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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION, Plaintiff,

v.

**ENFORMA NATURAL PRODUCTS, INC.,
ANDREW GREY, and
FRED ZINOS, Defendants.**

Civil Number

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

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

1. 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 a permanent injunction, rescission of contracts, restitution, disgorgement, and other equitable relief against defendants for engaging in deceptive acts or practices in connection with the advertising, marketing and sale of an alleged weight loss product, the "Enforma System," 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 of 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 FTC, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 *et seq.* The FTC is charged, *inter alia*, with enforcement of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, which respectively prohibit unfair or deceptive acts or practices in or affecting commerce, and false advertisements for food, drugs, devices, services, or cosmetics in or affecting commerce. The FTC is authorized to initiate federal district court proceedings to enjoin violations of the FTC Act and to secure such equitable relief, including consumer redress, as may be appropriate in each case. 15 U.S.C. § 53(b).

5. Defendant Enforma Natural Products, Inc. ("Enforma Natural"), is a Delaware corporation with its headquarters and principal place of business at 16633 Ventura Boulevard, Suite 600, Encino, California 91436. Since approximately 1998, Enforma Natural has been engaged in the sale of the Enforma System and other dietary supplements via mail order. Enforma Natural transacts business in the Central District of California.

6. Defendant Andrew Grey is the President, Chief Executive Office and a director of the corporate defendant Enforma Natural. At all times relevant to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of defendant Enforma Natural, including the acts and practices set forth in this complaint. He resides and transacts business in this District.

7. Defendant Fred Zinos has served as Vice President of Sales and Marketing for Enforma Natural. For some of the time relevant to this complaint, acting alone or in concert with others, he helped formulate, direct, or control, or he participated in the acts and practices of defendant Enforma Natural, including the acts and practices set forth in this complaint. For some of the time relevant to this complaint, he resided and transacted business in this District.

COMMERCE

8. 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

9. Since at least December 1998, defendants have engaged in the advertising, promotion, offering for sale, and sale of a purported weight loss product called the "Enforma System" to consumers located throughout the United States via television and Internet advertising. Consumers may order the Enforma System, *inter alia*, by calling a toll free telephone number or over the Internet. The Enforma System consists of two different types of capsules called, respectively, "Fat Trapper" and "Exercise In A Bottle." Fat Trapper consists primarily of chitosan, a form of fiber, and Exercise In A Bottle consists primarily of pyruvate, a substance found in the human body.

10. To induce consumers to purchase the Enforma System, defendants have disseminated advertisements of approximately 30 minutes in length ("infomercials") more than 30,000 times since December 1998 on cable and local television stations. The infomercials feature two hosts, former baseball player Steve Garvey, and Lark Kendall, a/k/a Kendall Carson, who is represented to be a nutritionist. In addition, several consumers purporting to recite their personal experiences with the Enforma System ("testimonials") make appearances during the infomercials to endorse the Enforma System. Accompanying this

complaint is a separately-bound set of five exhibits. Exhibit 1 is a copy of a videotape of one infomercial for the Enforma System and Exhibit 2 is a transcript of that infomercial. Exhibit 3 is a copy of a videotape of another infomercial for the Enforma System and Exhibit 4 is a transcript of that infomercial. The infomercials include, among others, the following statements or depictions:

- a. "With Enforma, you can eat what you want and never, ever, ever, ever have to diet again." Exh. 2 at 3.
- b. The Enforma System "[w]ill help you lose weight, burn more calories and even lower cholesterol by simply taking a pill." Exh. 2 at 4-5.
- c. With the Enforma System, "you can enjoy all these delicious foods like fried chicken, pizza, cheeseburgers, even butter and sour cream, and stop worrying about the weight." Exh. 2 at 23.
- d. A consumer endorser states that with the Enforma System, "you can eat anything you want - it is unbelievable. I never would have believed that there was a truly natural product that is not going to kill you that works." Exh. 2 at 4.
- e. Another purported Enforma System user states that the Enforma System "just grabs onto the fat and pulls it out of your system, and it works." Exh. 2 at 20.
- f. Another purported Enforma System user states: "You're able to eat everything you want to eat. You don't have to worry about, you know, eating salads when you go out. You can eat whatever you want to eat and you know you're taken care of with the Enforma System." Exh. 2 at 20.
- g. Another purported Enforma System user states: "And when I sit in a meeting at work, I order pizza, the women are all eating their little salads, and I just eat piece after piece of pizza and they just say, 'How do you look the way you do and eat like that?' And I say, 'It's the Enforma System.'" Exh. 2 at 24.
- h. Another purported Enforma System user states that with the Enforma System, I can "eat whatever I want and not worry about it and still fit into my tight pair of pants." Exh. 2 at 31.
- i. The Enforma System "helps your body to burn more calories while you're just standing or sitting around doing nothing - even while you're sleeping." Exh. 2 at 5.
- j. "[A]s a system, Fat Trapper blocks new fat from entering your body and Exercise In A Bottle gets rid of the old fat that already exists in your body." Exh. 2 at 9.
- k. The Enforma System allows you "to enjoy all of those delicious foods that you crave without the guilt while losing weight and keeping it off" without participating in fad diets or engaging in a rigid exercise regime. Exh. 2 at 14.
- l. The Enforma System "literally trap[s] fat before it's had a chance to be absorbed by your system." Exh. 2 at 5.
- m. Garvey: "But the Enforma System works. Isn't that right, Kendall?"

Carson: "You bet Steve. The Enforma System was created using years of scientific

study and you will see proof that it works right here today." Exh. 4 at 6.

n. "According to actual laboratory studies Fat Trapper safely allows you to eat up to 120 grams of fat per day." Exh. 4 at 13.

o. "Fat Trapper safely allows you to eat up to 120 grams of fat per day. That's over 1,000 calories from fat per day and you can still lose weight." Exh. 2 at 15-16.

p. "Fat Trapper blocks fat from wherever it may arise; grabs hold of the fat; wraps it up; ties it into a bundle, which is then too heavy to pass through the gut wall, and as a result that fat cannot stay in the human body - it has to be expelled. Your body has no other choice." Exh. 2 at 6.

q. Fat Trapper "permanently" blocks fat "so that it can never be absorbed by your body -- never." Exh. 2 at 11-12.

r. The advertisement (Exhibit 1) depicts Fat Trapper being added to a glass of water and blocking bacon grease in the water. Exh. 2 at 10-12

s. Carson: "Exercise In A Bottle works on a cellular level, forcing every cell in your body to work, whether you're exercising or not. And when your cells are working, you are burning calories or losing fat."

Garvey: "And, of course, all this happens without exercise, right?"

Carson: "Absolutely. In fact, lab studies have proven it, Steve." Exh. 2 at 21.

t. "Exercise In A Bottle can actually increase your metabolism at the cellular level and burn off the fat already in your body." Exh. 2 at 16.

u. "Exercise In A Bottle helps your body burn sugary carbohydrates before" they turn to fat. Exh. 2 at 16.

v. "Exercise In A Bottle works on a cellular level, forcing every cell in your body to work, whether you're exercising or not. And when your cells are working, you are burning calories or losing fat." Exh. 2 at 21.

11. Defendants also advertise, promote and market the Enforma System via an Internet Web site at www.enformanatural.com. Exhibit 5 is a copy of this Internet advertisement from approximately March 1999. This Internet Web site includes, among others, the following statements:

Congratulations for choosing the Enforma System! Fat Trapper will prevent excess dietary fat from being absorbed into your body and Exercise In A Bottle will increase the activity of your muscle cells so you can burn fat already stored in your body. This winning combination is the most powerful, all natural and safe way to lose weight and keep it off that we know about!

The Enforma System works. By ordering the Enforma System, you are on your way to taking control of your weight without hassles, without frustration and without the guilt.

How does it work?: The Enforma System aids in doing the two things that must be done to lose weight: 1) decrease calories from fat; and 2) increase metabolic rate. The Enforma System does this with no negative side effects, no jitters, no loss of sleep.

12. Defendants charge approximately \$69.90, plus shipping and handling, for 240 capsules of Fat Trapper and 120 capsules of Exercise In A Bottle. Defendants represent in their infomercials and on their Web site that these capsules constitute a two-month supply of the Enforma System.

DEFENDANTS' VIOLATIONS OF THE FTC ACT

13. 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. As set forth below, the defendants have engaged and are continuing to engage in such unlawful practices in connection with the marketing and sale of the "Enforma System."

14. For the purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, the "Enforma System" is either a "food" or a "drug" pursuant to Section 15(b) and (c) of the FTC Act, 15 U.S.C. § 55(b) and (c).

COUNT ONE

15. Through the use of representations, testimonials, and statements contained in the advertisements, including, but not limited to, Exhibits 1 through 5, defendants have represented, expressly or by implication, that:

- a. Use of the recommended daily dose of the Enforma System enables consumers to lose substantial weight without the need for a restricted calorie diet or exercise;
- b. Use of the recommended daily dose of the Enforma System enables consumers to lose substantial weight even if consumers eat substantial amounts of foods high in fat, including fried chicken, pizza, cheeseburgers, butter, and sour cream;
- c. Use of the recommended daily dose of the Enforma System enables consumers to avoid weight gain without the need for a restricted calorie diet or exercise;
- d. Use of the recommended daily dose of the Enforma System enables consumers to maintain weight loss without the need for a restricted calorie diet or exercise;
- e. Fat Trapper prevents the absorption in the human body of all, or substantially all fat consumed, up to 120 grams per day (over 1,000 calories from fat per day); and
- f. Exercise In A Bottle increases metabolism, burns sugar and carbohydrates before they turn to fat, and/or burns off fat already in the human body.

16. Defendants did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 15 above, at the time the representations were made.

17. Therefore, the making of the representations set forth in Paragraph 15 above was, and is, a deceptive act or practice and constitutes false and misleading advertising of a food,

drug, device, service or cosmetic 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

18. Through the use of representations, testimonials, and statements contained in the advertisements, including, but not limited to Exhibits 1 through 4, defendants have represented, expressly or by implication, that scientific testing proves that: (a) taking the recommended daily dosage of Exercise In A Bottle causes weight loss without the need to exercise; (b) Fat Trapper prevents the absorption of up to 120 grams of fat (or more than 1,000 calories) per day; and (c) the Enforma System works to cause weight loss.

19. In truth and in fact, scientific testing has not proven that: (a) taking the recommended daily dosage of Exercise In A Bottle causes weight loss without the need to exercise; (b) Fat Trapper prevents the absorption of up to 120 grams of fat (or more than 1,000 calories) per day; and (c) the Enforma System works to cause weight loss.

20. Therefore, the making of the representations set forth in Paragraph 18 above was, and is, a deceptive act or practice and constitutes false and misleading advertising of a food, drug, device, service or cosmetic 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

21. 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, defendants have been unjustly enriched as a result of their unlawful 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

22. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement, and restitution, to prevent and remedy any violations of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that this Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

- (a) Permanently enjoin defendants from violating Sections 5 and 12 of the FTC Act, as alleged herein, in connection with the advertising or sale of food, drugs, devices, cosmetics or other products, services or programs;
- (b) Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from defendants' violations of the FTC Act, including, but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten gains; and
- (c) Award plaintiff the costs of bringing this action, as well as such other and additional equitable relief as the Court may deem just and proper.

Dated: April 25, 2000

Respectfully Submitted,

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