

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**No. 1025798 ONTARIO, INC. d/b/a
The Fulfillment Solutions Advantage, Inc.,
The FSA Group, International Access,
Beauty Visions Worldwide, Slimshop,
Hydro-Gel Slim Patch, and Slenderstrip;
ROBERT VAN VELZEN;
KINGSTOWN ASSOCIATES LTD. and
BVW ASSOCIATES, INC. d/b/a Beauty
Visions Worldwide and Slimshop;
GARY RICHARD BUSH;
DAVID JAMES VARLEY; and
LAURENCE ANTHONY WHITE,**

Defendants.

**Civil Action No.
03-CV-00910A(SC)**

FIRST AMENDED COMPLAINT
FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), through its undersigned attorneys, alleges as follows:

1. The FTC brings this action pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure injunctive relief and other equitable relief against No. 1025798 Ontario, Inc. d/b/a The Fulfillment Solutions Advantage, Inc., The FSA Group, International Access, Beauty Visions Worldwide, Slimshop, Hydro-Gel Slim Patch, and Slenderstrip; Robert Van Velzen, individually and as President of No. 1025798 Ontario, Inc.;

Kingstown Associates Ltd. d/b/a Beauty Visions Worldwide and Slimshop; BVW Associates, Inc. d/b/a Beauty Visions Worldwide and Slimshop; Gary Richard Bush, individually and as Chief Executive Officer, Financial Director, and Secretary of Kingstown Associates Ltd. and Chief Executive Officer of BVW Associates, Inc.; David James Varley, individually and as Managing Director of Kingstown Associates Ltd. and Operating Manager and Director of BVW Associates, Inc.; and Laurence Anthony White, individually and as Marketing Director of Kingstown Associates Ltd. and Marketing Manager and Director of BVW Associates, Inc. (“Defendants”) for engaging in deceptive acts or practices and false advertising in connection with the advertising, marketing, and sale of purported weight-loss products in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a), 52 and 53(b) and 28 U.S.C. §§ 1331, 1337(a) and 1345.
3. Venue in this District Court is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b), (c), and (d).

PLAINTIFF

4. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, which prohibit, respectively, unfair or deceptive acts or practices, and false advertisements for food, drugs, devices, services, or cosmetics in or affecting commerce. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the Commission to initiate federal district court proceedings to enjoin violations of the FTC Act, and to secure such equitable relief,

including consumer redress, as may be appropriate in each case.

DEFENDANTS

5. Defendant No. 1025798 Ontario, Inc. is a Canadian corporation doing business as The Fulfillment Solutions Advantage, Inc., The FSA Group, International Access, Beauty Visions Worldwide, B.V.W., Slimshop, Mac Cosmetics, Body Flux, Cable Gym, Hydro-Gel Slim Patch, and Slenderstrip with its principal offices or places of business located at 1351 Rodick Road, Markham, Ontario, Canada, L3R 5K4 and 132 Denison Street, Markham, Ontario, Canada L3R 1B6. It transacts or has transacted business in this District and throughout the United States under the name of Beauty Visions Worldwide, B.V.W., Slimshop, Mac Cosmetics, Body Flux, Cable Gym, Hydro-Gel Slim Patch, and Slenderstrip through the dissemination of advertisements for purported weight loss products through U.S. media outlets and the use of a postal mail box located at 2316 Delaware Ave., PMB #289, Buffalo, New York 14216. This mail box receives orders from consumers for Hydro-Gel Slim Patch and Slenderstrip.

6. Defendant Robert Van Velzen is the President of No. 1025798 Ontario, Inc. He resides or has had residences at 111 Fred Varley Drive, Unionville, Ontario, Canada L3R 1T1 and 7 Woodglen Way, Unionville, Ontario, L3R 3A8. At all times material to this complaint, acting alone or in conjunction with others, he has formulated, directed, controlled, or participated in the acts or practices of No. 1025798 Ontario, Inc., including the acts and practices set forth in this complaint. Mr. Van Velzen, as President of No. 1025798 Ontario, Inc., transacts or has transacted business in this District by registering a mail box under the names of Beauty Visions Worldwide, B.V.W., Slimshop, Mac Cosmetics, Body Flux, Cable Gym, Hydro-Gel Slim Patch, and Slenderstrip, at 2316 Delaware Ave., PMB #289, Buffalo, New York 14216.

7. Defendant Kingstown Associates Ltd. is a British limited liability company doing business as Kingstown Data Solutions Ltd., Kingstown Products Ltd., Foot Friendly Ltd., Healthy Living Direct Ltd., Housewares Direct Ltd., Inspired Choices Ltd., and Continental Direct Ltd. with its principal offices or places of business located at Annie Reed Ct., Annie Reed Rd., Beverley, North Humberside, HU17 0LF, United Kingdom and Wadsworth Rd., Kelleythorpe Industrial Estate, Drifffield, East Yorkshire, YO25 9DJ, United Kingdom. It transacts business or has caused business to be transacted in this District and throughout the United States under the names of Beauty Visions Worldwide and Slimshop through the dissemination of advertisements for purported weight loss products through U.S. media outlets.

8. Defendant BVW Associates, Inc. is a Panamanian corporation with its principal offices or places of business located at 25 Woodgates Lane, North Ferriby, Hull, HU14 3JR, United Kingdom and Suite 45, Louis Pearlman Centre Goulton Street, Hull, East Yorkshire, HU3 4DL, United Kingdom. It transacts business or has caused business to be transacted in this District and throughout the United States under the names of Beauty Visions Worldwide and Slimshop through the dissemination of advertisements for purported weight loss products through U.S. media outlets.

9. Defendant Gary Richard Bush is an owner and the Chief Executive Officer, Financial Director, and Secretary of Kingstown Associates Ltd. and the Chief Executive Officer of BVW Associates, Inc. He resides or has had a residence at 25 Woodgates Lane, North Ferriby, North Humberside, HU14 3JR, United Kingdom. At all times material to this complaint, acting alone or in conjunction with others, he has formulated, directed, controlled, or participated in the acts or practices of Kingstown Associates Ltd. and BVW Associates, Inc.,

including the acts and practices set forth in this complaint.

10. Defendant David James Varley is an owner and the Managing Director of Kingstown Associates Ltd. and Operating Manager and Director of BVW Associates, Inc. He resides or has had a residence at 19 Castle Drive, South Cave, Brough, North Humberside, HU15 2ES, United Kingdom. At all times material to this complaint, acting alone or in conjunction with others, he has formulated, directed, controlled, or participated in the acts or practices of Kingstown Associates Ltd. and BVW Associates, Inc., including the acts and practices set forth in this complaint.

11. Defendant Laurence Anthony White is an owner and the Marketing Director of Kingstown Associates Ltd. and Marketing Manager and Director of BVW Associates, Inc. He resides or has had a residence at The Old Vicarage, Southburn, Drifffield, North Humberside, YO25 9ED, United Kingdom. At all times material to this complaint, acting alone or in conjunction with others, he has formulated, directed, controlled, or participated in the acts or practices of Kingstown Associates Ltd. and BVW Associates, Inc., including the acts and practices set forth in this complaint.

COMMERCE

12. The acts and practices of Defendants, as alleged herein, are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' COURSE OF CONDUCT

HYDRO-GEL SLIM PATCH

13. Since at least 2003, Defendants have advertised, promoted, offered for sale, sold, and distributed a purported weight-loss product called the "Hydro-Gel Slim Patch" to consumers

throughout the United States, using advertisements in newspapers and magazines. The booklet accompanying the product states that the Hydro-Gel Slim Patch contains fucus vesiculosus, guaranine, sodium ATBS monomer, glycerin, acrylic acid, sodium hydroxide, electrolyte, and deionized water. Defendants recommend that consumers using the product apply one patch every 24 hours. A thirty-day supply contains thirty patches and costs consumers \$34.95, plus \$3.00 shipping and handling. A sixty-day supply costs consumers \$54.90, plus \$3.00 shipping and handling, and a ninety-day supply costs consumers \$69.85, plus \$3.00 shipping and handling.

14. To induce consumers to purchase the Hydro-Gel Slim Patch, Defendants have disseminated or have caused to be disseminated advertisements for the Hydro-Gel Slim Patch, including but not necessarily limited to the attached Exhibit A. This advertisement contains the following statements and depictions, among others:

- **TRY THIS AMAZING NEW GUARANTEED SLIMMING DISCOVERY AND LOSE WEIGHT EASIER THAN EVER BEFORE!**
- **JUST WATCH YOUR FAT FADE AWAY WITH Hydro-Gel Slim Patch**
- **Clearly Better Than Outdated Conventional Patches! Futuristic Hydro-Gel Slim Patch effectively controls dispersal of special ingredients for maximum fat burning intensity**
- **No starvation diets, small portions or missed meals!**
- **No impossible back-breaking exercises!**
- **Just fast and easy, LASTING weight loss!**
- **Hydro-Gel Slim Patch** will be the easiest and most successful weight loss program you have ever used. Hydro-Gel Slim Patch is for **anyone** who has already tried to lose weight but failed – **anyone** who has lost weight before only for it to pile back on again later – **anyone** who is now overweight and wants to be slimmer!

- It's far more effective and pleasant to wear than an old-fashioned conventional patch. The revolutionary soft-gel construction means **Hydro-Gel Slim Patch** is able to carry more special ingredients for peak dispersal efficiency. Throughout the entire day it gradually releases a scientifically pre-determined, carefully controlled amount of slimming actives directly to the point of contact – even while you sleep!
- The remarkable dual fat-fighting ingredients – Fucus and Guaranine – are both completely safe natural extracts. They work together to boost your metabolism to spectacular new levels – helping to incinerate away your repulsive excess adipose tissue faster than you ever believed possible. In fact, your very own **secret 'fat furnace'!**
- You won't find an easier way to successfully lose weight and stay slim than with **Hydro-Gel Slim Patch**. It is not a boring, soul-destroying diet. It doesn't require grueling exercise.
- Best of all, you continue to eat your favorite foods! . . . It lets you carry on a normal life, eat a balanced diet and still lose weight.
- After just a few days on the **Hydro-Gel Slim Patch** program you will notice the pounds begin to melt away.
- Continue with the program and your figure will get slimmer, and most importantly **stay** slimmer – until you have the body you have always dreamed of.
- [Depiction: Three pictures illustrating “before” and “after” weight loss by woman of 31 pounds over 28 days – from 6/12/2000 (“Weight 146 lbs”) to 7/10/2000 (“Weight 115 lbs”)]
- **IF YOU NEED TO:**

LOSE UP TO 30lbs; 30-Day Course; ONLY \$34.95

LOSE UP TO 60lbs; 60-Day Course; \$54.95 SAVE \$15

LOSE UP TO 90lbs; 90-Day Course; \$69.85 SAVE \$35

Exhibit A (emphasis in original). This advertisement appeared as *Smart Source* (News America Marketing, A News Corporation Company) free-standing inserts in the *Contra Costa Times* (San

Francisco, California) (July 20, 2003, January 1, 2003) and the *Cleveland Plain Dealer* (June 22, 2003), and in *Cosmopolitan* magazine (September 2003).

SLENDERSTRIP

15. Since at least 1999, and continuing thereafter, Defendants have advertised, promoted, offered for sale, sold, and distributed a purported weight loss product called “Slenderstrip” to consumers throughout the United States, using advertisements in newspapers and direct mail brochures. The advertising for the product states that Slenderstrip contains fucus vesiculosus. Defendants recommend that consumers using the product apply one patch every 24 hours. A thirty-day supply contains thirty patches and costs consumers \$29.95, plus \$3.00 shipping and handling. A sixty-day supply costs consumers \$44.90, plus \$3.00 shipping and handling, and a ninety-day supply costs consumers \$54.95, plus \$3.00 shipping and handling.

16. To induce consumers to purchase Slenderstrip, Defendants have disseminated or have caused to be disseminated advertisements for Slenderstrip, including but not necessarily limited to the attached Exhibit B. This advertisement contains the following statements and depictions, among others:

- **TRY THIS REVOLUTIONARY NEW GUARANTEED WEIGHT LOSS SYSTEM AND WATCH THE lbs MELT AWAY!**
- **WATCH FAT MELT AWAY WITH Slenderstrip**
- **No impossible exercise! No missed meals! . . . No boring foods or small portions! Just fast and easy, effective weight loss!**
- **Slenderstrip** is the answer for anyone who has tried to lose weight and failed – anyone who has lost weight only for it to pile back on – in fact anyone who is losing the battle of the bulge!
- Throughout the day, it gradually releases a carefully controlled amount of its

special ingredient – even as you sleep! . . . This ingredient, Fucus Vesiculosus, is a completely natural plant extract that increases your metabolism, helping to burn away your excess fat.

- **Slenderstrip** is the easiest way to successfully lose weight you'll ever try. It is not a boring, soul-destroying diet. It doesn't require grueling exercise.
- Best of all, you continue to eat your favorite foods! . . . It lets you carry on with a normal life, eat a balanced diet and still lose weight.
- After just a few days on the **Slenderstrip** program you will notice the pounds begin to melt away. Tight skirts and trousers will suddenly seem loose. You'll have to try on smaller sizes in clothes shops. Continue the program and your figure will just get slimmer and slimmer until you have the body you've always dreamed of.
- [Depiction: Two pictures illustrating "before" and "after" weight loss by woman of 65 pounds] "Mrs. H Croft **LOST 65lbs.**" BEFORE: "This was me just last year – an ugly **193 lbs** in weight." AFTER: "Now look at me – a shadow of my former self at 128 lbs, after losing **65lbs** with **Slenderstrip.**"
- **IF YOU NEED TO:**

LOSE UP TO 30lbs; 30-Day Course; ONLY \$29.95

LOSE UP TO 60lbs; 60-Day Course; \$44.90; SAVE \$15.00

LOSE UP TO 90lbs; 90-Day Course; \$54.85; SAVE \$35.00

Exhibit B (emphasis in original). This advertisement appeared in free standing inserts in the *Myrtle Beach Times* (August 1, 1999) and the *Atlanta Journal and Constitution* (May 18, 2003), and in direct mail advertising in *Clipper Magazine* (2000) and accompanying product orders for the Hydro-Gel Slim Patch and for Slenderstrip.

DEFENDANTS' VIOLATIONS OF THE FTC ACT

17. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a), prohibits the dissemination of any false advertisement in or affecting commerce for the purpose of

inducing, or which is likely to induce, the purchase of food, drugs, devices, services, or cosmetics. For the purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, the Hydro-Gel Slim Patch and Slenderstrip are either “drugs” or “devices” as defined in Sections 15(c) and (d) of the FTC Act, 15 U.S.C. § 55(c) and (d). As set forth below, Defendants have engaged and are continuing to engage in such unlawful practices in connection with the marketing and sale of the Hydro-Gel Slim Patch and Slenderstrip.

COUNT ONE

18. Through the means described in Paragraph 14, including through the statements and depictions contained in the advertisement attached as Exhibit A, Defendants have represented, expressly or by implication, that:

- a. Hydro-Gel Slim Patch causes rapid and substantial weight loss without the need to reduce caloric intake or increase exercise;
- b. Hydro-Gel Slim Patch enables users to lose as much as a pound a day over multiple weeks and months, without the need to reduce caloric intake or increase exercise;
- c. Hydro-Gel Slim Patch works for all overweight users; and
- d. Hydro-Gel Slim Patch causes permanent weight loss.

19. In truth and in fact:

- a. Hydro-Gel Slim Patch does not cause rapid and substantial weight loss, without the need to reduce caloric intake or increase exercise;
- b. Hydro-Gel Slim Patch does not enable users to lose as much as a pound a day over multiple weeks and months, without the need to reduce caloric intake or increase exercise;
- c. Hydro-Gel Slim Patch does not work for all overweight users; and
- d. Hydro-Gel Slim Patch does not cause permanent weight loss.

20. Therefore, the making of the representations set forth in Paragraph 18 above constitutes a deceptive practice, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT TWO

21. Through the means described in Paragraph 14, including through the statements contained in the advertisement attached as Exhibit A, Defendants have represented, expressly or by implication, that Hydro-Gel Slim Patch causes rapid and substantial weight loss without the need to reduce caloric intake or increase exercise, enabling users to lose as much as a pound a day over multiple weeks and months, that it works for all overweight users, and that such weight loss is permanent.

22. Defendants did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 21 above at the time the representations were made.

23. Therefore, the making of the representations set forth in Paragraph 21 above constitutes a deceptive practice, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT THREE

24. Through the means described in Paragraph 16, including through the statements contained in the advertisement attached as Exhibit B, Defendants have represented, expressly or by implication, that:

- a. Slenderstrip causes rapid and substantial weight loss, without the need to reduce caloric intake or increase exercise;
- b. Slenderstrip enables users to lose as much as a pound a day over multiple weeks and months, without the need to diet or exercise; and

c. Slenderstrip works for all overweight users.

25. In truth and in fact:

a. Slenderstrip does not cause rapid and substantial weight loss, without the need to reduce caloric intake or increase exercise;

b. Slenderstrip does not enable users to lose as much as a pound a day over multiple weeks and months, without the need to diet or exercise; and

c. Slenderstrip does not work for all overweight users.

26. Therefore, the making of the representations set forth in Paragraph 24 above constitutes a deceptive practice, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT FOUR

27. Through the means described in Paragraph 16, including through the statements contained in the advertisement attached as Exhibit B, Defendants have represented, expressly or by implication, that Slenderstrip causes rapid and substantial weight loss without the need to reduce caloric intake or increase exercise, enabling users to lose as much as a pound a day over multiple weeks and months, and that it works for all overweight users.

28. Defendants did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 27 above at the time the representations were made.

29. Therefore, the making of the representations set forth in Paragraph 27 above constitutes a deceptive practice, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

CONSUMER INJURY

30. Defendants' law violations have injured consumers and will continue to injure consumers throughout the United States. In addition, Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

31. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award ancillary or other relief, including, but not limited to, rescission of contracts and restitution, and the disgorgement of ill-gotten gains caused by Defendants' law violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff FTC requests that this Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

(a) Permanently enjoin Defendants from violating Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, in connection with the offer, sale, advertising, or other promotion or distribution of weight-loss products, or any food, drugs, dietary supplements, devices, cosmetics, or other products, services, or programs;


(b) Award all temporary and preliminary injunctive and ancillary monetary relief that may be necessary to avert the likelihood of consumer injury during the pendency of this action, and to preserve the possibility of effective final relief, including, but not limited to, temporary and preliminary injunctions and an asset freeze;

(c) Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including, but not limited to, rescission of contracts and restitution, and the disgorgement of ill-gotten gains; and

(d) Award the Plaintiff the costs of bringing this action, and such other equitable relief as the Court may determine to be just and proper.

Dated: May 24, 2004

Respectfully submitted,
WILLIAM E. KOVACIC
General Counsel



DEAN C. FORBES
DAVID K. KOEHLER
KAREN M. MUOIO
Attorneys for the Plaintiff
Federal Trade Commission
Bureau of Consumer Protection
Division of Advertising Practices
601 New Jersey Avenue, NW, NJ-3212
Washington, D.C. 20001
(202) 326-2831
(202) 326-3627
(202) 326-2491
(202) 326-3259 (facsimile)