

1 WILLIAM E. KOVACIC
General Counsel

2 LEMUEL DOWDY
3 ROBIN ROSEN SPECTOR
4 VICTOR DEFRANCIS
Attorneys for Plaintiff
Federal Trade Commission
5 600 Pennsylvania Ave, N.W., Room NJ-2122
Washington, DC 20580
6 Telephone: (202) 326-2981 or -3740
Facsimile: (202) 326-2558

7 JOHN JACOBS
8 CA Bar No. 134154
Federal Trade Commission
9 10877 Wilshire Boulevard, Suite 700
Los Angeles, CA 90024
10 Telephone: (310) 824-4343
Facsimile: (310) 824-4380

11 Attorneys for Plaintiff
12

13 **UNITED STATES DISTRICT COURT**
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

15 _____
16 **FEDERAL TRADE COMMISSION,**

17 **Plaintiff,**

18 **v.**

19 **SAVVIER, INC.,**
20 **SAVVIER, LP,**
GREER CHILDERS,
21 **JACK CHING CHUNG CHANG,**
JEFFREY T. TULLER, and
KEITH GREER,

22 **Defendants.**
23

) **Civil Action No.**

) **COMPLAINT FOR**
) **PERMANENT**
) **INJUNCTION AND**
) **OTHER EQUITABLE**
) **RELIEF**
24

25 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), through
26 its undersigned attorneys, alleges as follows:

1 **1.** Plaintiff FTC brings this action under Section 13(b) of the Federal Trade
2 Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to secure a permanent
3 injunction, consumer redress, disgorgement, and other equitable relief
4 against the Defendants for engaging in deceptive acts or practices in
5 connection with the advertising, marketing, and sale of the BodyFlex+
6 System (“BodyFlex”), including an exercise bar and breathing technique,
7 which purportedly causes rapid inch loss and burns fat, in violation of
8 Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

9 **JURISDICTION AND VENUE**

- 10 **2.** This Court has subject matter jurisdiction over this matter under 15 U.S.C.
11 §§ 45(a), 52, and 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.
12 **3.** Venue in this district is proper under 15 U.S.C. § 53(b) and 28 U.S.C.
13 §§ 1391(b) and (c).

14 **THE PARTIES**

15 **4.** Plaintiff, the Federal Trade Commission, is an independent agency of the
16 United States Government created by statute. *See* 15 U.S.C. §§ 41-58. The
17 Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which
18 prohibits unfair or deceptive acts or practices in or affecting commerce. The
19 Commission also enforces Section 12 of the FTC Act, 15 U.S.C. § 52, which
20 prohibits false advertisements for food, drugs, devices, services, or
21 cosmetics in or affecting commerce. The Commission may initiate federal
22 district court proceedings, through its attorneys, to enjoin violations of the
23 FTC Act and to secure such other equitable relief, including rescission of
24 contracts and restitution, and disgorgement of ill-gotten gains, as may be
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1 appropriate in each case. 15 U.S.C. § 53(b).

2 **5.** Defendant Savvier, Inc. (“Savvier”), is a closely held California corporation
3 located at 74948 Saguaro Lane, Indian Wells, California 92210 and/or
4 19191 S. Vermont Avenue, Suite 750, Torrance, CA 90502. At all times
5 relevant to this Complaint, acting individually or in concert with others,
6 Savvier has marketed and sold BodyFlex to consumers throughout the
7 United States. Savvier transacts or has transacted business in the Central
8 District of California.

9 **6.** Defendant Savvier, LP is a limited partnership located at 5790 Fleet Street,
10 Suite 130, Carlsbad, California 92008. At all times relevant to this
11 Complaint, acting individually or in concert with others, Savvier LP has
12 marketed and sold BodyFlex to consumers throughout the United States.
13 Savvier LP transacts or has transacted business in the Central District of
14 California.

15 **7.** Defendant Greer Childers is the purported creator of BodyFlex, and appears
16 in the advertising for and videotapes demonstrating the product. At all times
17 relevant to this Complaint, acting individually or in concert with others, she
18 has participated in the acts and practices set forth herein. Ms. Childers
19 transacts or has transacted business in the Central District of California.

20 **8.** Defendant Jack Ching Chung Chang is an officer, director, and/or owner of
21 Savvier. At all times relevant to this Complaint, acting individually or in
22 concert with others, he has formulated, directed, controlled, or participated
23 in the acts and practices of Savvier and Savvier LP, including the various
24 acts and practices set forth herein. Mr. Chang resides in and/or transacts or
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1 has transacted business in the Central District of California.

2 **9.** Defendant Jeffrey Tuller is an officer and/or owner of Savvier. At all times
3 relevant to this Complaint, acting individually or in concert with others, he
4 has formulated, directed, controlled, or participated in the acts and practices
5 of Savvier and Savvier LP, including the various acts and practices set forth
6 herein. Mr. Tuller resides in and/or transacts or has transacted business in
7 the Central District of California.

8 **10.** Defendant Keith Greer is an officer of Savvier. At all times relevant to this
9 Complaint, acting individually or in concert with others, he has formulated,
10 directed, controlled, or participated in the acts and practices of Savvier and
11 Savvier LP, including the various acts and practices set forth herein. Mr.
12 Greer resides in and/or transacts or has transacted business in the Central
13 District of California.

14 **11.** The foregoing Defendants have operated as a common enterprise to
15 advertise, promote, offer for sale, sell or distribute BodyFlex.

16 **COMMERCE**

17 **12.** The acts and practices of the Defendants, as alleged herein, have been in or
18 affecting commerce, as “commerce” is defined in Section 4 of the FTC Act,
19 15 U.S.C. § 44.

20 **THE DEFENDANTS’ COURSE OF CONDUCT**

21 **13.** Beginning in or about February 2003, Defendants Savvier, Inc., Savvier LP,
22 Greer Childers, Jack Ching Chung Chang, Jeffrey Tuller, and Keith Greer
23 (collectively “Defendants”) have engaged in the advertising, marketing and
24 sale of BodyFlex directly to consumers nationwide through a variety of
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1 media including, but not necessarily limited to, an approximately 30-minute
2 television commercial (“infomercial”) and an Internet website.

3 **The BodyFlex+ System**

4 **14.** BodyFlex has two components: (1) a Gym Bar (a plastic exercise bar with
5 an oversized elastic band attached at either end); and (2) a breathing
6 technique. The product is packaged with a carrying case, instructions, a tape
7 measure and includes two videotapes: “Getting Started: Losing the Inches,”
8 an instructional video in which Ms. Childers demonstrates the breathing
9 technique and various exercises; and “The Workout: Just Minutes a Day,”
10 which depicts Ms. Childers performing the BodyFlex approximately 18-
11 minute routine.

12 **15.** The Defendants have offered BodyFlex for \$39.90 (two payments of \$19.95)
13 plus shipping and handling costs of \$14.95, for a total of \$54.85, directly to
14 consumers through a toll-free telephone number and on the Defendants’
15 Internet website.

16 **16.** The BodyFlex breathing technique involves taking deep breaths, which the
17 Defendants’ infomercial refers to as “aerobic” or “accelerated” breathing.
18 Ms. Childers states in the “Getting Started” videotape that this breathing
19 technique, by itself, can cause consumers to lose inches and burn fat.

20 **17.** In the “Getting Started” videotape, Ms. Childers explains that to use the
21 Gym Bar, consumers place the elastic band under their feet and hold the
22 plastic bar in their hands and lift the bar up and down. The elastic band
23 provides resistance such that it requires some effort to lift the bar.

24 **18.** In “The Workout” videotape, Ms. Childers begins the BodyFlex routine by
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1 performing the breathing technique combined with six warm-up exercises
2 that purportedly stretch the muscles in the face, neck, arms (biceps and
3 triceps), waist, and upper and lower abdominal muscles. She performs each
4 stretching exercise five times for a total of 30 warm-up repetitions. The
5 exercises can be performed in a sitting or standing position – Ms. Childers is
6 sitting in the video. The next step is a “cool down” consisting of five deep
7 breaths. The warm-up exercises and the cool down comprise approximately
8 11 minutes of the approximately 18-minute routine.

9 **19.** In the approximately seven remaining minutes of the approximately 18-
10 minute routine, after the cool down, Ms. Childers performs six different
11 exercises using the Gym Bar that allegedly target the biceps, shoulders,
12 triceps, abdominal muscles, waistline, hips and upper legs. Ms. Childers
13 instructs users to perform three sets of three repetitions of each exercise,
14 with a short rest after each set, for a total of nine repetitions. The sixth
15 exercise is the only exercise that must be performed in a standing position.
16 The routine ends with five deep breaths.

17 **20.** Ms. Childers states in the video and in the infomercial that, to make the Gym
18 Bar exercises more challenging, users can add approximately five pounds of
19 additional resistance by rolling the elastic band one revolution around the
20 ends of the Gym Bar.

21 **The Defendants’ Ads and Claims For BodyFlex**

22 **21.** To induce consumers to purchase BodyFlex, the Defendants have
23 disseminated or have caused to be disseminated advertisements including,
24 but not necessarily limited to, an infomercial and an Internet website –
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1 www.bodyflex.com. A transcript of the infomercial is attached hereto as
2 Exhibit A. A facsimile of the www.bodyflex.com website is attached hereto
3 as Exhibit B. A videotape containing a copy of the infomercial, the “Getting
4 Started” videotape and “The Workout” videotape is attached hereto as
5 Exhibit C.

6 **22.** From March through September 2003, the BodyFlex infomercial was among
7 the most frequently aired infomercials in the nation. The infomercial has
8 been ranked one of the top five infomercials for eight weeks and one of the
9 top 10 infomercials for 19 weeks. As of September 26, 2003, the BodyFlex
10 infomercial had appeared more than 2000 times. The Defendants have spent
11 over \$22 million to promote BodyFlex through this infomercial from
12 February through September 2003.

13 **23.** The BodyFlex infomercial prominently features Defendant Greer Childers,
14 who introduces herself as “the creator of BodyFlex, the revolutionary
15 exercise designed for weight loss, inch loss and more energy in only 15
16 minutes a day.” Ex. A at 24 (transcript of the infomercial). (The routine on
17 the “Workout” videotape is approximately 18 minutes.) Ms. Childers
18 promises that, “You’ll lose 4 to 14 inches in the first 7 days.” Ex. A at 36.
19 Ms. Childers explains that initially she was skeptical of the program until
20 she tried it and was amazed at the results:

21 GREER CHILDERS: As I look back 21 years, I can still
22 see myself standing in front of the mirror asking the question,
23 what can I do. I mean, I was a desperate size 16 and I wasn’t
24 going down anytime soon. I didn’t know what do. I had run,
25 Jazzercise[d], jogged. I mean, I ran enough I could have run
26 around the world and basically I still didn’t look good.

So, you can imagine what I thought when I heard about

1 an exercise program that you stood still and all you did was
2 breathe and it promised four to 14 inches lost off your body and
3 your midsection in the first seven days.

3 **ON SCREEN: Across your 6 target areas.**

4 GREER CHILDERS: I thought this is the biggest
5 gimmick I've ever heard in my life. But back then, I was so
6 desperate, I didn't know what else to do. So, I thought, well,
7 I've tried everything else, I'm going to try this, too.

8 The first seven days, to my amazement, I lost 10 inches
9 in my midsection alone. . . .

10 Ex. A at 26.

11 **24.** Throughout the infomercial Ms. Childers repeats her fabulous results. She
12 also challenges consumers to try the product. “[S]he includes a tape
13 measure in every kit so you can see with your own eyes the amazing inch
14 loss.” Ex. A at 45. “Use the tape measure, prove me wrong,” she implores
15 consumers. *Id.* at 63.

16 **25.** The infomercial includes user testimonials juxtaposed with before and after
17 photographs showing the users as substantially thinner purportedly as a
18 result of using BodyFlex. The infomercial also includes commentary by
19 medical doctors and purported testing results.

20 **26.** The www.bodyflex.com website closely parallels the infomercial.
21 Consumers are directed to this website during the infomercial when the
22 announcer describes how to order the product. The website relates Ms.
23 Childers' personal fitness story and reiterates many of the claims made in the
24 infomercial. It also includes the user testimonials and commentary from the
25 medical doctors depicted in the infomercial. *See* Ex. B (facsimile of the
26 website).

1 27. The BodyFlex advertisements include, but are not limited to, the following
2 statements and depictions:

3 a. MALE ANNOUNCER: Well, now, in just seven days you can
4 lose from four to 14 inches guaranteed with BodyFlex Plus.
Ex. A at 40-41 and 55; *see also* Ex. B at 68.

5 b. MALE ANNOUNCER: The secret of BodyFlex lies in the
6 power of oxygen to burn fat. With BodyFlex breathing, you'll
supercharge your blood with fat burning oxygen and you'll lose
7 inches fast –

8 **ON SCREEN: Guarantees**
9 **Lose**
4 to 14 Inches
in just 7 days

10 (In very small print) Measured across your 6 target areas

11 MALE ANNOUNCER: – so fast that BodyFlex guarantees
12 you'll lose four to 14 inches across your target areas in the first 7
days.

13 **ON SCREEN: Upper Abs**
14 **Lower Abs**
15 **Waist**
16 **Hips**
Thighs
Upper Arms
4 to 14 Inches

17 MALE ANNOUNCER: That's the upper abs, lower abs, waist,
18 hips, thighs and upper arms. That's right four to 14 inches in the first
7 days.

19 Ex. A at 41-42 and 55-56; *see also* Ex. B at 72 (same text).

20 c. GREER CHILDERS: BodyFlex is a system that fits into my
21 needs, and believe me, I'm not dieting for anybody.
Ex. A at 27.

22 d. **ON SCREEN: 4 to 14 inches across your 6 target areas**

23 GREER CHILDERS: Four to 14 inches in the first seven days.
24 What more could someone ask for in a fitness program?
Ex. A at 35-36.

25 e. GREER CHILDERS: The way BodyFlex works is it's

1 designed to work fast. I mean, four to 14 inches in the first week is
2 unbelievable. And the only reason I did it was because I didn't
3 believe that it would even work. I thought, oh, four to 14 inches in the
4 first week, I'm sure. So, basically I did it because I wanted to prove
5 them wrong. But to my surprise, I was the wrong one. I ended up
6 getting 10 inches off my body in the first seven days. So, that's fast.
7 Ex. A at 39-40; *see also* Ex. B at 75 ("in the first seven days I lost 10
8 inches").

9 **f.** GREER CHILDERS: You're allowed to live a normal life.
10 This program is not about food. Hallelujah for once. We're sick and
11 tired of people telling us, you can't eat this and you can't do this and
12 you can't have this and you can't have this, low carbs, low fat, low – I
13 mean, we don't even understand it in the first place.
14 Ex. A at 49; *see also id.* at 43, 58 and 65 (similar language).

15 **g.** GREER CHILDERS: Now, this may not seem very important
16 to you, however, two things you need to know about exercise. One,
17 oxygen is the key ingredient in burning fat. Now, listen, two, oxygen
18 is the key ingredient in giving us that energy that we want so
19 desperately and don't have. So, you see, the two things we need most
20 and don't have are provided in this program.
21 Ex. A at 30.

22 **h.** GREER CHILDERS: So, BodyFlex is a system that we've
23 streamlined. You can do it sitting, standing or even lying down. It
24 produces energy, it burns excess body fat and it tones all at the same
25 time.
26 Ex. A at 30-31.

i. GREER CHILDERS: . . . It's a program that doesn't take very
long and everyone can give up 15 minutes a day, everybody. And
basically you can still live a normal life and eat the way you want. It
doesn't cost very much and the results are phenomenal. I mean,
somewhere between four and 14 inches lost the first week, is where
you're going to fall.
Ex. A at 65.

j. GREER CHILDERS: So, we have to work – we have to work
on a fitness program that's something other than about food. This
program is not about food. This program teaches you to control your
body fat with something other than food. It's about losing inches and
losing body fat and toning up all at the same time, which produces
fitness, and that's what BodyFlex is about.
Ex. A at 49; Ex. B at 69 (similar text).

k. GREER CHILDERS: BodyFlex is a specialized breathing
technique which increases the oxygen level to your body. And, of

1 course, with increased oxygen to your body, you have more energy
2 and you have the ability to burn more fat because oxygen is the key
3 ingredient in burning body fat.
4 Ex. A at 50.

5 **l. ON SCREEN: Lost 13 Total Inches in 1 Week**

6 FAYE WEISS [purported BodyFlex user]: I lost 13 inches in a
7 week.

8 Ex. A at 23, 42, 54 and 57; *id.* at 37 and 42 (same text); *see also id.* at
9 36 (depicting Ms. Weiss discovering she lost 13 inches).

10 [A message of “Average inch loss in a recent study was 7 inches in 7 days. As with any fitness program, a
11 sensible eating plan is required in order to achieve long term weight loss” appears in fine print near
12 the bottom of the screen. Ex. A at 22. This small light blue text is
13 poorly contrasted against a medium blue screen (and a few seconds
14 later against a green shirt of one of the purported users) and is
15 accompanied by background sounds and images.]

16 **m. UNIDENTIFIED FEMALE:** [purported BodyFlex user]: I lost
17 14 inches in the first week.

18 **ON SCREEN: Lost 14 Total Inches in 1 Week!**

19 Ex. A at 23. [Same messages and display characteristics described in
20 ¶ 27(l) appear during this testimonial.]

21 **n. ALICIA NURICK** [purported BodyFlex user]: I’ve lost 62
22 inches in just six months, nine-and-a-half inches off my waist.

23 **ON SCREEN: Lost 62 Total Inches total**

24 Ex. A at 23. [Same messages and display characteristics described in
25 ¶ 27(l) appear during this testimonial.]

26 **o. ON SCREEN: Francine Scolaro**
Age: 44 Size: 20 to 12

FRANCINE SCOLARO [purported BodyFlex user]: I went
from a size 20 to a size 12/14 in three-and-a-half months. For me, the
BodyFlex program worked so quickly that I couldn’t even buy clothes
because I wouldn’t stay in them. I was coming out of them so
quickly, I felt like I was melting.

Ex. A at 34-35 [Same messages and display characteristics described
in ¶ 27(l) appear during this testimonial.]; *see also id.* at 23 (3 dress
sizes in 3 months); Ex. B at 75 (same text coupled with before and
after photographs that depict Ms. Scolaro as noticeably thinner).

1 **p. ON SCREEN: SIZE 20 to 10/12**

2 ERIKA WEAKLEY [purported BodyFlex user]: I've gone
3 from a size 20 to a size 10/12.

4 Ex. A at 24; *see also id.* at 55 ("The first week I lost an average of 12
5 inches all over"); *id.* at 48, 50 and 63 (same screen text).

6 **q. ON SCREEN: SIZE 14 TO 4**

7 DAWN HALASZ [purported BodyFlex user]: I went from a
8 size 14 to a 4.

9 Ex. A at 24; *see also id.* at 48, 51 and 64 (same text along with
10 photographs); Ex. B at 75 (same text coupled with before and after
11 photographs that depict Ms. Halasz as noticeably thinner).

12 **r. ON SCREEN: Alicia Nurick**
13 **Age: 57 Size: 22 to 14**

14 ALICIA NURICK [purported BodyFlex user]: The first week
15 that I was doing BodyFlex, I lost seven-and-a-half inches.

16 Ex. A at 27. [Same messages and display characteristics described in
17 ¶ 27(l) appear during this testimonial.]

18 **s. ON SCREEN: Lost 9 Total Inches in 1 Week**
19 **Joya Frazzetta**
20 **Age: 36**

21 JOYA FRAZZETTA [purported BodyFlex user]: It was
22 unbelievable to lose nine inches in one week.

23 Ex. A at 28 and 37; *see also id.* at 54 ("nine inches in one week").

24 **t. ON SCREEN: Sherry Sheppard**
25 **Age: 44 Size: 32 to 16**

26 SHERRY SHEPPARD [purported BodyFlex user]: On
BodyFlex I lost 200 pounds and 153 inches total. And that's just
amazing to me.

Ex. A at 31 and 48. [Same messages and display characteristics
described in ¶ 27(l) appear during this testimonial.]

1 DR. RON ROTHENBERG: We have very hard core data here.
2 The group lost seven inches average of the different measurements
3 that we took. What this means is a significant fat loss. That's how
4 they lost the inches, by losing fat.
5 Ex. A at 38; Ex. B at 73 (virtually identical text).

6 **d. ON SCREEN: Dr. Daniel Cosgrove, M.D.**
7 **Medical Director, Wellmax Center**
8 **BodyFlex utilizes resistance training to boost your**
9 **metabolism. A recent study confirmed the aerobic nature of the**
10 **BodyFlex workout and caloric burn capabilities versus treadmill**
11 **exercise at 3 mph.**

12 DR. DANIEL COSGROVE: With the BodyFlex System, even
13 compared to other exercise programs of this same duration, you will
14 burn more calories while you're using it, but even more importantly,
15 you're burning more calories the whole rest of the day while you're
16 not using it. And if you're burning more calories all day, even if
17 you're just sitting there, then you're going to lose weight more
18 effectively.
19 Ex. A at 38.

20 **e. DR. DANIEL COSGROVE: I think it is surprising how a**
21 **person can sit in one place and literally be watching TV while they're**
22 **doing exercise and they can still beat the treadmill. We compared the**
23 **exact same time on the treadmill with the BodyFlex System and the**
24 **BodyFlex System burned more calories. It works better.**
25 **Ex. A at 52-53; see also Ex. B at 72.**

26 **THE DEFENDANTS' VIOLATIONS OF THE FTC ACT**

27 **29.** Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive
28 acts or practices in or affecting commerce. Section 12 of the FTC Act, 15
29 U.S.C. § 52(a), prohibits the dissemination of any false advertisement in or
30 affecting commerce for the purpose of inducing, or which is likely to induce,
31 the purchase of food, drugs, devices, services, or cosmetics. For the
32 purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, the Gym Bar is a
33 "device" pursuant to Section 15(d) of the FTC Act, 15 U.S.C. § 55(d). As
34 set forth below, the Defendants have engaged and are continuing to engage
35 in such unlawful practices in connection with the marketing and sale of

1 BodyFlex.

2 **COUNT ONE**
3 **FALSE INCH LOSS CLAIMS**

4 **30.** Through the means described in Paragraphs 21-28, the Defendants have
5 represented, expressly or by implication, that BodyFlex causes users to lose
6 from four to 14 inches across six body areas in the first seven days without
7 reducing calories.

8 **31.** In truth and in fact, BodyFlex does not cause users to lose from four to 14
9 inches across six body areas in the first seven days without reducing
10 calories. Therefore, the Defendants' representation as set forth in Paragraph
11 30 is false or misleading and constitutes a deceptive act or practice, and the
12 making of false advertisements, in or affecting commerce, in violation of
13 Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

14 **COUNT TWO**
15 **FALSE FAT BURNING CLAIMS**

16 **32.** Through the means described in Paragraphs 21-28, the Defendants have
17 represented, expressly or by implication, that BodyFlex causes users to burn
18 enough body fat to lose four to 14 inches across six body areas in the first
19 seven days.

20 **33.** In truth and in fact, BodyFlex does not cause users to burn enough body fat
21 to lose four to 14 inches across six body areas in the first seven days.
22 Therefore, the Defendants' representation as set forth in Paragraph 32 is
23 false or misleading and constitutes a deceptive act or practice, and the
24 making of false advertisements, in or affecting commerce, in violation of
25 Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

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**COUNT THREE
FALSE ESTABLISHMENT CLAIMS**

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34. Through the means described in Paragraph 28, the Defendants have represented, expressly or by implication, that a clinical study proves that BodyFlex causes significant fat loss and inch loss in the first seven days.

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35. In truth and in fact, a clinical study does not prove that BodyFlex causes significant fat loss and inch loss in the first seven days. Therefore, the Defendants' representation as set forth in Paragraph 34 is false or misleading and 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.

CONSUMER INJURY

36. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss as a result of the Defendants' unlawful acts or practices. In addition, the Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, the Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

37. 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 the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award other ancillary relief, including, but not limited to, rescission of contracts and restitution, and the disgorgement of ill-gotten gains, caused by the Defendants' law violations.

