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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

July 2002 Grand Jury

11	UNITED STATES OF AMERICA,)	Criminal Case No. <u>03CR1088J</u>
12)	
13	Plaintiff,)	<u>I N D I C T M E N T</u>
14)	(Superseding)
15	v.)	
16)	Title 18, U.S.C., Sec. 1001 -
17	METABOLIFE INTERNATIONAL,)	False Statements; Title 18,
18	INC. (1),)	U.S.C., Sec. 1505 - Obstruction of
19	MICHAEL J. ELLIS (2),)	Agency Proceedings; Title 18,
20)	U.S.C., Sec. 2 - Aiding and
21	Defendants.)	Abetting
22)	

The grand jury charges:

ALLEGATIONS COMMON TO ALL COUNTS

1. On or about January 23, 1995, defendant MICHAEL J. ELLIS formed defendant METABOLIFE INTERNATIONAL, INC. (hereinafter "defendant METABOLIFE"), as a California corporation for the purpose of marketing Metabolife 356. Defendant METABOLIFE has its corporate headquarters in San Diego, California.

2. At all times relevant herein, defendant MICHAEL J. ELLIS was President of defendant METABOLIFE and/or a Member of its Board of Directors and one of the majority shareholders.

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PLBH:KWH(2):nlv:San Diego
7/22/04

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1 representation as to a material fact in that they did represent and
2 state to the FDA that "Metabolife has never received one notice from
3 a consumer that any serious adverse health event has occurred because
4 of the ingestion of Metabolife 356" whereas in truth and fact, as
5 defendants then and there well knew, this statement and representation
6 was false, fictitious and fraudulent when made; in violation of
7 Title 18, United States Code, Sections 1001 and 2.

8 Count 2

9 On or about April 17, 1998, within the Southern District of
10 California and elsewhere, defendants METABOLIFE INTERNATIONAL, INC.
11 and MICHAEL J. ELLIS, in a matter within the jurisdiction of the FDA,
12 a department and agency of the United States, did knowingly and
13 willfully make a false, fictitious, and fraudulent statement and
14 representation as to a material fact in that they did represent and
15 state to the FDA that Metabolife had a "claims-free history," whereas
16 in truth and fact, as defendants then and there well knew, this
17 statement and representation was false, fictitious and fraudulent when
18 made; in violation of Title 18, United States Code, Sections 1001
19 and 2.

20 Count 3

21 On or about April 17, 1998, within the Southern District of
22 California and elsewhere, defendants METABOLIFE INTERNATIONAL, INC.
23 and MICHAEL J. ELLIS, in a matter within the jurisdiction of the FDA,
24 a department and agency of the United States, did knowingly and
25 willfully make a false, fictitious, and fraudulent statement and
26 representation as to a material fact in that they did represent and
27 state to the FDA that "there have been no serious adverse reports of
28 any sort" whereas in truth and fact, as defendants then and there well

1 knew, this statement and representation was false, fictitious and
2 fraudulent when made; in violation of Title 18, United States Code,
3 Sections 1001 and 2.

4 Count 4

5 On or about April 17, 1998, in the Southern District of
6 California and elsewhere, defendants METABOLIFE INTERNATIONAL, INC.
7 and MICHAEL J. ELLIS, did corruptly endeavor to influence, obstruct
8 and impede the due and proper administration of the law under which
9 a pending proceeding (concerning the potential regulation of dietary
10 supplements containing ephedrine alkaloids) was being had before the
11 Department of Health and Human Services, FDA, by knowingly and
12 willfully making false statements and representations as to material
13 facts, and by knowingly and willfully falsifying, concealing, and
14 covering up by trick, scheme or device material facts; in violation
15 of Title 18, United States Code, Sections 1505 and 2.

16 Count 5

17 On or about February 9, 1999, within the Southern District of
18 California and elsewhere, defendants METABOLIFE INTERNATIONAL, INC.
19 and MICHAEL J. ELLIS, in a matter within the jurisdiction of the FDA,
20 a department and agency of the United States, did knowingly and
21 willfully make a false, fictitious, and fraudulent statement and
22 representation as to a material fact in that they did represent and
23 state to the FDA that "Metabolife has never been made aware of any
24 adverse health events by consumers of its products" whereas in truth
25 and in fact, as defendants then and there well knew, this statement
26 and representation was false, fictitious and fraudulent when made; in
27 violation of Title 18, United States Code, Sections 1001 and 2.

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Count 6

On or about February 9, 1999, within the Southern District of California and elsewhere, defendants METABOLIFE INTERNATIONAL, INC. and MICHAEL J. ELLIS, in a matter within the jurisdiction of the FDA, a department and agency of the United States, did knowingly and willfully make a false, fictitious, and fraudulent statement and representation as to a material fact in that they did represent and state to the FDA that "Metabolife has never received a notice from a consumer that any serious adverse health event has occurred because of ingestion of Metabolife 356" whereas in truth and fact, as defendants then and there well knew, this statement and representation was false, fictitious and fraudulent when made; in violation of Title 18, United States Code, Sections 1001 and 2.

Count 7

On or about February 9, 1999, within the Southern District of California and elsewhere, defendants METABOLIFE INTERNATIONAL, INC. and MICHAEL J. ELLIS, in a matter within the jurisdiction of the FDA, a department and agency of the United States, did knowingly and willfully make a false, fictitious, and fraudulent statement and representation as to a material fact in that they did represent and state to the FDA that Metabolife 356 had a "claims-free history" despite "widespread media attention regarding dietary supplement products containing ephedrine" whereas in truth and fact, as defendants then and there well knew, this statement and representation was false, fictitious and fraudulent when made; in violation of Title 18, United States Code, Sections 1001 and 2.

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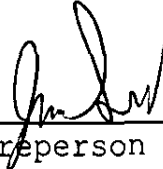
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Count 8

On or about February 9, 1999, in the Southern District of California and elsewhere, defendants METABOLIFE INTERNATIONAL, INC. and MICHAEL J. ELLIS, did corruptly endeavor to influence, obstruct and impede, the due and proper administration of the law under which a pending proceeding (concerning the potential regulation of dietary supplements containing ephedrine alkaloids) was being had before the Department of Health and Human Services, FDA, by knowingly and willfully making false statements and representations as to material facts, and by knowingly and willfully falsifying, concealing, and covering up by trick, scheme or device material facts; in violation of Title 18, United States Code, Sections 1505 and 2.


DATED: July 22, 2004.

A TRUE BILL:

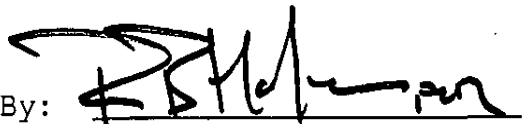
 7/22/2004

Foreperson

CAROL C. LAM
United States Attorney

By: 

PHILLIP L. B. HALPERN
Assistant U.S. Attorney

By: 

KYLE W. HOFFMAN
Assistant U.S. Attorney