

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

In the Investigation of

AG Case Number: L15-3-1180

Healthy New Beginnings, Inc.  
\_\_\_\_\_ /

**ASSURANCE OF VOLUNTARY COMPLIANCE**

PURSUANT TO Chapter 501, Part II, "The Florida Deceptive and Unfair Trade Practices Act", Florida Statutes (2014), the STATE OF FLORIDA, OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS (hereafter, the "Department") investigated certain acts and practices of Healthy New Beginnings, Inc. (hereinafter "HNB").

HNB enters into this Assurance of Voluntary Compliance (hereafter, the "AVC") with the Department without an admission of any wrongdoing and for the purpose of resolving this matter only. Pursuant to Section 501.207(6), Florida Statutes (2014), the Department accepts this AVC in termination of its investigation into certain acts and practices of HNB related to the marketing and sale of Garcinia Cambogia.

**1. BACKGROUND**

1.1. HNB is a Delaware corporation with its principal place of business located at 1540 International Parkway, Lake Mary, Florida 32746. Since 2013,

HNB advertised, marketed, promoted, offered for sale, sold, and distributed Garcinia Cambogia in Florida and throughout the United States. HNB offers HNB Product through Affiliate Networks.

1.2. The Department initiated its investigation of HNB in March, 2015 based on consumer complaints. The consumer complaints which the Department received generally allege problems with terms and conditions of the purchase of HNB Products.

1.3. HNB has been cooperative during the investigation of this matter, and has provided documents and information in response to the Consumer Protection Division Subpoena Duces Tecum. While HNB denies any wrongdoing or violation of any applicable laws, rules or regulations, the parties to this Agreement nevertheless desire to resolve this matter by entering into this AVC.

## **2. JURISDICTION AND VENUE**

2.1. The parties agree that the State of Florida has jurisdiction over HNB for the purposes of entering into this AVC and any enforcement actions arising out of the issues relating to the area of investigation associated with this AVC.

2.2. It is further agreed by the parties that venue for any matters relating to or arising out of this AVC shall lie solely in Orange County, Florida.

## **3. DEFINITIONS**

3.1. “Advertising” (including “Advertisement”), when used as a noun herein, means any written, oral graphic or electronic statement, illustration or depiction designed to create interest in the purchasing of, impart information about, publicize, or affect the sale of, HNB Product, where the statement appears in electronic mail, on the Internet, in a website, or other digital format, including mobile applications.

3.2. “Clear and Conspicuous” (including “Clearly and Conspicuously”) means that a statement, representation, claim, disclosure or term, collectively referred to as “disclosure”, being conveyed is sufficiently noticeable for an ordinary consumer to read and comprehend it. Further, in order to be Clear and Conspicuous:

a. The disclosure shall be presented in a manner that stands out from the accompanying text, so that it is sufficiently prominent because of its type size, contrast to the background against which it appears, location, or other characteristics, for an ordinary consumer to notice, read and comprehend it in relation to the claim it may be modifying or if not modifying a claim, to other terms and conditions of the offer;

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

c. The disclosure shall be displayed in close proximity to the statement, representation, claim, or term it clarifies, modifies, explains, or to which it otherwise relates;

d. The offer terms of any Negative Option Plan shall be presented together in a distinct location, in a stand-alone paragraph;

e. Nothing contrary to, or inconsistent with, or in mitigation of the disclosure shall be used;

f. The disclosure shall not be accompanied by distracting sounds, graphic or text that competes for the attention of the consumer;

g. In addition to other requirements of the paragraph, in communications made through the Internet and other web-based application or services, the message shall be unavoidable;

h. In addition to other requirements of the paragraph, in communications disseminated through video means (e.g., television or streaming video), the disclosure shall be presented in accordance with subsection a. of this definition, and shall appear on the screen for a duration for an ordinary consumer to read and comprehend the disclosure; and,

i. In addition to other requirements of this paragraph, in communications disseminated orally or through audible means (e.g.

streaming video), the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend the disclosure.

The parties agree that the Federal Trade Commission's Dot Com Disclosures Guidelines Dated March 12, 2014 shall serve as a relevant source for guidance on how to make Clear and Conspicuous disclosures in connection with advertising through mobile applications.

3.3. "Complainant(s)" shall include the consumers identified in Exhibit A hereto.

3.4. "Consumer Complaints" means Complaints appearing in Exhibit B hereto.

3.5. "Direct Proximity" shall mean for any communication presented solely through visual means, that a term is disclosed immediately above or beside a triggering representation, term or acceptance mechanism, as applicable; provided, however, information may also be disclosed below the triggering representation or term if it makes the overall communication easier to understand. In interactive electronic media such as the Internet, software or online services, "Direct Proximity" means on the same Web page, online service page, or other electronic page, and immediately above or beside the triggering representation, term or acceptance mechanism, displayed in such a manner that the communication is viewable without requiring the consumer to scroll up, down or sideways, or

otherwise adjust their browser window in any way, and shall not include such disclosures accessed or displayed through hyperlinks, pop-ups, interstitials or other means that take the consumer to a different page; provided, however, information may also be disclosed below the triggering representation or term if it makes the overall communication easier to understand.

3.6. “Effective Date” shall mean the date of execution of this AVC by the last signatory hereto.

3.7. “Express Informed Consent” means an affirmative act that is clear and unambiguous evidence of a person’s acceptance. Express Informed Consent to participate or be enrolled in a Negative Option Plan means clear and unambiguous evidence of the acceptance of the offer terms following disclosure of such terms in a manner set forth in this AVC. In order to be unambiguous, the act of consent to a Negative Option Plan must clearly apply to the offer terms of the Negative Option Plan so that consumers will fully understand that they are accepting enrollment in a Negative Option Plan and the offer terms, and not some other offer or other terms of the offer; provided, however, that for purposes of this provision, a Trial Conversion Offer that unless canceled, results in enrollment in a continuity or automatic renewal plan shall be considered a Negative Option Plan. More specifically, Express Informed Consent shall be with respect to written offers, (including over the Internet or other web-based services), a check box, button or

other method that consumers must affirmatively select, sign or take action to accept the Negative Option terms. The Negative Option Offer Terms, along with the instructions as to the affirmative act the consumer may take, shall be in Direct Proximity to the check box, signature, or other method of providing assent and shall appear, before billing information (e.g. name, address, credit card, debit card or bank account numbers) is obtained, in a stand-alone paragraph. The offer terms shall contain no additional information other than instructions as to the affirmative act that must be taken to accept the Negative Option.

3.8. “Express Informed Consent” to a one-time charge to a credit or debit card account in print, online or other electronic transaction, relating to a Negative Option Plan, means a check box, button, or other method that requires the consumer to take affirmative action to clearly indicate acceptance of to the amount of the charge and the date the charge is to be made, or if a charge is to be automatically on a recurring basis, then the consumer takes such affirmative action to authorize charging a set amount a set date automatically on a recurring basis without further authorization.

3.9. “HNB Product(s)” shall mean Garcinia Cambogia and all other products that HNB Advertises, markets, promotes, offers for sale or sells.

3.10. “Material” means likely to affect person’s choice of, or conduct regarding, goods, or services.

3.11. “Negative Option Feature” means in an offer or agreement to sell or provide any good or service, a provision under which the consumer’s silence or failure to take affirmative act to reject a good or service or cancel the agreement is interpreted by the seller as proof of acceptance to continuing acceptance of the offer.

3.12. A “Negative Option Plan” is a contractual plan or an arrangement to sell or provide HNB Products under which the consumer’s silence or failure to take an affirmative action to reject the HNB Products 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. An “Automatic Renewal Plan” as used herein means a plan or arrangement whereby a subscription or other agreement is automatically renewed and the consumer is billed or charged unless the consumer cancels before the renewal, or before some other specified date or period of time.

b. A “Trial Conversion Offer” as used herein means an offer to provide a trial period of HNB Product to a consumer where, as a result of accepting the trial period, the consumer is required to contact HNB prior to the expiration of the trial period to avoid receiving additional HNB Products or incurring a financial obligation.

c. A “Continuity Plan” as used herein means an arrangement, plan



or system pursuant to which a consumer receives, or agrees to receive, periodic shipments or HNB Products or recurrent delivery of HNB Product without agreeing to prior notification of each shipment or delivery, regardless of any trial or approval period allowing the consumer to return or be reimbursed for the HNB Product(s) and without regard to whether HNB sends prior notification.

#### 4. **COMPLIANCE TERMS**

##### **Policies and Procedures**

4.1. HNB agrees to maintain sufficient policies and procedures relating to its review process of consumer claims of confusion over the terms and conditions of purchase in order to lessen the frequency of consumer complaints in the State of Florida. HNB agrees to improve the efficiency of its policies and procedures in communicating with Florida consumers that make such allegations. As such, HNB agrees to maintain these policies with enhancements to avoid violations of applicable consumer protection statutes and similar regulations, including, but not limited to, the following: (1) The Florida Deceptive and Unfair Trade Practices Act as contained in Chapter 501, Part II, Florida Statutes (2014); and, (2) Restore Online Shopper's Confidence Act, 15 U.S.C. §§ 8401-8405.

4.2. As a material term and condition of this AVC, HNB shall continue to maintain corporate policies and procedures to ensure compliance with the terms of

this AVC, including reasonable quality control procedures to monitor compliance.

### **HNB Websites**

4.3. As a material term and condition of this AVC, all HNB websites shall include truthful and non-misleading language. In connection with the Advertising, promotion, offering for sale or sale of HNB Products to consumers pursuant to a Negative Option Plan, HNB shall Clearly and Conspicuously disclose all material billing terms and conditions in Direct Proximity to and directly above the submit button where the consumer completes his or her order. In no case shall HNB use pre-checked or pre-selected boxes or radio buttons to confirm a consumer's consent to any terms and conditions. Moreover, all HNB websites shall disclose all Material billing terms and conditions of any marketing offer containing a Negative Option Feature located on HNB's website in a Clear and Conspicuous manner and in a prominent location where it is likely that the consumer will see such terms and conditions before the consumer incurs any financial obligation. Furthermore, HNB shall:

- a. refrain from using the terms "free", "complimentary," "risk free," "without charge," "no obligation" 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;”

b. send an e-mail order confirmation to each consumer within twenty-four (24) hours of the consumer’s order placement, that Clearly and Conspicuously discloses the Material billing terms and conditions of any Negative Option Plan or offer involving a Negative Option Feature, 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. In the event HNB is unable to send an e-mail confirmation, it shall send an order confirmation by regular to the consumer. The order confirmation shall be in substantially the form attached as Exhibit C;

c. Clearly and Conspicuously disclose to consumers all Material billing terms and conditions of any Trial Conversion Offer, including the following:

- i) specifically when the trial period begins and ends;
- ii) that to cancel the trial offer and avoid further charges, the consumer must contact customer service before the end of the trial period;
- iii) the specific methods by which the consumer may cancel his or her trial offer;

iv) that if the consumer does not cancel, the consumer's credit card will be charged the full price of the HNB Product (stated in specific dollars i.e. \$xx.xx).

### **Cancellations and Returns**

4.4. As a material term and condition of this AVC, HNB shall Clearly and Conspicuously disclose to consumers how and when HNB Products may be returned, and shall maintain adequate customer service capacity to facilitate cancellation requests that comply with the HNB cancellation procedures. In order to accomplish this, HNB will:

a. Clearly and Conspicuously disclose to consumers all costs, fees and expenses, including postage, shipping, and restocking fees, that a consumer will incur to return an HNB product;

b. promptly cancel a consumer's enrollment in any HNB Negative Option Plan upon notice of a consumer's desire to cancel. In no case shall HNB knowingly, purposely or intentionally impede the methods of cancellation and will fully honor all requests that comply with the Terms and Conditions;

c. continue to process requests for refunds from consumers who, in accordance with the Terms and Conditions of HNB's website, attempted to cancel or terminate orders from HNB in a timely fashion from the receipt

of such inquires;

d. adjust its consumer service policies and practices to ensure that properly addressed phone, email, live chat, and written inquiries are responded to within twenty-four (24) business day hours from the receipt of such inquires; and,

e. provide the Department with information, regarding its resolution of the Consumer Complaints identified in **Exhibit B**. HNB will resolve all the Consumer Complaints set forth in **Exhibit B**, and provide a notarized spreadsheet with regard to the resolution of each Complaint.

#### **Affiliate Networks**

4.5. As a material term and condition of this AVC, HNB will notify each of its affiliate networks of HNB's obligations under this AVC. HNB shall not Advertise, market, promote, offer for sale or sell any HNB Products through an affiliate network whose practices violate any terms of this AVC. HNB will require each affiliate network to obtain prior approval from HNB of all marketing materials to be used by the affiliate network to Advertise, promote, offer for sale, or sell any HNB Products, , including, but not limited to, websites, emails, ad links, banner ads and pop-ups, and the following:

a. Copies of all material created by the affiliate network, displayed or contained within the marketing materials, including text, graphics, video,

audio, and photographs;

b. The location of any online marketing materials, as denoted by unique URL;

c. The URL of any hyperlink contained in the marketing materials; and

d. The range of dates that marketing materials will run.

4.6. HNB will provide the affiliate network with an acknowledgement of HNB's review and approval or disapproval of the marketing materials. Further, HNB will promptly and completely investigate any complaints received though any source alleging that an affiliate network is engaging in acts or practices prohibited by this AVC. In the event an affiliate network engages in acts or practices prohibited by this AVC, HNB will halt the processing of any payments to the affiliate network, and fully refund, within five (5) business days, each consumer's charges by HNB whose sale originated from the affiliate network. Finally, HNB will terminate any affiliate network engaged in practices prohibited herein.

### **Customer Service**

4.7. As a material term and condition of this AVC, HNB shall ensure that calls from consumers to customer service during business hours, or to a third party that provides customer service on behalf of HNB, are answered within four (4)

rings, and consumers are not placed on hold for longer than two (2) minutes during a call, unless a customer service representative advises the consumer that a longer period may apply; provided, however, in no case shall a consumer be placed on hold for more than four (4) minutes. HNB shall gather such data and reports as necessary to demonstrate to the Department its compliance with such policies and procedures by employees and third parties.

4.8. HNB shall continue to respond to any consumer complaints provided to it by consumers, the Department, or the Better Business Bureau, and will attempt in good faith to satisfactorily resolve such complaints within thirty (30) days of receipt.

### **Terms and Conditions**

4.9. As a material term and condition of this AVC, HNB shall revise its website Terms and Conditions to be consistent with and in compliance with its obligations under this AVC.

## **5. REMEDIATION AND OTHER MONETARY TERMS**

### **Refunds and Other Remuneration for Complainants**

5.1. HNB shall email each Complainant within thirty (30) days of the Effective Date for the purpose of: (1) Confirming the issuance of credit for the amount paid for the HNB Product, including tax and shipping and handling charges paid in connection with the purchase of the HNB Product; (2) Confirming

the resolution of Consumer Complaints; and (3) Offering each Complainant compensation in the amount of \$100.00 to serve as reimbursement for time involved with filing the Consumer Complaint. HNB shall maintain sufficient telephone lines, electronic hardware and software, and sufficient personnel, to respond to Complainants contacting HNB with regard to this AVC, or requests for refunds or remuneration, or to register a complaint. HNB shall make it a condition of redemption of any remuneration that will ensure the eligible Complainants waive all other recourse and remedy and fully release HNB from all claims related to the HNB Products.

#### **Attorneys' Fees and Costs**

5.2. Within ninety (90) days of the execution of this AVC, HNB shall pay to the Department the total sum of Seventy-Five Thousand and No/100 Dollars (\$75,000.00) for investigative costs, attorneys' fees and future monitoring. Payment shall be made by certified or cashier's check payable to the Department of Legal Affairs Revolving Trust Fund and shall be sent to Robert G. Clements, Assistant Attorney General, 135 West Central Blvd, Suite 670, Orlando, FL 32801. In the event that HNB fails to timely pay the above amount, HNB shall be in default of this AVC and hereby stipulates to entry of a final judgment against it in favor of the Department for the outstanding amounts due. Evidence of the failure to pay in accordance the terms and conditions of this AVC may be in the form of an



affidavit from the Department. HNB acknowledges and agrees that the failure to comply with the specific terms and conditions of this AVC is by statute *prima facie* evidence of a violation of Chapter 501, Part II, Florida Statutes (2011), and may subject HNB to any and all civil penalties and sanctions provided by law, including awarding of additional attorneys' fees and costs.

**6. PROHIBITED BUSINESS ACTIVITIES**

6.1. This AVC applies to HNB in the Advertising, marketing, promotion, offering for sale or selling and providing of any HNB Products, to consumers and the billing for such HNB Products.

6.2. As a material term and condition of this AVC, HNB shall disclose to consumers in a Clear and Conspicuous manner, all Material terms and conditions of any HNB Product offer, including:

- a. That HNB will use consumers' credit card information to charge consumers for the initial full month's supply of the HNB Product upon the expiration of a thirty (30) day limited trial period;
- b. The date on which consumers must cancel the Trial Conversion Offer to avoid further charges; and,
- c. The means consumers must use to cancel the Trial Conversion Offer.

6.3. As a material term and condition of this AVC, HNB shall disclose, to

consumers in a Clear and Conspicuous manner, all Material terms and conditions of HNB's refund and cancellation policy, including:

- a. any requirement that an "upsell" HNB Product must be cancelled separately ;
- b. the specific product return requirements and mailing directions;
- c. any tracking or delivery confirmation requirements for each HNB Product return; and,
- d. That the Trial Conversion Offer trial period shall hereinafter run for thirty (30) days from the time the consumer receives the HNB Product and not from the date of the order.

6.4. As a material term and condition of this AVC, HNB shall not make, in any manner, directly or indirectly, expressly or by implication, any false or unsubstantiated representation, including that the use of any HNB Product will result in weight loss or reduction of body fat.

6.5. As a material term and condition of this AVC, HNB shall not charge any consumer in an Internet-based sale of any HNB Products through a Negative Option Plan without:

1. Clearly and Conspicuously disclosing all Material terms and conditions of the sale before obtaining the consumer's billing information;
2. Obtaining a consumer's Express Informed Consent before

making any charge; and,

3. Providing a simple mechanism for a consumer to stop recurring charges from being placed on the consumer's credit card, debit card, bank account, or other financial account.

6.6. As a material term and condition of this AVC, HNB shall comply with the Restore Online Shoppers Confidence Act, 15 U.S.S. §§ 8401-8405.

6.7. As a material term and condition of this AVC, HNB shall comply with the Florida Deceptive and Unfair Trade Practices Act, as contained in Chapter 501, Part II, Florida Statutes (2014).

**7. EFFECTIVE UPON ACCEPTANCE**

7.1. The Department's Director of Economic Crimes may refuse to accept this AVC at his discretion, and the AVC shall only become effective upon its acceptance and signing by the 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.

7.2. This AVC may be signed in multiple counterparts, each of which shall be considered an original, and all of which together will constitute one and the same agreement.

**8. BUSINESS RECORDS**

8.1. In connection with the Department's future monitoring of HNB, HNB

agrees to retain consumers complaints, and other documents and information reasonably sufficient to establish its compliance with the provisions of this AVC, and shall provide the Department reasonable access to such consumer complaints, documents and information upon written request from the Department for a period of six (6) months from the date of HNB's execution of this AVC. HNB shall produce the consumer complaints, documents and information requested by the Department within fifteen (15) days of the date of the written request.

## **9. CONSTRUCTION OF AVC**

9.1. HNB shall in no way represent that the Department has approved any of the HNB's business practices, and shall not use the existence of this AVC to in any way imply such approval.

9.3. This AVC is a result of the joint efforts of the parties and shall be not construed as an admission of liability or wrong-doing or be interpreted as a finding of any liability or wrongdoing by the Department.

## **10. APPLICABILITY**

10. This AVC shall apply to and continuously bind HNB and its employees, directors, officers, agents, successors, assignees, affiliated entities, and subsidiaries.

## **11. CHANGES IN LAW OR BUSINESS PRACTICES**

11.1. It is further agreed by the parties that if any statutes change due to

amendment, repeal, or disposition by the legislature, an agency, or court so that they would permit any action prohibited by any section of this AVC, that section of this AVC shall no longer have any force or effect.

11.2. If any clause, provision, or section of the AVC shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this AVC, and this AVC shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

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

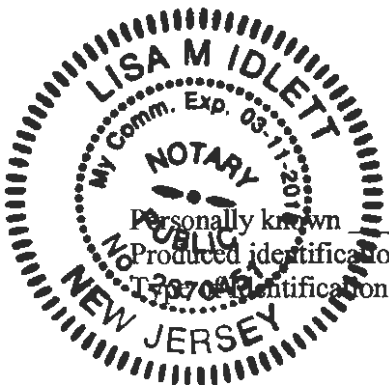
Healthy New Beginnings, Inc.

  
By: Jonathan A. Dorko  
Its: President

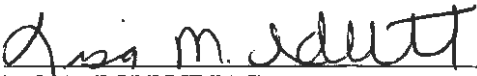
STATE OF New Jersey  
COUNTY OF Middlesex

BEFORE ME, an officer duly authorized to take acknowledgments in the State of New Jersey personally appeared Jonathan Dorko as President of Healthy New Beginnings, Inc., who acknowledged before me that he executed the foregoing instrument for the purposes therein stated, on this 25 day of September, 2015.

Sworn to and subscribed before me this 25 day of September, 2015.



Personally known \_\_\_\_\_ or  
Produced identification (check one)  
Type of identification Produced: FL DL

  
NOTARY PUBLIC  
(print, type or stamp commissioned name of Notary Public)

  
Initials



Robert G. Clements  
Senior Assistant Attorney General  
Office of the Attorney General  
Department of Legal Affairs  
135 West Central Blvd., Suite 670  
Orlando, Florida 32801

Accepted this 10 day of Nov, 2015.



Director of Economic Crimes  
Office of the Attorney General  
Department of Legal Affairs  
The Capitol  
Tallahassee, Florida 32399-1050