

1 WILLIAM E. KOVACIC
General Counsel
2
3 JAMES R. GOLDER
JUDITH A. SHEPHERD
THOMAS B. CARTER
4 Attorneys for Plaintiff
Federal Trade Commission
5 1999 Bryan Street, Suite 2150
Dallas, TX 75201-6803
6 214-979-9376 (Golder)
214-979-9383 (Shepherd)
7 214-979-9372 (Carter)
214-953-3079 (facsimile)
8
9 JOHN K. VINCENT
United States Attorney
10 Edmund F. Brennan
Assistant United States Attorney
11 501 "I" Street, Suite 10-100
Sacramento, CA 95814-2322
12 916-554-2700
916-554-2900 (facsimile)

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16 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
17

18 FEDERAL TRADE COMMISSION,)
19)
20 Plaintiff)
21 v.)
22 WESTERN BOTANICALS, INC.,)
a corporation, and)
23 RANDY C. GIBONEY and KYLE D.)
24 CHRISTENSEN,)
individually and as officers of the)
25 corporation,)
26 Defendants.)
27)

Civil Action No.

Complaint for Permanent
Injunction and Other Equitable
Relief

1 Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), by its undersigned
2 attorneys, alleges:

3 1. The FTC brings this action under Section 13(b) of the Federal Trade Commission
4 Act ("FTC Act"), 15 U.S.C. § 53(b), to secure a permanent injunction and other equitable relief
5 against defendants for their deceptive acts or practices and false advertisements for foods, drugs,
6 devices, services or cosmetics in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C.
7 §§ 45(a) and 52.

8 **JURISDICTION AND VENUE**

9 2. This Court has subject matter jurisdiction over this matter pursuant to 15 U.S.C.
10 §§ 45(a), 52, and 53(b) and 28 U.S.C. §§ 1331, 1337(a) and 1345.

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

13 **PLAINTIFF**

14 4. Plaintiff, the FTC, is an independent agency of the United States government
15 created by statute, 15 U.S.C. §§ 41-58. The FTC enforces Sections 5(a) and 12 of the FTC Act,
16 15 U.S.C. §§ 45(a) and 52, which prohibit, respectively, deceptive acts and practices, and false
17 advertisements for food, drugs, devices, cosmetics, or services, in or affecting commerce. The
18 FTC may initiate federal district court proceedings to enjoin violations of the FTC Act and to
19 secure such equitable relief as is appropriate in each case. 15 U.S.C. § 53(b).

20 **DEFENDANTS**

21 5. Defendant Western Botanicals, Inc. is a California corporation with its principal
22 place of business at 7341 Winding Way, Fair Oaks, CA 95628. Western Botanicals, Inc.,
23 transacts or has transacted business in the Eastern District of California.

24 6. Defendant Randy C. Giboney is president of Western Botanicals, Inc.
25 Individually, or in concert with others, he directs, controls, formulates, or participates in the acts
26 and practices of Western Botanicals, Inc., including the acts and practices complained of below.
27 He transacts or has transacted business in the Eastern District of California.

1 becoming increasingly anxious to tap into the financial growth of the emerging
2 herbal market. . . Within each herb are the cofactors, synergists, buffers and
3 supporting chemicals that render the utilization of the active ingredients safe,
4 nontoxic and balancing to the body. [Exhibit B]

5 c) Comfrey root . . . has expectorant, astringent [sic], soothing, and healing effects.
6 It reduces inflammation and controls bleeding. Use internally for chronic
7 bronchial diseases, gastric and duodenal ulcers, and colitis. Use externally for
8 psoriasis, eczema, sores, varicose veins, and ulcers, arthritis, sprains, strains,
9 bruises, bunions, hemorrhoids, sore breasts during lactation, injuries and fractures.
[Exhibit C]

10 d) Comfrey leaf . . . Use internally for chronic bronchial diseases, gastritis and
11 duodenal ulcers, colitis, and rheumatism. Externally for psoriasis, eczema, sores,
12 varicose veins and ulcers, arthritis, sprains, bunions, hemorrhoids, sore breasts
13 during lactation, and injuries including fractures. [Exhibit D]

14 e) Arthritis Tonic . . . These herbs work to reduce pain, relieve inflammation and
15 repair damaged tissues. . . DOSAGE: Take one teaspoon 1 to 3 times daily or a
16 [sic] recommended by your health providers. [Exhibit E]

17 f) Complete Tissue Repair Syrup & Ointment . . . An herbal combination designed
18 to aid and speed the recovery of connective tissue, injuries or problems. . . . Apply
19 the ointment to wounds, burns (amazing), injuries, ulcer, sores, rashes, cuts,
20 bruises, etc. Syrup helps to heal the body from the inside - out. We recommend
21 syrup for any injury or degenerative bone, muscle or nerve conditions such as
22 osteoporosis, arthritis, MS, ALS, etc. For external use only. (refer to Healing
23 Injuries on page 20) . . . DOSAGE: Apply generously externally over injuries or
24 wounds. Do not remove excess CTR ointment when applying new, just keep
25 adding the ointment until the area is healed. Syrup is taken 1 to 3 teaspoons 2 to 3
26 times daily. [Exhibit F]

27 g) [In “pop-ups” on on-line order form for comfrey root and comfrey leaf sold in
28 bulk: “Fresh Unsafe”; “Certified Unsafe”] [By reference in printed retail and
wholesale price lists: “Herbs which the FDA considers unsafe for human
consumption”] [Exhibit G]

13. Defendants sell comfrey leaf and comfrey root to consumers for prices ranging
from \$6.05 to \$8.10 per ounce. Defendants sell Arthritis Tonic to consumers for \$16.60 (8 oz.),
Complete Tissue Repair Syrup for \$9.00 (4 oz.), and Complete Tissue Repair Ointment for
\$13.70 (4 oz.). Consumers pay for their purchases of defendants’ products by check, money
order, or credit card.

DEFENDANTS’ VIOLATIONS OF SECTIONS 5(a) AND 12 OF THE FTC ACT

14. As set forth below, defendants have violated Sections 5(a) and 12 of the FTC Act,
15 U.S.C. § § 45(a) and 52, in connection with the offer, sale, advertising, promotion or

1 distribution of their comfrey products.

2 15. Defendants' comfrey products, offered and sold for internal use, are either
3 "foods" or "drugs" for purposes of Sections 12 and 15 of the FTC Act, 15 U.S.C. §§ 52 and 55.

4 **Safety Representations**

5 16. Through their advertising and promotional materials, including but not limited to
6 the representations set forth in Paragraph 12 above, defendants have represented, expressly or by
7 implication, that their comfrey products are safe for consumers, including nursing women, when
8 taken internally, as oral preparations, and when applied externally to burns, sores, and other open
9 wounds.

10 17. In truth and fact, comfrey and products containing comfrey are not safe when
11 taken internally, whether as oral preparations or applied to open wounds. Comfrey contains
12 pyrrolizidine alkaloids which have been linked to serious illness, occasionally leading to death.
13 Internal consumption of comfrey can cause serious liver damage. Therefore, the making of the
14 representation set forth in Paragraph 16 was, and is, a deceptive practice and constitutes false
15 advertising for a food or drug, in violation of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

16 18. Defendants did not possess and rely upon a reasonable basis that substantiated the
17 representation set forth in Paragraph 16, at the time the representation was made. Therefore, the
18 making of the representation set forth in Paragraph 16 is a deceptive practice and constitutes false
19 advertising for a food or drug, in violation of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

20 **Efficacy Representations**

21 19. Through their advertising and promotional materials, including but not limited to
22 the representations set forth in Paragraph 12(c) above, defendants have represented, expressly or
23 by implication, that comfrey root, taken internally, is effective in the treatment of chronic
24 bronchial diseases, gastric and duodenal ulcers, and colitis.

25 20. Through their advertising and promotional materials, including but not limited to
26 the representations set forth in Paragraph 12(d), above, defendants have represented, expressly or
27 by implication, that comfrey leaf, taken internally, is effective in the treatment of chronic
28 bronchial diseases, gastritis and duodenal ulcers, colitis, and rheumatism.

1 21. Through their advertising and promotional materials, including but not limited to
2 the representations set forth in Paragraph 12(e), above, defendants have represented, expressly or
3 by implication, that Arthritis Tonic, taken internally, is effective to reduce pain, relieve
4 inflammation, and repair tissues damaged by arthritis.

5 22. Through their advertising and promotional materials, including but not limited to
6 the representations set forth in Paragraph 12(f), above, defendants have represented, expressly or
7 by implication, that Complete Tissue Repair Syrup, taken internally, is effective in the treatment
8 of all injuries and degenerative bone, muscle and nerve conditions, including osteoporosis,
9 arthritis, multiple sclerosis, and amyotrophic lateral sclerosis.

10 23. Defendants did not possess and rely upon a reasonable basis that substantiated the
11 representations set forth in Paragraphs 19 through 22, at the time the representations were made.
12 Therefore, the making of the representations set forth in Paragraphs 19 through 22 is a deceptive
13 practice and constitutes false advertising for a food or drug, in violation of the FTC Act, 15
14 U.S.C. §§ 45(a) and 52.

15 **CONSUMER INJURY**

16 24. As a result of defendants' unlawful acts or practices, consumers throughout the
17 United States have suffered and continue to suffer monetary loss and possible injuries to their
18 health. Defendants also have been unjustly enriched as a result of their unlawful practices.
19 Absent injunctive relief by this Court, the defendants are likely to continue to injure consumers,
20 reap unjust enrichment, and harm the public interest.

21 **THIS COURT'S POWER TO GRANT RELIEF**

22 25. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes this Court to grant
23 injunctive and other equitable relief, including consumer redress, disgorgement and restitution, to
24 prevent and remedy any violations of any provision of law enforced by the Commission.

25 **PRAYER FOR RELIEF**

26 WHEREFORE plaintiff Federal Trade Commission pursuant to Section 13(b) of the FTC
27 Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that this Court:

- 28 1. Permanently enjoin defendants from violating the FTC Act as alleged herein;

