

DAVID C. SHONKA
Acting General Counsel

VICTOR F. DEFRANCIS
KAREN JAGIELSKI
Federal Trade Commission
600 Pennsylvania Avenue, NJ-3212
Washington, DC 20580
202-326-3495, vdefrancis@ftc.gov
202-326-3259 (facsimile)

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SUSAN J. STEELE
Chief, Civil Division
United States Attorney's Office
970 Broad Street, Suite 700
Newark, NJ 07102
(973) 645-2920, susan.steele@usdoj.gov
(973) 645-2702 (facsimile)

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DAVID J. ROMEO, individually, and in his capacity as an officer of Stella Labs, LLC, and Nutraceuticals International, LLC; **STELLA LABS, LLC**, a limited liability company; **NUTRACEUTICALS INTERNATIONAL, LLC**, a limited liability company; **DEBORAH B. VICKERY**, individually, and as an employee of Stella Labs and Nutraceuticals; **V. CRAIG PAYTON**, individually, and in his capacity as an officer of Stella Labs, LLC; and **ZOLTAN KLIVINYI**, individually, and in his capacity as an officer of Nutraceuticals International, LLC,

Defendants.

CASE NO. 09-1262
(WJM)

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

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

1. The following are named parties to this action:
 - A. **Plaintiff FTC** is an independent agency of the Government of the United States of America. Its address is 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.
 - B. **Defendant Stella Labs, LLC** (“Stella Labs”) was a New Jersey limited liability company. At all times relevant to this Complaint, its principal place of business was 625 From Road, Paramus, New Jersey 07652.
 - C. **Defendant Nutraceuticals International, LLC** (“Nutraceuticals”) is a Delaware limited liability company with its principal place of business at 11 Wallace Street, Elmwood Park, New Jersey 07407.
 - D. **Defendant David J. Romeo** (“Romeo”) is or has been an officer of Stella Labs, LLC and Nutraceuticals International, LLC. His principal place of business is 11 Wallace Street, Elmwood Park, New Jersey 07407.
 - E. **Defendant Deborah B. Vickery** (“Vickery”) was the head of

New Product Development and directed marketing at Stella Labs, and is the Director of Marketing at Nutraceuticals. Her principal place of business is 11 Wallace Street, Elmwood Park, New Jersey 07407.

F. **Defendant Verlyn Craig Payton** (“Payton”) was an officer of Stella Labs. At all times relevant to this Complaint, his principal place of business was 625 From Road, Paramus, New Jersey 07652.

G. **Defendant Zoltan Klivinyi** (“Klivinyi”) is an officer of Nutraceuticals. His principal place of business is 11 Wallace Street, Elmwood Park, New Jersey 07407.

2. The FTC brings this action pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to secure injunctive relief and other equitable relief against defendants Stella Labs; Nutraceuticals; Romeo, individually, and in his capacity as an officer of Stella Labs and Nutraceuticals; Vickery, individually, and in her capacity as the Director of Marketing for Stella Labs and Nutraceuticals; Payton, individually, and as an officer of Stella Labs; and Klivinyi, individually, and as an officer of Nutraceuticals (collectively, “Defendants”) for engaging in deceptive acts or practices and false advertising in connection with the advertising, marketing, and sale of a purported weight loss

product in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

JURISDICTION AND VENUE

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

4. Venue in the United States District Court for the District of New Jersey is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

PLAINTIFF

5. 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, unfair or deceptive acts or practices, and false advertisements for food, drugs, devices, services, or cosmetics in or affecting commerce. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the Commission to initiate federal district court proceedings to enjoin violations of the FTC Act, and to secure such equitable relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, as may be appropriate in each case.

DEFENDANTS

6. Since at least January 6, 2000, defendant Romeo has marketed a variety of ingredients to producers of finished dietary supplement products through a succession of corporate entities and limited liability companies. These companies, operating under the control of defendant Romeo, include, but are not limited to, defendant Stella Labs, and defendant Nutraceuticals.

7. Romeo is, or has been, an officer of defendants Stella Labs and Nutraceuticals. At all times relevant to the complaint, acting individually or in concert with others, Romeo has formulated, directed, controlled, or participated in the policies, acts, or practices of defendants Stella Labs and Nutraceuticals, including the acts or practices alleged in this complaint. He transacts, or has transacted, business in this District and throughout the United States.

8. Defendant Stella Labs was a New Jersey limited liability company. At all times relevant to this Complaint, Stella Labs sold a variety of ingredients, including an ingredient purportedly derived from the succulent, *Hoodia gordonii* (“hoodia”), to producers of finished dietary supplement products. Stella Labs is headquartered, or has its principal place of business, in this District and transacts, or has transacted, business in this District and throughout the United States.

9. Defendant Nutraceuticals is a Delaware limited liability company and is registered in New Jersey as a foreign business entity. It sells a variety of

ingredients, including an ingredient purportedly derived from the succulent, hoodia, to producers of finished dietary supplement products. Nutraceuticals is headquartered, or has its principal place of business, in this District and transacts, or has transacted, business in this District and throughout the United States.

10. Defendant Vickery was the head of New Product Development and directed marketing at Stella Labs, and is the Director of Marketing at Nutraceuticals. At all times relevant to the complaint, acting individually or in concert with others, Vickery has formulated, directed, controlled, or participated in the policies, acts, or practices of Stella Labs and Nutraceuticals, including the acts or practices alleged in this complaint. She transacts, or has transacted, business in this District and throughout the United States.

11. Defendant Payton was an officer of Stella Labs. At all times relevant to the Complaint, acting individually or in concert with others, Payton has formulated, directed, controlled, or participated in the policies, acts, or practices of Stella Labs, including the acts or practices alleged in this complaint. He transacts, or has transacted, business in this District and throughout the United States.

12. Defendant Klivinyi is an officer of Nutraceuticals. At all times relevant to this Complaint, acting individually or in concert with others, Klivinyi has formulated, directed, controlled, or participated in the policies, acts, or practices of Nutraceuticals, including the acts or practices alleged in this

complaint. He transacts, or has transacted, business in this District and throughout the United States.

COMMERCE

13. 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

Stella Labs

14. On or about March 26, 2003, defendant Romeo filed, or caused to be filed, a Certificate of Formation for defendant Stella Labs, LLC. On September 13, 2004, Romeo opened up a corporate bank account for Stella Labs at Commerce Bank/North Westwood, 336 Old Hook Road, Westwood, New Jersey. The signatories on the account were Romeo, who identified himself as Stella Labs’ Manager; defendant Payton, who was designated Stella Labs’ “member”; and Marlin Gold, Stella Labs’ “Controller.” Defendant Payton previously had worked for Romeo at Romeo’s company, Global Nutrients, Inc. (“Global Nutrients”), marketing ingredients.

15. In or about September 2004, defendant Vickery was hired as a marketing consultant to Stella Labs. Vickery later became was the head of New Product Development and directed marketing at Stella Labs. Vickery previously

had worked for Romeo at his company, Global Nutrients, as a consultant marketing ingredients.

16. Beginning in at least September 2004, and continuing thereafter, defendants Stella Labs, Romeo, Payton, and Vickery (collectively, "Stella Labs Defendants") advertised, promoted, offered for sale, sold, and distributed numerous raw ingredients to their trade customers for use in finished dietary supplements marketed to consumers. These ingredients included, but were not limited to, ingredients that the Stella Labs Defendants represented to be authentic hoodia.

17. Hoodia is a cactus-like, succulent plant native to the Kalahari Desert of South Africa, Namibia, and Botswana. Because hoodia is considered an endangered species, the import and export of hoodia is regulated under the Convention of International Trade in Endangered Species of Wild Fauna and Flora. At this time, only the nation of South Africa permits the exportation of hoodia.

18. Traditionally, an indigenous people of Southern Africa, known as the "San Bushmen," have used hoodia as an appetite suppressant. In recent years, hoodia has been marketed as a weight-loss ingredient to consumers throughout the United States and the world.

19. To induce trade customers to purchase their hoodia, the Stella Labs Defendants have disseminated, or caused to be disseminated, advertisements and

marketing materials for hoodia, including, but not limited to, the attached Exhibits A through H. These promotional materials contain, among other things, the following statements:

- A. Hoodia supplements taken daily can reduce calorie intake by 1000 calories a day; inducing weight loss by taking away the feeling of hunger; without limiting food intake, changing the diet, or the addition of an exercise regimen.

Exhibit ("Ex.") A, p. 2.

- B. Hoodia works by tricking the brain into thinking the body is full even if it is not. When a person eats, the body produces glucose which sends a signal to the hypothalamus of the brain indicating the body has been nourished; thus the feeling of hunger subsides. Hoodia acts on the body in the same way, only the signals are 100,000 times more potent than glucose, completely eliminating the feeling of hunger for extended periods.

Ex. B, p.3; Ex. C.

- C. "We have seen an incredible demand for [hoodia]. We suspect that by the end of 2005, the current weight loss industry leaders will have to create new brands using the Hoodia [g]ordonii ingredient, to retain a competitive position in the market," said Craig Payton, managing director of Stella Labs. Hoodia [g]ordonii aids in weight loss by eliminating the urge to overeat. Because of this, diets which limit the amount of food or the types of food one can eat will be viewed as unnecessary.

Ex. C.

- D. Hoodia has many wonderful effects on the body, all of which are linked to the activity of the hypothalamus of the brain, the part which controls appetite Mainly it is seen as an appetite suppressant When we eat, the hypothalamus sends signals to the body that it has been nourished and hunger subsides.

Hoodia has this same effect.

Ex. D.

- E. HOODIA: THE HOTTEST PRODUCT IN WEIGHT LOSS FOR 2006.

Ex. E.

- F. The first human trials [of hoodia] involved a morbidly obese group of people allowed only to read, watch television, and eat. Half were given Hoodia; the other half, placebo. Fifteen days later, the Hoodia group had reduced their calorie intake by 1,000 calories a day. (The average American man consumes about 2,600 calories a day; a woman about 1,900).

Ex. B, p. 5; Ex. C.

- G. ***Dr. Richard Dixey explained how the active ingredient actually works:*** “There is a part of your brain, the hypothalamus. Within that mid-brain there are nerve cells that sense glucose sugar. When you eat, blood sugar goes up because of the food, these cells start firing and now you are full. What the Hoodia seems to contain is a molecule that is about 10,000 times as active as glucose. It goes to the mid-brain and actually makes those nerve cells fire as if you were full. But you have not eaten. Nor do you want to.”

Ex. A, p. 5.

- H. Only Hoodia gordonii has shown proven results as a highly effective appetite suppressant. Therefore it is important to make sure you have the correct product.

Ex. B, p. 12.

- I. **WHAT IS THE SCIENCE BEHIND IT:**
. . . . When South African scientists were testing the Hoodia plant, they discovered the plant contained a previously unknown molecule. Results of human clinical trials in Britain suggest that this active ingredient could reduce the appetite by

up to 2,000 calories a day.

Ex. A, p. 4; Ex. B, p.11.

- J. **Hoodia [g]ordonii: The world's best chance at a cure for obesity.** Hoodia is a new and powerful nutritional supplement for suppressing the appetite. . . . There are no side effects from the usage of Hoodia, other than lack of hunger and weight loss.

Ex. B, p.7.

- K. **THE ORIGIN OF OUR HOODIA**

Our Hoodia is grown from seedlings on approved farms in South Africa with the knowledge and help of the San People.

Ex. F.

- L. Retail customers are asking for Hoodia that works...
Stella Labs has an exclusive supply of
Authentic South African Hoodia.
THERE IS NO SUBSTITUTE!

Ex. G.

- M. **STELLA HOODIA WORKS!
IT'S THE REAL DEAL, THE
WHOLE PACKAGE! FROM
SOUTH AFRICA, GREAT
PRICE, HIGH QUALITY,
AND IT HAS BEEN PROVEN
EFFECTIVE [sic] FOR SATIETY,
ENERGY, & WEIGHT LOSS**

Ex. H.

- N. **Avoid Customs Hold Ups - The FDA
requires that importers of Hoodia
register and that all product be
approved upon arrival to the US. Stella**

is the only US approved company.

Ex. B, p.17.

- O. Use informational resources- Stella provides our customers with all of [sic] research to use in helping promote new products.

Ex. B, p. 17.

20. The Stella Labs Defendants have furnished copies of their advertising and marketing materials for hoodia to their trade customers. One or more trade customers have used these materials to market the Stella Labs Defendants' purported hoodia to consumers nationwide.

21. The Stella Labs Defendants have represented that they supply authentic hoodia to their trade customers. Numerous trade customers have purchased product represented to be hoodia from the Stella Labs Defendants and included it in weight-loss products sold to consumers. In the course of marketing these weight-loss products to consumers, Stella Labs' trade customers have represented in advertising and on product labels that such products contain hoodia.

Nutraceuticals

22. On or about April 5, 2007, defendant Romeo filed, or caused to be filed, a Certificate of Formation for Nutraceuticals in the State of Delaware. Defendant Romeo registered, or caused to be registered, Nutraceuticals as a New Jersey business entity on or about August 28, 2007.

23. Beginning in at least May 2007, and continuing thereafter, defendants Nutraceuticals, Romeo, Klivinyi, and Vickery (collectively, “Nutraceuticals Defendants”) advertised, promoted, offered for sale, sold, and distributed numerous raw ingredients to their trade customers for use in finished dietary supplements marketed to consumers. These raw ingredients included, but were not limited to, ingredients that the Nutraceuticals Defendants represented to be authentic hoodia.

24. To induce trade customers to purchase their hoodia, the Nutraceuticals Defendants have disseminated, or caused to be disseminated, advertisements for hoodia, including, but not limited to, the attached Exhibits I through L. These promotional materials contain, among other things, the following statements:

- A. [Hoodia] is used by the San Bushmen for the suppression of appetite in times of little food, they also say it provides an uplifting in mood, increases sexual stamina, and leaves on [sic] with a feeling of nourished energy, as if you have eaten a full meal and you can continue about you [sic] day.

Ex. I, p.1.

- B. . . . plants grown outside South Africa has [sic] little to no active steroidal glycosides which is what leads to Hoodia’s ability increase [sic] ATP levels i [sic] the hypothalamus of the brain lending [sic] to an effect of energy sensing satiety and the suppression of the feeling of hunger. When the body is satisfied, it does not want for food.

Ex. I, p.1.

- C. A Brain Research study conducted in 2004 by David [sic]

McLean and Lu-Guang Lou of Brown Medical School Hallett Center for Diabetes and Endocrinology, showed the first conclusive evidence of Hoodia's ability to initiate the suppression of hunger and thirst.

Ex. J.

- D. Satiety, over calorie or carb intake is being looked at as a new approach to dieting & weight loss.

Ex. J.

- E. Nutraceuticals International LLC will provide products and services surpassing common natural products on the market. We will offer the direct supply of superior and uncommon natural ingredients combined with custom formulations, bulk tolling and private label brands, along with marketing research and product branding services to customers intending to launch new dietary supplement brands to market.

Ex. K (Nutraceuticals Company Profile at www.npicenter.com, captured Aug. 12, 2008); *Ex. L* (Nutraceuticals Website, captured Aug. 13, 2008).

25. The Nutraceuticals Defendants have furnished copies of their advertising and marketing materials for hoodia to their trade customers. One or more trade customers have used these materials to market the Nutraceuticals Defendants' purported hoodia to consumers nationwide.

DEFENDANTS' VIOLATIONS OF THE FTC ACT

26. 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.

27. For the purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, hoodia is either a “food” or a “drug” as “food” and “drug” are defined in Section 15(b) and (c) of the FTC Act, 15 U.S.C. § 55(b) and (c).

COUNT ONE

Stella Labs Defendants’ False and Deceptive Weight Loss Claims

28. Through the means described in Paragraph 19, including the statements and depictions contained in the advertisements attached as Exhibits A through H, among others, the Stella Labs Defendants have represented, expressly or by implication, that the product they sold as hoodia:

- A. causes substantial weight loss;
- B. causes users to reduce daily caloric intake by 1,000 to 2,000 calories;
- C. reduces appetite sufficiently to cause substantial weight loss in humans; and
- D. is an effective treatment for obesity.

29. The Stella Labs Defendants’ representations set forth in Paragraph 28 are false or were not substantiated at the time the representations were made.

Therefore, the making of the representations in Paragraph 28 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

Nutraceuticals Defendants' Deceptive Weight Loss Claims

30. Through the means described in Paragraph 24, including the statements and depictions contained in the advertisements attached as Exhibits I through L, among others, the Nutraceuticals Defendants have represented, expressly or by implication, that their hoodia reduces appetite, thereby causing weight loss in humans.

31. The Nutraceuticals Defendants' representation set forth in Paragraph 30 was not substantiated at the time the representation was made. Therefore, the making of the representation in Paragraph 30 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

Stella Labs Defendants' False Establishment Claims

32. Through the means described in Paragraph 19, including through the use of the statements and depictions contained in the advertisements attached as Exhibits A through H, among others, the Stella Labs Defendants have represented,

expressly or by implication, that clinical studies prove that hoodia enables its users to reduce caloric intake by 1,000 to 2,000 calories a day.

33. The Stella Labs Defendants' representation set forth in Paragraph 32 is false. In truth and in fact, clinical studies do not prove that hoodia enables its users to reduce caloric intake by 1,000 to 2,000 calories a day. Therefore, the making of the representation in Paragraph 32 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

Nutraceuticals Defendants' False Establishment Claims

34. Through the means described in Paragraph 24, including through the use of the statements and depictions contained in the advertisement attached as Exhibit I through L, among others, the Nutraceuticals Defendants have represented, expressly or by implication, that scientific research demonstrates that hoodia suppresses the appetite, resulting in weight loss.

35. The Nutraceuticals Defendants' representation set forth in Paragraph 34 is false. In truth and in fact, scientific research does not demonstrate that hoodia suppresses the appetite, resulting in weight loss. Therefore, the making of the representation in Paragraph 34 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 FIVE

Stella Labs Defendants' False Product Content Claims

36. Through the means described in Paragraph 19, including the statements and depictions contained in the advertisements attached as Exhibits A through H, among others, the Stella Labs Defendants have represented, expressly or by implication, that:

- A. The product they sold as *Hoodia gordonii* is authentic *Hoodia gordonii*; and
- B. The product they sold as *Hoodia gordonii* is the only FDA-approved *Hoodia gordonii* in the United States.

37. In truth and in fact, in one or more instances, the product sold by the Stella Labs Defendants as *Hoodia gordonii* was not authentic *Hoodia gordonii*. In addition, the FDA has not approved the product sold by Stella Labs Defendants as *Hoodia gordonii*. Therefore, the making of the representations in Paragraph 36 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 SIX

Means and Instrumentalities

38. Defendants have provided to their trade customers advertising and promotional materials referred to in Paragraphs 19, 20, 21, 24, and 25, containing, among other things, false and unsubstantiated representations, as described in Paragraphs 28 through 37 above; and purported substantiation materials containing false and misleading representations.

39. By providing to their trade customers these advertising, promotional, and substantiation materials, Defendants have provided their trade customers the means and instrumentalities for the commission of deceptive acts and practices. Therefore, Defendants' practice described in Paragraph 38 constitutes a deceptive act or practice, in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

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

THIS COURT'S POWER TO GRANT RELIEF

42. 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 or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies caused by Defendants' law violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the 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 permanent injunctions, immediate access to Defendants' written and electronic records; and an order requiring Defendants to preserve all electronic and written records and cease from their destruction;

(b) Enter a permanent injunction to prevent future violations of the FTC Act by Defendants;

(c) Award such relief as the Court finds necessary to redress injury to