

Filed
4/28/94

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

_____)	
UNITED STATES OF AMERICA,)	
)	
	Plaintiff,)	COMPLAINT FOR CIVIL PENALTIES
)	AND OTHER RELIEF
	v.)	
)	
)	CIV. ACT. NO. 94 0686
GENERAL NUTRITION, INC.,)	
a corporation,)	
)	
	Defendant.)	
_____)	

Plaintiff, United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("Commission"), for its Complaint alleges that:

1. Plaintiff brings this action under Sections 5(1), 9, and 13(b) and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(1), 49, and 53(b) and 56(a) as amended, to obtain monetary civil penalties and injunctive relief for violations of two final cease and desist orders issued against defendant General Nutrition, Inc. ("GNC"), by the Commission, and to obtain permanent injunctive relief against GNC for engaging in unfair or deceptive 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 jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345 and 1355 and under 15 U.S.C. §§ 45(a), 45(1), 49, 52, 53(b), and 56(a).

3. Venue in the United States District Court for the Western District of Pennsylvania is proper under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b-c) and 1395(a).

THE PARTIES AND DEFENDANT'S BUSINESS

4. The Commission is an independent agency of the United States Government created by statute (15 U.S.C. § 41 et seq.). The Commission is charged, inter alia, with enforcing Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

5. Defendant GNC is a Pennsylvania corporation with its office and principal place of business located within the Western District of Pennsylvania at 921 Penn Avenue, Pittsburgh, PA.

6. GNC is in the business of advertising, labeling, packaging, promoting, offering for sale, selling, and distributing to members of the general public, throughout the United States, a variety of products manufactured and distributed by GNC and by third parties and marketed as nutritional supplements, weight-loss aids, energy boosting vitamin and mineral supplements, and hair care products for human consumption or use. These products are foods, cosmetics, and/or drugs, as the terms "food," "cosmetic," and "drug" are defined in Section

5, 12, and 15 of the FTC Act, 15 U.S.C. §§ 45, 52, and 55. GNC has advertised its nutritional supplements, weight-loss aids, energy boosting vitamin and mineral supplements, and hair care products by means of broadcast advertisements, product labels, newspaper advertisements, magazine advertisements, mail circulars, mail-order catalogs, in-store displays and in-store handouts. Defendant GNC maintains, and at all times mentioned herein 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.

PRIOR COMMISSION PROCEEDINGS

Commission Orders

7. In a Commission proceeding bearing Docket No. C-9175, in which defendant GNC was charged with violating Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1), the Commission on February 2, 1989, entered against GNC, its successors and assigns, and its officers, agents, representatives and employees, a consent order to cease and desist from certain practices in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of various products. General Nutrition, Inc., 111 F.T.C. 387 (1989) ("1989 Order"). The 1989 Order contains the following provisions:

II.

It is further ordered, That respondent [GNC], its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture,

advertising, labeling, packaging, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting in any manner, directly or by implication, the purpose, content, sample, reliability, results or conclusions of any scientific test, research article, or any other scientific opinion or data, with respect to such product's ability to cure, treat, prevent or reduce the risk of developing any disease in humans.

III.

It is further ordered, That respondent, its successors and assigns, officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of "Challenge Growth and Training Vita-Pak," "Challenge Free Form Amino Acids," "Life Expander Growth Hormone Releaser," or "24 Hour Diet Plan," or any other free form amino acid nutrient supplement containing arginine, ornithine, tryptophane or a combination thereof, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

A. Any such nutrient supplement will stimulate greater production or release of human growth hormone in users than non-users;

B. Any such nutrient supplement will aid a user in achieving greater or faster muscular development than a non-user or will aid a user in achieving muscular development similar to or superior to the kind generally believed by bodybuilders to be achievable through the use of anabolic steroids, e.g., rapid or substantial muscular development;

C. Any such nutrient supplement will burn away fat or otherwise alter human metabolism to use up or "burn" stored fat, rather than stored carbohydrates, or will aid a user in attaining greater weight loss during sleep than a non-user; or

D. Any such nutrient supplement will expand, extend, or prolong life, or retard aging.

* * *

V.

It is further ordered, That respondent, its successors and assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale or distribution of any product, in or affecting commerce, as "commerce" is defined in

the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication:

A. Concerning such product's ability to cure, treat, prevent or reduce the risk of developing any disease in humans;

B. That such product assists or enables a user to lose or control weight or fat, or suppress appetite;

C. That such product expands, extends, or prolongs life or retards aging; or

D. That such product aids a user in achieving greater or faster muscular development than a non-user or aids a user in achieving greater endurance, strength, power or stamina or shorter exercise recovery or recuperation time than a non-user, unless, at the time of making such representation (V. A-D above), respondent possesses and relies upon reliable and competent scientific evidence that substantiates the representation.

Provided however, that respondent is not liable under this paragraph for any representation contained on a package label or package insert for a product that meets all of the following conditions:

1. The product is manufactured and distributed by a third party and is not manufactured or distributed exclusively for respondent;

2. The product is generally available at competing retail outlets;

3. The product is not identified with respondent and does not contain respondent's name or logo;

4. The product was not developed or manufactured at the instigation or with the assistance of respondent; and,

5. The product representation is not otherwise advertised or promoted by respondent.

* * *

VII.

It is further ordered, That for three (3) years after the last date of dissemination of the representation, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying copies of:

1. All materials that were relied upon by respondent in disseminating any representation covered by this order; and,

2. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question any representation made by respondent that is covered by this order.

8. The 1989 Order was served upon GNC on February 13, 1989, and by operation of law became final and enforceable thereafter. It has remained in full force and effect ever since.

9. Copies of the Commission's Complaint, the Consent Agreement, and the 1989 Order are attached to this Complaint as Exhibit A.

10. In a Commission proceeding bearing Docket No. C-1517, in which defendant GNC was charged with violating Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1), the Commission on April 4, 1969, entered against GNC, and its officers, agents, representatives and employees, a consent order to cease and desist from certain practices in connection with the offering for sale, sale, or distribution of various products. General Nutrition Corporation, et al., 75 F.T.C. 529 (1969). Paragraph 2 of the order, not at issue in this case, was modified at 77 F.T.C. 1458 (1970). (The final, modified order is referred to herein as the "1970 Order"). The 1970 Order contains the following provisions:

It is ordered, That respondents General Nutrition Corporation, a corporation, also trading as Natural Sales Company, or under any other name or names, and its officers, and David B. Shakarian, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of Geri-Gen Liquid, Geri-Gen Tablets or Hemotrex, or any other food or drug preparation containing vitamins and/or minerals, do forthwith cease and desist from:

1. Disseminating, or causing to be disseminated, by means of the United States mails or by any means in commerce, as

"commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication that:

(a) The use of such preparations will be of benefit in the prevention, relief or treatment of tiredness, listlessness, lack of normal appetite, "depleted" feeling, "run-down" feeling, easy fatigability or any other symptom, unless such representation is expressly limited to a symptom or symptoms caused by a deficiency of one or more of the vitamins or iron provided by such preparations; and, further, unless such advertisement also discloses clearly and conspicuously, in immediate or close proximity, and with equal prominence, to any such representations:

(1) That, in the great majority of persons suffering from any such symptom or symptoms, the preparations will be of no benefit in the prevention, treatment or relief of such symptom or symptoms; and

* * *

(3) That the presence of a deficiency of the B vitamins, or of any vitamin, cannot be self-diagnosed and can be determined only by means of medical or laboratory tests conducted by or under the supervision of a physician.

11. Copies of the Commission's Complaint, the Consent Agreement, and the 1970 Order are attached to this Complaint as Exhibit B.

VIOLATIONS OF THE COMMISSION ORDERS

12. All of the acts or practices alleged herein were in or affecting commerce, as "commerce" is defined in the FTC Act.

FIRST CAUSE OF ACTION

13. In numerous instances, GNC, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale or distribution of 100% Egg Amino 1500, a free form amino acid nutrient supplement containing ornithine, violated Part III of the 1989 Order by representing, directly or by implication, through the display of product labels in stores, that 100% Egg Amino 1500 will stimulate greater production or release of human growth hormone in users than in non-users (Part III(A)), and will

aid a user in achieving greater or faster muscular development than a non-user (Part III(B)).

14. In numerous instances, GNC, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale or distribution of Amino 2300, a free form amino acid nutrient supplement containing ornithine, violated Part III of the 1989 Order by representing, directly or by implication, through the display of product labels in stores, that Amino 2300 will stimulate greater production or release of human growth hormone in users than in non-users (Part III(A)), and will aid a user in achieving greater or faster muscular development than a non-user (Part III(B)).

15. In numerous instances, GNC, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale or distribution of Amino 1500 (Optimal Research), a free form amino acid nutrient supplement containing ornithine, violated Part III of the 1989 Order by representing, directly or by implication, through the display of product labels in stores, that Amino 1500 (Optimal Research) will stimulate greater production or release of human growth hormone in users than in non-users (Part III(A)), and will aid a user in achieving greater or faster muscular development than a non-user (Part III(B)).

16. In numerous instances, GNC, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale or distribution of Amino 1500 (Mega-Pro International), a free form amino acid nutrient supplement containing ornithine and

arginine, violated Part III of the 1989 Order by representing, directly or by implication, through the display of product labels in stores, that Amino 1500 (Mega-Pro International) will aid a user in achieving greater or faster muscular development than a non-user (Part III(B)).

17. In numerous instances, GNC, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale or distribution of GH Formula GH Release, a free form amino acid nutrient supplement containing ornithine and arginine, violated Part III of the 1989 Order by representing, directly or by implication, through the display of product labels in stores, that GH Formula GH Release will stimulate greater production or release of human growth hormone in users than in non-users (Part III(A)).

18. In numerous instances, GNC, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale or distribution of Maximum G-H, a free form amino acid nutrient supplement containing ornithine and arginine, violated Part III of the 1989 Order by representing, directly or by implication, through the display of product labels in stores, that Maximum G-H will stimulate greater production or release of human growth hormone in users than in non-users (Part III(A)), and will aid a user in achieving greater or faster muscular development than a non-user (Part III(B)).

19. In numerous instances, GNC, in connection with the manufacture, advertising, labeling, packaging, offering for sale,

sale or distribution of Super Meg-Amino, a free form amino acid nutrient supplement containing ornithine and arginine, violated Part III of the 1989 Order by representing, directly or by implication, through the display of product labels in stores, that Super Meg-Amino will stimulate greater production or release of human growth hormone in users than in non-users (Part III(A)), and will aid a user in achieving greater or faster muscular development than a non-user (Part III(B)).

20. In numerous instances, GNC, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale or distribution of Right Stuff, a free form amino acid nutrient supplement containing ornithine and arginine, violated Part III of the 1989 Order by representing, directly or by implication, through the display of product labels in stores, that Right Stuff will stimulate greater production or release of human growth hormone in users than in non-users (Part III(A)), and will aid a user in achieving greater or faster muscular development than a non-user (Part III(B)).

SECOND CAUSE OF ACTION

21. In numerous instances, GNC, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of Sleeper's Diet, a free form amino acid nutrient supplement containing arginine and ornithine, violated Part III(C) of the 1989 Order by representing, directly or by implication, in newspaper advertisements, in mail circulars, in in-store displays, in in-store handouts, and through the display

of product labels in stores, that Sleeper's Diet aids a user in attaining greater weight loss during sleep than a non-user.

THIRD CAUSE OF ACTION

22. On March 15, 1989, GNC entered into a contract with Nature's Bounty, Inc., whereby Nature's Bounty (through its subsidiary, Specialized Manufacturing and Marketing Corp.) purchased assets of GNC's mail order catalog business. Under an accompanying Literature License Agreement, GNC retained control over the content of advertising and other aspects of subsequent catalogs. From about April 1989 through February 1991, seventeen (17) catalogs portrayed in various ways as joint GNC/Puritan's Pride publications were disseminated to the public. (Puritan's Pride, Inc., is a subsidiary of Nature's Bounty.) These catalogs contain representations for which GNC is liable under the 1989 Order.

23. Specifically, GNC, directly or through Nature's Bounty, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of CATA-Rx, later renamed, Eye-Vites, violated Part II of the 1989 Order by misrepresenting, directly or by implication, in catalogs, the results or conclusions of scientific tests and research articles with respect to the ability of CATA-Rx and Eye-Vites to cure, treat, prevent or reduce the risk of developing any disease in humans.

24. In addition, GNC, directly or through Nature's Bounty, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of free form amino acid nutrient supplements containing arginine or ornithine, violated Part III of the 1989 Order by representing, directly or by implication, in catalogs, that:

- (a) L-Arginine 500 mg. tablets will stimulate greater production or release of human growth hormone in users than in non-users (Part III(A) of Order);
- (b) L-Ornithine 500 mg. tablets will stimulate greater production or release of human growth hormone in users than in non-users (Part III(A) of Order).

25. In addition, GNC, directly or through Nature's Bounty, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of products, violated Part V of the 1989 Order by representing, directly or by implication, in catalogs, without possessing and relying upon reliable and competent scientific evidence that substantiated the representations:

- (c) That Octacosanol aids a user in achieving greater endurance, strength, power or stamina than a non-user (Part V(D) of Order);
- (d) That New Zealand Green Lipped Mussel Extract cures, treats, prevents or reduces the risk of developing any disease in humans (Part V(A) of Order);
- (e) That Ginsana aids a user in achieving greater

- endurance than a non-user (Part V(D) of Order);
- (f) That KLB6 assists or enables a user to lose or control weight or fat (Part V(B) of Order);
 - (g) That Glucomannan assists or enables a user to lose or control weight or fat (Part V(B) of Order);
 - (h) That Sugar Blocker assists or enables a user to lose or control weight or fat (Part V(B) of Order);
 - (i) That Spirulina 500 mg. tablets assists or enables a user to lose or control weight or fat, or suppress appetite (Part V(B) of Order);
 - (j) That Fatbuster Diet Tea assists or enables a user to lose or control weight or fat (Part V(B) of Order);
 - (k) That KLB6 Grapefruit Diet assists or enables a user to lose or control weight or fat, or suppress appetite (Part V(B) of Order);
 - (l) That Shake-A-Weigh assists or enables a user to lose or control weight or fat (Part V(B) of Order);
 - (m) That Herbal Cellulex Formula assists or enables a user to lose or control weight or fat (Part V(B) of Order);

FOURTH CAUSE OF ACTION

26. In numerous instances, GNC, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of Dynamic Fat Burners, violated Part V(B) of the 1989 Order by representing, directly or by implication, in

newspaper advertisements, in in-store handouts, in mail circulars, and through the display of product labels in stores, that Dynamic Fat Burners assists or enables a user to lose or control weight or fat, or suppress appetite, without possessing and relying upon reliable and competent scientific evidence that substantiated such representations.

27. None of the representations made through the display of product labels in stores, referred to in paragraph 26 above, meets the conditions of the proviso in Part V of the 1989 Order that would relieve GNC of liability for such claims.

FIFTH CAUSE OF ACTION

28. In numerous instances, GNC, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of Fat Burners, violated Part V(B) of the 1989 Order by representing, directly or by implication, in mail circulars, in newspaper advertisements, in in-store displays, and through the display of product labels in stores, that Fat Burners assists or enables a user to lose or control weight or fat, or suppress appetite, without possessing and relying upon reliable and competent scientific evidence that substantiated such representations.

29. None of the representations made through the display of product labels in stores, referred to in paragraph 28 above, meets the conditions of the proviso in Part V of the 1989 Order that would relieve GNC of liability for such claims.

SIXTH CAUSE OF ACTION

30. In numerous instances, GNC, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of Super Fat Burners, violated Part V(B) of the 1989 Order by representing, directly or by implication, in magazine advertisements, in mail circulars, in in-store handouts, in in-store displays, and through the display of product labels in stores, that Super Fat Burners assists or enables a user to lose or control weight or fat, or suppress appetite, without possessing and relying upon reliable and competent scientific evidence that substantiated such representations.

31. None of the representations made through the display of product labels in stores, referred to in paragraph 30 above, meets the conditions of the proviso in Part V of the 1989 Order that would relieve GNC of liability for such claims.

SEVENTH CAUSE OF ACTION

32. In numerous instances, GNC, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of Super Fat Blocker, violated Part V(B) of the 1989 Order by representing, directly or by implication, in mail circulars and through the display of product labels in stores, that Super Fat Blocker assists or enables a user to lose or control weight or fat, or suppress appetite, without possessing and relying upon reliable and competent scientific evidence that substantiated such representations.

33. None of the representations made through the display of product labels in stores, referred to in paragraph 32 above, meets the conditions of the proviso in Part V of the 1989 Order that would relieve GNC of liability for such claims.

EIGHTH CAUSE OF ACTION

34. In numerous instances, GNC, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of Fat Metabolizer Diet, violated Part V(B) of the 1989 Order by representing, directly or by implication, in in-store displays and through the display of product labels in stores, that Fat Metabolizer Diet assists or enables a user to lose or control weight or fat, or suppress appetite, without possessing and relying upon reliable and competent scientific evidence that substantiated such representations.

35. None of the representations made through the display of product labels in stores, referred to in paragraph 34 above, meets the conditions of the proviso in Part V of the 1989 Order that would relieve GNC of liability for such claims.

NINTH CAUSE OF ACTION

36. In numerous instances, GNC, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of Primary Tablet, violated Part V(B) of the 1989 Order by representing, directly or by implication, in broadcast advertisements, in mail circulars, and through the display of product labels in stores, that Primary Tablet assists or enables a user to lose or control weight or fat, or suppress

appetite, without possessing and relying upon reliable and competent scientific evidence that substantiated such representations.

37. None of the representations made through the display of product labels in stores, referred to in paragraph 36 above, meets the conditions of the proviso in Part V of the Order that would relieve GNC of liability for such claims.

TENTH CAUSE OF ACTION

38. In numerous instances, GNC, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of Diet Pep, violated Part V(B) of the 1989 Order by representing, directly or by implication, in broadcast advertisements, in mail circulars, and through the display of product labels in stores, that Diet Pep assists or enables a user to lose or control weight or fat, or suppress appetite, without possessing and relying upon reliable and competent scientific evidence that substantiated such representations.

39. None of the representations made through the display of product labels in stores, referred to in paragraph 38 above, meets the conditions of the proviso in Part V of the 1989 Order that would relieve GNC of liability for such claims.

ELEVENTH CAUSE OF ACTION

40. In numerous instances, GNC, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of Protabalase ME, violated Part V(D) of the 1989 Order by representing, directly or by implication, in

broadcast advertisements, and through the display of product labels in stores, that Protabalase ME aids a user in achieving greater or faster muscular development than a non-user, without possessing and relying upon reliable and competent scientific evidence that substantiated such representations.

41. None of the representations made through the display of product labels in stores, referred to in paragraph 40 above, meets the conditions of the proviso in Part V of the 1989 Order that would relieve GNC of liability for such claims.

TWELFTH CAUSE OF ACTION

42. In numerous instances, GNC, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of Cybergenics Phase I, violated Part V(D) of the 1989 Order by representing, directly or by implication, in broadcast advertisements, in print advertisements, and through the display of product labels in stores, that Cybergenics Phase I aids a user in achieving greater or faster muscular development than a non-user, without possessing and relying upon reliable and competent scientific evidence that substantiated such representations.

43. None of the representations made through the display of product labels in stores, referred to in paragraph 42 above, meets the conditions of the proviso in Part V of the 1989 Order that would relieve GNC of liability for such claims.

THIRTEENTH CAUSE OF ACTION

44. In numerous instances, GNC, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of Liquid Power Energy Lift, violated Part V(D) of the 1989 Order by representing, directly or by implication, in broadcast advertisements, that Liquid Power Energy Lift aids a user in achieving greater or faster muscular development than a non-user, and aids a user in achieving greater endurance, strength, power or stamina or shorter exercise recovery or recuperation time than a non-user, without possessing and relying upon reliable and competent scientific evidence that substantiated such representations.

FOURTEENTH CAUSE OF ACTION

45. In numerous instances, GNC, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of Muscle Fire Power, violated Part V(D) of the 1989 Order by representing, directly or by implication, in broadcast advertisements, in mail circulars, and through the display of product labels in stores, that Muscle Fire Power aids a user in achieving greater or faster muscular development than a non-user, and aids a user in achieving greater endurance, strength, power or stamina or shorter exercise recovery or recuperation time than a non-user, without possessing and relying upon reliable and competent scientific evidence that substantiated such representations.

46. None of the representations made through the display of product labels, referred to in paragraph 45 above, meets the conditions of the proviso in Part V of the 1989 Order that would relieve GNC of liability for such claims.

FIFTEENTH CAUSE OF ACTION

47. In numerous instances, GNC, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of Hot Stuff, violated Part V(D) of the 1989 Order by representing, directly or by implication, in in-store handouts, that Hot Stuff aids a user in achieving greater or faster muscular development than a non-user, without possessing and relying upon reliable and competent scientific evidence that substantiated such representations.

SIXTEENTH CAUSE OF ACTION

48. In numerous instances, GNC, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of Cybergain, violated Part V(D) of the 1989 Order by representing, directly or by implication, in in-store displays and through the display of product labels in stores, that Cybergain aids a user in achieving greater or faster muscular development than a non-user, without possessing and relying upon reliable and competent scientific evidence that substantiated such representations.

49. None of the representations made through the display of product labels in stores, referred to in paragraph 48 above,

meets the conditions of the proviso in Part V of the 1989 Order that would relieve GNC of liability for such claims.

SEVENTEENTH CAUSE OF ACTION

50. With regard to the representations set forth in the Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth and Sixteenth Causes of Action, GNC has refused to make available to the Federal Trade Commission the substantiation it is required to possess, maintain, and make available pursuant to Parts V and VII of the 1989 Order, thereby violating Part VII of the 1989 Order.

EIGHTEENTH CAUSE OF ACTION

51. In numerous instances, GNC, in connection with the offering for sale, sale, or distribution of Quick Shot Energy Pak, violated Paragraph 1(a) of the 1970 Order by representing, directly or by implication, in broadcast advertisements, in print advertisements, and in in-store displays, that the vitamins in Quick Shot Energy Pak will be of benefit in the prevention, relief or treatment of tiredness, listlessness, "depleted" feeling, "run-down" feeling, or easy fatigability, without making the affirmative disclosures required by Paragraph 1(a).

NINETEENTH CAUSE OF ACTION

52. In numerous instances, GNC, in connection with the offering for sale, sale, or distribution of Sublingual B Total, violated Paragraph 1(a) of the 1970 Order by representing, directly or by implication, in broadcast advertisements, that the vitamins in Sublingual B Total will be of benefit in the

prevention, relief or treatment of tiredness, listlessness, "depleted" feeling, "run-down" feeling, or easy fatigability, without making the affirmative disclosures required by Paragraph 1(a).

CIVIL PENALTIES AND INJUNCTION

53. Each copy of each print advertisement (including newspaper advertisements, magazine advertisements, mail circulars, mail-order catalogs, and in-store handouts) described in the Second, Third, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth, Twelfth, Fourteenth, and Fifteenth Causes of Action, each appearance of each in-store display described in the Second, Fifth, Sixth, Eighth, and Sixteenth Causes Of Action, each broadcast of each television advertisement described in the Ninth, Tenth, Eleventh, Twelfth, Thirteenth, and Fourteenth Causes of Action, and each appearance of each product label described in the First, Second, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Twelfth, Fourteenth, and Sixteenth Causes of Action, since the issuance of the 1989 Order and within five years of the filing of this Complaint, constitutes a separate violation of the 1989 Order for the purposes of computing monetary civil penalties.

54. Each copy of each print advertisement described in the Eighteenth Cause of Action, each appearance of each in-store display described in the Eighteenth Cause of Action, and each broadcast of each television advertisement described in the Eighteenth and Nineteenth Causes of Action, since the issuance of

the 1970 Order and within five years of the filing of this Complaint, constitutes a separate violation of the 1970 Order for the purposes of computing monetary civil penalties.

55. Section 5(1) of the FTC Act, 15 U.S.C. § 45(1), authorizes the Court to award monetary civil penalties of not more than \$10,000 for each such violation of the Commission's 1989 and 1970 Orders.

56. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction against any defendant's violating the FTC Act.

VIOLATIONS OF §§ 5(a) AND 12 OF THE FTC ACT

57. In connection with the advertising and sale of various hair care products, GNC has represented, directly or by implication, that Biotin Hair Care Kit, Biotin Shampoo, Biotin Conditioner, Biotin Vitamins and Minerals for The Hair, and Polysorbate 80, will prevent or retard hair loss. In truth and in fact, Biotin Hair Care Kit, Biotin Shampoo, Biotin Conditioner, Biotin Vitamins and Minerals for The Hair, and Polysorbate 80, will not prevent or retard hair loss.

58. Therefore, the representations set forth in paragraph 57 were and are false and misleading, and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and false advertisements in violation of Section 12 of the FTC Act, 15 U.S.C. § 52.

59. Through the use of the advertisements referenced in paragraph 57, defendant represented, directly or by implication,

that, at the time defendant made the representations set forth in paragraph 57, it possessed and relied upon a reasonable basis for those representations.

60. In truth and in fact, at the time defendant made the representations set forth in paragraph 57, defendant did not possess and rely upon a reasonable basis for such representations.

61. Therefore the representations set forth in paragraph 59 were and are false and misleading, and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

CONSUMER INJURY

62. Consumers have in fact been injured by GNC's violations of Sections 5(a) and 12 of the FTC Act. GNC's false representations have misled consumers, and have induced consumers to buy products that do not perform as advertised. As a result of GNC's acts or practices set forth in paragraphs 57 and 59 above, consumers have suffered, and will continue to suffer, substantial financial injury.

THIS COURT'S POWER TO GRANT RELIEF

63. Section 13(b) of the FTC Act empowers this Court to issue injunctive and other relief against violations of the FTC Act and, in the exercise of its equitable jurisdiction, to award redress to remedy the injury to consumers. Defendant's violations of Sections 5(a) and 12 of the FTC Act were likely to injure and have injured consumers and, absent injunctive relief

by this Court, are likely to continue to injure consumers and harm the public interest.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests this Court, pursuant to 15 U.S.C. §§ 45(1), 49, 53(b), and to the Court's own equity powers, to:

(1) Enter judgment against defendant and in favor of plaintiff for each violation alleged in this Complaint;

(2) Award plaintiff monetary civil penalties from defendant for each violation of the Commission's 1989 and 1970 Orders alleged in this Complaint;

(3) Enjoin defendant from further violating the Commission's 1989 and 1970 Orders and this Court's Order;

(4) Permanently enjoin defendant, in connection with the advertising, labeling, packaging, offering for sale, sale, or distribution of any hair care product from committing deceptive acts or practices in violation of Sections 5(a) and 12 of the FTC Act as alleged herein.

(4) Order defendant to pay the costs of this action; and

(5) Award plaintiff such additional relief as the Court may deem just and proper.

DATED:

FOR THE UNITED STATES OF AMERICA:

Of Counsel:

Frank W. Hunger
Assistant Attorney General
Civil Division
U.S. Department of Justice

FOR THE UNITED STATES OF AMERICA:

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Assistant Attorney General
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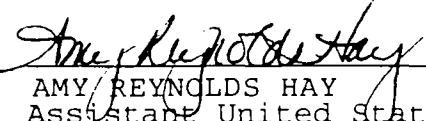
Of Counsel:

DEAN C. GRAYBILL
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for Enforcement

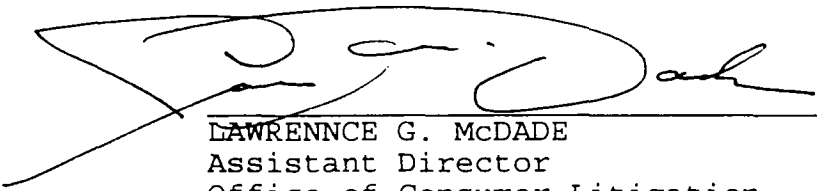
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