

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SENSA PRODUCTS, LLC, a limited liability company,
SENSA, INC., formerly known as INTELLIGENT BEAUTY, INC., a corporation,
ADAM GOLDENBERG,
and
DR. ALAN R. HIRSCH,

Defendants.

Case Number: 14-cv-72

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission (“Commission” or “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 permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants’ acts or practices, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, in connection with the labeling, advertising, marketing, distribution, and sale of Sensa, a powdered substance sprinkled on food that purportedly causes weight loss.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 15 U.S.C. §§ 45(a) and 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

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

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 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. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the FTC 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.

DEFENDANTS

6. Defendant Sensa Products, LLC (“Sensa Products”) is a Delaware limited liability company with its principal place of business at 2301 Rosecrans Avenue, El Segundo, California 90245. Sensa Products 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, Sensa Products has labeled, advertised, marketed, distributed, or sold Sensa and Sensa for Men (collectively, “Sensa”) to consumers throughout the United States.

7. Defendant Sensa, Inc., formerly known as Intelligent Beauty, Inc. (“Sensa, Inc.”), is a Delaware corporation with its principal place of business at the same location as Sensa Products. Sensa, Inc. owns ninety percent and is the managing member of Sensa Products. Sensa, Inc. 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, Sensa, Inc. has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint.

8. Defendant Adam Goldenberg is the Chief Executive Officer of Sensa, Inc. and a member of its four-member Board of Directors. He also is a member of Sensa Products’ four-member Board of Managers. Until 2012, he was a Co-Chief Executive Officer of Sensa Products. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Goldenberg, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

9. Defendants Sensa Products and Sensa, Inc. (collectively, “the Corporate Defendants”) have operated as a common enterprise while engaging in the deceptive and unfair acts and practices alleged below. They have conducted the business practices described below through an interrelated network of companies that have common ownership, officers, managers, business functions, employees, and office locations. Because the Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Defendant Goldenberg has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Corporate Defendants that

constitute the common enterprise. (The Corporate Defendants and Defendant Goldenberg collectively are referred to hereinafter as “the Sensa Defendants.”)

10. Defendant Dr. Alan R. Hirsch is the creator of Sensa and owns ten percent of Sensa Products. His principal place of business is at 845 North Michigan Avenue, Chicago, Illinois 60611. Acting alone or in concert with others, he has provided the means and instrumentalities for the acts and practices set forth in this Complaint. He has also participated in the promotion of Sensa by, among other means, authoring promotional materials and providing endorsements for Sensa in advertisements and promotional materials. Defendant Hirsch resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

COMMERCE

11. At all times material to this Complaint, Defendants have 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.

DEFENDANTS’ BUSINESS ACTIVITIES

12. Since at least 2008, the Sensa Defendants have labeled, advertised, marketed, distributed, and sold Sensa, a powdered weight-loss product created and endorsed by Defendant Hirsch, to consumers and retailers. Defendant Hirsch has licensed to one or both of the Corporate Defendants the rights to market and sell Sensa to consumers. The Sensa Defendants have advertised Sensa through long-form television commercials (“infomercials”), short-form television commercials, radio spots, magazine ads, freestanding newspaper inserts, online ads, and other advertising and promotional materials. Defendants have represented, among other things, through express claims and consumer endorsements, that Sensa causes consumers to lose

30, 40, 90 pounds, and more without dieting or exercise. Relying on research conducted by Defendant Hirsch and by a purportedly independent laboratory, Defendants have also represented that Sensa is clinically proven to cause substantial weight loss without dieting or exercise, averaging 30 pounds in six months.

13. Defendants sell Sensa directly to consumers for \$59.00 plus shipping and handling for a one-month supply and, if signed up for a continuity plan, \$89.95 plus shipping and handling for a two-month supply. Sales of Sensa in the United States from 2008 through 2012, minus returns, totaled nearly \$364 million.

14. To induce consumers to purchase Sensa, the Sensa Defendants have disseminated, or caused to be disseminated, advertisements for Sensa, including, but not limited to, the attached Exhibits A through H. These advertisements contain the following statements and depictions, among others:

A. Excerpts from Sensa infomercial (Transcript attached as Exhibit A; DVD recording submitted as Exhibit A.1)

MICHELLE FERNANDEZ: Everything you've ever heard about dieting is wrong. You don't need to diet to lose weight. There's a better way and you've just found it.

MALE NARRATOR: If you've tried to lose weight, there's something you already know. No matter what diets, programs or products you've tried, they've all had one thing in common, they didn't work. But there's something new that does.

ON SCREEN: [Before and after photos of consumer endorser]

Amanda lost 50 pounds!

Studies show average weight loss 30 lbs. in 180 days.

ON SCREEN: [Before and after photos of consumer endorser]

Dorothy lost 64 pounds!

Studies show average weight loss 30 lbs. in 180 days. Dorothy used Sensa for 9 months with a sensible diet and exercise program.

ON SCREEN: [Before and after photos of consumer endorser]

David lost 93 pounds!

Studies show average weight loss 30 lbs. in 180 days. David used Sensa for 8 months with a sensible diet and exercise program.

MALE NARRATOR [ON SCREEN depictions, including consumer endorsement, omitted]: Right now hundreds of thousands of people are already losing millions of pounds without dieting. They've discovered the most revolutionary weight-loss breakthrough of the 21st century. It's called Sensa, the amazing new clinically proven sensation that you sprinkle on to take the weight off. Whether you need to lose 10 pounds, 50 pounds or more, now you can, without dieting. Simply sprinkle Sensa on, eat all the foods you love, and watch the pounds come off. It's that easy. You'll lose weight faster and easier than you ever dreamed possible.

ON SCREEN: [Before and after photos of consumer endorser]

Joey lost 120 pounds!

Studies show average weight loss 30 lbs. in 180 days. Joey used Sensa for 12 months with a sensible diet and exercise program.

JOEY: I lost over 120 pounds with Sensa. [Ex. A, pp. 4-7.]

* * *

MICHELLE FERNANDEZ [ON SCREEN depiction omitted]: So, how does Sensa work? Well, at the heart of the Sensa program is a revolutionary technology that's based on 25 years of research and testing. It was discovered by a brilliant research scientist and my hero, Dr. Alan Hirsch. Dr. Hirsch holds five medical board certifications and is recognized as the world's leading expert on the science of smell and taste. He's appeared on Oprah, Good Morning America, Dateline, Extra, the CBS Early Show, CNN, and in hundreds of magazines and newspapers around the world. During the course of his pioneering research, Dr. Hirsch discovered the ground-breaking secret behind Sensa that has changed the way the world looks at weight loss forever.

DR. ALAN HIRSCH [ON SCREEN depiction omitted]: After 25 years of research, I finally figured out why diets don't work. Most diets focus on what you eat. They have it all wrong. Sensa looks at why you overeat and the

biological mechanisms that prevent you from overeating. It uses the body's natural physiology to prevent you from overeating. I've found that hunger isn't controlled by your stomach; it's controlled by your brain. We don't overeat just because we're hungry. It's because we love to eat. And diets don't stop you from wanting to eat, they just stop you from eating what you want. And that's a recipe for failure. The key is a medical phenomena called sensory specific satiety. As you eat, Sensa works with your senses to activate your body's natural control switch and triggers your body into thinking you've eaten more than you have. So, you begin to lose weight without having to think about it. The reason Sensa works when diets don't is because it lets you do what no diet can. It lets you lose weight while still eating the foods you love most without ever feeling hungry or deprived. [Ex. A, pp. 18-20.]

* * *

MALE NARRATOR [ON SCREEN depiction omitted]: If this sounds too good to be true, just listen to this. In one of the largest clinical studies ever conducted for a non-pharmaceutical weight-loss product, over 1,400 people were given Sensa and told not to diet and not to change their exercise routine. All they did was sprinkle, eat, and lose weight. And lose weight they did.

ON SCREEN: Over 1400 people!

SENSA®
WEIGHT-LOSS SYSTEM
average weight-loss
30.5
pounds

Results based on 180 day study period.

MALE NARRATOR [ON SCREEN depiction omitted]: In fact, the average weight loss was an incredible 30 and a half pounds. And in the same study, the group that was not given Sensa lost an average of only two pounds. [Ex. A, pp. 26-27.]

B. Email (Exhibit B)

... Lose More Weight for Less Money “GUARANTEED” With Sensa’s FREE Trial!

Sensa is breaking the mold of high-priced, high-risk weight-loss programs by offering customers the chance to try Sensa for free. We realize that you might be somewhat skeptical, even jaded by a weight-loss industry spread thick with misleading claims, which is why we are offering a free trial. And we back it up with a **30-day weight-loss guarantee**.

If you don't lose weight, you owe us nothing for the product.

It is a huge financial risk to us, but we have good reason to be confident that you will lose weight because Sensa has been tested and **proven effective in multiple clinical studies**. In fact, no other weight-loss product has such amazing clinical results. In one of the largest clinical weight-loss studies ever conducted, **1,436 people lost an average of 30.5 pounds – nearly 15% of their total body weight** in just 6 months. And all they did was sprinkle Sensa on their food. No counting calories, no back-breaking exercise, no boxed meals.

C. Radio advertisement (Exhibit C)

MVO: You already know that going to the gym will get you rock hard abs, ripped arms, and a completely toned body. But what if there was a way you could get all of that without ever stepping foot into a gym again? . . .

Introducing Sensa for Men. Specifically designed for men, by men, to help you shed thirty pounds or more so you can build that beach body in no time. Get started on your six-pack abs today with a free 30 day trial of Sensa. Call 1-800-XXX-XXXX.

Sensa does not require any dieting, pills or change in lifestyle. It's a clinically proven way to lose thirty pounds or more. And because it's created for men, by men, results are guaranteed.

If you want to lose more than THIRTY pounds, call now for your free trial and get those six-pack abs you've always wanted. . . .

D. Print advertisement (Exhibit D)

“Eat Yourself Skinny!”

Mother of 5 reveals how she **lost 58 pounds in 10 months WITHOUT Dieting** . . . and WITHOUT depriving herself of all of her favorite foods – plus it was as easy as shaking ‘salt n pepper’ on her meals . . .

Based on Dr. Hirsch’s 25 years of research and testing, SENSA® works with your sense of smell to trigger the “I feel full” signal in your brain which means you eat less and feel more satisfied . . . ultimately you lose weight. In one of the largest studies ever conducted on a non-prescription weight-loss system, 1,436 men and women lost an average of 30.5 pounds in just 6 months, without changing their diets or exercise routines.

Considering all the science behind SENSA®, I was relieved to see it wasn't another one of those fad diets or quick fixes. I knew I had to try it. After all, the only thing I had to lose was my unwanted weight! . . .

I have been using SENSA® for ten months now, and I've lost 58 pounds*! . . .

[Accompanied by before and after photos of a consumer endorser. At the bottom of the page is the following in small print text: “*Studies show average weight loss of 30.5 lbs in 6 months. Jennifer used SENSA® for 10 months with sensible diet. Jennifer is a SENSA® contest winner.”]

E. Print advertisement (Exhibit E)

[The background of the ad is a photograph of a thin and fit woman's torso with visible hip bones and visibly cut stomach muscles]

**NEED TO LOSE
30 POUNDS?
Try SENSA® FREE!***

SENSA® is clinically proven to help you lose 30 lbs without dieting or spending all your time working out.** Just sprinkle on your food, eat and lose weight!

**GET A GYM BODY
WITHOUT GOING TO THE GYM**

* * *

CLINICALLY PROVEN. 100% SATISFACTION GUARANTEED.

* * *

*Product is Free to try for 30 days! Pay only a small shipping and handling fee. ** In one of the largest studies ever conducted on a non-prescription weight-loss system, 1436 people lost an average 30.5 pounds in just 6 months without changing their diet or exercise regime.

F. Print advertisement (Exhibit F)

[The background of the ad is a photograph of a fit man's torso with visibly cut stomach, chest, and arm muscles, along with an inset photograph of a plate with a hamburger and French fries and two Sensa packages.]

NEW

Get in Shape with
SENSA® FOR MEN

G. Website at www.trysensa.com [depictions omitted] (Exhibit G)

**Do You Want to Lose Weight, But Hate Dieting?
Join the Sensa Weight-Loss Revolution!**

Michelle
lost 40 pounds

Results not typical. Individual results may vary.

* * *

TOP TEN REASONS TO TRY SENSA

1. It's NOT a diet
2. There are no stimulants, fat blockers or side effects
3. You can still eat all of your favorite foods (life's too short to deprive yourself of the things you love)
4. You don't have to spend money on bland, pre-packaged meals
5. The patent-pending technology is based on 25 years of scientific research
6. It's proven effective in one of the largest clinical weight-loss studies
7. Average weight loss is 30.5 pounds!
8. It's as easy to use as salt & pepper. Just sprinkle it on ... and watch the weight come off.
9. You'll have 30 DAYS to try Sensa, and your satisfaction is GUARANTEED.
10. You can try it FREE.*

* * *

NO OTHER WEIGHT-LOSS PRODUCT HAS SUCH EXTRAORDINARY CLINICAL RESULTS.

Over the course of 25 years, Sensa creator Dr. Alan Hirsch has conducted ongoing research on the effects of smell and taste on eating habits, ultimately leading him to spearhead one of the largest studies ever conducted on weight loss. Over a 6 month period, 1,436 women and men sprinkled scented, flavorless "Tastant" crystals on everything they ate. Participants were instructed not to change their existing diet or exercise program.

The 1,436 people in the treatment group who completed the program **lost an average of 30.5 pounds** — nearly 15% of their total body weight. Those in the control group lost only 2 pounds, on average.

This was followed by a double-blind, placebo-controlled study conducted by an independent laboratory, in which participants lost 27.5 pounds and about 14% of their body mass, on average. Participants were instructed not to change their existing diet or exercise program. Those in the control group gained half a pound, on average.

Sensa was proven effective in one of the largest clinical studies ever performed on a non-prescription weight-loss product.

H. Print Advertisement (Exhibit H)

WENDY LOST 125 LBS* . . .

And Wendy is not alone. SENSA® was tested in one of the largest weight-loss studies of its kind ever conducted. Over 1,400 men and women who sprinkled SENSA® on their food for 6 months, lost an average of 30.5 lbs. And participants were told not to change anything about their current diet or exercise habits. . . .

[In small print: *SENSA® advocates a healthy lifestyle with regular exercise and portion control. Study shows 30.5 lbs average weight loss in 6 months. Compensated for excellent results. Wendy used SENSA® for 36 months with exercise and sensible diet.]

15. To induce consumers to purchase Sensa, Defendants have disseminated, or caused to be disseminated, promotional materials for Sensa, including, but not limited to, the attached Exhibit I (excerpts from “Sensa Weight-Loss Program – The Accidental Discovery That’s Transforming the Way People Lose Weight” by Dr. Alan Hirsch). These promotional materials contain the following statements and depictions, among others:

- Eat all your favorite foods
- Clinically proven results
- No restrictive dieting

* * *

The use of the Sensa Tastant System was created to kick start your weight loss. This system allows you to eat all of your favorite foods, lose weight, and doesn't require any change in your lifestyle. The clinical studies have shown that just the use of these Tastants alone can result in a healthy weight loss of 1 to 2 pounds per week. . . .

* * *

We conducted an initial pilot study with 92 subjects over a six month period in 2002. . . . Using these Tastants resulted in substantial weight loss. Compared to a control group that used no Tastants, those who used Tastants lost an average of 34 pounds over a six-month period (approximately 2.1% body mass per month)! The greatest results were seen in those participants with the normal ability to smell and taste.

In 2004, I wanted to test this process on a much larger population base. In this next clinical trial, 1,436 people finished the study. A non-treatment control group of 100 individuals were randomly selected to not use the Tastants. Both groups were instructed not to change their eating or exercise routines over the course of the study. Weight and body mass index (BMI) was measured for both groups before and after the study. **The test group using the Tastants experienced an average weight loss of 30.5 pounds, and an average BMI decrease of 5 points, over a period of six months.** The control group who used nothing lost an average of only 2 pounds, with an average BMI decrease of 0.3 points over the same period.

* * *

Most recently, and most notable is an independent double blind placebo controlled study. . . . [T]he act of sprinkling something on the food . . . could make someone more cognizant of what they are eating and thus stimulate them to eat less and/or lower calorie foods. In order to eliminate the act of sprinkling as a cause of weight loss, we consulted an independent, third-party laboratory. In this study both groups received Tastants to use, but only the active group was given the Sensa Tastants. . . . **Participants using the active Tastants experienced an average weight loss of 27.5 pounds in six months. Participants in the placebo group actually gained an average of nearly one-half pound in the same time period.** . . . This last study proved conclusively that the weight loss was caused specifically by the individual formulations of the active Tastants.

* * *

Where can I purchase the Sensa Tastants?

The Sensa Tastants are available as part of the Sensa Weight-Loss System.

Please visit www.trysensa.com to order.

* * *

Dina C.

Lost 37 pounds in eight months

[Before and after pictures, personal story, and footnote stating, “Results not typical. Individual results may vary.”]

Adriana J.

Lost 12 pounds in one month

[Before and after pictures, personal story, and footnote stating, “Results not typical. Individual results may vary.”]

* * *

Resources

Sensa Weight-Loss System
(www.trysensa.com)

Visit the Sensa website for more detailed information on how to use
and purchase the Sensa Tastants.

* * *

Special Reader Offer!
Get 15% off on your first purchase of the Sensa
Weight-Loss System Tastants.

Go to www.sensabookoffer.com
and follow instructions.

16. In numerous instances, consumer endorsers of Sensa were offered the possibility of monetary compensation and other incentives, such as a free trip or appearing on television, for providing their endorsement. For example, Defendants ran numerous promotions in which they offered consumers \$1000 or \$5000 and other incentives, such as trips to Los Angeles or the chance to be on television, to enter contests, such as “Be Our Next Sensa Success Story,” “Sensa Weight Loss Contest: Your Chance to be on TV!” and “The Sensa Weight-Loss Challenge,” by sending in their endorsement, including “before” and “after” pictures. Numerous consumer

endorsers of Sensa were compensated hundreds or thousands of dollars for their endorsement. In numerous instances, Defendants did not disclose these incentives, or did not disclose them adequately, in the advertisements in which such endorsements appeared.

17. Defendants have represented that clinical studies conducted on Sensa prove that it causes an average weight loss of 30 pounds in six months. Defendant Hirsch conducted two purported weight-loss studies on Sensa and an allegedly independent lab, Best American Toxicology Testing Services, LLC (“BATTs”), conducted a third.

18. The first study Defendant Hirsch conducted on Sensa (Gallant-Shean, M., Hirsch, A.R., *Use of Tastants to Facilitate Weight Loss*) (“Hirsch 1”) purportedly was a six-month study with 108 test subjects (92 who completed the study), compared to a purported control group of 100 persons.

19. Defendant Hirsch reported the results of Hirsch 1 in an abstract printed and distributed by The Association for Chemoreception Sciences at its 25th Annual Meeting (April 9-13, 2003). The distributed abstract states that the 92 completers lost an average of 5.6 pounds over six months, while the control group gained an average of 1.1 pounds.

20. Defendant Hirsch filed four separate patent applications discussing Hirsch 1 with the United States Patent and Trademark Office (2002 and 2009) that also report that the 92 completers lost an average of 5.6 pounds over six months, while the control group gained an average of 1.1 pounds. Two patents issued in 2012 report the same data.

21. Defendants state in promotional material that Hirsch 1 shows that the 92 completers lost an average of 33.6 pounds in six months.

22. Hirsch 1 was an open-label study, which means it was not blinded because the researchers and the subjects knew what treatment was being administered; it also was not

randomized or placebo-controlled; there was no intent-to-treat analysis of the subjects who dropped out of the study; the subjects self-reported their weights; the subjects' diet and exercise were not monitored; and the underlying data are unavailable for verification.

23. The second study Defendant Hirsch conducted on Sensa (Hirsch, A.R., *Use of Gustatory Stimuli to Facilitate Weight Loss*) ("Hirsch 2") purportedly was a six-month study with 2437 enrolled test subjects (1436 who completed the study), compared to a purported control group of 100 persons. Defendants state in advertising and promotional material that Hirsch 2 shows that the 1436 completers lost an average of 30.5 pounds over six months, and the control group lost an average of two pounds.

24. Hirsch 2 was an open-label study, which means it was not blinded because the researchers and the subjects knew what treatment was being administered; it also was not randomized or placebo-controlled; the subjects self-reported their weight; the test subjects were encouraged to diet and exercise; the subjects' diet and exercise were not monitored; and the underlying data are unavailable for verification.

25. The third study on Sensa, by BATTs (*Efficacy Determination of Weight Loss Through Use of Crystal Tastants*) ("BATTs study"), purportedly was a six-month study conducted by an independent lab with 46 test subjects and 32 control subjects who completed the study. Defendants have stated in advertising and promotional material that the 46 test subjects lost an average of 27.5 pounds over six months, while the control group gained an average of .34 of a pound. The Corporate Defendants funded the BATTs study and participated in or exercised control over the design, conduct, and report of the study.

26. The BATTs study was not adequately randomized; five test subjects (JA, LC, MB, MIC, and MS) were duplicates; some test subjects did not lose the weight reported in the

data; there was no intent-to-treat analysis of the subjects who dropped out of the study, including five reported and seventeen unreported subjects; and the subjects' diet and exercise were not monitored. In addition, on one or more occasions, BATTs or its contractors sent the subjects' purported monthly weight data to the Corporate Defendants and a third party in advance of weighing the subjects. Moreover, owners of BATTs or their family members appeared as endorsers in Sensa advertising.

VIOLATIONS OF THE FTC ACT

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

28. Misrepresentations or omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

29. 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.

30. For the purposes of Section 12 of the FTC Act, Sensa is 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 I

FALSE OR UNSUBSTANTIATED EFFICACY CLAIMS

31. Through the means described in Paragraphs 14 and 15, Defendants have represented, directly or indirectly, expressly or by implication, that:

A. Sensa causes substantial weight loss without dieting or exercise, averaging 30 pounds in six months; and

B. Sensa enables users to lose substantial weight without ever feeling hungry.

32. Through the means described in Paragraph 14, the Sensa Defendants have represented, directly or indirectly, expressly or by implication, that Sensa enables users to obtain toned, physically fit looking bodies without exercise.

33. The representations set forth in Paragraphs 31 and 32 are false or were not substantiated at the time the representations were made.

34. Therefore, the making of the representations as set forth in Paragraphs 31 and 32 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 II

FALSE PROOF CLAIMS

35. Through the means described in Paragraphs 14 and 15, Defendants have represented, directly or indirectly, expressly or by implication, that:

- A. Sensa is clinically proven to cause substantial weight loss without dieting or exercise, averaging 30 pounds in six months; and
- B. A clinical study of more than 1400 people proves that Sensa causes users to lose an average of 30.5 pounds in six month, without changing their diets or exercise routines.

36. The representations set forth in Paragraph 35 are false.

37. Therefore, the making of the representations as set forth in Paragraph 35 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 III

FAILURE TO DISCLOSE MATERIAL CONNECTIONS WITH CONSUMER ENDORSERS

38. Through the means described in Paragraphs 14 and 15, Defendants have represented, directly or indirectly, expressly or by implication, that consumers appearing in advertisements for Sensa are satisfied users of Sensa.

39. In numerous instances in which Defendants have made the representations set forth in Paragraph 38, they have failed to disclose or disclose adequately that certain of the consumers appearing in their advertisements were offered incentives, such as possible monetary compensation, free trips, or television appearances, to provide an endorsement, or have been compensated in connection with their endorsement. These facts would have been material to consumers in deciding whether to purchase Sensa.

40. Defendants' failure to disclose or disclose adequately the material information described in Paragraph 39, in light of the representation described in Paragraph 38, 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 IV

FALSE CLAIM OF STUDY INDEPENDENCE

41. Through the means described in Paragraphs 14 and 15, Defendants have represented, directly or indirectly, expressly or by implication, that a clinical study conducted by a laboratory independently of Defendants proves Sensa's efficacy for weight loss.

42. The representation set forth in Paragraph 41 is false. The Corporate Defendants funded the study and participated in or exercised control over the design, conduct, and report of the study.

43. Therefore, the making of the representation as set forth in Paragraph 41 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 V

**UNSUBSTANTIATED EXPERT ENDORSEMENT CLAIMS
BY DEFENDANT HIRSCH**

44. Through the means described in Paragraphs 14 and 15, Defendant Hirsch, appearing as an expert endorser, has represented, expressly or by implication, that:

- A. Sensa causes substantial weight loss without dieting or exercise, averaging 30 pounds in six months;
- B. Sensa enables users to lose substantial weight without ever feeling hungry;
- C. Sensa is clinically proven to cause substantial weight loss without dieting or exercise, averaging 30 pounds in six months; and
- D. A clinical study of more than 1400 people proves that Sensa causes users to lose an average of 30.5 pounds in six month, without changing their diets or exercise routines.

45. Defendant Hirsch did not possess and rely upon a reasonable basis for the representations set forth in Paragraph 44 at the time the representations were made. Moreover, Defendant Hirsch did not exercise his purported expertise in the field of weight loss in the form of an examination or testing of Sensa and its purported scientific proof that was at least as extensive as an examination or testing that an expert in that field would normally conduct, in order to support the conclusions presented in his endorsements.

46. Therefore, the making of the representations set forth in Paragraph 44 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 VI

MEANS AND INSTRUMENTALITIES BY DEFENDANT HIRSCH

47. Defendant Hirsch has provided the Sensa Defendants with scientific, promotional, and other materials and services to assist the Sensa Defendants' marketing and sale of Sensa, including, but not limited to:

- A. Studies purporting to show that Sensa causes substantial weight loss without dieting or exercise, averaging 30 pounds in six months;
- B. His deceptive endorsement claims regarding Sensa; and
- C. Deceptive promotional materials.

48. By providing the Sensa Defendants with these materials and services, Defendant Hirsch has provided the Sensa Defendants with the means and instrumentalities for the commission of deceptive acts and practices.

49. Therefore, Defendant Hirsch's practices described in Paragraph 47 constitute

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

CONSUMER INJURY

50. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or 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

51. 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 any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

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. 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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