

ORIGINAL

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

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U.S.D.C. - Atlanta

APR 14 2011

JAMES N. HATTEN, Clerk
By: *[Signature]* Deputy Clerk

FEDERAL TRADE COMMISSION,)
)
Plaintiff,)
)
v.)
)
CHARLES DUNLEVY, individually,)
)
Defendant.)

Case No.

TWT

1 : 11 - CV - 1226

**COMPLAINT FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission ("FTC"), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief against Defendant Charles Dunlevy for Defendant's acts or practices 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 pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

3. Venue is proper in this district under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces Section 12 of the FTC Act, 15 U.S.C. § 52, which prohibits false advertisements for food, drugs, devices, services, or cosmetics in or affecting commerce.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b) and 56(a)(2)(A).

DEFENDANT

6. Defendant Charles Dunlevy (“Defendant”), at all times material to this Complaint, acting alone or in concert with others, formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. In connection with the matters alleged herein, Defendant transacts or has transacted business in this district and throughout the United States. At all times material to this Complaint, acting alone or in concert with others, Defendant Dunlevy has advertised, marketed, and promoted purported weight-loss products containing acai berries, including, but not limited to, Acai Max, Acai Max Cleanse, and Acai Optimum (collectively, the “Acai Berry Products”), and purported colon cleansing products, including, but not limited to, LiquiBoost Colon Cleanse, Pure Cleanse, and Advanced Cleanse (collectively, the “Colon Cleanse Products”), to consumers throughout the United States.

COMMERCE

7. At all times material to this Complaint, Defendant has maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANT'S BUSINESS ACTIVITIES

8. Since at least October 2009, Defendant has advertised, marketed, and promoted various products to consumers throughout the United States, including the Acai Berry Products and Colon Cleanse Products. Defendant promotes these products through websites designed to look like news reports.

9. The sites use domain names such as health9news.com, acai-berry-trial-offers.com, acai-trial-offers.com, and www.colon-cleanse-trial-offers.com, and include titles such as "Health 9 News" and "Consumer News Reporter." The sites often include the names and logos of major broadcast and cable television networks, falsely representing that the reports on the sites have been seen on these networks.

10. The sites purport to provide objective investigative reports authored by reporters or commentators typically pictured on the sites. The supposed authors of the reports claim to have tested the products on themselves and experienced dramatic and positive results. Following the reports are "responses" or "comments" that appear to be independent statements made by ordinary consumers.

11. In fact, Defendant's news reports are fake. Reporters or commentators pictured on the sites are fictional and never conducted the tests or

experienced the results described in the reports. The “responses” and “comments” following the reports are simply additional advertising content, not independent statements from ordinary consumers.

12. The sole purpose of Defendant’s websites is to promote the featured products on behalf of third-party merchants who then sell the products on other websites. Defendant’s promotional websites are designed to entice consumers to click on links that will transfer them to a merchant’s website. Defendant receives a commission or other payment for each consumer who clicks on a link and ultimately makes a purchase or signs up for a “free trial” on the merchant’s website. In this context, Defendant commonly is referred to as an “affiliate marketer.”

13. Defendant has failed to disclose in a clear and conspicuous manner that he is not objectively evaluating these products and, in fact, is being paid to promote the products. Defendant’s websites either fail entirely to disclose these facts, or fail to do so adequately. The relevant information, if disclosed at all, typically appears in small type at the bottom of the web page, following the fake consumer comments, well below the links to the products being sold.

14. In promoting products through his websites, Defendant also makes deceptive claims about the products. Defendant has represented, for example, that

taking the Acai Berry Products, alone or in combination with the Colon Cleanse Products, causes rapid and substantial weight loss. Defendant typically claims on his sites that reporters who tested on themselves taking the Acai Berry Products, alone or in combination with the Colon Cleanse Products, lost twenty-five pounds in four weeks without any special diet or intense exercise.

15. In truth and in fact, the Acai Berry Products, alone or in combination with the Colon Cleanse Products, do not cause rapid and substantial weight loss, nor does Defendant possess and rely upon a reasonable basis to substantiate representations that consumers who use the Acai Berry Products, alone or in combination with the Colon Cleanse Products, will rapidly lose a substantial amount of weight.

VIOLATIONS OF THE FTC ACT

16. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

17. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act. Section 12 of the FTC Act, 15 U.S.C. § 52, 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 Acai Berry Products and Colon Cleanse Products are either a “food” or “drug” as defined in Section 15(b) and (c) of the FTC Act, 15 U.S.C. § 55(b), (c).

COUNT ONE

False and Unsubstantiated Product Claims

18. Through the means described in Paragraphs 8 through 15 of this Complaint, Defendant has represented, directly or indirectly, expressly or by implication, that use of the Acai Berry Products, alone or in combination with the Colon Cleanse Products, will result in rapid and substantial weight loss, including as much as twenty-five pounds in four weeks.

19. The representations set forth in Paragraph 18 of this Complaint are false or were not substantiated at the time the representations were made.

20. Therefore, the making of the representations as set forth in Paragraph 18 of this Complaint constitutes a deceptive act or 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

Misrepresentations (Fake News Reports)

21. Through the means described in Paragraphs 8 through 15 of this Complaint, Defendant has represented, directly or indirectly, expressly or by implication, that:

- a. Defendant's websites are objective news reports;
- b. Objective news reporters have performed independent tests demonstrating the effectiveness of the products featured, including but not limited to Acai Berry Products and Colon Cleanse Products; and
- c. The comments following the 'articles' on Defendant's websites express the views of independent consumers.

22. In truth and in fact:

- a. Defendant's websites are advertisements made to appear as objective news reports;
- b. Objective news reporters have not performed independent tests demonstrating the effectiveness of the products featured, including but not limited the Acai Berry Products and Colon Cleanse Products; and
- c. The comments following the 'articles' on Defendant's websites do not express the views of independent consumers.

23. Therefore, the making of the representations as set forth in Paragraph 21 of this Complaint constitutes a deceptive act or practice, in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT THREE

Failures to Disclose (Connection to Seller)

24. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or the sale of Acai Berry Products, Colon Cleanse Products and other products, including through the means described in Paragraphs 8 through 15 of this Complaint, Defendant has represented, directly or indirectly, expressly or by implication, that the content of his websites has been authored by an objective journalist who has conducted independent tests.

25. In numerous instances in which Defendant has made the representation set forth in Paragraph 24 of this Complaint, Defendant has failed to disclose or disclose adequately to consumers that the content of Defendant's websites has not been authored by an objective journalist, but is in fact an advertisement placed by Defendant. Defendant receives commissions or other payments when consumers purchase the products or sign up for "free trials" on the product-selling websites.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, 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. Award Plaintiff such preliminary injunctive and ancillary relief as 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, an order preserving assets, and an accounting;

B. Enter a permanent injunction to prevent future violations of the FTC Act by Defendant;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendant's 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

D. 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.

The undersigned counsel of record certifies this document was prepared in the font and point selections approved by the court pursuant to LR5.1B.

Respectfully submitted,

WILLARD K. TOM
General Counsel

DATED: April 14, 2011



ROBIN L. ROCK
GA 629532
Federal Trade Commission
225 Peachtree St, NE
Suite 1500
Atlanta, GA 30303
Tel. 404-656-1368
Fax 404-656-1379
rrock@ftc.gov

Attorney for Plaintiff
FEDERAL TRADE COMMISSION