



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF REGIONAL OFFICES

February 2, 2015

Michael G. Archbold, CEO
GNC Holdings, Inc.
300 Sixth Avenue
Pittsburgh, Pennsylvania 15222

Certified—Return Receipt Requested
Facsimile: 412-288-4764

Re: **CEASE & DESIST NOTIFICATION**
Herbal Plus—GNC Distributed Herbal Dietary Supplements

Dear Mr. Archbold:

This letter constitutes a demand to cease and desist engaging in the sale of adulterated and/or mislabeled herbal dietary supplements, and in particular to immediately stop the sale of five “Herbal Plus” dietary supplements as identified by lot number in the exhibit annexed hereto.

Be advised that the Attorney General is authorized by Executive Law § 63(12) to investigate allegations and prosecute businesses which perpetuate fraud upon consumers or engage in illegality in their business practices. General Business Article 22-b further authorizes this office to redress deceptive business acts and practices and false advertising. Of late, the topic of purity (or lack thereof) in popular herbal dietary supplements has raised serious public health and safety concerns,¹ and also caused this office to take steps to independently assess the validity of industry representations and advertising.

In an investigation recently conducted by the Attorney General’s Office, six popular GNC “Herbal Plus” brand dietary supplement products were purchased at four different New York State locations and were then genetically tested five times per sample, yielding 120 results. The supplements tested included Gingko Biloba, St. John’s Wort, Ginseng, Garlic, Echinacea, and Saw Palmetto. By using established DNA barcoding technology, analytic testing disclosed that 5 out of 6 types of dietary supplement products tested were either unrecognizable or a substance other than what they claimed to be, and therefore constitute contaminated or substituted products. Twenty-two (22) percent of the tests yielded DNA matching the product label; 33% tested for botanical material other than what was on the label; and 45% yielded no plant DNA at all.

¹See, e.g., Newmaster, et al., “DNA Barcoding Detects Contamination and Substitution in North American Herbal Products,” *BMC Medicine*, 2013, 11:222 (<http://www.biomedcentral.com/1741-7015/11/222>).

Contamination, substitution and falsely labeling herbal products constitute deceptive business practices and, more importantly, present considerable health risks for consumers. The Attorney General's testing upon the products purchased revealed the following:

Ginkgo Biloba. Negative. No ginkgo biloba DNA was identified. The only DNA identified was allium (x5), "oryza"(x4)(commonly known as rice), spruce, and asparagaceae. Nine of the tests revealed no plant DNA whatsoever.

St. John's Wort. Negative. No St. John's Wort DNA was identified. Of the 20-tests performed, only three identified any DNA, and it included allium, oryza, and dracaena (tropical houseplant).

Ginseng: Negative. No ginseng DNA was identified. The testing yielded identification of oryza, dracaena, pinus strobus, wheat/grass, and citrus spp., with 15 of the tests identifying no genetic material at all.

Garlic: Positive. All 20 tests yielded DNA from allium.

Echinacea: Negative. Five tests identified oryza DNA, one other yielded the DNA of pinus or ranunculacae. Fourteen tests detected no plant DNA of any sort in the product labeled Echinacea.

Saw Palmetto: Qualified negative. Only 6 of 20 tests did identify the presence of saw palmetto, but the positive results were principally from one sample. The results did not replicate in the three other samples. One sample demonstrated no plant DNA, another revealed the presence of asparagaceae, and oryza, while a fourth was positive for DNA from the primrose family as well as saw palmetto.

Studies conducted by the Centre for Biodiversity Genomics at the University of Guelph and others have previously alerted the dietary supplement industry to the fact that it is not providing the public with authentic products without substitution, contamination or fillers. It is disappointing that over a year later the Attorney General's researcher reached similar conclusions, demonstrating that the industry has failed to clean up its practices.

To assist in the Attorney General's ongoing investigation of this matter, and pursuant to the above authority, please supply the following information as it pertains to the identified lot numbers, as well as for all companies presently producing these product lines:

1. The name of the manufacturer and the location of the production of each of the herbal products identified.
2. A listing of any DNA testing or any other analytic testing for content and quality (including but not limited to chemical composition) of the herbal products listed above and copies of such testing results.
3. Copies of all licensing and production contracts with any party involved in the production and distribution of the herbal products identified above.
4. A listing of all ingredients used in the products identified above and a measurement of the amount of each ingredient in each of the herbal products identified above.

5. Identify the standards or procedures followed to authenticate the content of the herbal products listed above.
6. Produce the relevant Bioterrorism Registration documentation for the manufacturer of the dietary supplements.
7. Articulate the acquisition, production protocol, and quality assurance measures undertaken by the manufacturer of the products tested, including all such protocols undertaken to comply with current Dietary Supplement Current Good Manufacturing Practices (CGMPs) for quality control.
8. Produce any and all serious adverse event reports associated with use of any GNC herbal dietary supplement in the United States

Please provide the requested information to me at the following address: NYS Attorney General's Office, Dulles State Office Building, 317 Washington Street, Watertown, New York 13601. Kindly respond on or before 5:00 P.M. on February 9, 2015. If you have any questions, you may contact Assistant Attorney General Deanna R. Nelson at 315-785-2444.

The foregoing shall not constitute a waiver of or limitation on the Attorney General's authority to issue subpoenas or take enforcement action pursuant to applicable law.

Thank you for your anticipated cooperation.

Very truly yours,

MARTIN J. MACK
Executive Deputy Attorney General
for Regional Offices

Enc.

Cc: Gavin O'Connor, Esq., General Counsel

Supplements by Lot #: As a courtesy, store location for the tested supplement is also listed. Kindly remove all of the supplements identified below which may bear the lot number indicated no matter the store location.

OAG #	Product	Address	Lot #
Bi-G-1	Ginkgo Biloba	GNC #00369, 3111 E. Main Street, Johnson City, NY 13790	4783GM1834
Bi-G-2	St. John's Wort	GNC #00369, 3111 E. Main Street, Johnson City, NY 13790	6736JN1945
Bi-G-3	Ginseng	GNC #00369, 3111 E. Main Street, Johnson City, NY 13790	8173LN3748
Bi-G-5	Echinacea	GNC #00369, 3111 E. Main Street, Johnson City, NY 13790	8273LN1987
Bi-G-6	Saw Palmetto	GNC #00369, 3111 E. Main Street, Johnson City, NY 13790	2660DN3972
Su-G-1	Ginkgo Biloba	GNC #05057, 899 Montauk Highway, Bayport, NY 11705	0624AN1834
Su-G-2	St. John's Wort	GNC #05057, 899 Montauk Highway, Bayport, NY 11705	0822BN1945
Su-G-3	Ginseng	GNC #05057, 899 Montauk Highway, Bayport, NY 11705	1376BN3748
Su-G-5	Echinacea	GNC #05057, 899 Montauk Highway, Bayport, NY 11705	1985CO1987
Su-G-6	Saw Palmetto	GNC #05057, 899 Montauk Highway, Bayport, NY 11705	2617DO3972
H-G-1	Ginkgo Biloba	GNC #09903, 121 West 125th Street, New York, NY 10027	2447DO1947
H-G-2	St. John's Wort	GNC #09903, 121 West 125th Street, New York, NY 10027	1930DO1945
H-G-3	Ginseng	GNC #09903, 121 West 125th Street, New York, NY 10027	2096DO3747
H-G-5	Echinacea	GNC #09903, 121 West 125th Street, New York, NY 10027	1247BO1941
PI-G-1	Ginkgo Biloba	GNC #06698, 114 Consumer Square, Plattsburgh, NY 12901	2447DO1947
PI-G-2	St. John's Wort	GNC #06698, 114 Consumer Square, Plattsburgh, NY 12901	1930DO1945
PI-G-3	Ginseng	GNC #06698, 114 Consumer Square, Plattsburgh, NY 12901	2096DO3747
PI-G-5	Echinacea	GNC #06698, 114 Consumer Square, Plattsburgh, NY 12901	1985CO1987
PI-G-6	Saw Palmetto	GNC #06698, 114 Consumer Square, Plattsburgh, NY 12901	0256AO3972