**INFORMATION MEMORANDUM**

TO: Distribution

SUBJECT: Anticompetitive Conduct by the Department of Health and Human Services and the Food and Drug Administration



DATE: February 25, 2014

## PURPOSE

The purpose of this information memorandum is to keep the food industry appraised of current developments in the matter of *FoodQuestTQ LLC versus the Department of Health and Human Services and the Food and Drug Administration.*

## CURRENT STATUS

On February 23, 2014, we sent a letter to Mr. Andrew I. Gavil, Director, Office of Policy and Coordination, Bureau of Competition at the Federal Trade Commission. The letter is reprinted in its entirety below for the information of the food industry.

In the letter, we respectfully request a review of the Federal Government's authority to pirate the intellectual property of private businesses and duplicate commercially available products as a form of anticompetitive conduct falling within the meaning of the Sherman Anti-trust, Clayton and Federal Trade Commission Acts.

We will keep you apprised of the results of our request.

## THE LETTER

Andrew I. Gavil, Director
Office of Policy and Coordination
Room 7117
Bureau of Competition
Federal Trade Commission
601 New Jersey Ave, NW
Washington, D.C. 20580

February 23, 2014

Dear Mr. Gavil:

We are a small company that is being forced out of business in the face of direct competition by the U.S. Government. The purpose of this letter is to seek a review of current antitrust policy by the Federal Trade Commission as it relates to anticompetitive conduct by the Federal Government.

The Department of Health and Human Services (HHS) and the Food and Drug Administration (FDA) are plagiarizing our research, pirating our patented ideas and stealing our trade secrets. The Food and Drug Administration has stated that the quality of the products they have duplicated is inferior to those produced by our company. The products in question do not fall under the FAIR Act definition of an "inherently governmental function."



Using our intellectual property without permission and in the absence of due process, the FDA has duplicated our products and is giving them away for free to industry. As a direct result, the bottom has dropped out of our sales and we are being forced out of business. These actions by the Federal Government have serious implications with respect to Article I, clause 8 of the Constitution, and the right of citizens to pursue commerce; they also give rise to new and serious conflicts relating to the meaning and intent of Sherman Antitrust, Clayton and the Federal Trade Commission Acts.

It is our understanding that an unlawful monopoly exists when only one entity controls the market for a product or service, and it has obtained that market power, not because its product or service is superior to others, but by suppressing competition with anticompetitive conduct. In our case, the Food and Drug Administration and the Department of Health and Human Services have suppressed competition with anticompetitive conduct.

We recognize that current antitrust laws are based on the notion of the Federal Government as an honest broker in the administration of Sherman Antitrust, Clayton and the Federal Trade Commission statutes. However, recent modifications in law by Congress have changed the traditional relationship to make the Federal Government and the private sector direct competitors. By allowing Federal Agencies to patent and copyright for the first time while allowing them to supplement their Congressional Appropriations by charging "user fees" for products and services the Federal Government has now become a *defacto* competitor with the private sector.

One of the extended order effects of these recent changes in law is that the Federal Government is no longer a disinterested party in the administration of justice under Sherman Antitrust, Clayton and the Federal Trade Commission statutes. The new irony that arises in this changed environment is that the Federal Government, through the Department of Justice, serves as the only power that can prosecute violations regarding monopolies. Under current circumstances the Federal Government cannot prosecute Federal Government agencies for the very type of anticompetitive behavior that it punishes the private sector for engaging in.

In The Law Bastiat writes:

> And when [law] has exceeded its proper functions, it has not done so merely in some inconsequential and debatable matters. The law has gone further than this; it has acted in direct opposition to its own purpose. The law has been used to destroy its own objective: It has been applied to annihilating the justice that it was supposed to maintain; to limiting and destroying rights which its real purpose was to respect. The law has placed the collective force at the disposal of the unscrupulous who wish, without risk, to exploit the person, liberty, and property of others. It has converted plunder into a right, in order to protect plunder. And it has converted lawful defense into a crime, in order to punish lawful defense.

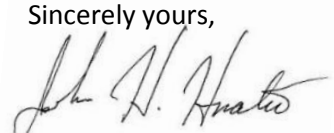
We believe with new changes in law passed by Congress and the inability of the Federal Trade Commission and the Department of Justice to effectively police the conduct of Federal Agencies that it is time to re-visit Federal government policies as they relate to direct competition with the private sector. The situation as it stands now belies the very mission of the Federal Trade Commission to:

> To prevent business practices that are anticompetitive or deceptive or unfair to consumers; to enhance informed consumer choice and public understanding of the competitive process; and to accomplish this without unduly burdening legitimate business activity.



We wish to thank-you for considering our request for a policy review of current antitrust policy by the Federal Trade Commission as it relates to anticompetitive conduct by the Federal Government. If you have any questions please feel free to contact me.

Sincerely yours,



John H. Hnatio, EdD, PhD
Chief Science Officer

cc:

The Honorable Kathleen Sebelius, Secretary Department of Health and Human Services
The Honorable Margaret Hamburg, Commissioner, Food and Drug Administration
The Honorable Daniel Levinson, Inspector General, Department of Health and Human Services
The Honorable William Baer, Assistant Attorney General, Department of Justice
Senator Patrick Leahy, Chairman of the Senate Judiciary Committee
Representative, John Mica, Committee on Oversight and Government Reform, Chairman, Subcommittee on Government Operations

## FDA UNAUTHORIZED USE OF FOODQUESTTQ INTELLECTUAL PROPERTY

In prior notifications, all addressees were cautioned to avoid future liability by refraining from the use of the FDA Food Protection Plan and the following five FDA tools that are currently accessible free of charge to the food industry at the FDA official government website, namely:

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| 1. Food Defense Plan Builder |
| 2. Food Defense Mitigation Strategies Database |
| 3. iRisk |
| 4. Food Related Emergency Exercise Boxed (FREE-B) |
| 5. Post 2007 Updates to C.A.R.V.E.R. plus SHOCK |

Table 1: FDA Tools in Dispute

FDA copyright infringement in the case of *FoodQuestTQ versus the Food and Drug Administration* includes the plagiarizing of FoodQuestTQ funded and copyrighted research as embodied in the CSM METHOD® and other research, patent infringement and theft of FoodQuestTQ LLC owned trade secrets that the FDA used to duplicate the following six FoodQuestTQ LLC commercial products, namely:



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|---|---|
| 1. | Food DefenseTQ (with TQ standing for Threat Quotient) |
| 2. | Food Defense Architect (FDAR) |
| 3. | Food Safety Architect (FSAR) |
| 4. | POISON Metadata Repository of Intentional and Unintentional Food Poisonings |
| 5. | Food Event Analysis and Simulation Tool (FEAST) |
| 6. | Food Response and Emergency Evaluation (FREE) Tool |

Table 2: FoodQuestTQ Tools Duplicated by the FDA

## CAUTION TO ALL PARTIES

Please be advised that any use of Projectioneering LLC and FoodQuestTQ LLC owned intellectual property, without the express written permission of Projectioneering LLC and FoodQuestTQ LLC will be considered by Projectioneering LLC and FoodQuestTQ LLC as the unauthorized use of Projectioneering LLC and FoodQuestTQ LLC owned intellectual property pursuant to Title 35, USC, Chapter 29, et seq.

Private companies who continue to use the Food and Drug Administration Food Protection Plan and the computer tools listed in Table 1, below, may also be considered to be in collusion with the Food and Drug Administration within the intent of the Sherman Anti-trust, Clayton and Federal Trade Commission Acts by conspiring to engage with a federal regulatory agency, i.e., the Food and Drug Administration, in anticompetitive conduct.

## RECOMMENDATION TO AVOID FUTURE LIABILITY

To avoid future liability in this matter all parties should refrain from using the FDA Food Protection Plan or any of the five computer software tools listed in Table 1, above, since they contain the FoodQuestTQ LLC and Projectioneering LLC owned intellectual property in contention. In the event that Projectioneering LLC and FoodQuestTQ LLC prevail in this matter, any party that knowingly uses the above referenced FDA products can be held liable for infringement under 35 USC, Chapter 29, e seq. and other applicable provisions of law.

Bruce H. Becker

Bruce Becker. President
FoodQuestTQ LLC
Date: February 25, 2014

John H. Hnatio

John H. Hnatio, President
Projectioneering LLC
Date: February 25, 2014

cc:

Secretary Sebelius, HHS
Commissioner Hamburg, FDA
Inspector General Levinson, OIG-HHS
Director Anvil, Office of Policy and Coordination, FTC
Deputy Assistant Attorney General Baer, DOJ