



U.S. Department of Justice

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NEWS RELEASE:

BOCA RATON MAN CONVICTED IN NUTRITIONAL SUPPLEMENT SCAM

Jeffrey H. Sloman, Acting United States Attorney for the Southern District of Florida, David Bourne, Special Agent in Charge, Food and Drug Administration, Office of Criminal Investigations, Daniel W. Auer, Special Agent in Charge, Internal Revenue Service, Criminal Investigation Division, and Henry Gutierrez, Postal Inspector in Charge, U.S. Postal Inspection Service, announce that late yesterday afternoon, a federal jury convicted defendant **Frank Sarcona, a/k/a Frank Sarcone, a/k/a Dave Johnson**, 57, of Boca Raton, FL, of conspiracy to commit mail, wire fraud, and criminal contempt of court; conspiracy to commit money laundering; and multiple counts of substantive mail fraud, wire fraud, money laundering, misbranding of a food, and criminal contempt of court. Sentencing has been scheduled for January 15, 2010 at 9:00 a.m. before U.S. District Court Judge Kenneth A. Marra.

In 1999, in FTC v. SlimAmerica, Frank Sarcona et. al., U.S. District Court Judge Wilkie Ferguson issued a final injunction order against Frank Sarcona in connection with Sarcona's sale of a dietary supplement. The injunction prohibited Sarcona, among other things, from engaging in deceptive marketing practices. The injunction also required him to post a \$5 million performance bond before engaging directly or indirectly in any other business relating to weight loss services or products. Almost immediately after the issuance of the injunction, defendant Sarcona nonetheless conspired to fraudulently market and sell a dietary supplement containing chitosan. In addition, defendant Sarcona failed to post the performance bond required by the Court order.

Instead, according to the evidence presented at trial, Sarcona and others defrauded more than a hundred thousand consumers across the U.S. out of more than

\$16 million through his fraudulent sales techniques. To sell the product, called Lipoban, Sarcona mailed and caused the mailing of letters to consumers inviting them to participate in a restricted nationwide test of a new product that would allegedly promote large weight losses without diet and exercise. Consumers were asked to purchase the product in order to participate. Sarcona created the false impression that the study was being carried out in conjunction with a healthcare clinic. To enhance this false impression, the mail order house was named the Lipoban Clinic, and the mailing stated that it was engaged in a nationwide study with limited participation. Each customer was led to believe that they were test participant number 731, as listed on the mailing. A medical insignia was strategically placed on the letter and enclosures. Included in the mailing was a letter from Dr. Joseph Maya, the purported medical director of the Lipoban Clinic, along with a business card listing a Boca Raton address. The enclosures contained the statement that the “clinic” had a team of weight loss and nutrition professionals. In addition, a newsprint insert into the mailing falsely claimed a New York cardiologist and another doctor endorsed this product.

In reality, according to the evidence presented at trial, the “clinic” was located at the residence of a co-defendant and had an office in an industrial park. Dr. Jose (not Joseph) Maya was not licensed to practice medicine in Florida, but only in Mexico. Dr. Jose Maya never came to the “clinic” or performed any services for the clinic. There was no test study, nor were there weight loss and nutrition professionals. Virtually all customers were given test participant number 731. Lastly, neither of the doctors referenced had used the Lipoban product.

Defendant Sarcona funneled the monies he received from the mail and wire fraud scheme into the bank account of a defunct corporation, National Marketing Data. The bank account, opened with a fictitious tax identification number, was used as Sarcona’s personal bank account. Large sums from the National Marketing Data account were transferred into other accounts in the name of another person. That person gave Sarcona a signature stamp and allowed Sarcona to write checks from that new account. The checks were used to put money back into the operation of the scheme and to purchase valuable real estate in the Virgin Islands, a property ultimately seized by the United States.

Mr. Sloman commended the investigative efforts of the Food and Drug Administration, Office of Criminal Investigations, the Internal Revenue Service, Criminal Investigation Division, and the U.S. Postal Inspection Service. The case was prosecuted by Assistant U.S. Attorney Kerry S. Baron and Special Assistant U.S. Attorney Jason Hedges.

A copy of this press release may be found on the website of the United States Attorney’s Office for the Southern District of Florida at www.usdoj.gov/usao/fls. Related court documents and information may be found on the website of the United States District Court for the Southern District of Florida at www.flsd.uscourts.gov or <http://pacer.flsd.uscourts.gov>.