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ATTORNEYS FOR PLAINTIFF

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

FEDERAL TRADE COMMISSION,

Plaintiff

v.

DIET COFFEE, INC., a corporation;
DAVID STOCKNOFF, individually and as
President, Chief Financial Officer, and a
Director of Diet Coffee, Inc.; and **DAVID**
ATTARIAN, individually and as Secretary
and a Director of Diet Coffee, Inc.,

Defendants.

CASE NO. 1:08-cv-0094-JSR-DCF

ECF CASE

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 Diet Coffee, Inc., a corporation; David Stocknoff, individually and as President,

Chief Financial Officer, and a Director of Diet Coffee, Inc.; and David Attarian, individually and as Secretary and a Director of Diet Coffee, Inc. (“defendants”) for engaging in deceptive acts or practices and false advertising in connection with the advertising, marketing, and sale of a purported weight-loss product 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 plaintiff’s claims 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 the United States District Court for the Southern District of New York is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

THE PARTIES

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.

5. **Defendant Diet Coffee, Inc.** (“DCI”) is a Delaware corporation doing business at 16 E. 40th St., New York, NY 10016. It markets a purported weight-loss product called “Slim Coffee” in this District and across the United States.

6. **Defendant David Stocknoff** (“Stocknoff”) is the President, Chief Financial Officer, a Director, and a founding member of DCI. He does business at 16 E. 40th St., New

York, NY 10016. Individually, or in concert with others, Stocknoff directs, controls, formulates, or participates in the acts and practices complained of below. He transacts business in the Southern District of New York.

7. **Defendant David Attarian** (“Attarian”) is the Secretary, a Director, and a founding member of DCI. He does business at 16 E. 40th St., New York, NY 10016. Individually, or in concert with others, Stocknoff directs, controls, formulates, or participates in the acts and practices complained of below. He transacts business in the Southern District of New York.

COMMERCE

8. 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

9. Since at least December 19, 2005, and continuing thereafter, defendants have labeled, advertised, promoted, offered for sale, sold, and distributed a purported weight-loss product called “Slim Coffee” to consumers throughout the United States. Advertisements for “Slim Coffee” have appeared on the Internet, radio, and television, including on Oxygen, Fox Reality Channel, A&E Television, The CW, WE, and Bravo. Advertisements also have appeared in magazines and Sunday newspaper supplements, including *SmartSource* by News America Marketing FSI, Inc.

10. According to its product label, Slim Coffee contains coffee, Vitamin E, ascorbic acid, chromium picolinate, Vitamin A, Vitamin B12, *Hoodia gordonii*, *Garcinia cambogia* extract, ginseng-panax root powder, and green tea extract. *Exhibit (“Ex.”) A.*

11. To induce consumers to purchase their products, defendants have disseminated, or

caused to be disseminated, advertisements for Slim Coffee, including, but not limited to the attached Exhibits A through K. Among other things, the advertisements contained the following statements or depictions:

- A. “Everybody wants to be thin, right? Well, stop starving yourself, stop popping pills and stop killing yourself at the gym with no results. Now, you can drink away the pounds with the Slim Coffee System, a remarkable way to shed those excess pounds by drinking delicious, flavorful coffee. There’s no being hungry, strenuous exercise, or counting calories.”

Ex. B; C; E; F; H; I, Attachments (“Atts.”) 1 - 3; J.

- B. “[C]linical studies have proven you can lose up to five pounds a week and up to 20 pounds a month. It’s as easy as replacing your ordinary coffee with Slim Coffee and you start to see the pounds coming off.”

Ex. G.

- C. “[C]linical studies have proven you can lose up to five pounds a week and up to 20 pounds a month. Drink one cup of delicious Instant Slim Coffee with every meal. There’s no need to change your eating habits or what you eat. Just replace your coffee with Slim Coffee and you will start to see results. It’s that easy and all-natural.”

Ex. B; C; E; F; H; I, Atts. 1 - 3; J.

- D. “**Clinically tested** . . . this study shows all participants lost weight and over 50% also increased muscle mass.”

Ex. B; C; D; E; F; H; I, Atts. 1 - 3; J.

- E. “The secret is the all-natural ingredients. When infused into the delicious coffee and used in our system, the results are astounding. . . Your hunger pains and cravings are curbed, your metabolism is boosted and your body is turned into a fat-burning machine, burning two to five pounds a week.”

Ex. B; C; E; F; H; I. Atts. 1 - 3; J.

- F. “The New, Instant Weight-Loss Coffee That Burns Away Calories!”

Ex. K.

- G. “Lose 3-5 Pounds A Week By Drinking Slim Coffee!”

Ex. K.

H. “Revolutionary Slim Coffee is 100% premium dark-roasted coffee blended with scientifically proven weight-loss ingredients specially formulated to help you SHED POUNDS & INCHES – FAST”

Ex. J.

I. “Burn unwanted fat and lose weight with premium slim coffee, available in regular and decaffeinated.”

Ex. G.

J. “Slim Coffee suppresses your appetite.”

Ex. B; C; D; E; F; G; H; I, Atts. 1 - 3.

K. “These are the amazing results people are getting with Slim Coffee. One woman lost 13 pounds in one month. A gentleman lost 15 pounds. Another woman said she went from a size eight to a size two.”

Ex. G.

L. “Since I’ve been on the Slim Coffee System, I’ve lost just over 16 pounds and I feel great.”

Ex. B; C; D; E; F; H; I, Atts. 1 - 3.

M. “In the last month, using Slim Coffee and not changing anything else, I lost 12 pounds.”

Ex. B; C; E; F; H; I, Att. 3.

DEFENDANTS’ VIOLATIONS OF THE FTC ACT

12. 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.

13. For the purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, Slim Coffee is either a “food” or a “drug” as “food” and “drug” are defined in Sections 15(b) and (c) of the FTC Act, 15 U.S.C. § 55(b) and (c).

COUNT ONE

False and Deceptive Weight Loss Claims

14. As described in Paragraph 11, including through the use of the trade name “Slim Coffee” and the statements and depictions contained in the advertisements attached as Exhibits A through K, defendants have represented, expressly or by implication, that drinking Slim Coffee:

- A. enables consumers to lose substantial weight, including as much as two to five pounds per week and twenty pounds per month, without the need to reduce caloric intake or increase physical activity;
- B. causes rapid weight loss;
- C. burns body fat;
- D. increases muscle mass;
- E. suppresses appetite; and
- F. boosts metabolism sufficient to cause weight loss or burn body fat.

15. The representations set forth in Paragraph 14 are false or were not substantiated at the time the representations were made. Among other things, there are no reliable scientific studies of defendants’ weight loss product, or of the ingredients in that product, to support the effects claimed in defendants’ advertising. Therefore, the making of the representations in Paragraph 15 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

False Establishment Claims

16. As described in Paragraph 11, and the statements and depictions contained in the advertisements attached as Exhibits A through K, defendants have represented, expressly or by implication, that clinical studies prove that drinking defendants' weight loss product, Slim Coffee, enables consumers to lose substantial weight, including as much as two to five pounds per week and twenty pounds per month, without the need to reduce caloric intake or increase physical activity.

17. In truth and in fact, clinical studies do not prove that drinking defendants's weight loss product, Slim Coffee, enables consumers to lose weight, including as much as two to five pounds per week and twenty pounds per month, without the need to reduce caloric intake or increase physical activity. Therefore, the making of the representation in Paragraph 16 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

18. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss as a result of defendants' unlawful practices. In addition, defendants have been unjustly enriched as a result of their unlawful practices. Absent 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

19. 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 other ancillary 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, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

(a) Enter a permanent injunction to prevent future violations of the FTC Act by defendants;

(b) Award such 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 or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

(c) Award plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

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General Counsel



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Dated: 1/3/08

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

EXHIBIT A


Slim Coffee

SUPPLEMENT FACTS:

Serving Size: 1 packet
APPROXIMATELY NO Diet weight per container

	Amount Per Serving	% Daily Value
Total Fat	5g	
Total Carbohydrate	11g	
Total Protein	0.1g	
Total Fiber	0.1g	
Total Sugar	10.9g	
Total Caffeine	100mg	20%
Total Vitamin B1	100%	20%
Total Vitamin B2	100%	20%
Total Vitamin B3	100%	20%
Total Vitamin B6	100%	20%
Total Vitamin B12	100%	20%
Total Vitamin C	100%	20%
Total Vitamin E	100%	20%
Total Vitamin K	100%	20%
Total Calcium	100%	20%
Total Iron	100%	20%
Total Magnesium	100%	20%
Total Zinc	100%	20%
Total Selenium	100%	20%
Total Phosphorus	100%	20%
Total Potassium	100%	20%
Total Sodium	100%	20%
Total Chloride	100%	20%
Total Sulfur	100%	20%
Total Iodine	100%	20%
Total Fluoride	100%	20%
Total Boron	100%	20%
Total Manganese	100%	20%
Total Copper	100%	20%
Total Molybdenum	100%	20%
Total Chromium	100%	20%
Total Vanadium	100%	20%
Total Silicon	100%	20%
Total Nickel	100%	20%
Total Cobalt	100%	20%
Total Selenium	100%	20%
Total Tellurium	100%	20%
Total Barium	100%	20%
Total Bismuth	100%	20%
Total Cadmium	100%	20%
Total Lead	100%	20%
Total Mercury	100%	20%
Total Arsenic	100%	20%
Total Antimony	100%	20%
Total Tellurium	100%	20%
Total Thallium	100%	20%
Total Uranium	100%	20%
Total Plutonium	100%	20%
Total Americium	100%	20%
Total Curium	100%	20%
Total Berkelium	100%	20%
Total Californium	100%	20%
Total Einsteinium	100%	20%
Total Fermium	100%	20%
Total Mendelevium	100%	20%
Total Nobelium	100%	20%
Total Lawrencium	100%	20%
Total Rutherfordium	100%	20%
Total Dubnium	100%	20%
Total Seaborgium	100%	20%
Total Bohrium	100%	20%
Total Hassium	100%	20%
Total Meitnerium	100%	20%
Total Darmstadtium	100%	20%
Total Roentgenium	100%	20%
Total Copernicium	100%	20%
Total Tennessine	100%	20%
Total Oganesson	100%	20%

Daily value not established
 Percent daily values are based on a 2000 calorie diet



**SCIENTIFICALLY
POPULATED**

Diet Coffee Inc.
 1175A 2nd Avenue Suite 288
 New York, NY 10021
 Corporate (800) 584-5072
www.slimcoffee.com




EXHIBIT B

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OFFICIAL TRANSCRIPT PROCEEDING
FEDERAL TRADE COMMISSION

MATTER NO. 0723052

TITLE DIET COFFEE COMPANY, INC.

DATE RECORDED: MAY 9, 2006

TRANSCRIBED: MARCH 21, 2007

PAGES 1 THROUGH 8

VIDEOTAPE -- SLIM COFFEE COMMERCIAL - OXYGEN

FEDERAL TRADE COMMISSION

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VIDEO AD:

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Slim Coffee - Oxygen

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In the Matter of:)
Diet Coffee Company, Inc.) Matter No. 0723052
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May 9, 2006

The following transcript was produced from a videotape provided to For The Record, Inc. on March 16, 2007.

