

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FILED

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U.S. DISTRICT COURT
BRIDGEPORT, CONN

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

CIVIL NO.

304CV1866

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BRONSON PARTNERS, LLC,
d/b/a NEW ENGLAND DIET CENTER,
and BRONSON DAY SPA, and

MARTIN HOWARD,

Defendants.

COMPLAINT FOR PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), through its undersigned attorneys, for its Complaint alleges:

1. Plaintiff FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure a permanent injunction, rescission of contracts and restitution, disgorgement of ill-gotten gains, and other equitable relief against the Defendants for engaging in deceptive acts or practices and false advertisements for food, drugs, devices, services or cosmetics, in or affecting commerce in connection with the advertising, marketing and sale of the **Chinese Diet Tea** and **Bio-Slim Patch** products in violation of Section 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 pursuant to 15 U.S.C. §§ 45(a), 52, 53(b) and 28 U.S.C. §§ 1331, 1337(a), and 1345.

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

THE PARTIES

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

5. Defendant **BRONSON PARTNERS, LLC ("Bronson")** is a limited liability corporation, doing business as NEW ENGLAND DIET CENTER and BRONSON DAY SPA, with offices located at 142 Regent's Park, Westport, CT 06880. **Bronson** transacts or has transacted business in the District of Connecticut.

6. Defendant **Martin Howard** is a member and principal manager of **Bronson**. He resides at 142 Regent's Park, Westport, CT 06880. At all times relevant to this Complaint, acting individually or in concert with others, **Martin Howard** has formulated, directed,

controlled, or participated in the acts or practices of **Bronson**, including the acts or practices alleged in this Complaint. He resides in or transacts or has transacted business in the District of Connecticut.

COMMERCE

7. The acts and practices of Defendants alleged in this Complaint 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. Since at least December 2003, Defendants have advertised, promoted, offered for sale, and sold products to the public throughout the United States, including purported weight loss products called **Chinese Diet Tea** and the **Bio-Slim Patch**.

Chinese Diet Tea

9. **Chinese Diet Tea** is an herbal tea, which contains green tea. A one-month supply of **Chinese Diet Tea** costs **\$24.95** plus shipping and handling. Defendants recommend that users drink one cup of **Chinese Diet Tea** after each meal to neutralize the absorption of fattening foods.

10. Defendants advertise and offer **Chinese Diet Tea** for sale through national magazines, such as *USA Weekend* and *Clipper Magazine*. Consumers purchase Chinese Diet Tea directly from the company by calling a toll-free phone number, or by mail.

11. To induce consumers to purchase **Chinese Diet Tea**, Defendants have disseminated, or caused to be disseminated, advertisements for **Chinese Diet Tea**, including, but not limited to, the attached Exhibit A from the December 26-28, 2003 issue of *USA Weekend*. This advertisement contains the following statements or depictions, among others:

[Testimonial #1]

'I lost 64 lbs. in 10 weeks!' "After 10 weeks my weight was down to 104 lbs. I lost weight so fast my doctor ordered me to slow down."

Powerful Green Diet Tea

CHINESE DIET TEA™

SHEDS POUND AFTER POUND OF FAT – FAST!

You eat your favorite foods – but **STILL** lose weight!

- ◆ **Eliminates an amazing 91% of absorbed sugars.**
- ◆ **Prevents 83% of fat absorption.**
- ◆ **Doubles your metabolic rate to burn calories fast.**
- ◆ **Powerful herbal formula helps you stop snacking.**

Let this powerful Chinese Green Diet Tea help you lose those unwanted pounds. Can you imagine losing weight by simply drinking a cup of refreshing tea? Well, that is all you now have to do to lose weight with one of the "easiest" and most effective diets ever discovered. . . . Clinical trials have shown by drinking a cup of Chinese Green Diet Tea your body will absorb less sugar and animal fats. Participants on Chinese Green Diet Tea clinical trials carried on eating a normal healthy measure of sugar and fats – but they still lost weight. Just make sure you drink one cup of Chinese Green Diet Tea after each meal to neutralize the absorption of fattening foods. You'll get the satisfaction and flavor of eating a balanced diet, but without any fattening effects.

Researchers found that those who drank Chinese Diet Green Tea burned an additional 500 calories per week, with no change in diet or physical activity!

GUARANTEED! • **Chinese Green Diet Tea** has been clinically trialed [sic] on 163 patients. All participants lost between 18 lbs and 75 lbs over the 12 week trial period. If you do not lose similar amounts of weight we guarantee to refund your purchase price in full (less s/h). **REMEMBER**, the more **Chinese Green Diet Tea** you drink, the more weight you may lose!

4 Week Course
You'll lose
up to 25 lbs.
\$24.95

8 Week Course
You'll lose
up to 50 lbs.
\$39.95
Save \$16.00

12 Week Course
You'll lose
up to 75 lbs.
\$49.95
Save \$32.90 . . .

The Chinese Green Diet Tea's secret herbal ingredients act in four ways to help you lose weight.

1. Reduces sugar absorption by an amazing 91%. This means you can eat sweet buns and chocolate without putting on so much weight. But be careful-drinking Chinese Green Diet Tea is not a license to gorge yourself.
 2. Reduces the absorption of animal fats and dairy products by as much as 83%. This controls the fattening effects of butter, cheese, pate, sausages and fatty meats.
 3. Doubles the digestion of food in the intestine. This prevents food laying in your stomach for 24 hours or more and contributing to that "pot belly" look. The faster digestion of food means fewer calories are absorbed into the body.
 4. Acts as an effective appetite suppressant to reduce snacking.
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WARNING: Doctors recommend that weight loss must be achieved gradually over an extended 8-12 week period. We therefore recommend that you do not lose weight too suddenly. If very rapid weight loss occurs, stop taking Chinese Green Diet Tea for 10-14 days and consult your doctor.

[Testimonial 2]

"We (my husband and I) have lost 45 lbs. so far. Send extra order forms for friends."-Doris T.

[Testimonial 3]

"I have been on the program 6 weeks and have not religiously followed the schedule of a cup of tea after each meal. However, I have gone from 240 lbs. down to 210 lbs. I feel better."
-Gerald G.

(Exhibit A)

The Bio-Slim Patch

12. The **Bio-Slim Patch** is a diet patch which contains fucus, garcinia and guarana. A one-month supply of the **Bio-Slim Patch** costs \$24.95 plus shipping and handling. Users are instructed to wear the patch on their skin for 24 hours a day, for a minimum of 90 days.

13. Defendants advertise and offer the **Bio-Slim Patch** for sale by means of a catalogue delivered to consumers who buy Defendants' products. Consumers purchase the **Bio-Slim Patch** directly from the company by calling a toll-free phone number, or by mail.

14. To induce consumers to purchase the **Bio-Slim Patch**, Defendants have disseminated, or caused to be disseminated, advertisements for the **Bio-Slim Patch**, including but not limited to the

attached **Exhibit B**. This advertisement contains the following statements or depictions, among others:

DO YOU LACK THE WILL-POWER TO DIET OR EXERCISE?

**With this newly improved weight loss discovery...
You may lose weight faster and easier than ever before!**

**24 hour Pre-determined Bio-Slim Patch™
with Controlled Dispersal of Special Maximum Fat Burning Ingredients**

Have you tried other diet plans that failed to work for you? The amazing, easy to use, Bio-Slim Patch may just be the answer to your prayers!

Anyone who has tried to lose weight but failed, anyone who has lost weight before only for it to re-appear again later, and anyone who is now overweight and wants to be thinner may want to try the Bio-Slim Patch.

Simply wear the patch on your skin in a discreet area, you're the only one who knows it's there. The special natural ingredients, Fucus, Garcinia and Guarana are completely safe and are released in pre-determined, carefully controlled amounts directly into your system - at the point of contact ... even while you sleep!

Repulsive, excess ugly fatty tissue will disappear at a spectacular rate due to the combination and synergy of these three natural ingredients: Fucus, Garcinia and Guarana, working in combination with one another.

The Bio-Slim Patch is not a boring diet. It doesn't require back-breaking exercise And you continue to eat your favorite foods. There isn't an easier way to possibly lose weight. You carry on with your normal life style, eat a balanced diet, drink water and lose weight.

The Bio-Slim Patch is completely safe to use, there are no harmful side effects. Each package contains 30 patches- a one month supply. . . . You have nothing to lose except unsightly surplus fat. . . .

- ◆ **No starvation diets, tiny portions or skipped meals!**
- ◆ **No back breaking exercises!**
- ◆ **Fast, easy, LASTING weight loss with the Bio-Slim Patch!**

Just Watch Your Fat Fade Away

LOSE up to 20 lbs
\$24.95

LOSE up to 40 lbs
\$43.95

LOSE up to 60 lbs
\$62.95

Bio-Slim Patch

30 Patches (#SDPA) for only \$24.95

Save!

60 Patches (#SDPB) for only \$43.95

Save More!

90 Patches (#SDPC) for only \$62.95

(Exhibit B)

THE FTC ACT

15. 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, 15 U.S.C. § 52, **Chinese Diet Tea** and the **Bio-Slim Patch**, are “foods,” “drugs” or “devices,” as defined in Sections 15(b), (c), and (d) of the FTC Act, 15 U.S.C. §§ 55(b), (c), and (d) . . . As set forth below, Defendants have engaged and continue to engage in violations of Sections 5(a) and 12 of the FTC Act in connection with the advertising, marketing and sale of **Chinese Diet Tea** and the **Bio-Slim Patch**.

False Claims for Chinese Diet Tea

COUNT ONE

16. Through the means described in Paragraph 11, including through the statements and depictions contained in the advertisement attached as Exhibit A, Defendants have represented,

expressly or by implication, that

(a) **Chinese Diet Tea** causes rapid and substantial weight loss without the need to reduce caloric intake or increase physical activity;

(b) **Chinese Diet Tea** enables users to lose as much as six pounds per week over multiple weeks and months without the need to reduce caloric intake or increase physical activity;

(c) **Chinese Diet Tea** enables users to lose substantial weight while enjoying their favorite foods, including foods high in sugar and animal fat;

(d) **Chinese Diet Tea** blocks the absorption of fat and calories thereby enabling users to lose substantial weight;

(e) **Chinese Diet Tea** causes substantial weight loss for all users; and

(f) **Chinese Diet Tea** is clinically proven to cause rapid and substantial weight loss without the need to reduce caloric intake or increase physical activity.

17. In truth and in fact:

(a) **Chinese Diet Tea** does not cause rapid and substantial weight loss without the need to reduce caloric intake or increase physical activity;

(b) **Chinese Diet Tea** does not enable users to lose as much as six pounds per week over multiple weeks and months without the need to reduce caloric intake or increase physical activity;

(c) **Chinese Diet Tea** does not enable users to lose substantial weight while enjoying their favorite foods, including foods high in sugar and animal fat;

(d) **Chinese Diet Tea** does not block the absorption of fat and calories and enable users to lose substantial weight;

- (e) **Chinese Diet Tea** does not cause substantial weight loss for all users; and
- (f) **Chinese Diet Tea** is not clinically proven to cause rapid and substantial weight loss

without the need to reduce caloric intake or increase physical activity.

18. Therefore, Defendants' representations as set forth in Paragraph 16 above are false or misleading and constitute a deceptive practice, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

Unsubstantiated Claims for Chinese Diet Tea

COUNT TWO

19. Through the means described in Paragraph 11, including through the statements contained in the advertisement attached as Exhibit A, Defendants have represented, expressly or by implication, that **Chinese Diet Tea**: (a) causes rapid and substantial weight loss without the need to reduce caloric intake or increase physical activity; (b) enables users to lose as much as six pounds per week over multiple weeks and months without the need to reduce caloric intake or increase physical activity; (c) enables users to lose substantial weight while enjoying their favorite foods, including foods high in sugar and animal fat; (d) blocks the absorption of fat and calories thereby enabling users to lose substantial weight; and (e) causes substantial weight loss for all users.

20. In truth and in fact, Defendants did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 19 above, at the time the representations were made.

21. Therefore, the making of the representations as set forth in Paragraph 19 above constitutes a deceptive practice, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

False Claims for the Bio-Slim Patch

COUNT THREE

22. Through the means described in Paragraph 14, including through the statements and depictions contained in the advertisement attached as Exhibit B, Defendants have represented, expressly or by implication, that

(a) The **Bio-Slim Patch** causes rapid and substantial weight loss without the need to reduce caloric intake or increase physical activity; and

(b) The **Bio-Slim Patch**, when worn on the body, causes substantial weight loss.

23. In truth and in fact:

(a) The **Bio-Slim Patch** does not cause rapid and substantial weight loss without the need to reduce caloric intake or increase physical activity; and

(b) The **Bio-Slim Patch**, when worn on the body, does not cause substantial weight loss.

24. Therefore, Defendants' representations as set forth in Paragraph 22 above are false or misleading and constitute a deceptive practice, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

Unsubstantiated Claims for the Bio-Slim Patch

COUNT FOUR

25. Through the means described in Paragraph 14, including through the statements contained in the advertisement attached as Exhibit B, Defendants have represented, expressly or by implication, that the **Bio-Slim Patch**: (a) causes rapid and substantial weight loss without the need to reduce caloric intake or increase physical activity; and (b) when worn on the body, causes

substantial weight loss.

26. In truth and in fact, Defendants did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 25 above, at the time the representations were made.

27. Therefore, the making of the representations as set forth in Paragraph 25 above constitutes a deceptive practice, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

INJURY

28. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss as a result of 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

29. 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, to prevent and remedy injury caused by Defendants' law violations.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's equitable powers, requests that this Court:

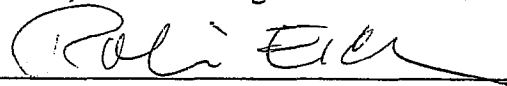
- (a) Award the Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including, but not limited to a preliminary injunction;
- (b) Permanently enjoin Defendants from violating the FTC Act as alleged herein;
- (c) 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
- (d) Award the Plaintiff the costs of bringing this action, and such other equitable relief as the Court may determine to be just and proper.

Dated: October 27, 2004

Respectfully submitted,

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