

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
 William E. Kovacic
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill

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In the Matter of)	
)	
NBTY, INC.,)	DOCKET NO.
a corporation,)	
)	
NATURESMART LLC,)	
a limited liability company, and)	
)	
REXALL SUNDOWN, INC.,)	
a corporation.)	
)	
)	

COMPLAINT

The Federal Trade Commission, having reason to believe that NBTY, Inc., NatureSmart LLC, and Rexall Sundown, Inc. (collectively “respondents”) have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent NBTY, Inc. (“NBTY”) is a Delaware corporation with its principal place of business at 2100 Smithtown Ave., Ronkonkoma, New York 11779.
2. Respondent NatureSmart LLC (“NatureSmart”) is a Colorado limited liability company with its principal place of business at 2100 Smithtown Ave., Ronkonkoma, New York 11779. Respondent NatureSmart is a wholly owned subsidiary of NBTY.
3. Respondent Rexall Sundown, Inc. (“Rexall Sundown”), also doing business as Sundown, Inc., is a Florida corporation with its principal place of business at 2100 Smithtown Ave.,

Ronkonkoma, New York 11779. Respondent Rexall Sundown is an indirectly wholly owned subsidiary of NBTY.

4. Respondent NBTY has manufactured and, together with Respondent NatureSmart, has advertised, marketed, distributed, or sold, throughout the United States, a children's multivitamin and mineral chewable tablet product called Disney Princess Complete and the following children's multivitamin and mineral gummy products: 1) Disney Princess Gummies; 2) Disney Pixar Cars Gummies; 3) Disney Winnie the Pooh Gummies; 4) Disney Tigger & Pooh Gummies; 5) Disney Pixar Finding Nemo Gummies; 6) Disney Pixar Wall-E Gummies; and 7) Disney Pixar Toy Story Gummies (the gummy vitamin products, collectively referred to as the "Disney Gummies"). According to the package directions for these products, they are intended for adults and children two years of age and older.
5. Respondent NBTY has manufactured and, together with Respondent Rexall Sundown, has advertised, marketed, distributed, or sold, throughout the United States, a children's multivitamin and mineral chewable tablet product called Marvel Heroes Complete and a children's multivitamin and mineral gummy product called Marvel Heroes Gummies. According to the package directions for these products, they are intended for adults and children two years of age and older.
6. Respondents have marketed the Disney Gummies and Marvel Heroes Gummies (collectively, the "Disney and Marvel Gummies") at a wide range of major retail stores, including, but not limited to, CVS Pharmacy, Wal-Mart, Target, Walgreens, Kroger, Kmart, Meijer, and Rite Aid. They have also marketed these products through online vendors, such as www.drugstore.com.
7. Respondents have marketed Disney Princess Complete and Marvel Heroes Complete tablets (collectively, the "Disney and Marvel Complete Tablets") through various online vendors, such as www.drugstore.com.
8. The Disney and Marvel Gummies and the Disney and Marvel Complete Tablets (collectively, the "NBTY Products") are either "foods" or "drugs" as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.
9. Retail prices for the NBTY Products range from approximately \$4.00 to \$8.00 for a sixty-count bottle.
10. The acts and practices of respondents, as alleged herein, have been in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
11. Respondents have disseminated, or caused to be disseminated, advertisements for the NBTY Products, including, but not limited to, the attached Exhibits A through C. These advertisements contain the following statements and depictions, among others:

A. **Print Advertisements:** Text “with DHA*” in white font within a red starburst-shaped graphic appears above images of packages for various products. The asterisk refers to the following statement, which is situated at the bottom of these advertisements:

DHA is naturally found in the brain and the eyes. 100 mg promotes healthy brain and eye development. One serving provides 100 mcg of DHA.

(See, e.g., Exhibit A.)

B. **Product Packages and Labels for the Disney and Marvel Gummies:** On the front panel is the text “with DHA*” in colored font within a graphic that corresponds to the theme of the children’s vitamin, such as a pink crystal heart for Disney Princess Gummies, an orange starfish for Disney Pixar Nemo Gummies, and a white spider web situated in front of an image of the Marvel Spider-Man super hero for Marvel Heroes Gummies. The asterisk refers to the following statement, which is displayed on the side panel of these packages:

*DHA is naturally found in the brain and the eyes. 100 mg promotes healthy brain and eye development.** One serving provides 100 mcg of DHA.

(Exhibit B.)

C. **Product Packages and Labels for the Disney and Marvel Complete Tablets:** On the front panel is the text “Plus DHA 100 mcg*” in colored font within a graphic that corresponds to the theme of the children’s vitamin, specifically, a pink crystal heart for Disney Princess Complete and a white spider web situated in front of an image of the Marvel Spider-Man super hero for Marvel Heroes Complete. The asterisk refers to the following statement, which is displayed on the side panel of these packages:

*DHA is naturally found in the brain and the eyes. 100 mg promotes healthy brain and eye development.** One tablet provides 100 mcg of DHA.

(Exhibit C.)

12. A daily serving (1 tablet) of the Disney and Marvel Complete Tablets for children ages four years and older and a daily serving (2 gummies) of the Disney and Marvel Gummies contain 0.1 mg (100 mcg) of DHA (docosahexaenoic acid, a polyunsaturated Omega-3 fatty acid), which equals one thousandth of the 100 mg amount referred to in product advertising and packaging as promoting health benefits. The Disney and Marvel Complete Tablets contain 0.05 mg (50 mcg) of DHA per daily serving (1/2 tablet) for children two to four years of age, which equals five ten-thousandths of the 100 mg amount referred to in product advertising and packaging as promoting health benefits.
13. Through the means described in Paragraphs 11 and 12, respondents NBTY and NatureSmart have represented, expressly or by implication, that the Disney Gummies and Disney Princess Complete contain a significant amount of DHA. For example, they have

represented, expressly or by implication, that these products contain an amount of DHA that is comparable to 100 mg of DHA.

14. Through the means described in Paragraphs 11 and 12, respondents NBTY and Rexall Sundown have represented, expressly or by implication, that Marvel Heroes Gummies and Marvel Heroes Complete contain a significant amount of DHA. For example, they have represented, expressly or by implication, that these products contain an amount of DHA that is comparable to 100 mg of DHA.
15. In truth and in fact, the NBTY Products contained neither a significant amount of DHA nor an amount comparable to 100 mg of DHA. Therefore, the representations set forth in Paragraphs 13 and 14 were false or misleading.
16. Through the means described in Paragraphs 11 and 12, respondents NBTY and NatureSmart have represented, expressly or by implication, that the DHA provided by a daily serving of Disney Princess Complete or the Disney Gummies promotes healthy brain and eye development in children two years of age and older.
17. Through the means described in Paragraphs 11 and 12, respondents NBTY and Rexall Sundown have represented, expressly or by implication, that the DHA provided by a daily serving of Marvel Heroes Complete or Marvel Heroes Gummies promotes healthy brain and eye development in children two years of age and older.
18. Through the means described in Paragraphs 11 and 12, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraphs 16 and 17 at the time the representations were made.
19. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraphs 16 and 17 at the time the representations were made. Therefore, the representation set forth in Paragraph 18 was false or misleading.
20. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission, this _____ day of _____, 2010, has issued this complaint against respondents.

By the Commission.

Donald S. Clark
Secretary