

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

THE FOUNTAIN OF YOUTH GROUP,
LLC,
a limited liability company, and

EDITA KAYE,
individually and as founding member and
manager of The Fountain of Youth Group,
LLC,

Defendants.

Civ. No. 3:04-CV-47-J-99HTS

**COMPLAINT FOR INJUNCTIVE
AND OTHER EQUITABLE
RELIEF**

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

1. This is an action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to secure a permanent injunction and other equitable relief against defendants for engaging in deceptive acts or practices and the making of false advertisements in connection with the advertising, offering for sale, selling, and/or distribution of alleged weight loss products, Skinny Pill AM, Skinny Sleep PM, Skinny Carbs, and Skinny Pill for Kids, in violation of Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45 and 52.

JURISDICTION AND VENUE

2. This Court has jurisdiction over Plaintiff's claim pursuant to 28 U.S.C. §§ 1331, 1337(a) and 1345, and 15 U.S.C. §§ 45(a), 52 and 53(b).

3. Venue in this District is proper under 28 U.S.C. §§ 1391(b) and (c) 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 Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, which prohibit, respectively, deceptive acts and practices, and false advertisements for food, drugs, devices or cosmetics in or affecting commerce. The FTC may initiate federal district court proceedings to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case. 15 U.S.C. § 53(b).

DEFENDANTS

5. Defendant The Fountain of Youth Group, LLC ("Fountain of Youth") is a Delaware limited liability company with its principal office or place of business at 830-13 A1A North, Ponte Vedra Beach, Florida 32082. It markets various dietary supplements that purportedly cause substantial weight loss. Fountain of Youth transacts business in the Middle District of Florida.

6. Defendant Edita Kaye is founding member and manager of Fountain of Youth. Her principal office or place of business is the same as that of Fountain of Youth. In connection with the matters alleged herein, Edita Kaye transacts business in the Middle District of

Florida. At all times material to this complaint, Edita Kaye, individually or in concert with others, formulated, directed, controlled, or participated in the policies, acts, or practices of Fountain of Youth, including the acts and practices alleged in this complaint.

COMMERCE

7. The acts and practices of defendants as alleged herein are in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ COURSE OF CONDUCT

8. Beginning in 2000, defendants have marketed a variety of dietary supplements that purportedly cause substantial weight loss. These products have included Skinny Pill AM, Skinny Sleep PM capsules, Skinny Carbs capsules, and the Skinny Pill For Kids. These dietary supplements, which contain ingredients such as chromium, citrus aurantium, chitosan, green tea leaf extract, and herbal blends and diuretics, are purported to cause substantial weight loss through, among other means, speeding up thermogenesis (the production of heat through burning of calories) and blocking starch absorption.

9. Defendants have advertised, offered for sale, sold, and/or distributed Skinny Pill AM, Skinny Sleep PM, Skinny Carbs, and the Skinny Pill For Kids to consumers throughout the United States by means of personal promotions by Defendant Edita Kaye, radio commercials, a test infomercial, and Internet website(s).

Skinny Pill AM and Skinny Sleep PM

10. Defendants have disseminated or have caused to be disseminated advertisements for Skinny Pill AM and Skinny Sleep PM, including, but not limited to, the attached Exhibits A and B (excerpts from defendants' Internet website, www.skinnypill.com, on December 11, 2002), which include, among other things, the following statements and depictions:

[Edita's] **AM Skinny Pill** . . . works all day with a combination of the top five fat fighters. (Ex. A-1)

Everything about Edita's Skinny Pill

The Skinny Pill formula is safe. . . . Effective. It includes the top 5 skinny supplements that help turn off your body's fat switch and break your food-to-fat cycle starting in just 24 hours.

Here's what this winning skinny formula contains:

Carnitine 250 mg

It helps to burn off stored fat . . . , suppresses your appetite and reduces cravings.

Chromium 400 mcg

. . . It acts as a thermogenic (fat burning) agent, reducing body fat without dieting or exercise.

Citrimax 300 mg

Decreases fat gain by inhibiting lipogenesis, the metabolic process by which our bodies turn food into fat.

Chitosan 250 mg

[P]acks a double fat fighting whammy. It's a fat magnet, attracting fat before it gets digested and it's also a fat sponge, absorbing over four times its weight in dietary fat.

Citrus Aurantium 300 mg

Unlocks fat cells. Speeds up the rate at which fat is released from fat storage (lipolysis). Increases resting metabolism (thermogenesis) accelerating the rate at which your body burns fat. (Ex. A-5, A-6)

I [Edita Kaye] lost 67 pounds on the Skinny Pill! ["Before" and "after" photographs shown.] (Ex. A-9)

Tracy

lost 26 pounds and ten inches on the Skinny Pill! ["Before" and "after" photographs shown.]

Priscilla

lost 30 pounds and 4 dress sizes on the Skinny Pill! ["Before" and "after" photographs shown.] (Ex. A-10, A-11)

Rebecca

lost 75 pounds and hubby lost 55 on the Skinny Pill! ["Before" and "after" photographs shown.] (Ex. A-13)

Lorraine

I have been taking the Skinny Pill for two months and have lost 32 pounds.

(Ex. A-14)

Edita's Skinny products are the BEST! They are safe. Effective.

Researched. Tested. Proven. (Ex. A-15)

Here is everything you need to know about Edita's Skinny PM.

[M]y special blend also contains skinny supplements that help your own natural fat fighting systems start to empty out those fat cells, overnight.

The Result? You should wake up rested, refreshed and SKINNER!

Here's my blend:

The Skinny Part Vitamin B6 [sic]

One of the most powerful metabolism boosting vitamins[.]

Chromium

A thermogenic agent and insulin cofactor, helping your body regulate sugar and blood fat more efficiently.

Citrus Aurantium

Researchers believe that citrus aurantium zeros in on special Beta-3 receptors only, turning on their powerful fat fighting signal

Citrimax

Preliminary research shows that HCA [which is contained in Citrimax] decreases fat gain by inhibiting lipogenesis, the metabolic process by which our bodies turn food into fat.

L Carnitine

Helps burn off stored fat (Ex. B-3, B-4)

My **PM Skinny Sleep** works overnight with a thermic formula to burn fat while you sleep . . . to make sure you wake up . . . skinnier than when you went to bed. (Ex. B-6)

What is Skinny Sleep™?

[B]ased on the latest scientific research into both sleep supplements and thermogenics to help you . . . burn fat all night long. The result? You'll wake up rested . . . and skinnier than when you went to bed! (Ex. B-8)

Edita's Skinny products are the BEST! They are safe. Effective.

Researched. Tested. Proven. (Ex. B-11)

Skinny Carbs

11. Defendants have disseminated or have caused to be disseminated advertisements for Skinny Carbs, including, but not limited to, the attached Exhibit C (excerpts from defendants' Internet website, www.skinnypill.com, on December 11, 2002), which include, among other things, the following statements:

What is Skinny Carbs™?

Skinny Carbs is the miracle that lets you occasionally "cheat" without guilt or added fat pounds. . . . When you eat a carb, Skinny Carbs blocks the starch from being broken down into sugar. . . . Skinny carbs cuts [sic] right into that cycle [of conversion of excess sugar into fat stores] and prevents starch from

turning into sugar and then into fat. Instead, it passes right through our system. The result? We can enjoy our carbs without having them turn into body fat.

What does it contain?

Skinny Carbs contain [sic] the following ingredients to help you get skinny, even if you have to cheat, occasionally.

Chromium: 500 mcg

Chromium plays an important role in the regulation of insulin and glucose levels, controlling hunger, and in regulating the metabolic rate. It promotes loss of body fat

Vanadium: 200 mcg

Most research has focused on its role in improving insulin action and reducing sugar cravings.

Glucosol™: 16 mg

Shown to reduce blood sugar levels [which otherwise usually would be converted into blood sugar].

D-Carb Energy Blend 450 mg

Green tea leaf extract, . . . fights fatigue, and helps diminish appetite. It's also a thermogenic that can promote the burning of fat and regulate blood sugar.

D-Carb Support Blend 250 mg

Gymnema sylvestre leaf, . . . inhibits the digestive process causing the elimination of excess calories before they can be absorbed

How fast does it work?

Skinny Carbs begin to work within minutes to help keep you skinny even when you can't eat skinny. (Ex. C-1, C-2)

Edita's Skinny products are the BEST! They are safe. Effective.

Researched. Tested. Proven. (Ex. C-4)

Skinny Pill For Kids

12. Defendants have disseminated or have caused to be disseminated advertisements for Skinny Pill for Kids, including, but not limited to, the attached Exhibit D (excerpts from defendants' Internet website, www.skinnypill.com, on December 11, 2002), which include, among other things, the following statements:

Edita is proud to offer you and your children the first SKINNY PILL just for kids! And because it's from Edita, America's Favorite Nutritionist, you know you and your kids can trust the Skinny Pill for Kids™.

This is the FIRST thermic and herbal formula ever developed for weight loss for children 6 to 12 and has been created to help our children win their battle with fat.

. . .

Here is a real solution for overweight kids and the adults that care about them. I give you with great pride, America's first SKINNY PILL for Kids! [followed by Edita' Kaye's signature]

Here's how very special and exciting this new Skinny Pill for Kids really is!

1. It is the very first product that brings together fat fighting ingredients in one formula.
 2. It contains an exciting, proprietary blend of safe . . . fat fighting nutrients . . . just for children's unique needs.
 3. It is formulated . . . to help children reduce their risk of obesity-related diseases such as heart disease, high blood pressure and diabetes.
 4. It offers very real weight-loss help through supplements that metabolically assist children to burn more fat pounds and inches, block new fat deposits, and help regulate insulin levels to mitigate fat factors.
- . . .

Edita's Skinny Pill for Kids proprietary blend contains:

Niacin

[A]ids in the metabolism of carbohydrates, fat, and proteins.

. . .

Chromium

[I]s involved in the metabolism of glucose. . . . This essential mineral also maintains stable blood sugar levels

Pectins

[S]low the absorption of food after meals and also helps to lower cholesterol levels.

. . .

Glucommanan

This substance actually picks up and removes fat from the colon wall. It is good for diabetes and obesity, because one of its primary functions is the removal of fat. . . . It expands up to sixty times its own weight, and in so doing, helps maintain a feeling of fullness and curbs appetite.

. . .

Buchu Leaf

Aids in controlling diabetes, digestive disorders, and fluid retention. (Ex. D-1 thru D-4)

Edita's Skinny products are the BEST! They are safe. Effective. Researched. Tested. Proven. (Ex. D-6)

DEFENDANTS' VIOLATIONS OF THE FTC ACT

13. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a), prohibits the dissemination of any false advertisement in or affecting commerce for the purpose of inducing, or which is likely to induce, the purchase of food, drugs, devices, services, or cosmetics. For the purposes of Section 12 of the FTC Act, Skinny Pill AM, Skinny Sleep PM, Skinny Carbs, and the Skinny Pill For Kids are either a “food” or “drug” as defined in Section 15(b) and (c) of the FTC Act, 15 U.S.C. § 55(b) and (c).

14. As set forth below, the defendants have engaged in unlawful practices in violation of Sections 5(a) and 12(b) of the FTC Act in connection with the marketing and/or sale of Skinny Pill AM, Skinny Sleep PM, Skinny Carbs, and the Skinny Pill For Kids .

COUNT ONE

Unsubstantiated Efficacy Claims For Skinny Pill AM and Skinny Sleep PM

15. Through the means described in Paragraph 10, defendants have represented, expressly or by implication, that:

- A. Use of Skinny Pill AM and Skinny Sleep PM causes weight loss;
- B. Use of Skinny Pill AM and Skinny Sleep PM causes increased fat burning;
- C. Use of Skinny Pill AM and Skinny Sleep PM normalizes insulin and blood sugar levels; and
- D. Use of Skinny Pill AM and Skinny Sleep PM causes dietary fat to be passed out of the body before it can be digested.

16. Through the means described in Paragraph 10, defendants have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 15 at the time the representations were made.

17. In fact, defendants did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 15 at the time the representations were made. Therefore, the making of the representation set forth in Paragraph 16 constitutes a deceptive practice, and the making of a false advertisement, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT TWO

False Claim For Skinny Pill AM and Skinny Sleep PM

18. Through the means described in Paragraph 10, defendants have represented, expressly or by implication, that use of Skinny Pill AM and Skinny Sleep PM causes dietary fat to be passed out of the body before it can be digested, thereby causing substantial weight loss.

19. In fact, use of Skinny Pill AM and Skinny Sleep PM does not cause dietary fat to be passed out of the body before it can be digested, thereby causing substantial weight loss. Therefore, the making of the representation set forth in Paragraph 18 constitutes a deceptive practice and the making of a false advertisement, 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 THREE

False Establishment Claims For Skinny Pill AM and Skinny Sleep PM

20. Through the means described in Paragraph 10, defendants have represented, expressly or by implication, that scientific research establishes that use of Skinny Pill AM and Skinny Sleep PM causes weight loss.

21. In fact, scientific research does not establish that use of Skinny Pill AM and Skinny Sleep PM causes weight loss. Therefore, the making of the representation set forth in Paragraph 20 constitutes a deceptive practice and the making of a false advertisement, 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 FOUR

Unsubstantiated Efficacy Claims For Skinny Carbs

22. Through the means described in Paragraph 11, defendants have represented, expressly or by implication, that:

- A. Use of Skinny Carbs blocks the absorption of carbohydrates, preventing them from being converted into fat and thereby causing weight loss; and
- B. Use of Skinny Carbs normalizes insulin and blood sugar levels.

23. Through the means described in Paragraph 11, defendants have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 22 at the time the representations were made.

24. In fact, defendants did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 22 at the time the representations were made. Therefore, the making of the representation set forth in Paragraph 23 constitutes a deceptive practice and the making of a false advertisement, 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 FIVE

False Establishment Claim For Skinny Carbs

25. Through the means described in Paragraph 11, defendants have represented, expressly or by implication, that scientific research establishes that use of Skinny Carbs blocks new fat from forming when the user eats a starchy meal.

26. In fact, scientific research does not establish that use of Skinny Carbs blocks new fat from forming when one eats a starchy meal. Therefore, the making of the representation set forth in Paragraph 25 constitutes a deceptive practice and the making of a false advertisement, 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 SIX

Unsubstantiated Efficacy and Safety Claims For The Skinny Pill For Kids

27. Through the means described in Paragraph 12, defendants have represented, expressly or by implication, that:

A. Use of Skinny Pill for Kids causes weight loss in children 6 to 12 years old;

- B. Use of Skinny Pill for Kids causes children 6 to 12 years old to burn increased fat;
- C. Use of Skinny Pill for Kids blocks new fat deposits in children 6 to 12 years old;
- D. Use of Skinny Pill for Kids normalizes insulin and blood sugar levels in children 6 to 12 years old;
- E. Use of Skinny Pill for Kids reduces the risk of obesity related disease, including heart disease, high blood pressure, and diabetes, in children 6 to 12 years old;
- F. Use of Skinny Pill for Kids helps control diabetes and digestive disorders in children 6 to 12 years old; and
- G. Use of Skinny Pill for Kids is safe for children 6 to 12 years old.

28. Through the means described in Paragraph 12, defendants have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 27 at the time the representations were made.

29. In fact, defendants did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 27 at the time the representations were made. Therefore, the making of the representation set forth in Paragraph 28 constitutes a deceptive practice and the making of a false advertisement, 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 SEVEN

False Establishment Claim For Skinny Pill For Kids

30. Through the means described in Paragraph 12, defendants have represented, expressly or by implication, that scientific research establishes that use of Skinny Pill for Kids causes weight loss in, and is safe for, children 6 to 12 years old.

31. In fact, scientific research does not establish that use of Skinny Pill for Kids causes weight loss in, or is safe for, children 6 to 12 years old. Therefore, the making of the representation set forth in Paragraph 30 constitutes a deceptive practice and the making of a false advertisement, 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

32. Defendants' law violations have injured consumers throughout the United States. In addition, defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

33. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other relief as the Court may deem appropriate to prevent and remedy any violations of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award other ancillary relief, including consumer redress, disgorgement, and restitution, to prevent and remedy injury caused by defendants' law violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff FTC requests that this Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

1. Enjoin defendants permanently from violating Sections 5(a) and 12 of the FTC Act, as alleged herein, in connection with the offer, sale, advertising, or other promotion or distribution of any dietary supplement, food, drug, or device; and the offer, sale, advertising, or other promotion or distribution of any service or program that promotes weight loss.
2. Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from defendants' violations of Sections 5(a) and 12 of the FTC Act, including but not limited to, rescission of contracts and restitution, and the disgorgement of ill-gotten gains by the defendants; and

3. Award the plaintiff the costs of bringing this action, as well as such additional equitable relief as the court may determine just and proper.

Dated: _____, 2004

Respectfully submitted,

WILLIAM E. KOVACIC
General Counsel

BARBARA ANTHONY
Regional Director

MICHAEL J. BLOOM (MB 7732)
Senior Counsel to the Northeast Region
DONALD G. D'AMATO (DD 3008)
Assistant Regional Director
FEDERAL TRADE COMMISSION
1 Bowling Green, Suite 318
New York, NY 10004
(212) 607-2829 (voice)
(212) 607-2822 (facsimile)

Attorneys for Plaintiff