

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

RITE AID CORPORATION,

Defendant.

**COMPLAINT FOR
INJUNCTIVE AND OTHER
EQUITABLE RELIEF**

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

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 or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief against Rite Aid Corporation for engaging in deceptive acts or practices in connection with the advertising, marketing, and sale of the Rite Aid Germ Defense line of products, which are purported to prevent, treat, or cure colds and flu, 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 (c).

THE PARTIES

4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. *See* 15 U.S.C. §§ 41-58. The FTC 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 FTC also enforces Section 12 of the FTC Act, 15 U.S.C. § 52, which prohibits false advertisements for foods, drugs, devices, services, or cosmetics in or affecting commerce. The FTC, through its own attorneys, may initiate federal district court proceedings to enjoin violations of the FTC Act and to secure such other equitable relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and disgorgement of ill-gotten monies, as may be appropriate in each case. 15 U.S.C. § 53(b).

5. Defendant Rite Aid Corporation (“Rite Aid”) is a Delaware corporation with its principal place of business at 30 Hunter Lane, Camp Hill, Pennsylvania 17011. Rite Aid retail stores are located throughout the United States. Since September 2005, acting alone or in concert with others, Rite Aid has marketed, distributed, and sold its Germ Defense products to consumers throughout the

United States. Rite Aid transacts or has transacted business in the Middle District of Pennsylvania.

COMMERCE

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

DEFENDANT’S COURSE OF BUSINESS

7. Since September 2005 and continuing thereafter, Defendant Rite Aid has advertised, promoted, offered for sale, sold, and distributed Germ Defense products to the public. Sales of Germ Defense products at Rite Aid stores from September 2005 through December 2008 exceeded \$4.5 million.

8. Germ Defense products come in an effervescent tablet form. According to the product label, Germ Defense products contain Vitamins A, C, and E; minerals, including zinc; electrolytes; amino acids; and a “proprietary” blend of herbal extracts, including echinacea. A “PM” version of Germ Defense, promoted for night time use, also includes chamomile and valerian. The formula of ingredients used in Germ Defense products purportedly replicates the formula originated by and used in Airborne products, manufactured and sold by Airborne Health, Inc. Product directions indicate that Germ Defense can be used by both

adults and children.

9. Rite Aid created, prepared, disseminated, or caused to be disseminated advertisements, product packages and labels, in-store display cases, and other promotional material, including, but not limited to, the attached Exhibits A, B, and C, containing, among other things, the following statements and depictions.

- a. Rite Aid Germ Defense Package (Exhibit A)

RITE AID

Compare to the active ingredients of Airborne®

Handborn & Airborn

Germ Defense

Take at the first sign of cold symptoms
or before entering crowded environments

For Cold & Flu

.....

For Use in*Airplanes*Offices*Schools*Restaurants*
Health Clubs*Theaters

.....

Dietary Supplement

Contains 7 herbal extracts, antioxidants, electrolytes, amino
acids, 1,000 mg of Vitamin C and more!

.....

DIRECTIONS: AT THE **FIRST** SIGN OF A COLD SYMPTOM, SIMPLY DROP (1) TABLET IN A SMALL AMOUNT OF PLAIN WATER, LET DISSOLVE (ABOUT 1 MINUTE) AND DRINK. . . .

TAKE AT THE FIRST SIGN OF COLD SYMPTOM OR IN CROWDED PLACES*

- b. Rite Aid Germ Defense Package (Exhibit B)

RITE AID

Compare to the active ingredients of Airborne® Orange Flavor

Handborn & Airborn

Germ Defense™

Take to boost your immune system before entering crowded environments*

Effervescent Health Formula

.....

For Use in*Airplanes*Offices*Schools*Restaurants* Health Clubs*Theaters

.....

Dietary Supplement

Contains 7 herbal extracts, antioxidants, electrolytes, amino acids, 1,000 mg of Vitamin C and more!

.....

DIRECTIONS: SIMPLY DROP (1) TABLET IN A SMALL AMOUNT OF PLAIN WATER, LET DISSOLVE (ABOUT 1 MINUTE) AND DRINK. . . .

Take to boost your immune system
before entering a crowded environment*

- c. Rite Aid Newspaper Circular Advertising – December 2005
(Exhibit C)

[picture of Rite Aid Handborn & Airborn Germ Defense for Cold and Flu grouped with cold and flu products, including Rite Aid Children's Ibuprofen, Rite Aid Cough Drops, Rite Aid Allergy Medication, Rite Aid Nasal Decongestant PE, Rite Aid Loratadine, and other Rite Aid products with the following copy:]

Rite Aid
Cold Relief
All Loratadine, Acta-Tabs or Nasal Decongestant PE, Complete Allergy, Children's Non-Aspirin or Ibuprofen or Cough Drops or Germ Defense

- d. Rite Aid Newspaper Circular Advertising – December 2006
(Exhibit D)

[picture of Rite Aid Handborn & Airborn Germ Defense for Cold and Flu grouped with cold and flu products, including Rite Aid Nite Time Cold/Flu Formula, Rite Aid Mucus Relief Expectorant, Rite Aid Nasal Decongestant PE, and Rite Aid Day Time Cold/Flu Formula]

Rite Aid
Nasal Decongestant PE
Germ Defense
Nite Time or Day Time Cold/Flu Relief
Mucus Relief

DEFENDANT'S VIOLATIONS OF THE FTC ACT

10. 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, the Germ Defense products are “drugs” or “foods” pursuant to Section 15(b) and (c) of the FTC Act, 15 U.S.C. § 55(b) and (c). As set forth below, Defendant has engaged in such unlawful practices in connection with the marketing and sale of the Germ Defense products.

11. Through the means described in Paragraph 9, including the statements and depictions contained in Exhibits A through C, among others, Defendant has represented, expressly or by implication, that the Germ Defense products:

- a. Reduce the risk of or prevent colds and flu;
- b. Protect against or help fight germs;
- c. Reduce the severity or duration of a cold;
- d. Protect against colds and flu in crowded places, such as airplanes, offices, schools, restaurants, health clubs, and theaters; and

- e. Boost the body's immune system, thereby providing protection against cold and flu viruses.

12. The representations set forth in Paragraph 11 were not substantiated at the time the representations were made. Therefore, the representations set forth in Paragraph 11 constitute deceptive acts or practices, and the dissemination 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

13. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss as a result of Defendant's unlawful acts and practices. In addition, Defendant has been unjustly enriched as a result of its unlawful practices. Absent relief by this Court, Defendant is likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

14. 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 Defendant's 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:

1. Enter a permanent injunction to prevent future violations of the FTC Act by Defendant;
2. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendant's violations of the FTC Act, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies from Defendant; and
3. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

WILLARD K. TOM
General Counsel

Dated: July 13, 2009

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Federal Trade Commission

EXHIBIT A



Compare to the active ingredients of Airborne®

EXHIBIT A

Handborn & Airborn

Germ Defense

Take at the first sign of cold symptoms or before entering crowded environments

For Cold & Flu

Handborn & Airborn

Germ Defense

Take at the first sign of cold symptoms or before entering crowded environments

For Cold & Flu

For Use in • Airplanes • Offices • Schools • Restaurants • Health Clubs • Theaters

Effervescent

- Seven Herbal Extracts
- Antioxidants!
- Electrolytes!
- Amino Acids!
- 1,000mg of Vitamin C!
- Tastes Great!



Handborn & Airborn

Germ Defense

Dietary Supplement

Contains 7 herbal extracts, antioxidants, electrolytes, amino acids, 1,000 mg of Vitamin C and more!

10 tablets NET WT 1.7 OZ



DISTRIBUTED BY
RITE AID CORPORATION
HARRISBURG, PA 17105

This product is not recommended or distributed by King's Mountain, Inc. or its affiliates.

5299



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SUPPLEMENT FACTS: Serving size 1 tablet. Servings per container 10.
Amount per serving: Calories 5; Total Fat 0g; Sodium 280mg (10% DV); Total
Carbohydrates 0g; Protein 0g; Vitamin A (100% Palmitate) 5,000
IU (100% DV); Vitamin C (Ascorbic Acid) 1,000mg (1,870% DV); Vitamin
E (Acetate) 30 IU (100% DV); Riboflavin 2.8mg (170% DV); Magnesium
(Sulfate) 40mg (10% DV); Zinc (Sulfate) 8mg (55% DV); Selenium (Amino
Acid Chelate) 15mg (20% DV); Manganese (Glucosate) 3mg (150% DV);
Potassium (Bicarbonate) 75mg (2% DV); Herbal Extracts (Proprietary blend
of Lonicera Forsythia, Schizonepeta, Ginger, Chinese Vitex, Isatis Root,
Echinacea) 250mg (DV **); Amino Acids (Glutamine as L-Glutamine, Lysine as
L-Lysine HCl) 50mg (DV **); Daily Value based on a 2000 calorie diet. Daily
Value not established. **OTHER INGREDIENTS:** Citric Acid, Sodium Bicarbonate,
Sorbitol, Orange Flavor, Sucralose, Acesulfame Potassium.

Take at the first sign of cold symptoms or before entering crowded environments
Germ Defense
For Cold & Flu

Handborn & Airborn



Compare to the active ingredients of Airborne®

CONTENTS: 1 TUBE
DIRECTIONS: Take 1 tablet at the first sign of cold symptoms or before entering crowded environments.
Keep out of reach of children.
Keep this product dry. Do not use if the seal is broken or the product is expired.
© 2005 King's Mountain, Inc. All rights reserved.

EXHIBIT B



Compare to the active ingredients of Airborne®

Orange Flavor

Handborn & Airborn

Germ Defense™

Take to boost your immune system before entering crowded environments*

Effervescent Health Formula

SUPPLEMENT FACTS: Serving size 1 tablet. Servings per container: 10. Amount per serving: Calories 5, Total Fat 0g, Sodium 230mg (10% DV*), Total Carbohydrates 0g, Sugars 0g, Protein 0g. **Vitamin A** (100% Palmitate) 5,000 I.U. (100% DV*), **Vitamin C** (Ascorbic Acid) 1,000mg (1,670% DV*), **Vitamin E** (Acetate) 30 I.U. (100% DV*), **Riboflavin** 2.8mg (170% DV*), **Magnesium** (Sulfate) 40mg (10% DV*), **Zinc** (Sulfate) 8mg (55% DV*), **Selenium** (Amino Acid Chelate) 15mcg (20% DV*), **Manganese** (Gluconate) 3mg (150% DV*), **Potassium** (Bicarbonate) 75mg (2% DV*), **Herbal Extracts** (Proprietary blend of Lonicera, Forsythia, Schizonopeta, Ginger, Chinese Vitex, Isatis Root, Echinacea) 350mg (DV**), **Amino Acids** (Glutamine as L-Glutamine, Lysine as L-Lysine HCl) 50mg (DV**), *Daily Value based on a 2000 calorie diet. **Daily Value not established. **OTHER INGREDIENTS:** Citric Acid, Sodium Bicarbonate, Sorbitol, Orange Flavor, Sucralose, Acesulfame Potassium.

Made in Germany

CONTENTS: 1 TUBE

DIRECTIONS: SIMPLY DROP (1) TABLET IN A SMALL AMOUNT OF PLAIN WATER, LET DISSOLVE (ABOUT 1 MINUTE) AND DRINK. REPEAT EVERY THREE HOURS AS NECESSARY. CHILDREN ONE HALF TABLET AS WITH ALL DIETARY SUPPLEMENTS. PREGNANT WOMEN OR PEOPLE ON MEDICATION SHOULD CONSULT PHYSICIAN BEFORE TAKING. SEALED WITH A TAMPER EVIDENT CAP FOR YOUR PROTECTION. MAY BE USED IN HOT OR COLD WATER.

EFFERVESCENT HEALTH FORMULA EFFECTIVE IMMUNE SUPPORT. ACESULFAME POTASSIUM

Take to boost your immune system before entering a crowded environment*



DISTRIBUTED BY
RITE AID CORPORATION
HARRISBURG, PA 17105
The product is not manufactured or distributed by Rite Aid. Rite Aid is a registered trademark of Rite Aid Corporation.
6247



10 tablets NET WT 1.7 OZ

Contains 7 herbal extracts, antioxidants, electrolytes, amino acids, 1,000 mg of Vitamin C and more!

Handborn & Airborn
Germ Defense
Dietary Supplement

Effervescent



- Seven Herbal Extracts
- Antioxidants
- Electrolytes
- Amino Acids
- 1,000mg of Vitamin C
- Tastes Great!

Take to boost your immune system before entering crowded environments*
Effervescent Health Formula

Germ Defense™

Handborn & Airborn

Take to boost your immune system before entering crowded environments*
Effervescent Health Formula

Germ Defense™

Handborn & Airborn

Orange Flavor



Compare to the active ingredients of Airborne®

EXHIBIT C

**NET
LS**

www.RiteAid.com

Call 1-800-RITE AID® for the location of a 24-hour store near you.

Powered by **EXHIBIT C**
drugstore.com
The pharmacist drugstore

DayTime
Cold & Sinus Relief Tablets

YOUR CHOICE
2.99

16 oz. or
pharmacy counter

Get GAS CASH

Vicks Formula 44
DayQuil or NyQuil
Liquicaps - 12 ct or
Adult Liquid - 8 oz.
Pepto-Bismol
Maximum Strength
8 oz.
Regular Strength
12 oz.

Some items
located behind the
pharmacy counter

YOUR CHOICE
3.99

BUY ONE GET SECOND ONE
FREE

Cold Relief
All Loratadine, Acto-Tabs or Nasal Decongestant PE, Complete Allergy, Children's Non-Aspirin or Ibuprofen or Cough Drops or Germ Defense
Regular Retail \$2.69 - \$29.99

of equal or lesser value plus applicable sales tax. Items offered at regular retail

Excedrin
MIGRAINE

ASPIRIN FREE
Excedrin PM
For Pain With Sleeplessness

Excedrin
EXTRA STRENGTH

Dimetapp
Infant Drops 0.5 oz. or Elix 4 oz.
Advil
Cold & Sinus
Liquid Gels 10 oz.

Some items located behind the pharmacy counter

YOUR CHOICE
3.99

Excedrin
100 ct

YOUR CHOICE
5.99

Y Snore
Nasal Pump
Series 1 20 ct

Softlips Lip Protectant
Assorted Flavors \$0.97 each

Zim's Crack Creme
Cinnamon 1.25 oz.

Ocean Nasal Spray
4.5 oz. Saline Gel 1.5 oz.
12 Puffs 1.25 oz.
Regular Retail \$2.99 - \$11.99

BUY ONE GET SECOND ONE
FREE

of equal or lesser value plus applicable sales tax. Items offered at regular retail

Halls Cough Drops
Honey Lemon Strawberry, Ice Blue Cherry, Raspberry or Menthol 20 ct

YOUR CHOICE
1.29

Get GAS CASH

Blistex
Regular, Mint or Berry Lip Balm - 0.15 oz. or Lip Ointment - 0.21 oz.
DCT - 0.25 oz.

ChapStick Lip Balm
Original, Cherry, Mentholated or Lip Moisturizing - 0.15 oz.

YOUR CHOICE
99¢

Mucinex
24 hr. Cough/Sinus Relief

Claritin
24-hour Allergy 10 mg. 20 ct

YOUR CHOICE
16.99

Delsym
Cough Suppressant 100

YOUR CHOICE
6.99

Mylanta
Cough Syrup 12 ct
Syrup - 2.5 oz. or Tablets - 10 ct

YOUR CHOICE
3.99

NEOSPORIN
LIP TREATMENT

Neosporin Lip Treatment
0.25 oz.
Lip 1 Tablet

6.99
-2.00
4.99

2.99
-2.00
99¢

SINGLE CHECK REBATE

SudaCare
NEW SHOWER SOOTHERS

SudaCare Shower Soothers
7 ct
Lip 1 Rebate

6.99
-2.00
4.99

SINGLE CHECK REBATE

Vicks Vaporizer
Humidifiers, Digital Thermometers or Kaz Heating Pads

YOUR CHOICE
25% OFF
REGULAR RETAIL

BRAUN
ThermoScan Ear Thermometer

GREAT VALUE
34.99

EXHIBIT D

EXHIBIT D



Nasal Decongestant PE 18 ct.
Germ Defense 10 ct.
Nite Time or Day Time Cold/Flu Relief Liquid 6 oz. or Softgels 20 ct.
Mucus Relief 30 ct.

BUY ONE GET SECOND ONE FREE

of equal or lesser value plus applicable sales tax. Items offered at regular retail.



Metamucil Powder - 114 Dose Capsules Plus Calcium - 120 ct.
 Capsules - 180 ct.
Fiber Sure Powder - 57 Dose

10⁹⁹



Prilosec OTC 28 ct.

18⁹⁹



Joint-Ritis Patch 8 ct.
 Roll On 1.4 - 3 oz.
Blue-Emu 4 oz.

BUY ONE GET SECOND ONE FREE

of equal or lesser value plus applicable sales tax. Items offered at regular retail.



All Kez Heating Pads, Vicks Thermometers, Vicks Vaporizers or Humidifiers

25% OFF
 REGULAR RETAIL



RITE AID Digital Thermometer Flexible Tip or Quick Read

5⁹⁹



Pepto-Bismol Regular Strength - 12 oz. Maximum Strength - 8 oz. Capslets - 40 ct. Children's - 24 ct.

3⁹⁹

*Sale only available at GNC Locations in Rite Aid Stores. For the Rite Aid GNC locations nearest you, call 1-800-RITE AID® or visit us at www.RITEAID.com



GNC Live Well
Ultra Mega Gold 180 ct.

27⁹⁹



Endothil-CR 30 ct.
Oxydrene 60 ct. \$29.99

54⁹⁹



GNC Live Well
Triflex 120 - 140 ct.
Ester-C 1000 mg., 90 - 180 ct.
Chewable Papaya 90 - 240 ct.

BUY ONE GET SECOND ONE 50% OFF
 REGULAR RETAIL
 of Equal or Lesser Value



Nutrex Lipo 6 120 ct.

39⁹⁹