

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CIVIL NO. 2:04cv00241-GZS

IWORX, a corporation, and

SELFWORX.COM, LLC, and

JEFFREY V. KRAL, and

BERNARD WILLIMANN,

Defendants,

and

SHAWN P. LYDEN,

Relief Defendant.

**PLAINTIFF'S AMENDED COMPLAINT
FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF**

Plaintiff Federal Trade Commission ("FTC" or "Commission"), through its undersigned attorneys, for its *AMENDED COMPLAINT* alleges:

1. Plaintiff Federal Trade Commission 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 gel•ä•thin™ and Ultra LipoLean 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 pursuant to 15 U.S.C. §§ 45(a), 52 and 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 1391(c).

THE PARTIES

4. **Plaintiff 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 contacts 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 Iworx** is a Maine corporation with offices located at 51 U.S. Route 1, Nonesuch River Plaza–Suite1, Scarborough, Maine 04074. Iworx transacts and has transacted business in the District of Maine.

6. **Defendant Selfworx.com LLC** (“Selfworx”) is a Maine “Limited Liability Company” with offices located at 51 U.S. Route 1, Nonesuch River Plaza–Suite1, Scarborough, Maine 04074. Selfworx transacts and has transacted business in the District of Maine.

7. **Defendant Jeffrey V. Kral** is an owner, the president and manager of Selfworx and Iworx. At all times relevant to this *AMENDED COMPLAINT*, acting individually or in concert with others, defendant Kral has formulated, directed, controlled or participated in the acts or practices of the corporate defendants, including the acts or practices alleged in this *AMENDED COMPLAINT*. Defendant Kral resides in the District of Maine, and he transacts or has transacted business in the District of Maine.

8. **Defendant Bernard Willimann** is an owner, officer and manager of Selfworx and Iworx. At all times relevant to this *AMENDED COMPLAINT*, acting individually or in concert with others, defendant Willimann has formulated, directed, controlled or participated in the acts or practices of the corporate defendants, including the acts or practices alleged in this *AMENDED COMPLAINT*. Defendant Willimann resides in the District of Maine, and he transacts or has transacted business in the District of Maine.

9. **Defendant Shawn P. Lyden** is an owner and officer of Selfworx and Iworx. As an owner of Selfworx and Iworx, he has received payment of funds from the profits of Selfworx and Iworx. Relief defendant Lyden resides in the District of Maine, and he transacts or has transacted business in the District of Maine.

COMMERCE

10. The acts and practices of defendants alleged in this *AMENDED 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

11. Since at least 2003, defendants have advertised, promoted, offered for sale and sold products to the public throughout the United States, including two purported weight-loss products called gel•ä•thin™ and Ultra LipoLean (LipoLean).

12. gel•ä•thin is a topical gel. A one-month supply of gel•ä•thin costs \$59.95, including shipping and handling.

13. Defendants advertise and offer gel•ä•thin for sale through full-page advertisements in national magazines and newspapers, and on the Internet. The advertisements direct consumers to dial an “800” number to order the product.

14. To induce consumers to purchase gel•ä•thin, defendants have disseminated or caused to be disseminated advertisements for gel•ä•thin that include, but are not limited to, the advertisements attached hereto as Exhibit A (COSMOPOLITAN, January 2004), Exhibit B (COMPLETE WOMAN, December 2003) and Exhibit C (Sunday newspaper supplements, including Cleveland, Ohio, SUN NEWSPAPERS, the week of March 28, 2004). These advertisements contain the following statements or depictions, among others:

gel•ä•thin™ introduces its scientifically advanced topical gel that melts away cellulite.
A Flatter, Sexier Tummy and Butt in Days! (*Exhibit A.*)

gel•ä•thin™ penetrates skin and emulsifies cellular fat. (Releases then forces fat lipids out of the adipose tissue cells.)

Fat lipids shrink and are forced into the blood-stream to be used as energy. Skin tightens.

Emulsifies stubborn fat on contact.
Thighs, butt, & tummy...naturally, without the risk of surgery.

(Exhibit A.)

Listen to these former skeptics:

* * *

"... I lost 6 inches and 21 lbs. with Gelathin in only 6 weeks!
Now I can walk the beach without a towel around my waist. . ."
—Marla N. *(Exhibits A, B and C.)*

Tomorrow's fat-loss technology today!

(Exhibit A.)

Exciting New Breakthrough!!

gel•ä•thin™ Body Toning System

Introducing **gel•ä•thin™** body toning system which uses scientifically advanced, natural ingredients for tighter skin, and to melt away the appearance of stubborn cellulite in your problem areas. This breakthrough system targets and dissolves the appearance of cellulite and fat deposits on hips and thighs—even that tummy pouch. When diet and exercise aren't enough, **gel•ä•thin™** system works in days wherever it's applied. It's that fast and easy!

(Exhibit B.)

Reduce Cellulite-Affected Areas and Firm Up

Sculpt Your Body in Ways You Never Thought Possible!

Just apply **gel•ä•thin™** to any area of your body that you want to be slimmer, smoother, and sexier looking! **gel•ä•thin™** works on almost any part of the body, including your buttocks, arms, chin, and neck! You can spot-reduce the appearance of unwanted fat and unsightly lumps and bumps almost anywhere on your body safely and effectively without expensive medical procedures. *(Exhibit B.)*

Wouldn't You Love a Flatter, Sexier Tummy and Butt in 19 Days?

* * *

Photo
of
"Doctor"

Advanced Ingredients

(Concentrate Rhodofiltrat®-HG)

The advanced ingredient Concentrate Rhodofiltrat®-HG, a natural extract, is doctor recommended and makes the **gel•ä•thin™** program unlike any other body toning system. Simply apply **gel•ä•thin™** to any area of your body that you want to be slimmer, smoother, and sexier looking and follow the easy, step by step **gel•ä•thin™** program. The gel is light and absorbs fast, and the system couldn't be simpler. Now you can spot-reduce the appearance of unwanted fat and unsightly lumps and bumps almost anywhere on your body! When diet and exercise aren't enough, the **gel•ä•thin™** system works in days wherever it's applied – arms, neck, hips, butt and thighs, even that tummy pouch!
(Exhibit C.)

Breakthrough System

Guaranteed Results within 30 days

Are you tired of that stubborn, unsightly fat in your problem areas? Are you wasting \$200, \$500, even \$1,000 in clothes that just don't fit anymore? Are you serious about having a flatter, sexier tummy and butt? Now you can shed pant or dress sizes quickly, without ephedra or stimulants. You can have tighter arms, leaner thighs and a more shapely waist without starvation diets or strenuous exercise. See for yourself: the **gel•ä•thin™** system is guaranteed to give you results within 30 days or you get a refund. You have nothing but weight to loose! *(Exhibit C.)*

15. Ultra LipoLean ("LipoLean") is a dietary supplement in tablet form. A one-month supply costs \$39.95 plus shipping and handling. It is advertised on the Internet, and, as with **gel•ä•thin**, consumers are directed to call an "800" number to order the product.

16. To induce consumers to purchase LipoLean, defendants have disseminated or caused to be disseminated advertisements for LipoLean that include, but are not limited to, the Internet advertisement attached hereto as Exhibit D.¹ This advertisement contains the following statements or depictions, among others:

Lose pant or dress sizes in weeks!

“Revolutionary patented formula now absorbs up to 300% more fat!”

Introducing Ultra LipoLean, the most comprehensive fat-reduction and weight-management product available! With Ultra LipoLean's fast-acting formula, you'll achieve your weight-loss goals faster and easier, without giving up your favorite foods!

Benefits:

Scientifically advanced system

Contains all-natural ingredients — No Ephedra, no stimulants, No jitters.

No complicated fat gram counting—eat the foods you love

Convenient and fast-acting

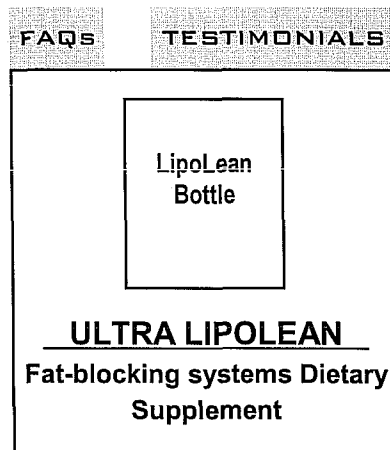
To order your risk-free trial of Ultra LipoLean by check, money order or credit card, call 1-800-308-5590.

(Exhibit D.)

Recommended use: As a dietary supplement, take two (2) tablets with an 8 oz. glass of water, twice daily. Once, 1 to 5 minutes before mid-day meal and once, 1 to 5 minutes before evening meal and drink plenty of water. *(Exhibit D.)*

WARNING: Since Ultra LipoLean is so effective at removing fat and cellulite, some people may experience rapid weight loss. Do not allow yourself to become too thin. If you start to loose *[sic]* weight too quickly, skip a day or two of use. *(Exhibit D.)*

¹ www.selfworx.com/LIPOLEAN/lipolean.html.



(Exhibit D.)

What makes Ultra LipoLean different from and more effective than any other fat binder, fat blocker or product containing chitosan?

Ultra LipoLean is different from and more effective than other weight-loss supplements because it contains a powerful patented combination of ingredients called Liposan. Derived by the most advanced technology and processing techniques, Liposan has superior solubility meaning that it breaks down faster than any other fat binder. It also has the highest density and the most superior fat-binding performance available. Within one minute Ultra LipoLean *[sic]* has an 85-to-18 comparison to the top fat binder in fat absorption. Only two tablets of the amazing Ultra LipoLean can absorb up to 20 to 30 grams of fat from a meal. Other fat binders take up to 60 minutes to break down and it takes 10 to 15 tablets to absorb 20 to 30 grams of fat. By using Ultra LipoLean in combination with the "Rapid Weight Loss Guide," you'll experience the easiest, most effective weight-loss-management system available. *(Exhibit D.)*

How does Ultra LipoLean work?

Ultra LipoLean is a unique, naturally occurring substance derived from the shells of crabs and shrimp, as well as other shellfish fiber (Liposan Ultra), which is chemically attracted to fat and acts as a fat-absorbing sponge inside your body. Within one to five minutes of entering your system, the powerful blend of Ultra LipoLean ingredients absorbs and binds to fat, and turns it into a mass that your body can't digest. The mass of fat is passed through your body undigested, which means the fat you eat never has a chance to be stored as unwanted fat on your body in places like your inner and outer thighs, your stomach, under your chin, on your arms, etc. And because Ultra LipoLean neutralizes fat after it enters your stomach, the fat has no effect on your body, which forces your body to burn off your already-stored body fat. With the amazing new Ultra LipoLean formula, it's never been easier to get rid of fat, lose weight, and have the LEAN, sculpted body you've always wanted! *(Exhibit D.)*

Why am I not losing weight as quickly as my friends who are also using Ultra LipoLean?

It's essential that you take Ultra LipoLean as directed for best results. Many people forget to take Ultra LipoLean twice a day, or they skip meals. In addition, many people find that when they exercise, they may not lose weight, but their amount of body fat decreases so there is a loss of inches around the stomach, legs, arms, etc. Also, eating more sensibly with less fat in your diet is recommended to speed up your results.
(Exhibit D.)

Can I take more than the recommended dosage?

After two weeks of use, many people prefer to take one or two extra tablets with lunch and dinner to speed up and maximize the results. This is satisfactory with the approval of a physician. *(Exhibit D.)*

How much weight will I lose?

Many people lose two-four pounds per week, although results can vary between individuals. *(Exhibit D.)*

“. . . Ultra LipoLean is the first diet aid product that has worked for me. I have been taking only 2 (tablets) a day and I have lost 20 lbs in 2 months... I really like the fact that it has no side effects, no shaking or nervousness.”

–Sue T.

(Exhibit D.)

THE FEDERAL TRADE COMMISSION ACT

17. 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, gel•ä•thin and LipoLean are each a “food” or “drug” as defined in Sections 15(b) and (c) of the FTC Act, 15 U.S.C. §§ 55(b) and (c). 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 gel•ä•thin and LipoLean.

COUNT ONE

False Claims for gel•ä•thin

18. Through the means described in Paragraph 14, including through the statements and depictions contained in the advertisements attached as Exhibits A-C, defendants have represented, expressly or by implication, that:

- a. gel•ä•thin causes rapid and substantial weight loss, including as much as twenty-one pounds in six weeks, without the need to reduce caloric intake or increase exercise;
- b. gel•ä•thin, when rubbed into the skin, causes substantial weight loss;
- c. gel•ä•thin dissolves fat deposits in days;
- d. gel•ä•thin dissolves and removes cellulite from the body;
- e. scientific studies demonstrate that gel•ä•thin will reduce fat and cellulite deposits on contact.

19. In truth and in fact:

- a. gel•ä•thin does not cause rapid and substantial weight loss, including as much as twenty-one pounds in six weeks, without the need to reduce caloric intake or increase exercise;
- b. gel•ä•thin, when rubbed into the skin, does not cause substantial weight loss;

- c. gel•ä•thin does not dissolve fat deposits in days;
- d. gel•ä•thin does not dissolve and remove cellulite from the body;
- e. scientific studies do not demonstrate that gel•ä•thin will reduce fat and cellulite deposits on contact.

20. Therefore, the making of the representations set forth in Paragraph 18 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.

COUNT TWO

Unsubstantiated Claims for gel•ä•thin

21. Through the means described in Paragraph 14, including through statements contained in the advertisements attached as Exhibits A-C, defendants have represented, expressly or by implication that gel•ä•thin: (a) causes rapid and substantial weight loss, including as much as twenty-one pounds in six weeks, without the need to reduce caloric intake or increase exercise; (b) when rubbed into the skin, causes substantial weight loss; (c) dissolves fat deposits in days; and (d) dissolves and removes cellulite from the body.

22. In truth and in fact, defendants did not possess and rely upon a reasonable basis to substantiate the representations for gel•ä•thin set forth in Paragraph 21 above at the time the representations were made.

23. Therefore, the making of the representations as set forth in Paragraph 21 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.

COUNT THREE

False Claims for LipoLean

24. Through the means described in Paragraph 16, including the statements and depictions contained in the advertisement attached as Exhibit D, defendants have represented, expressly or by implication, that:

- a. LipoLean causes rapid and substantial weight loss, including as much as four pounds or more per week, without the need to reduce caloric intake or increase exercise;
- b. only two tablets of LipoLean absorb 20 to 30 grams of fat from a meal.

25. In truth and in fact:

- a. LipoLean does not cause rapid and substantial weight loss, including as much as four pounds or more per week, without the need to reduce caloric intake or increase exercise;
- b. two tablets of LipoLean do not absorb 20-30 grams of fat from a meal.

26. Therefore, the making of the representations set forth in Paragraph 24 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.

COUNT FOUR

Unsubstantiated Claims for LipoLean

27. Through the means described in Paragraph 16, including through the statements contained in the advertisement attached as Exhibit D, defendants have represented, expressly or by implication, that LipoLean: (a) causes rapid and substantial weight loss, including as much as four pounds or more per week, without the need to reduce caloric intake or increase exercise; and (b) only two tablets of LipoLean absorb 20-30 grams of fat from a meal.

28. In truth and in fact, defendants did not possess and rely upon a reasonable basis to substantiate the representations set forth in Paragraph 27 at the time the representations were made.

29. Therefore, defendants' representations as set forth in Paragraph 27 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.

INJURY

30. 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, including the relief defendant, 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

31. 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 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 temporary and preliminary injunctions;

(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 plaintiff the costs of bringing this action, and such other equitable relief as the Court may determine to be just and proper.

Dated: Aug 19th, 2005

Respectfully submitted,

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Director
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/s/ Brinley H. Williams

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