

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Case No. 07 C 4541
)	
v.)	Judge David H. Coar
)	
SILI NEURACEUTICALS, LLC, and)	Magistrate Judge Morton Denlow
)	
BRIAN MCDAID, individually and doing business as KAYCON LTD,)	
)	
Defendants.)	
)	

**MOTION FOR ENTRY OF DEFAULT AGAINST
DEFENDANTS SILI NEURACEUTICALS, LLC AND BRIAN MCDAID**

Pursuant to Rules 37(b)(2)(A) and 55(a) of the Federal Rules of Civil Procedure, Plaintiff Federal Trade Commission (“FTC”) hereby moves for entry of default against Defendants Sili Neuraceuticals, LLC and Brian McDaid. As described below in more detail, Defendants have failed to tender their Rule 26(a)(1) disclosures to the FTC despite being compelled by Court order to do so. In support of this motion, the FTC states:

1. On August 13, 2007, the FTC filed this action alleging that Defendants violated the FTC Act and the Controlling the Assault of Non-Solicited Pornography and Marketing Act by deceptively marketing and selling dietary supplements on Internet Web sites utilizing illegal “spam” email messages. (See Exhibit 1.) That same day, the Court granted the FTC’s *ex parte* motion for a temporary restraining order against Defendants, enjoining further misrepresentations and ordering that Defendants’ assets be frozen.

2. On August 27, 2004, the Court signed a Stipulated Preliminary Injunction Order With Asset Freeze and Other Equitable Relief. (*See* Exhibit 2.) In the Preliminary Injunction, Defendants stipulated that they “received service of the Complaint, Summons and TRO[.]” (*Id.* at p. 1.) Defendants further stipulated that this Court has subject matter jurisdiction and personal jurisdiction over Defendants. (*Id.* at p. 2.) On October 29, 2007, Defendants filed their Answer in this matter.

3. On October 31, 2007, the parties filed their Planning Conference Report and stipulated to a Joint Proposed Scheduling Order. (*See* Exhibit 3.) On November 6, 2007, the Court adopted the parties’ proposed discovery dates and issued a scheduling order. (*See* Exhibit 4.) The Court’s scheduling order required that initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) be tendered on or before November 6, 2007. The scheduling order closes fact discovery on January 31, 2008.

4. After making numerous attempts in good faith to obtain Defendants’ Rule 26(a)(1) disclosures, the FTC filed a motion to compel the disclosures on December 4, 2007. On December 10, 2007, Magistrate Judge Denlow granted the FTC’s motion to compel and entered the following order:

Motion hearing held on 12/10/2007 regarding motion to compel.
Defendant fails to appear. Plaintiff’s motion to compel defendants to tender their initial disclosures is granted. Defendants are ordered to serve their initial disclosures on or before 12/19/07 or be barred from calling any witnesses or producing any documents in defense of this case. The Court would recommend a default judgment be entered in the event defendants fail to comply by 12/19/07.

(*See* Exhibit 5.)

5. Despite the Court order compelling them to do so, Defendants still have not tendered their Rule 26(a)(1) disclosures.¹ Pursuant to Fed. R. Civ. P. 37(b)(2)(A), if a party fails to obey an order to provide discovery, the Court may render a default judgment against the disobedient party. Therefore, pursuant to the recommendation of Magistrate Judge Denlow and the authority provided by Rule 37(b)(2), the FTC seeks entry of default against Defendants pursuant to Fed. R. Civ. P. 55(a).

WHEREFORE, the FTC requests that this Court enter an order finding Defendants Sili Neutraceuticals, LLC and Brian McDaid in default pursuant to Rules 37(b)(2)(A) and 55(a) of the Federal Rules of Civil Procedure.

Respectfully Submitted,

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Dated: January 3, 2008

¹ In addition to failing to tender their Rule 26(a)(1) disclosures, Defendants also have failed to submit their responses to the FTC's First Set of Interrogatories and the FTC's First Request for the Production of Documents. The interrogatories and document requests were propounded on Defendants on November 16, 2007. Defendants have neither filed responses to these discovery requests nor requested additional time to file a response.