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BARRISTERS & SOLICITORS | PATENT & TRADE-MARK AGENTS

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TO: (Name, Company, City & Country)

FACSIMILE:

TELEPHONE:

1 & 1 Internet Inc., Chesterbrook, Pennsylvania,
U.S.A.

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FROM: Tony S. K. Wong

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416.863.2643

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April 10, 2006

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Reference: 64453/31

Dear Sir/Madam:

Re: Dietfraud.com

We are solicitors for Herbal Magic ULC ("Herbal Magic"). Herbal Magic, through weight loss and nutrition centres across North America, offers weight management programs to its customers which promote safe, consistent weight loss by combining sensible eating habits and natural herbal supplements designed to deliver the best possible results while maintaining an efficient metabolism, increased energy and vibrant health.

We write to complain about content concerning our client that appears on the website www.dietfraud.com ("the Website"). We understand that 1 & 1 Internet Inc. hosts the Website. Attached for your reference are excerpts from the Website which we believe to be false and defamatory statements about Herbal Magic. Among other things, the excerpts state:

1. "There are statements in that advertisement [allegedly placed by Herbal Magic] which are clearly meant to deceive the public.";
2. "One of the main problems is the fact that companies like Herbal Magic have never published a single paper on their success rate. How they could make the following statement is amazing: *WEIGHT LOSS DESIGNED FOR YOUR LIFE...NOW AND FOREVER". That statement is totally and completely false."; and,
3. "Over the years Herbal Magic has made wild and unsupported claims for many of their herbal products,...".

The excerpts cited above, and other statements on the Website that we have not set out, state or imply that Herbal Magic is engaged in fraud – deceiving its customers through false claims and false and misleading ads. They also state or imply that Herbal's Magic's weight loss programs are not effective – something its many satisfied customers would dispute. These statements are devastatingly defamatory as they go to the heart of Herbal Magic's business and

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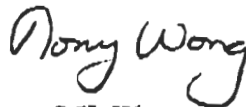
Page 2

directly undermine the trust and confidence that we have developed with our customers over many years.

We demand that you, as the host of dietfraud.com website, immediately remove, or cause to be removed, all false and defamatory statements concerning Herbal Magic which appear on the Website. Should we not receive a satisfactory response within the next 7 days, Herbal Magic will take all steps necessary to protect its reputation.

We look forward to hearing from you.

Yours very truly,



Tony S.K. Wong

enc.



Dietfraud

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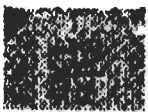


Herbal Magic

It ain't what you say, it's how you say it - Part II

On November 3, 2005 I heard from the current owner of Herbal Magic's weight loss franchise empire from his London office. I had complained about an advertisement that was previously posted in [The Record's Business Spotlight](#) section about seven years ago. Was he calling about that web site?

amazon.com



The Alps Diet Workout
Tom Holland
New \$13.99!
Used \$12.49!

The French Chef With
Julia Child 2
Julia Child

The Martha Stewart
Cooking Collection...
Martha Stewart

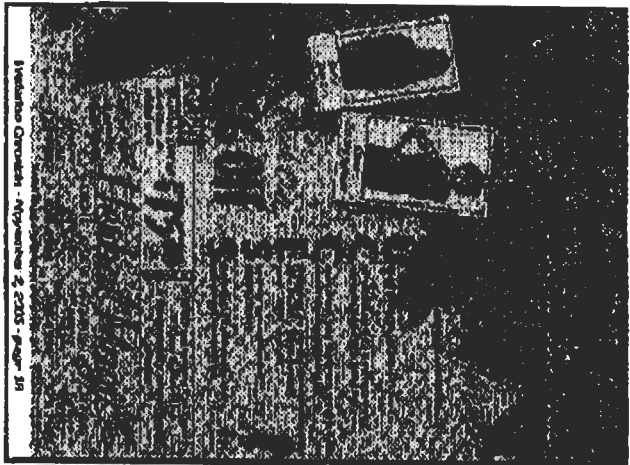
The Martha Stewart
Cooking Collection...
Martha Stewart

Jamie Oliver - Jamie's
Kitchen
Jamie Oliver (1)

Jacques Pepin Fast
Food My Way
Jacques Pepin

Jamie Oliver - Oliver's
Twist
Jamie Oliver (1)

(Prices may change)
Privacy Information



It was obvious to me that he was not interested in that old site. It so happens that he had purchased the company a few years ago and seemed to have taken offense because I had sent a complaint to some people who regulate health professions in Ontario. It was in response to a huge colourful advertisement that made it into the Waterloo Chronicle on November 2, 2005. Apparently it was inserted without being reviewed by the head office.

There are statements in that advertisement which are clearly meant to deceive the public. For instance they say that they are:

"Specialists in pharmacy and naturopathic medicine"

Pharmacy is a regulated health profession in all Provinces and Territories across Canada, and naturopathic medicine is government by the Board of Drugless Practitioners - Naturopathy in Ontario. Nobody has the right to use those words to advertise services under Provincial Acts. There are no naturopathic doctors or pharmacist in their stores.

In addition, they make the claims that they have:

"Superior natural herbal supplements"

And they use a "seal", (a white circle in this advertisement), that makes the claims that they have the approval of the Natural Health Products Directorate. They place this "seal" right after the line above. The NHPD does not rate things as "superior". It takes very little to have the NHPD approve a product, and it does not guarantee their safety. In fact, most of the products made by at least one of their manufacturers, Douglas Laboratories from Pittsburgh, Pennsylvania were given DIN number years ago by the old Health Canada organization. To check on the other companies that have had their products given registration numbers by the NHPD click [here](#).

Douglas has been selling to chiropractors, and other health professionals for decades. As far as I can tell, none of the claims for their herbal or weight loss products have been accepted as valid by the FDA. You can see for yourself by going to their Weight Loss Protocols (Adobe .pdf format), what they promote.

amazon.com



The Abs Diet Workout
Tom Holland
New \$13.99!
Used \$12.49!

The French Chef With
Julia Child 2
Julia Child

The Martha Stewart
Cooking Collection...
Martha Stewart

The Martha Stewart
Cooking Collection...
Martha Stewart

Jamie Oliver - Jamie's
Kitchens
Jamie Oliver (11)

Jacques Pepin Fast
Food My Way
Jacques Pepin

Jamie Oliver - Oliver's
Twist!
Jamie Oliver (11)

(Prices may change)
Privacy Information

For more details about Douglas Laboratories and the promotion of their own products click here for their Directive's page. It frightening that this company still promotes their products to health professionals, like chiropractors and naturopaths, through deceptive tests such as "hair analysis", etc. One of their programs is called their "Merke Patent Testing & Analysis Program". It was devised by a chiropractor, Dr. Van D. Merkle, who was a user and promoter of their products to his patients. You can check out one his self-promoting web sites called masteringbloodanalysis.com, where he teaches others to use the same bogus techniques. In fact, Merkle says much more on his own Mastering Blood Analysis web site in Dayton, Ohio.

Douglas Labs refer to it as the MBA (Merke Blood Analysis) program and it claims that:

"It is state of the art computerized laboratory analysis providing a highly advanced objective medical analysis, taking into account many factors including medications, patient symptoms, blood testing, hair analysis etc. producing a report that includes vitamin and dietary recommendations that is patient and doctor friendly even those new to laboratory analysis."

Douglas Laboratories has a professional brochure that describes in detail what their company is all about, and it is called [Douglas Capabilities](#).

Another statement in the Herbal Magic ad which is dubious at best:

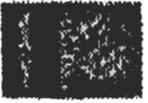
"Councillors, you meet one on one with our trained certified staff"

Unfortunately, this is deceptive as well. What are the training programs that they offer their staff, and what does "certification" really mean? Only dietitians in Ontario have official certification under law to deal with dietary problems. Staff hired by companies like this have little or no academic background and they should not be considered to be "certified" in anything, since there is no such "certifying agency" in Ontario, or in fact in Canada. The company representative insisted that their training program was top of the heap, and it involved the use of CD-ROMs full of information about their products. One of the main problems is the fact that companies like Herbal Magic have never published a single paper on their success rate. How they could make the following statement is amazing:

• **"WEIGHT LOSS DESIGNED FOR YOUR LIFE...NOW AND FOREVER"**

That statement is totally and completely false. I have received a number of serious complaints over the years in regards to people who have had side effects from herbal products, and who have had difficulty with weight-loss programs just like theirs.

amazon.com



The World's Familiar
Raven Giftmass
New \$9.971
Used \$4.081

Diaper Genie Scent
Raffi
Playbox

Prescription for Herbal
Healing
Phyllis A. Balch

Infusions of Healing
Joe Davidow

Starina, Pilates Magic
Circle with You...
Starina Products, Inc.

Cunningham's
Encyclopedia of
Magical...
Scott Cunningham

The Green Pharmacy
Herbal Handbook
James A. Duke

(Prices may change)
Policy Information

Over the years Herbal Magic has made wild and unsupported claims for many of their herbal products, especially in the area of erectile dysfunction, and sexual enhancement products. I remember watching a video at their store on Wonderland Road in London a few years ago that inferred that their products could prevent or treat cancer patients. Their weight-loss ads use testimonials and before and after pictures without identifying the dates that the pictures were actually taken. This is a technique that is used by many other weight loss franchises around the world, and is amply demonstrated widely on Dietfraud.com's numerous web pages.

After listening to his rebuttal of my complaint, I began to wonder if he really knew what was going on with his franchisees. Well, it so happens that the complaints that I made were justified, because the situation with some franchisees has evidently not changed very much in the last few years.

One of the most egregious web sites is for an advertisement in the Midland, Ontario area.
• [Click here to judge for yourself.](#) - The site was accessed on November 4, 2005.

The claims are made for the for the following conditions:

Concerned About...

- * Good Health?
- * Weight Management?
- * Arthritis?
- * Constipation?
- * Sports Injury?
- * P.M.S./Menopause?
- * Chronic Sickness?
- * Back Pain?
- * Body Building?
- * Digestive Problems?
- * Carcinogens?

Who is using Herbal Magic™ Systems Products??

- * Active Professionals wishing to maintain their vitality.
- * Individuals that are having a difficult time maintaining their desired weight.
- * Individuals with symptoms of physical and psychological stress.
- * Individuals with certain health illness.

Are these claims validated by any scientific studies? The head of Herbal Magic tells me that they are really concentrating on weight loss, and have limited areas of interest in the other medical problems despite the fact that the list above is clearly not the case.



amazon.com

Prescription for Herbal Healing
Phyllis A. Balch
New \$15.571
Used \$10.991

Sushi Ingredients Kit
Food Adventures

Shamira, Pilates Magic
Circle with Me...
Shamira Products, Inc.

Everybody's guide to
hormonal/mis...
Stephen Cummings

Yuber Magic
Mary Murray

The Herbal Drugstore
Linda B. White

The Herbal Home
Ramsey Book
Joyce A. Vandwell

(Prices may change)
Extra Information

He says that the staff have an extensive training program and that their offices are linked to a library of herbal product database that is instantly updated. There are no naturopaths or pharmacists in their local offices, and if patients are having problems they are told to see their family doctor. Well, in my area, 10% of our citizens don't have a family doctor. What is the average retail sales person at the desk supposed to do about this? How could a few CD-ROMS full of interactive software possibly prepare the sales people to assess whether or not a customer is having problems with the products?

Then there is the question of whether or not any company has the right to place the name of a department of our Federal government in ANY advertisement. These folks have consistently had ads running in our local newspapers that have displayed some kind of apparent "seal of approval", a "blue ribbon" and other such nonsense that in my opinion implies that the Natural Health Products Directorate approves of their products. Just because there is a NHPD does not mean that any of the products are effective as claimed for the conditions listed above. As far as I am concerned the NHPD is being used by companies like this, and this is not justified.

The products sold at the Herbal Magic counter are imported from companies in New Jersey and Pennsylvania, and that has been going on for years. Anyone can just walk in and purchase them. They don't have to be a weight-loss client.

Do you think that Health Canada or the NHPD actually plans to visit their stores to see how the registered products are being sold? Furthermore, do you think that they plan any real analysis of those products in the future after they grant the company the right to import and then sell them in Canada?

For details of how the NHPD actually arrives at the decision to give each of their products an NPN - Natural Products Number, you will be surprised. In fact, you will have to pay at least five dollars and file an ATP with the Federal government if you want to attempt to learn about any of this, and that goes for any company. The NHPD has a track record that has not been well established. Some of the products in recent months that have been given an NPN are used to treat cancer patients in a quack cancer clinic in our own nation's capital. Another product granted approval has actually been blocked from sale, and that same company has been charged with serious violations of the Food and Drug Act that go back many years.

So, I challenge the management of any company in the weight loss business to publish their results, and to follow up with their franchisees to assure the public that they are not in the snake-oil business. So far, only Weight Watchers has done that. Herbal Magic, despite its best efforts and claims that they are doing a great job serving their customers, has to prove it to the regulators and to me.

I encourage anyone who feels that they may have been injured or become ill from any herbal product to contact Health Canada and fill out the Adverse Reporting Form. In addition,



anyone who feels that any company has failed to provide adequate services for the money to complain to the Better Business Bureau in their community. Herbal products have been widely pushed in the market place, and Herbal Magic now has new competition in our area. Are the same standards basically being duplicated by these new entities?

Herbal products generally make the claims that they are "natural" and "safe", but the evidence that they are effective, or "safe" for many people is just not there. That is not just my opinion. Consumer must be made aware that the vendors' claims may not be what they say, and that there may be complications with any ingested or applied natural product. Those are the facts, and we need to tell our patients that over and over again.

Terry Palevoy, MD

November 4, 2005

Herbal Magic™

Views from beyond the Golden Haze - September 1998

The London, Ontario based weight loss stores have another edge lately. With claims that their products will possibly help out your prostate they have entered, disclaimers and all, the world of medicine.

Pfizer™ has gone off the deep end with this one. So here is another nightmare for them to contend with.

About 1 kilometer from my office which is in the building recently vacated by Shoppers Drug Mart™, I spotted a huge yellow temporary sign bearing the name Viagra. Inside the store were similar smaller signs. This company is so slick, that even the Shoppers Drug Mart employees I spoke to would never knowingly send anyone over there. Mind you, SDM employees I regularly speak with know nothing about herbs either, despite the fact that they sell them. But that's another story.

Their new web site brags that their company is the fastest growing franchise of its type in North America. They say that they are aggressive in their marketing. I just couldn't find any mention of honesty in advertising in all of this bull. The only thing I found was a reference to someone called a Nutritional Consultant, and the fact that

"All materials are certified for potency and purity before acceptance, after which stringent physical, chemical and microbiological tests are performed during the production process. Simply put, we offer the best product line available."

The fact is, the products are not standardized by anyone in the government. In recent tests by Consumers Reports and by independent agencies of numerous vendors, there is almost

no standardization for the industry.

Herbal Magic claims to have seen 750,000 people. Can they supply us with that information to substantiate their claims?

Here are the two pictures I took on September 2, 1998 at the Sherwood Forest Mall in London



HEARD ABOUT VIAGRA. Now there's URO-COMPLEX! This goes along with their London Free Press campaign of the previous week. The URO crap is nothing more than a bunch of herbs.



FAST * EASY WEIGHT LOSS - 1st 20 lbs. FREE. It's the flip side of the Viagra sign. Behind it is a Tim Hortons. The ad in the paper said Lose 30 pounds in 30 days for \$30. Lose up to 42 lbs. by THANKSGIVING DAY inside a pumpkin.

The owner of two of their stores was recently featured on the Wayne Hussey show on CKGL in Kitchener where he spoke about how to hire help. Well if the Sherwood Forest Mall store was any indication, that guy should head on over to London and learn something

about tap dancing.

I approached the glass counter that edges close to the mall entrance. I leafed through the loose leaf book that featured every name and description of what they sell. On the counter in front of me were many full colour brochures describing their collection of herbs. But, a crudely made hand coloured sign, made out of what looked like a piece of hard board, the kind that might come back from your dry cleaners was staining me in the face. I couldn't get a picture of it, but the wording was just like their ad on the sign and in the paper, except for one item, this sign again had the word **VIAGRA** (without the trademark on it).

I told the young girl that they were in violation of Canada's Trademark laws, and that Pfizer[™] would be sending down their pit bulls tomorrow to chew the sign up. So, she quickly removed it with the disclaimer, "I just work here, I didn't know it was wrong."

I will be recording their trials and tribulations, and keep you posted on these herbal magicians. Only, I think I better learn how to make them disappear really quickly, before the Health Protection Branch, or the Competition Bureau does it for me.

DIET FRAUD ALERT

Anyone who has felt that the have not gotten a square deal, or a square meal from these "nothing up my sleeve" artists, please let us know. We'd also like to hear from any former employees about how they were hired, what kind of background they had, and whether their employer spent any time at all explaining the risks that they took when they were trained to be magically adept at hoodwinking the public into believing that herbal weight loss is safe.

If my feelings are correct, these people know about as much about herbal medicine or weight loss as I know about operating a sewing machine. Judging from the number of missing buttons, and holes in socks, I guess you can tell where I'm coming from.

Judging from the decisions made jointly by the FDA and the FTC, Herbal Magic better examine its very reason for existence, or get a really good lawyer to look at the implications of what they have done. Health Canada and the Competition Bureau as well as Ontario's Consumer and Corporate Relations have been educating themselves at Herbal Magic counters as of late, so I am told.

Now compare this with Health Canada's gutless reform promised in May 1997. Check the Ontario Herbalist Association Draft Proposal - *Guidelines to be adopted by government for the regulation of herbs and herbal products.*

FTC's Operation Cure-All

- really goes after the crooks.

Phytotherapy Study
- A Study into a resolution of herbal products in Canada.

Herbal Report Comes Up Short
Canadian Pharmacists Association - May 14, 1998 - These folks are at war with health food stores, herbalists, naturopaths, homeopaths, and the rest of the world. Repeated complaints to the Ontario College of Pharmacists regarding false claims in Shoppers Drug Mart has led to a big fat zero in terms of self-regulation. It's in their interest to dilute the knowledge to keep sales up, particularly at Shoppers, where they need to fill up shelf space as one Province after another bans the sale their own *Imperial Tobacco products*.

Herbal Magic's Homepage from Midland, Ontario
Are you concerned about your health? What about carcinogens, body building, arthritis, constipation? They won't cut corners giving you herbs, but will you let them play doctor with your health?

Kitchener-Waterloo Record
thinks that the Herbal Magic franchisees make good business, but has he sampled their wares, or checked out their claims?

Cancer cures from Herbal Magic products?

- Shar - Klene - Stimulates Immune System - Destroys Cancer Cells
- MM - 2000® - Weight Loss/ Stabilization/ Maintenance / Energy (Lose up to 3-7 lb. Per week)
- Cellulite Emulsion - Fat Breakdown- Eliminates Unsightly bumps and bulges.
- Chromium GTF - 200 - Inhibits Fat Production. Increases Fat Metabolism. Lowers Cholesterol. Maintains Stable Blood Sugar Level.
- Formula A.O. - Antioxidants and Vitamin and Minerals. Reduces Incidence of Cardiovascular Disease, Cancer, Cell Damage and Heart Disease.