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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 \_\_\_\_\_ )  
11 ) Civ. No.  
12 FEDERAL TRADE COMMISSION, )  
13 Plaintiff, ) COMPLAINT  
14 v. )  
15 MOUNTAIN SPRINGS L.L.C., and )  
16 MAX PEREZ, )  
\_\_\_\_\_ )

17  
18 Plaintiff, the Federal Trade Commission ("Commission"), by  
19 its undersigned attorney, alleges as follows:

20 JURISDICTION AND VENUE

21 1. This is an action under Section 13(b) of the Federal  
22 Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure a  
23 permanent injunction and other equitable relief, including  
24 rescission, restitution and disgorgement, against Defendants'  
25 violations of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§  
26 45(a) and 52, respecting deceptive acts or practices. This Court  
27 has subject matter jurisdiction over Plaintiff's claim pursuant  
28

1 to 28 U.S.C. §§ 1331, 1337(a) and 1345, and 15 U.S.C. §§ 45(a)  
2 and 53(b). Venue in this District is proper under 28 U.S.C.  
3 § 1391(b) and 15 U.S.C. § 53(b).

4 THE PARTIES

5 2. Plaintiff Commission is an independent agency of the  
6 United States Government created by statute (15 U.S.C. § 41 et  
7 seq.). The Commission is charged, inter alia, with the  
8 enforcement of Sections 5(a) and 12 of the FTC Act, 15 U.S.C.  
9 §§ 45(a) and 52, and is authorized under Section 13(b) of the FTC  
10 Act, 15 U.S.C. § 53(b), to initiate court proceedings to enjoin  
11 violations of the FTC Act and to secure such equitable relief as  
12 may be appropriate in each case.

13 3. Defendant Mountain Springs L.L.C. ("Mountain Springs")  
14 is a New York limited liability company. Mountain Springs'  
15 principal place of business is located at 125 Park Avenue, 8th  
16 Floor, New York, New York. At all times relevant to this  
17 complaint, Mountain Springs conducted business in this District.

18 4. Defendant Max Perez is a manager of Mountain Springs.  
19 At all times relevant to this complaint, Max Perez conducted  
20 business in this District. Individually or in concert with  
21 others, he formulates, directs, or controls the policies, acts or  
22 practices of Mountain Springs, including the acts or practices  
23 alleged in this complaint.

24 COMMERCE

25 5. At all times relevant to this complaint, the Defendants  
26 maintained a substantial course of trade, in or affecting  
27

1 commerce, as "commerce" is defined in Section 4 of the FTC Act,  
2 15 U.S.C. § 44.

3 DEFENDANTS' COURSE OF CONDUCT

4 6. From at least April 1995 until the present, Defendants  
5 maintained a substantial course of trade in the sale of una de  
6 gato ("cat's claw"), a derivative of the bark of a woody vine  
7 (*Uncaria tomentosa*) of the same name that grows in South America.  
8 Defendants sold una de gato under the brand name "Manaxx."  
9 Defendants advertised, offered for sale, sold, and distributed  
10 Manaxx as a treatment for the prevention of, or cure for, a  
11 variety of diseases and conditions. Through the use of  
12 advertisements, including testimonials, and telephone sales  
13 representations to consumers, the Defendants induced consumers to  
14 purchase Manaxx. Manaxx is a "food" and/or "drug" as defined in  
15 Section 15 of the FTC Act, 15 U.S.C. § 55.

16 7. The Defendants represented in television and print  
17 advertisements that Manaxx is a "great health breakthrough" that  
18 "can do miracles for your health problems." The Defendants have  
19 claimed in their advertising that una de gato "has relieved many  
20 illnesses in the past and continues to do so for new ones as  
21 well"; that una de gato has been "known as a curative since  
22 ancient times"; and that una de gato is "a weapon against any  
23 immunological problems regardless of their cause."

24 8. The Defendants have disseminated or caused to be  
25 disseminated advertisements containing, among others, the  
26 following illustrative statements:

- 1 A. "It's been tested in Italy, Austria, Germany . . . And  
2 it's been proven in laboratories that 'Una de Gato' . .  
3 . reinforces the immune system and reduces  
4 inflammation."
- 5 B. "MANAXX CAT'S CLAW has been proven in laboratories to  
6 strengthen the human immune system and enhance overall  
7 health and well-being."
- 8 C. "Una de Gato, whose incredible properties, according to  
9 medical science, have various medicinal uses ranging  
10 from the reduction of muscular and skin inflammations  
11 to overall strengthening of the Human Immune system . .  
12 . ."
- 13 D. "And the observable defense reinforcement that we've  
14 found resulting from Manaxx's Una de Gato mark it as a  
15 weapon against any immunological problems, regardless  
16 of their cause."
- 17 E. "Another favorable quality is the effect on  
18 inflammation . . . Manaxx's Una de Gato can be an  
19 excellent nutritional source for the reduction of the  
20 abnormal irritation of body tissues."
- 21 F. "We can also add to the list of benefits the fact that  
22 Manaxx's Una de Gato does not affect the stomach and  
23 does not have any abnormal effects resulting from  
24 exceeding the recommended dosage. It has also been  
25 shown in experiments in Europe to be void of any toxic  
26 effects."

1           9. In the course of telephone calls with consumers, the  
2 Defendants made additional claims regarding una de gato. The  
3 script provided to telemarketers states that una de gato is used  
4 as a "supplement to improve overall health . . . [i]t also  
5 strengthens the immune system." During a call made to (800) 441-  
6 4868, a number provided by Defendants to place orders for una de  
7 gato, Defendants' agent or representative stated that una de gato  
8 prevented diseases from occurring because it strengthened the  
9 immune system.

10           10. In its advertisements Defendants have used  
11 testimonials, including the following: "I was taking 'Una de  
12 Gato' between '82 and '84. . . the prognosis for my illness was  
13 pretty bad but it's been 10 or 12 years now and I'm still here";  
14 "For many years, I could hardly walk because of the discomfort  
15 and swelling I had in my leg, and now I walk perfectly"; and "I  
16 had skin problems, with a lot of pimples that just would not go  
17 away with any remedy, until I started taking Manaxx, and then my  
18 skin cleared up in just two weeks."

19                           DEFENDANTS' VIOLATIONS OF THE FTC ACT

20           11. Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a)  
21 and 52, prohibit deceptive acts and practices and the making of  
22 false advertisements to induce, or likely to induce, the purchase  
23 of "foods" and/or "drugs," respectively, in or affecting commerce.

24           12. Through the means described in paragraphs 7 through 10,  
25 Defendants, individually or in concert with others, have  
26 represented, expressly or by implication, that:  
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28



1 the immune system, effectively treats inflammation, reduces the  
2 abnormal irritation of body tissue, and is void of any toxic  
3 effects. In fact, clinical and laboratory research does not  
4 demonstrate that una de gato strengthens or reinforces the immune  
5 system, effectively treats inflammation, reduces the abnormal  
6 irritation of body tissue, or is void of any toxic effects.  
7 Therefore such representations were, and are, false or  
8 misleading.

9 15. Defendants' representations set forth above were, and  
10 are, false or misleading and constitute deceptive acts or  
11 practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.  
12 § 45(a), and false advertisements in or affecting commerce, in  
13 violation of Section 12 of the FTC Act, 15 U.S.C. § 52.

14 CONSUMER INJURY

15 16. Consumers have suffered substantial injury as a result  
16 of Defendants' violations of Sections 5(a) and 12 of the FTC Act,  
17 as set forth in paragraphs 6 through 15 above.

18 THIS COURT'S POWER TO GRANT RELIEF

19 17. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),  
20 empowers this Court to issue injunctive and other relief against  
21 violations of the FTC Act and, in the exercise of its equitable  
22 jurisdiction, to award redress to remedy the injury of consumers,  
23 order disgorgement of profits resulting from Defendants' unlawful  
24 acts or practices, and issue other ancillary equitable relief.

25 PRAYER FOR RELIEF

26 WHEREFORE, Plaintiff requests that this Court:  
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1 (1) Enjoin Defendants permanently from violating Sections  
2 5(a) and 12 of the FTC Act in connection with the advertising,  
3 offering, sale, distribution, or other promotion of Manaxx, other  
4 una de gato products or any food, drug or dietary supplement.

5 (2) Award such relief as the Court finds necessary to  
6 remedy the Defendants' violations of Sections 5(a) and 12 of the  
7 FTC Act, including but not limited to disgorgement, rescission of  
8 purchases, and refund of money.

9 (3) Award Plaintiff such other and additional equitable  
10 relief as the Court may determine to be proper and just.

11 Dated: June 24, 1997

FEDERAL TRADE COMMISSION

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14 By: \_\_\_\_\_  
15 Gregory W. Staples  
16 Attorney for Plaintiff  
17 Federal Trade Commission  
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