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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

AUG -5 2010

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

_____)
 FEDERAL TRADE COMMISSION,)
)
 Plaintiff,)
)
 v.)
)
 CENTRAL COAST NUTRACEUTICALS, INC.,)
 a California corporation,)
)
 iLIFE HEALTH AND WELLNESS, LLC,)
 a Delaware limited liability company,)
)
 SIMPLY NATURALS, LLC, a Delaware limited)
 liability company,)
)
 FIT FOR LIFE, LLC, a Delaware limited)
 liability company,)
)
 HEALTH AND BEAUTY SOLUTIONS LLC,)
 a Delaware limited liability company,)
)
 GRAHAM D. GIBSON, and)
)
 MICHAEL A. MCKENZY,)
)
 Defendants.)
 _____)

Civil No.

10C 4931

JUDGE NORGLE

MAGISTRATE JUDGE SCHENKIER

COMPLAINT FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC"), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and Section 917(c) of the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. § 1693o(c), to obtain temporary, preliminary, and permanent injunctive

relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52; Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a); and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), and 1693o(c).

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

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 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 food, drugs, devices, services, or cosmetics in or affecting commerce. The FTC also enforces the EFTA, which regulates the rights, liabilities, and responsibilities of participants in electronic fund transfer systems, 15 U.S.C. § 1693, et seq.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the EFTA and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A), and 1693o(c).

DEFENDANTS

6. Defendant Central Coast Nutraceuticals, Inc. (“CCN”) is a California corporation with its principal place of business at 2375 East Camelback Road, 5th Floor, Phoenix, Arizona, 85016. CCN transacts or has transacted business in this district and throughout the United States.

7. Defendant iLife Health and Wellness, LLC (“iLife”) is a Delaware corporation with its principal place of business at 2375 East Camelback Road, 5th Floor, Phoenix, Arizona, 85016. iLife transacts or has transacted business in this district and throughout the United States.

8. Defendant Simply Naturals, LLC (“Simply Naturals”) is a Delaware corporation with its principal place of business at 2375 East Camelback Road, 5th Floor, Phoenix, Arizona, 85016. Simply Naturals transacts or has transacted business in this district and throughout the United States.

9. Defendant Fit for Life, LLC (“Fit for Life”) is a Delaware corporation with its principal place of business at 2375 East Camelback Road, 5th Floor, Phoenix, Arizona, 85016. Fit for Life transacts or has transacted business in this district and throughout the United States.

10. Defendant Health and Beauty Solutions LLC (“Health and Beauty”) is a Delaware corporation with its principal place of business at 2375 East Camelback Road, 5th Floor, Phoenix, Arizona 85016. Health and Beauty transacts or has transacted business in this district and throughout the United States.

11. Defendant Graham D. Gibson is the president and chief executive officer of Defendant CCN, and an officer, director, or owner of Defendants iLife, Simply Naturals, Fit for Life, and Health and Beauty. At all times material to this Complaint, acting alone or in concert

with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Gibson, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

12. Defendant Michael A. McKenzy is a manager of CCN and an officer, director, or owner of Defendants Simply Naturals and iLife. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant McKenzy, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

13. Defendants CCN, iLife, Simply Naturals, Fit for Life, and Health and Beauty (collectively "Corporate Defendants") have operated as a common enterprise while engaging in the deceptive, unfair, and unlawful acts and practices alleged below. Defendants have conducted the business practices described below through an interrelated network of companies that have common ownership, officers, managers, business functions, employees, office locations, and have commingled funds. Because the Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Individual Defendants Gibson and McKenzy have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Corporate Defendants that constitute the common enterprise.

COMMERCE

14. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ BUSINESS ACTIVITIES

15. Since at least May 2007, Defendants have advertised, marketed, promoted, offered to sell, and sold numerous purported health and beauty products to consumers throughout the United States, including AcaiPure, Celebrity Smile, Gloskin, and Colopure.

16. Defendants have offered their products through a variety of channels, including CCN’s company website, www.centralcoastnutra.net, and numerous other websites that Defendants own and operate, such as www.healthandwellnessoffers.com/sites/acaipure and www.colo-pure-detox.com. Defendants’ products are also promoted via Internet advertisements, websites, and emails generated by a network of affiliate marketers to direct consumers to Defendants’ websites and products.

17. As described below, Defendants have deceived consumers across the country out of tens of millions of dollars. The acts and practices alleged herein also have generated thousands of consumer complaints to law enforcement agencies and the Better Business Bureau.

Defendants’ “Free” Trial Programs

18. Defendants typically have offered their products to consumers on a “free trial,” “risk free,” or “trial” basis and have represented that consumers need only pay a nominal charge, usually for shipping and handling. Defendants typically have represented that the offered trial is available only for a limited time.

19. For example, in or around December 2009, Defendants featured a streaming video of a female model on a website offering AcaiPure. When consumers visited the website, the video appeared at the bottom right hand corner of the screen and the model stated, among other things:

We stand behind AcaiPure, and by doing so, we're not even going to ask you to pay for it. That's right. We'll send you a risk-free 30-day supply of our incredible AcaiPure, absolutely free of charge, so you can experience the amazing and incredible fat-fighting power of AcaiPure first-hand without any risk. All we ask for is for you to pay a small shipping and handling fee of \$4.95 and we'll rush it to you right away. So, be quick. With all the media attention surrounding AcaiPure, supplies are going fast and we can't guarantee this free 30-day supply will still be available next time you visit us.

20. Defendants have made similar representations about the purported "free" or "risk free" nature of their trial programs on their other websites. For example, the first page of many of Defendants' websites offering Colopure have prominently included one or more of the following statements:

Try Colopure Now Risk Free for only \$1 plus s/h

TRY IT FREE* (*Pay S&H)

FREE* TRIALS are Limited [Asterisk references no other text]

Rush My FREE* TRIAL [Asterisk references no other text].

Defendants' websites offering AcaiPure, Celebrity Smile, and Gloskin have made similar representations about "free" and "risk free" trials.

21. After consumers enter their payment information on Defendants' websites, ostensibly to pay the nominal charge, Defendants then ship a one month's supply of product to the consumer. This represents the trial product. To avoid being charged for this allegedly "free" or "risk free" trial, consumers have been required to return the product to Defendants so that it is

received within 14 days from the date consumers placed their order. Consumers must incur the postage cost for returning the product. In some instances, Defendants also have charged consumers a 15% restocking fee for returning the trial product.

22. In numerous instances, nowhere in proximity to Defendants' promotional statements concerning the "free" or "risk free" trial have Defendants disclosed that consumers seeking to avoid being charged for the "free" or "risk free" trial must ship the remaining product back to Defendants so that it is received within 14 days, nor have Defendants disclosed that consumers may be required to pay a restocking fee.

23. Further, the invoice accompanying the product shipment typically states that Defendants will accept returns only if consumers first obtain a return merchandise authorization ("RMA") number prior to shipping the return package and obtain delivery confirmation from the shipping provider. This is the first time that Defendants have disclosed these requirements. To obtain an RMA number, consumers have been required to contact Defendants by telephone or by sending an e-mail to Defendants' customer service department. In numerous instances, Defendants have not provided consumers with RMA numbers when requested. In numerous other instances, consumers have been unaware that they are required to obtain an RMA number and delivery confirmation before sending the unused product back to Defendants.

24. Nowhere on Defendants' websites offering their products have Defendants disclosed that consumers must obtain an RMA number and delivery confirmation in order to return the trial product and avoid being charged.

25. In numerous instances, even when consumers have obtained an RMA number, paid to ship the trial product back to Defendants, and obtained a confirmation that Defendants received the product within the required time period, Defendants nevertheless have charged

consumers the full price for the trial. This charge is typically \$39.95 to \$59.95 for AcaiPure, Celebrity Smile, Gloskin, Colopure, and other similar products.

26. In numerous other instances, Defendants have charged consumers additional amounts unrelated to shipping and handling or the cost of the trial product. Typically, these charges range from \$.02 to \$.99, and were never authorized by consumers.

Lifestyle Programs

27. Despite representing that consumers may try their products for “free” or without risk, Defendants actually have provided their products on an automatic monthly basis. Defendants have referred to this monthly membership program as a “Lifestyle Program.” Defendants automatically ship consumers monthly supplies of the product and charge consumers the full price for such product, typically \$44.90 to \$64.90 per month (\$39.95 to \$59.95, plus a \$4.95 shipping and handling fee). The monthly shipments and charges begin approximately one month after consumers first request the trial product.

28. In numerous instances, nowhere in proximity to Defendants’ promotional statements concerning the trial offer have Defendants disclosed that by requesting the “free” or “risk free” trial of Defendants’ product, consumers will become enrolled in a Lifestyle Program whereby they will incur a continuing month-to-month obligation to pay for monthly supplies of the product.

29. Without obtaining consumers’ consent or authorization, Defendants have charged the additional monthly Lifestyle Program shipments to the debit or credit card account that consumers previously provided to pay for the one-time nominal fee associated with the “free” or “risk free” trial of Defendants’ product.

30. Defendants have not obtained written authorization from consumers who order the trial product and pay by debit card for Defendants to make recurring transfers from consumers' accounts.

31. In many instances, consumers have first become aware of their enrollment in Defendants' Lifestyle Program when they have received their second shipment from Defendants. By this time, Defendants already have charged consumers not only for the allegedly "free" or "risk free" trial shipment, but also for this second shipment.

32. In other instances, consumers have never received Defendants' shipment of the trial product or the second shipment. These consumers have first learned of their enrollment in Defendants' Lifestyle Program when they saw Defendants' charges on their credit or debit card accounts.

33. In instances where Defendants' charges to consumers' credit or debit accounts have been rejected, either because the consumer has insufficient funds or has closed the account, Defendants have aggressively attempted to collect by sending consumers letters or calling them to demand payment. Defendants have threatened to send consumers' purported delinquent accounts to a third-party collection agency, and tell them this will harm their credit ratings and result in additional hefty fees. Some consumers have paid Defendants' unauthorized charges as a result of these threats.

Money-Back Guarantee

34. On some of their websites, Defendants have claimed that they will provide consumers with a full refund, no questions asked. For example, on one of their websites offering AcaiPure, Defendants have stated:

We are so confident that AcaiPure is the most effective and powerful anti-oxidant cleansing product on the market today that if for any reason you do not find AcaiPure is right for you we will gladly give you a full refund, no questions asked. You have nothing to lose except the weight. Try AcaiPure today!

35. In numerous instances, Defendants have not provided the promised full refunds to consumers. Indeed, by imposing the previously undisclosed conditions discussed above on consumers who attempt to return the trial product, Defendants claim multiple reasons for denying consumers' refund requests. For example, consumers who properly obtained an RMA number and mailed the product back in plenty of time for Defendants to receive it within the required 14-day time period have still been denied a refund if they failed to obtain a delivery confirmation. Defendants also have denied refunds to consumers who have failed to obtain the meaningless RMA number. Even when consumers successfully have satisfied the previously undisclosed conditions, Defendants sometimes have promised refunds but never actually issued them.

36. In some instances, consumers have received refunds from Defendants, but only after they have complained to law enforcement or the Better Business Bureau. Even in those instances, however, Defendants frequently have not issued full refunds, but have charged an inadequately disclosed 15% restocking fee on the returned product.

Charges For Additional Products and Services

37. Along with many of its purported health and beauty products, Defendants also have charged consumers for numerous additional products or services, including, but not limited to: Hoodiaburst, Hoodiawater, and Fit Factory. The practice of offering or charging for additional products or services in connection with another transaction is referred to as "upselling."

38. Many of these upsell products or services offered by Defendants are purportedly meant to supplement the products consumers have ordered from Defendants. For example, Hoodiaburst and Hoodiawater are marketed as appetite suppressants. Hoodiaburst and Hoodiawater together typically cost \$39.90. Fit Factory is a fitness and diet consultation service that is offered on a thirty-day free trial basis. If the consumer does not cancel the Fit Factory program within thirty days, consumers would be charged \$29.95 per month.

39. When these additional products and services have been offered to consumers on the Internet, Defendants' order form for the trial product has included the option to purchase additional upsell products. Boxes were often pre-checked to indicate that the consumer wanted to purchase these products. In order to avoid receiving the upsells, consumers have had to affirmatively uncheck the boxes. Numerous consumers, however, did not expect to be charged for additional unordered products and were unaware of the requirement to take such affirmative steps. These consumers did not uncheck the boxes. Defendants have proceeded to charge the credit or debit card account the consumers previously provided, even though the account information was provided only to pay for the nominal fee associated with the trial product. Defendants have not obtained consumers' authorization for the additional charges for the upsell products and services.

40. Defendants have failed to disclose in a clear and conspicuous manner the fact that consumers are being signed up for additional products or services unrelated to the trial product. Typically, consumers have first learned of the upsells upon reviewing their bank or credit card account statements.

AcaiPure Product Claims

41. Each AcaiPure capsule purportedly contains 800 milligrams of a proprietary blend of ingredients, including an unspecified amount of acai extract. Acai extract is derived from the berries which grow on acai palm trees, native to Central and South America. According to the packaging, each AcaiPure capsule also contains: gelatin, rice flour, magnesium stearate, and silicon dioxide.

42. Defendants have represented on their websites offering AcaiPure that if consumers use AcaiPure they will rapidly lose a substantial amount of weight.

43. For example, typical representations made by Defendants on their AcaiPure websites have included, but are not limited to, the following:

a. “WARNING! AcaiPure Is Fast Weight Loss That Works. It Was Not Created For Those People Who Only Want To Lose A Few Measly Pounds. AcaiPure was created to help you achieve the incredible body you have always wanted...USE WITH CAUTION! Major weight loss in short periods of time may occur;”

b. “[AcaiPure] contains a unique proprietary blend of nutrients scientifically proven to help people lose up to five times their body fat, compared to just a traditional diet and exercise program by itself. The awesome aspects of this system is that it enables rapid weight loss in a fiercely short time period, without any unwanted side effects, starvation, impossible to follow diet schemes or unnecessary fatigue;”

c. “Many health and fitness experts already believe Acai berry is the most effective, safe, non-prescription weight loss supplement in the world. It’s backed by ironclad, double-blind, placebo-controlled weight loss studies from the medical establishment . . . ;”

d. “Depending on your height and weight, most of our customers report weight loss anywhere from 10-25 lbs in the first month;”

e. “AcaiPure is a powerful cleansing formula that helps you to lose weight and feel great all day long;”

f. “Flush Out Excess Pounds;” and

g. “Shed those unwanted pounds.”

44. Additionally, on their AcaiPure websites, Defendants have asked consumers if they “qualify” for AcaiPure by posing the following series of weight-loss related questions: 1) “How much weight would you like to lose?”; 2) “How quickly would you like to lose weight?”; and 3) “What’s your #1 reason for losing the weight?” Regardless of their responses, Defendants’ websites have then congratulated consumers for being “perfect candidate[s] for AcaiPure.” For example, consumers have been able to respond that they want to lose “more than 20 lbs.” in “less than a month.”

45. Defendants’ AcaiPure websites also have prominently displayed testimonials of purported customers who have lost substantial amounts of weight using AcaiPure. For example, one purported customer states, “I have lost 30lbs in the last 4 weeks and have tons more energy.”

46. In truth and in fact, AcaiPure does not cause rapid and substantial weight loss, nor do Defendants possess and rely upon a reasonable basis to substantiate representations that consumers who use AcaiPure will rapidly lose a substantial amount of weight.

Colopure Product Claims

47. Each Colopure capsule purportedly contains 800 milligrams of a propriety blend of ingredients, almost all of which are identical to those purportedly contained in AcaiPure. As

with AcaiPure, according to the packaging, each Colopure capsule also contains: gelatin, rice flour, magnesium stearate, and silicon dioxide.

48. Defendants have represented on their Colopure website, and on websites selling at least one other similar colon cleansing product called Colotox, that these products help prevent the development of colon cancer.

49. For example, Defendants have represented on their websites offering Colopure and on their websites offering Colotox that:

a. “**Colon cancer** is currently the second leading cancer killer in the United States, with **60,000 Americans** expected to die from the disease this year” (emphases in original);

b. “An estimated **150,000 people in America** will be diagnosed with colorectal cancer this year, and while progress is being made to prevent and treat the disease, tragically more than **57,000 will die** from it” (emphases in original); and

c. “**Colon cancer** is one of the deadliest diseases to affect Americans . . . The Early Show medical correspondent Dr. Emily Senay reports that an average **57,000 Americans die** each year from colon cancer . . . when colon cancer is caught late, it is survivable only **8 percent** of the time” (emphases and ellipses in original).

50. Defendants have juxtaposed these statements on their websites about the deadly nature of colon cancer with representations about their product such as, on their Colopure websites:

a. “America’s #1 Colon Cleanse;”

b. “The purest way to *detoxify* your body and *cleanse* your entire system”

(emphases in original);

c. “Colopure will help to:

- Remove Toxic Buildup . . .
- Cleanse your entire system . . .
- Detoxify your organs;” and

d. “[Colopure] breaks down and removes toxic waste matter which may have been stuck in the folds and wrinkles of your digestive system for years and years.”

51. In truth and in fact, Colopure, and at least one other similar colon cleansing product, Colotox, do not help prevent the development of colon cancer, nor do Defendants possess and rely upon a reasonable basis to substantiate representations that they help prevent the development of colon cancer.

False Celebrity Endorsements

52. On one or more of Defendants’ websites, Defendants have used the images of celebrities such as Oprah Winfrey and Rachael Ray and have represented to consumers that such celebrities have endorsed one or more of Defendants’ products.

53. In truth and in fact, neither Oprah Winfrey nor Rachael Ray, nor any other specifically identified celebrity has endorsed any of Defendants’ products.

VIOLATIONS OF THE FTC ACT

54. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

55. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act. 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, AcaiPure and Colopure, and other similar products, are either a “food” or “drug” as defined in Section 15(b) and (c) of the FTC Act, 15 U.S.C. § 55(b), (c). Acts or practices are unfair under Section 5 of the FTC Act if they cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

COUNT ONE

False and Unsubstantiated Product Claims

56. In connection with the advertising, marketing, promotion, offering for sale, or sale of AcaiPure, Defendants have represented, directly or indirectly, expressly or by implication, that use of AcaiPure will result in rapid and substantial weight loss, including as much as thirty pounds in four weeks.

57. In connection with the advertising, marketing, promotion, offering for sale, or sale of AcaiPure, Defendants have represented that scientific evidence, including double-blind, placebo-controlled weight loss studies, show that AcaiPure causes rapid and substantial weight loss.

58. In connection with the advertising, marketing, promotion, offering for sale, or sale of Colopure, and at least one other similar colon cleansing product called Colotox, Defendants

have represented, directly or indirectly, expressly or by implication, that use of those products will aid in the prevention of colon cancer.

59. The representations set forth in Paragraphs 56 through 58 of this Complaint are false, misleading, or were not substantiated at the time the representations were made.

60. Therefore, the making of each of the representations as set forth in Paragraphs 56 through 58 of this Complaint constitutes a deceptive act or 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

Misrepresentations (False Endorsements)

61. In connection with the advertising, marketing, promotion, offering for sale, or sale of their products, Defendants have represented, directly or indirectly, expressly or by implication, that their products are used, endorsed, or approved by specifically identified celebrities such as Oprah Winfrey and Rachael Ray.

62. The representations described in Paragraph 61 of this Complaint are false and misleading.

63. Therefore, the making of the representations described in Paragraph 61 of this Complaint constitutes a deceptive act or 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

Misrepresentations (Money-Back Guarantee)

64. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of AcaiPure and other products, Defendants have represented directly or indirectly, expressly or by implication, that they will provide full refunds to all consumers who request them.

65. In truth and in fact, in numerous instances in which Defendants have made the representation set forth in Paragraph 64 of this Complaint, Defendants have not provided full refunds to consumers who requested them.

66. Therefore, Defendants' representation as set forth in Paragraph 64 of this Complaint is false and misleading, and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT FOUR

Misrepresentations (Trial Offer)

67. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of AcaiPure and other products, Defendants have represented, directly or indirectly, expressly or by implication, that a 30-day trial supply of the product is free and Defendants will charge consumers only a nominal fee.

68. In truth and in fact, in numerous instances in which Defendants have made the representation set forth in Paragraph 67 of this Complaint, a 30-day trial supply of the product is not free and Defendants charge consumers substantially more than a nominal fee.

69. Therefore, Defendants' representations as set forth in Paragraph 67 of this Complaint are false and misleading, and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT FIVE

Failures to Disclose (Membership Programs, Upsells, Return Costs)

70. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of AcaiPure and other products, Defendants have represented, directly or indirectly, expressly or by implication, that consumers who pay a nominal fee to receive a trial supply will incur no risks or obligations.

71. In numerous instances in which Defendants have made the representations set forth in Paragraph 70 of this Complaint, Defendants have failed to disclose, or disclose adequately, to consumers the material terms and conditions of the offer, including, but not limited to, the fact that:

- a. consumers who sign up to receive a trial supply of one of Defendants' products are charged for a month's supply of the product if they do not return the product to Defendants within a certain time period;
- b. consumers who attempt to cancel during the trial period must obtain an RMA number from Defendants before returning the product to Defendants;
- c. consumers who attempt to cancel during the trial period will incur additional costs in returning the product, including, but not limited to, paying for return shipping, paying for delivery confirmation, and paying a restocking fee;
- d. consumers who sign up to receive a trial supply of one of Defendants'

products are automatically enrolled in a membership program for the product and must cancel the program to avoid additional charges; and

e. consumers who sign up to receive a trial supply of one of Defendants' products will be charged for additional, unrelated products or services unless consumers take affirmative action to avoid the charges.

72. Defendants' failure to disclose, or disclose adequately, the material information described in Paragraph 71, above, in light of the representation described in Paragraph 70, above, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT SIX

Unauthorized Charges

73. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of their products, Defendants have caused charges to be submitted for payment to the credit and debit cards of consumers:

a. who were not adequately informed of the terms and conditions of Defendants' trial programs;

b. who were not adequately informed of the terms and conditions of Defendants' monthly membership programs; and

c. who were not adequately informed of other undisclosed charges; and who therefore did not provide express informed consent for the charges.

74. Defendants' actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

75. Therefore, Defendants' practices as described in Paragraph 73 above constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a) and 45(n).

VIOLATIONS OF THE ELECTRONIC FUND TRANSFER ACT AND REGULATION E

76. Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), provides that a "preauthorized electronic fund transfer from a consumer's account may be authorized by the consumer only in writing, and a copy of such authorization shall be provided to the consumer when made."

Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the term "preauthorized electronic fund transfer" means "an electronic fund transfer authorized in advance to recur at substantially regular intervals."

77. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides that "[p]reauthorized electronic fund transfers from a consumer's account may be authorized only by a writing signed or similarly authenticated by the consumer. The person that obtains the authorization shall provide a copy to the consumer."

78. Section 205.10(b) of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that "[t]he authorization process should evidence the consumer's identity and assent to the authorization." *Id.* at ¶10(b), cmt 5. The Official Staff Commentary further provides that "[a]n authorization is valid if it is readily identifiable as such and the terms of the preauthorized transfer are clear and readily understandable." *Id.* at ¶10(b), cmt 6.

COUNT SEVEN

Unauthorized Electronic Fund Transfers from Consumers' Bank Accounts

79. In numerous instances, Defendants have debited consumers' bank accounts on a recurring basis without obtaining a written authorization signed or similarly authenticated from consumers for preauthorized electronic fund transfers from their accounts, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

80. In numerous instances, Defendants have debited consumers' bank accounts on a recurring basis without providing to the consumer a copy of a written authorization signed or similarly authenticated by the consumer for preauthorized electronic fund transfers from the consumer's account, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

81. Pursuant to Section 917(c) of the EFTA, 15 U.S.C. § 1693o(c), every violation of the EFTA and Regulation E constitutes a violation of the FTC Act.

82. By engaging in violations of the EFTA and Regulation E as alleged in Paragraphs 79 and 80 of this Complaint, Defendants have engaged in violations of the FTC Act. 15 U.S.C. § 1693o(c).

CONSUMER INJURY

83. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act and the EFTA. In addition, Defendants have been unjustly enriched as a result of their unlawful acts and practices. Absent injunctive 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

84. 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 any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Sections 13(b) of the FTC Act, 15 U.S.C. §§ 53(b), and Section 917(e) of the EFTA, 15 U.S.C. § 1693o(c), 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 preliminary injunctions, an order freezing assets, immediate access, and the appointment of a receiver;
- B. Enter a permanent injunction to prevent future violations of the FTC Act and the EFTA by Defendants;
- C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the EFTA, including, but not limited

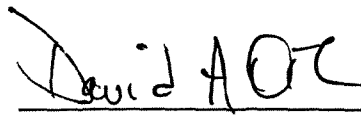
to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

D. 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: August 5, 2010



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