law or fact by any court or agency that Respondent has engaged in any act or practice declared unlawful by any laws, rules or regulations of the State of Florida, and neither party shall make any statement to the contrary. Respondent is prepared to enter into this AVC solely for the purpose of resolution and cooperation, and the parties, being in agreement, do accept this AVC by virtue of the authority vested in the Department by said statute. Further, to the extent that any changes in Respondent’s business, advertisements or advertising practices are made to achieve or facilitate conformance to the terms of this AVC, such changes shall not constitute any failure to comply with any statute, regulation or the common law.

The Department and Respondent hereby agree and stipulate to the following:

2.1 Respondent engages in the sale of non-prescription dietary and health supplements over the Internet via various websites and through the use of third party affiliates.

2.2 Beginning in February 2009, the Department received several complaints from consumers who alleged, among other complaints, that they were unable to contact Respondent by telephone, email, or via Respondent's websites to cancel future orders under the terms of the Trial Offer. Respondents were and are offering a 15-day free trial offer, also known as a negative option, where consumers must cancel during the trial offer period to ensure they will not be charged in the future. Therefore, some consumers were continuously being charged on a monthly basis for products that they neither wanted nor ordered.

2.3 The Department's investigation focused primarily on whether Respondent engaged in negative option marketing to sell its products, but failed to provide adequate means for consumers to cancel during the free trial period, thus resulting in future shipments and charges.

2.4 Respondent has been fully cooperative during the investigation of this matter. Such cooperation has involved the provision of detailed documents, sworn testimony, and detailed information about the specific complaints and general operation of the dietary supplement business.

2.5 Respondent makes no admission that it engaged in any wrongdoing or committed any violation of Florida Statute 501, Part II. This AVC contains neither findings of fact nor conclusions of law.

III. COMPLIANCE

3.1 The Department has not approved any of Respondent's past, current or proposed business practices, other than those specifically mentioned in this AVC, and therefore no portion of this AVC shall be construed as such an approval.

3.2 The parties agree that Respondent is on notice and shall comply with FLA. STAT. Ch. 501, Part II, Florida's Deceptive and Unfair Trade Practices Act.

3.3 Respondent and their representatives, agents, employees, or any other person who acts under, by, through, or on behalf of Respondent, directly or indirectly, or through any corporate or other device, shall comply with and have actual knowledge of Chapter 501, Part II, Florida Statutes, the Florida Deceptive and Unfair Trade Practices Act.

3.4 **IT IS HEREBY AGREED** by the parties that Respondent shall:

a) Web Sites: Describe all material terms of any negative option marketing offer located on Respondent's website in a clear and conspicuous manner and in a prominent location where it is likely that the customer will see the terms and conditions before the consumer incurs a financial obligation. Further, it is agreed that Respondent shall be in compliance with the "clear and conspicuous" requirement described above if, on Respondent's website, Respondent will:

- i) provide a link to the full terms and conditions of the negative option offer;
- ii) refrain from using terms "free," "complimentary," "risk free," "without charge," or any other term that reasonably leads a consumer to believe that he or she may receive something of value, entirely or in part without a requirement of compensation in any form, or that tends to convey the impression to the consuming public that an article of merchandise or service is "free," unless the terms of the offer are clearly and conspicuously disclosed on the web

site in close proximity to such terms. It is agreed that the display demonstrated on Exhibit C, in which the word “free” is in close proximity to a “qualifying asterisk” and the relevant qualifying statement is in close proximity to the word “free”, satisfies the requirements of this subparagraph;

iii) aid in the verification of each consumer’s affirmative consent to the offer by having the negative option billing terms located within 300 pixels of the button or link that the consumer uses to complete his or her order, without the use of pre-checked boxes;

iv) send an order confirmation communication, within 24 hours of the customer’s order placement, to customers disclosing the material terms and conditions of any negative option offer, including when and how the consumer can cancel without being charged, exactly how much they will be charged monthly after the trial period and what product they will be receiving on a monthly basis after the trial period is over, it being understood that Respondent (a) will implement the confirmation system within twenty (20) days following the effective date of this Agreement and (ii) does not and cannot guarantee that the recipient’s email server will accept the message or that the email will be successfully delivered to the recipient’s Inbox, however Respondent will make all reasonable efforts to ensure this confirmation; clarify whether a limited number of consumers and/or products are eligible for a free trial offer, including, but not limited to, a daily limit per offer;

v) ensures that any testimonials of purported customers, including photographs and quotes, are true and accurate and derived from actual users of the product formulation, it being understood and agreed that if actor photographs are used, that fact will be conspicuously disclosed on the website ;

vi) clearly and conspicuously discloses to customers the material Terms and Conditions of the Trial Offer, including the following:

- a) the 15 day trial period includes a one month supply of the product and enrollment into the auto delivery program;
- b) the trial period begins on the day the product is ordered and terminates fifteen (or more, if appropriate and properly disclosed) calendar days later;
- c) to cancel and avoid further charge, the consumer must contact customer service by the end of the trial period;
- d) if the consumer does not cancel, the consumer's credit card will be charged the full price of the product (stated in specific dollars i.e. \$xx.xx);
- e) place the terms and conditions within 300 pixels of any button or link the consumer clicks to submit his or her order, in a clear and conspicuous font.

b) Cancellations/Refunds: Clearly disclose to customers how and when products may be returned, and maintain adequate customer service capacity to facilitate cancellation requests that comply with the cancellation procedures. This provision specifically requires Respondent to:

- i) disclose to customers whether the customer will incur any financial expense, such as postage, shipping, or restocking if the customer returns the product;
- ii) provide rapid and easy methods for a consumer to receive an RMA number to return the product either during the trial period or after;

modify their sites as requested by FWM. Upon discovering or being notified that an affiliate is engaging in improper activity, FWM shall, within one (1) business day following the date of receipt of such notification, contact the relevant affiliate network company and request the company to remove the relevant affiliate from FWM's affiliate network, it being understood that FWM does not guarantee prompt removal by the affiliate network company

IV. MONETARY TERMS

4.1 Respondent agrees to pay a total of TWO HUNDRED THOUSAND DOLLARS (\$200,000) in attorneys' fees, investigative fees and costs of future investigation ("Funds").

4.2 The Funds shall be payable in their entirety in equal monthly installments of \$50,000.00 per installment, over the course of four months, with the first installment to be paid contemporaneously with the partial execution of this Agreement by Respondents, and thereafter as indicated below. The first Funds check along with the partially executed AVC signed by Respondent and Respondent's attorney, are to be delivered to Assistant Attorney General Samantha Schosberg Feuer, Office of the Attorney General, 1515 North Flagler Drive, Suite 900, West Palm Beach, Florida 33401. Subsequently, the next three installment checks of \$50,000.00 each will be paid on November 30, 2009 and December 30, 2009 and January 30 2010 respectively. All of the above payments will be made by certified funds payable to the **DEPARTMENT OF LEGAL AFFAIRS REVOLVING TRUST FUND**. Should Respondents be delinquent in payment more than Five (5) business days past the due date, the Department may choose to expedite the remainder of the entire unpaid balance due immediately.

4.3 Upon signing this AVC, Respondent will keep a minimum of SIXTY-THOUSAND DOLLARS (\$60,000.00) ("the Escrow Funds") in Respondent's attorney's escrow account for the purpose of making refunds to other eligible consumers who have not yet made

contact with the Respondent or the Department, but come forward subsequent to the execution of the AVC seeking a refund for eligible purchases made prior to the execution of the AVC.

Respondent will establish and maintain exclusive access to and control of this account.

Respondent's obligation to maintain the Escrow Funds for the purposes stated herein terminates sixty (60) from the date this AVC is executed. In the event actual restitution for future complainants exceeds the amount of the Escrow Funds, then the Escrow Funds will be distributed pro-rata to the complainants who come forward within the sixty (60) day period.

However, no individual consumer will receive more than the amount they are actually owed.

Respondents will maintain a spreadsheet, entitled Escrow Complaints Spreadsheet, containing all the complaints forwarded to Respondent from the Department during the Escrow period that contains the complainant's name, contact information, and how the complaint was resolved. At the end of the sixty (60) day Escrow Period, Respondent will provide a notarized affidavit with the complete aforementioned spreadsheet attached, attesting to the fact that those complaints forwarded to the Respondents during the Escrow Period were resolved. If there are any excess funds remaining after the distribution, these funds will be returned to the Respondent.

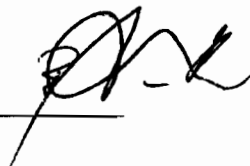
Complaints that the Department receives regarding Respondents or products shipped out of Respondents business location, after the above sixty- (60) day period and after the Escrow Funds are distributed will be sent directly to "Refund Department" which will maintain a dedicated specific individual, known as the Refund Manager, devoted exclusively to resolve complaints and refund requests. These future complainants, either within the 60 day Escrow period or after, will include any complaints that the Department receives that reference Respondent, reference any addresses connected to Respondent, or reference any shipping or fulfillment by or from Respondent. These refund requests sent by the Department will be

answered by Respondent within forty-eight (48) business hours. All complaints the Department receives will be faxed or mailed or emailed to Respondent to the following locations: FAX: 954-927-9978 attn: Elyssa Weiss; 3007 Greene Street, Hollywood, Florida 33020; billing@fwmlabs.com, with a copy to bgross@becker-poliakoff.com. Future complainants may call Respondent 24 hours a day, 7 days a week at **866-949-0138** to lodge any and all complaints and/or speak to a customer service representative. Respondent will make contact with the complainant via electronic mail or phone within forty-eight (48) hours from the time the Complaint is received. Respondent will keep a spreadsheet of complaints that are forwarded by the Department to Respondent and will send the Department an updated spreadsheet on the last day of the month, for six months from the date this AVC is executed, describing the resolution of each complaint. Respondent will maintain adequate customer service personnel to examine, address and resolve all complaints expeditiously related to Respondent's business, products and trial offers.

4.4 Respondent represents that since Respondent became aware of this investigation on or about February 12, 2009, and in accordance with Respondent's standard refund policies, Respondent has refunded \$34,659,361.76 in total to consumers who ordered Respondents products. Respondent's interest in funds paid in conjunction with this AVC shall fully and completely divest when the AVC is fully executed by all parties. Notwithstanding any other provision of this AVC, no portion of the Funds, other than any remaining Escrow Funds, shall in any event be returned to Respondent provided that the AVC has been fully executed.

4.5 Upon receipt of the partially executed AVC and accompanying Funds check, Samantha Schosberg Feuer will sign the AVC and then forward the AVC to the Deputy Attorney General, together with the aforementioned funds. The Deputy General has the final authority to

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A handwritten signature in black ink, appearing to be 'S. Feuer', written over a horizontal line.

approve or disapprove the entry of the AVC. Should the Deputy General or his authorized designee decline to authorize and execute this AVC, then the Funds would be promptly returned to Respondent.

V. EFFECTIVE DATE

The Effective Date of this AVC is the date on which the AVC is fully executed by the parties. This will be the date that the AVC is signed by the Deputy Attorney General or Division Director. The receipt of or deposit by the Department of any monies pursuant to this AVC does not constitute acceptance by said Department, and monies received will be returned if this AVC is not accepted. Upon entry of this AVC and upon full payment of attorneys' fees, the Attorney General agrees to close this investigation into the activities of Respondent.

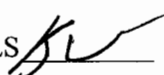

VI. AVAILABILITY OF RECORDS

Respondents shall retain for a minimum of two (2) years and maintain and make available to the Department, upon its written request, all books, records and other documents which reflect the implementation of the terms of this AVC and compliance with its terms. Any such records requested by the State shall be made available for inspection within twenty (20) business days. Respondents shall honor any request from the State to make such records available without further legal process.

VII. FUTURE VIOLATIONS

7.1 Notwithstanding any other provision of this AVC, the parties further recognize that future violations of this AVC or of FLA. STAT. Ch. 501, Part II, may subject Respondent or its officers, directors and employees to any and all civil penalties and sanctions provided by law.

7.2 **IT IS FURTHER AGREED** by the parties that any future violations of this AVC which occur are by statute *prima facie* evidence of a violation of FLA. STAT. Ch. 501, Part II, and

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will subject RESPONDENTS to any and all civil penalties and sanctions provided by law, attorneys' fees and costs.

7.3 **IT IS HEREBY AGREED** by the parties that Respondent shall be responsible for making the substantive terms and conditions of this AVC known to the officers, directors, partners, employees, agents, representatives, licensees, franchisees, independent contractors, successors and assigns, engaged in Respondent's business, projects, and activities.

VIII. MISCELLANEOUS PROVISIONS

8.1 Nothing herein shall be construed as a waiver of any private rights, causes of action, or remedies of any private person, business, corporation, government or legal entity.

8.2 In consideration for the fulfillment and acceptance of the various obligations set forth herein, no penalties are imposed under this AVC. However, the Attorney General reserves the right to seek Chapter 501 penalties for any future violation(s) of Chapter 501 Part II Florida Statutes. The Attorney General also reserves the right to seek attorneys' fees and costs upon any future noncompliance.

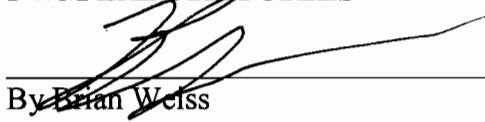
8.3 The parties jointly participated in the negotiation of the terms articulated in this AVC. No provision of this AVC shall be construed for or against either party on the ground that one party or another was more heavily involved in the preparation.

IN WITNESS WHEREOF, Respondent has caused this AVC to be executed by an authorized representative, as a true act and deed, in the County and State listed below, as of the date affixed thereon.

Agreed to and Signed this 29th day of October, 2009.

MY SIGNATURE I hereby affirm that I am acting in my capacity and within my authority as a Principal Owner, and in my individual capacity, and that by my signature I am binding myself and the business to the terms and conditions of this AVC.

FWM LABORATORIES


By Brian Weiss
President, FWM LABORATORIES

State of Florida

STATE OF FLORIDA

COUNTY OF Broward

BEFORE ME, a notary public of the State of Florida appeared Brian Weiss who swore under oath that he is a Principal Owner of FWM LABORATORIES and who is known to me.


NOTARY PUBLIC
AFFIX NOTARY SEAL

Agreed to and Signed this 29th day of October, 2009.



SYLVIA GOMEZ
Commission DD 659039
Expires July 8, 2011
Bonded Thru Troy Fahn Insurance 800-385-7019

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MY SIGNATURE I hereby affirm that I am acting in my capacity and within my authority as a Principal Owner, and in my individual capacity, and that by my signature I am binding myself and the business to the terms and conditions of this AVC.

GOLD STANDARD MARKETING LIMITED


By Ashwin Sokke,
Chief Executive Officer, GOLD STANDARD MARKETING LIMITED

State of Florida

STATE OF FLORIDA

COUNTY OF Broward


BEFORE ME, a notary public of the State of Florida appeared Robert Harris who swore under oath that he is a Principal Owner of Gold Standard Marketing Limited and who is either (Check One) _____ known to me or who produced the following identification:

Republic of India Passport # F7904345


NOTARY PUBLIC
AFFIX NOTARY SEAL



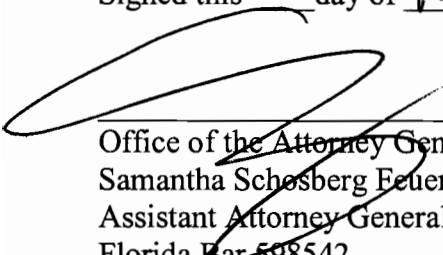
SYLVIA GOMEZ
Commission DD 659039
Expires July 8, 2011
Bonded Thru Troy Fahn Insurance 800-386-7019


Bradley J. Gross
Florida Bar No: 059137
Attorney for Respondents

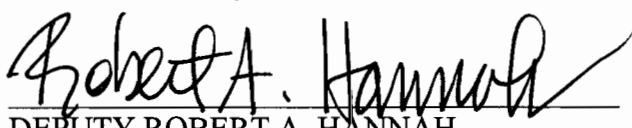
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ACCEPTANCE BY ATTORNEY GENERAL'S OFFICE

Signed this 17th day of November, 2009.


Office of the Attorney General
Samantha Schosberg Feuer
Assistant Attorney General
Florida Bar 598542
1515 North Flagler Drive, Suite 900
West Palm Beach, Florida, 33401
561-837-5000
561-837-5109 (FAX)

Accepted this 17th day of November, 2009.


DEPUTY ROBERT A. HANNAH
OFFICE OF THE ATTORNEY GENERAL
The Capitol, PL 01
Tallahassee, FL 32399-1050
(850) 414-3300