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**ALLIANCE FOR NATURAL HEALTH FILES LAWSUIT  
AGAINST THE FOOD SUPPLEMENTS DIRECTIVE  
BAN ON VITAMINS AND MINERALS**

The **Alliance for Natural Health**, a pan-European and international organisation of innovative supplement manufacturers, retailers, practitioners and consumers, yesterday lodged in the High Court an application for permission to proceed with a claim for judicial review of the EU Food Supplements Directive's ban on vitamins and minerals which are not on its positive list.

The Food Supplements Directive ("FSD") was passed in to EU law on 12 July 2002 and then transposed in to English law on 11 July 2003. The law however does not come into effect until 1 August 2003 when it will ban around 300 of the 420 or so forms of vitamins and mineral presently available on the UK market, as well as in other countries which have advanced markets for food supplements such as Sweden, the Netherlands and Ireland.

**Ban catastrophic to leading-edge of industry**

The ANH argues the FSD ban is irrational from a scientific and economic point of view and quite unnecessary. It will have catastrophic effects on a very important segment of the food supplement industry, namely that which is involved in developing, manufacturing and selling leading-edge or innovative, effective and safe food supplements.

**Dr Robert Verkerk, Executive Director** of ANH says;

"This Directive has caused much confusion because what it gives with one hand it takes away with the other.

If you are a producer of mainstream products which are on the FSD positive list, then the FSD presents no problem as it will open up new markets in many parts of Europe that have had restrictive regimes on nutritional supplements. The ANH welcomes this aspect of the FSD.

However, the price of this market expansion appears to be the imposition of ban on advanced food supplements in the EU because they are not on the FSD's positive list. Thus if; you are an innovator in this field, you retail specialist products, or you are a practitioner where the most effective products are part of your toolbox, your business is likely to be devastated when the FSD comes in to force in 2005.

- 1 -

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In addition, thousands of consumers of these advanced food supplements around Europe will have their freedom to choose removed and are hence extremely concerned. There is absolutely no justification for this state of affairs.”

### **Nature of the ANH challenge**

The ANH yesterday filed its case that the Directive is invalid under European law.

Aided by its lawyers from **Brick Court Chambers** and the **Simkins Partnership** in London, ANH has determined that the ban to be imposed on so many vitamin and mineral products is unlawful and not necessary for the achievement of the FSD’s stated purpose, which is, harmonisation of legislation relating to food supplements across the 15 EU member countries in order to facilitate (not hinder) the trade in and availability of food supplements across the EU.

Says **David Hinde, Solicitor and Legal Director** of ANH;

“This is a ground-breaking case from key parties across Europe, including Sweden, Ireland and the UK, which will be most adversely affected by a Directive that seems not to have been properly thought through. The purpose of our application for judicial review of the FSD is to keep the good and sever the bad. We aim to demonstrate that the English Regulations based on the Directive are *ultra vires* and invalid as a matter of EU law. The FSD itself defeats its own stated aim.”

### **Small businesses suffer most**

**Mike Ash, Managing Director** of Nutri-Link Ltd, a west country based manufacturer and supplier of leading edge, innovative supplements to practitioners and health stores, is a Co-Claimant with ANH in the case and represents many of the small businesses impacted negatively by the Directive in Europe.

Mike Ash, also a well-established clinical nutritionist, points out;

“The Directive bans many of our best selling products and forces us and many other manufacturers to reformulate other key products. The cost to the company in time and expertise in reformulating existing tried and tested products is enormous. To develop a single product can take months of careful assessment and analysis. If we spend our time until August 2005 reformulating existing products, we will be distracted from the ongoing evolution of new products. This has the effect of removing our competitive advantage and limits our business expansion. In many instances, of course, reformulation will not be possible at all as it is the most important ingredients of the product which are subject to the ban”.

Pointing out the impact to practitioners and their patients, he says “Already many of our patients are worried that the product that has helped them to recover their

- 2 -

Alliance for Natural Health  
Reg. Office: Mount Manor House  
16 The Mount, Guildford  
Surrey GU2 4HS, United Kingdom

e-mail [info@alliance-natural-health.org](mailto:info@alliance-natural-health.org)  
tel +44 (0)1252 371 275  
web [www.alliance-natural-health.org](http://www.alliance-natural-health.org)

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health will be removed from the market and this makes them very anxious. As clinicians we consult every day with patients whose health is profoundly improved through correct application of food concentrates. This is not simply an economic problem for us, it is a professional catastrophe.”

### **What will be banned**

Products containing natural forms of Vitamin E and organic bound minerals such as selenocysteine, as well as most of the trace elements like boron and vanadium, are among those most severely affected. Demand for products containing these sorts of natural ingredients is increasing rapidly among consumers simply *because* such products work very effectively. An increasing number of scientific reports are supporting their use in place of older-style synthetic nutrients that have been the mainstay of the supplement industry for several decades.

The Directive as it stands ‘grandfathers’ in most of the *basic synthetic* vitamins and inorganic minerals used widely in mainstream products sold in supermarkets and pharmacies. But it forces products containing more advanced formulations, often including food-form nutrients, to be banned unless ingredients go through a very time consuming, difficult and expensive “dossier” regime that is prohibitively expensive for most of the smaller, innovative companies. Additionally, due mainly to the high cost, only 24 dossiers are currently in preparation, meaning that, even if approved, a very large number of nutrients will still be banned.

The ANH is expecting its case to go before the Administrative Court of the High Court of Justice in London prior to Christmas 2003, and this court will determine whether the case will be referred to the European Court of Justice.

### **Contacts:**

**Robert Verkerk** BSc, MSc, DIC, PhD

*Executive Director*

Tel. (general): 01252 371 275

Tel. (direct): 0771 484 7225

e-mail: [robv@alliance-natural-health.org](mailto:robv@alliance-natural-health.org)

**David Hinde** LLb Solicitor

*Legal Director*

Tel. (direct): 0207738 1640

E-mail: [davidh@alliance-natural-health.org](mailto:davidh@alliance-natural-health.org)