

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF WISCONSIN

FEDERAL TRADE COMMISSION)	
)	
Plaintiff,)	
)	
v.)	<u>Civil Action No. 1:16-cv-1325</u>
)	
)	
SUPPLE, LLC,)	
PETER APATOW, JR., and)	
MONITA POUDYAL,)	
Defendants.)	

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, Federal Trade Commission (“FTC” or “Commission”), for its complaint alleges:

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 obtain a permanent injunction, 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, in connection with the labeling, advertising, marketing, distribution, and sale of the nutritional supplement, Supple.

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) and 53(b).

3. Venue is proper in this district under 28 U.S.C. § 1391(b)(1), (b)(2), (c)(1), (c)(2), and (d) 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.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act 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) and 56(a)(2)(A).

DEFENDANTS

6. Defendant Supple, LLC, which also did business as Supple Beverages, LLC through February 2010 (“Supple”), is a Connecticut LLC with its principal place of business at 355 Byrd Avenue, Neenah, WI 54956. At all times material to this Complaint, acting alone or in concert with others, Supple has advertised, marketed, or sold its nutritional supplement by the same name to consumers throughout the United States.

7. Defendant Peter Apatow, Jr. (“Apatow”) is the founder and CEO of Supple. His principal office or place of business is the same as that of Supple. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had authority to control, or participated in the acts and practices of Supple, including the acts and practices set forth in the Complaint. Defendant Apatow, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States. Defendant Apatow resides in Colorado.

8. Defendant Monita Poudyal (“Poudyal”) is the ex-wife of Defendant Apatow. She appeared in Supple’s advertising and assisted the company in compiling substantiation for its claims. At all times material to this complaint, acting alone or in concert with others, she has participated in the acts and practices of Supple, including the acts and practices set forth in the Complaint. Defendant Poudyal, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States. Defendant Poudyal resides in Colorado.

COMMERCE

9. 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

10. Defendants advertise, offer for sale, sell, and distribute a glucosamine and chondroitin beverage called Supple. Supple is a “drug” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

11. Defendants have advertised Supple through infomercials; social media and other internet marketing; radio; brochures; and in-person outreach at community events. Supple is also marketed and sold through websites owned by Supple, including, but not limited to, www.buysupple.com.

12. To induce consumers to purchase Supple, Defendants have disseminated or caused to be disseminated advertisements, packaging, and promotional materials, including, but not limited to, the attached Exhibits A through F. Defendants sell Supple liquid for approximately \$79.95 (auto-shipment price of 24-day supply) to \$139.95 (one-time shipment price of 48-day supply)

and Supple powder for approximately \$69.95 (auto-shipment price of 24-day supply) to \$269.95 (one-time shipment price of 144-day supply). From January 2011 to December 2015, Defendants generated \$150.6 million in U.S. gross sales minus returns of all of its products.

13. The advertising, packaging, and promotional materials referenced in Paragraphs 11 and 12 contain the following statements and depictions, among others:

A. Supple Infomercial (“Master # 365276 - 10-20-11 - Supple testimonial 101 infomercial”), which was disseminated from October 2011 through the present (**Exhibits A-1** (transcript) at SUPPLE002912-13; 2916; 2938-39; 2929; 2940-41; 2944-45 and **A-2** (video)):

Monita Poudyal: If you have pain or know someone that has pain – joint pain, back pain, bone pain, muscle pain, or if you suffer from arthritis, osteoarthritis, rheumatoid arthritis, fibromyalgia or even weakness or fatigue, then you need to stay with us for the next half hour... Peter [Apatow] has created a revolutionary, all-natural drink, Supple, that is now more powerful and more comprehensive than ever before. Supple is helping countless Americans to live pain-free and mobile lives again...

* * *

Peter Apatow: ... now, I could ski, I could hike, I could play racquetball, I could jog, I could play tennis. I could do anything I want to do and no matter what I do, I can't even get the pain back.

Monita Poudyal: And now, you're completely pain-free, fully mobile again, just from drinking Supple every day.

Peter Apatow: Yeah. I'm fully mobile again. I'm completely pain-free and I have been now for years.

* * *

Patricia D., Actual Supple User: It [Supple] was the best thing out that I've ever done for myself because it helped my knees, the cartilage come back into my knees. It helped my arthritic hands.

* * *

Peter Apatow: [Supple] stops those enzymes that are eating away at your cartilage. It rebuilds your entire joint structures. It eliminates pain so you don't have to worry about pain in your bones, muscles and joints, and it helps you to be more mobile again.

* * *

Peter Apatow: ... the medical research behind these agents, it's irrefutable.

Monita Poudyal: Why are you so confident in the research?

Peter Apatow: It's simple. The active agents in Supple are the most highly recommended joint rebuilding agents by the greatest medical experts in all of Europe. They're standard of care in over 40 countries and over 13 million people use them safely every day with no negative side effects. [Dr. Poudyal nods.] Over 20,000 human clinical studies, observational studies, laboratory studies, meta-analysis, expert review. All these kinds of studies are available at the National Institutes of Health on these ingredients alone...

* * *

Peter Apatow: Supple's core ingredients have been studied for over 35 years and we use only the highest quality and most clinically-proven ingredient sources available... If you just drink a can of Supple every day... it'll help you get rid of all your pain, all your immobility, all of your suffering. You could stop taking dangerous pain drugs, you could avoid surgery...

B. Excerpts from Supple Website, www.buysupple.com, captured on December 5, 2014 (**Exhibit B** at SUPPLE1925; 1935; 1945):



[photo image is Defendant Poudyal]

#1

INTERNATIONAL DOCTOR RECOMMENDED FORMULA

The most respected medical research shows that nothing beats the joint restoring power of Supple's® key ingredients to help you be more active and feel your best. Discover how Supple® can help you get your life back today.

The Supple® Difference

... Supple® delivers only ingredients that have been clinically proven to be effective.

Message from Doctors About Supple®

[Order Supple® Liquid](#) [Order Supple® Powder](#)



Dr. Monita Poudyal

Dr. Monita Poudyal, M.D., is board certified in internal medicine. She is Yale University-trained and has completed clinical research training at the National Institutes of Health... her special interest now is educating the public about natural and safe ways to maximize musculoskeletal health, in order to live a longer, more satisfying life.

“Whether you’re a professional athlete who wants effective joint protection or a retiree who just wants to enjoy gardening again, Supple® have [sic] the right ingredients to keep you moving discomfort-free. Supple® is specially formulated to deliver premium quality, pharmaceutical strength glucosamine and chondroitin, along with 10 USP-grade vitamins and minerals that will protect, repair, and soothe your joints. These ingredients have been rigorously tested and proven to optimize joint health for over 3 decades.”

C. Supple Radio Ad – “Bob August,” which aired in June 2013 (**Exhibits C-1** (transcript) and **C-2** (audio recording)):

Announcer: If you’re living with joint discomfort in your back, knees, hips or even your hands, you want fast relief. You want to end your discomfort and feel good again. And now you can.

Our powerful joint comforting formula as seen on TV called Supple, can help you get your life back, fast...

D. Excerpts from Supple Facebook Page, www.facebook.com/suppledrink, captured on August 28, 2014 (**Exhibit D**):

**PRESCRIPTION
STRENGTH
JOINT RELIEF
IN A DELICIOUS
DAILY SUPPLEMENT.**

[Facebook photo from a rodeo in Florida of a banner display;
the banner stands more than two times the height of a table]

* * *

Supple LLC

Managing Sore and Aching Joints and Muscles <http://ow.ly/gRGuO> [link to Supple homepage]



Tina Tyree and Fa Bri Z O like this.

[Top Comments](#) ▼

Linda Wright Does this work if the cartilage is worn away and rubbing bone to bone my doctor said there is nothing they can do but knee replacement????

April 25, 2013 at 5:58 am

Carrie At Supple Supple will help the process of repairing cartilage and it works differently with every person's body.

April 25, 2013 at 6:14 am

Linda Wright would love to see more first before I make a decision

April 25, 2013 at 6:36 am

Supple LLC Linda, we have had many people who have been "bone on bone" and their doctor's [sic] told them that they would only have one option and that is surgery for a replacement find Supple first and actually get to take their life back and not have to go into surgery. The best advice I can give, is give it a try. You have nothing to lose. We have a money back guarantee, so if it doesn't work for you, you will be reimbursed for your order. You just have to make sure that you take it every single day and take the full quantity of you your [sic] order. You will not be disappointed.

April 25, 2013 at 12:46 pm

E. Supple Digital and Email Advertising to *Arthritis Today* Subscribers (**Exhibit E**):

20% Off Exclusively for Arthritis Today Readers

[Click here for more details](#)

Tastes Great · Regain Mobility & Flexibility · Repair & Protect Cartilage

20% Off
Exclusively
for Arthritis
Today Readers

- ✓ Tastes Great
- ✓ Comfort Joints,
Back & Muscles
- ✓ Regain Mobility &
Flexibility
- ✓ Repair & Protect
Cartilage

F. Supple Brochure (**Exhibit F**):



ACTIVE SENIOR

“Several friends have observed my transformation from being immobile to running on the tennis courts and walking without a limp. Your Supple® drink has kept me out of the surgeon’s office and out of a wheelchair.”

Valerie

G. Excerpt from Supple Website Online Chats, www.buysupple.com,

December 22, 2011 (**Exhibit G**):

Wendy: Welcome to Supple Beverages Live Chat. My name is Wendy. How may I assist you today?

[consumer name redacted]: i just had my left shoulder replaced (reverse replacemrnt [sic]) no rotator cuff left. My right shouder [sic] needs the same surgery. Honestly, would supple help me without surgery?

Wendy: Yes this will help your with all of your symptoms.

Wendy: Is there anything else I can assist you with today?

[consumer name redacted]: will it help build cartilage if my rotor [sic] cuff is all worn out

Wendy: Yes Supple is designed to rebuild the cartilage.

VIOLATIONS OF THE FTC ACT

14. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”
15. Misrepresentations or deceptive omissions of material facts constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.
16. 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. Supple is a “drug” as “drug” is defined in Section 15(c) of the FTC Act, 15 U.S.C. § 55(c).

COUNT ONE

False or Unsubstantiated Efficacy Claims

17. Through the means described in Paragraph 13, including, but not limited to, the statements and depictions contained in the advertisements and online chats attached as Exhibits A through G, Defendants Apatow and Supple have represented, expressly or by implication, that:
 - A. Supple provides complete and long-lasting relief from joint pain;
 - B. Supple treats or relieves chronic or severe pain, including chronic or severe pain caused by rheumatoid arthritis, fibromyalgia, and all forms of osteoarthritis;
 - C. Supple provides pain relief comparable to drugs or surgery;
 - D. Supple repairs cartilage;
 - E. Supple rebuilds joints and entire joint structures; and
 - F. Supple restores mobility and joint function to consumers with severe mobility restrictions, such that they can engage in strenuous physical activities like downhill skiing and playing tennis.

18. The representations set forth in Paragraph 17 are false or misleading, or were not substantiated at the time the representations were made.

19. Therefore, the making of the representations as set forth in Paragraph 17 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

False Establishment Claim

20. Through the means described in Paragraph 13, including, but not limited to, the statements and depictions contained in the advertisements attached as Exhibits A and B, Defendants Apatow and Supple have represented, expressly or by implication, that Supple is clinically proven to eliminate joint pain.

21. The representation set forth in Paragraph 20 is false.

22. Therefore, the making of the representation as set forth in Paragraph 20 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

False or Unsubstantiated Expert Endorsement Claims by Defendant Poudyal

23. Through the means described in Paragraph 13, including, but not limited to, the statements and depictions contained in the advertisements attached as Exhibits A and B, Defendant Poudyal has represented, expressly or by implication, that:

A. Supple provides complete and long-lasting relief from joint pain;

B. Supple treats or relieves chronic or severe pain, including chronic or severe pain caused by rheumatoid arthritis, fibromyalgia, and all forms of osteoarthritis; and

C. Supple rebuilds joints and entire joint structures.

24. The representations set forth in Paragraph 23 are false or misleading, or were not substantiated at the time the representations were made.

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

False Claim Regarding Independent Expert

26. Through the means described in Paragraph 13, including, but not limited to, the statements and depictions contained in the infomercial attached as Exhibit A and in excerpts from the website attached as Exhibit B, Defendants have represented, expressly or by implication, that Defendant Poudyal is an independent, impartial medical expert.

27. The representation set forth in Paragraph 26 is false. Defendant Poudyal was married to Defendant Apatow, Supple's founder and CEO, at the time of the making of the infomercial and when Defendant Poudyal's endorsement appeared on the website.

28. Therefore, the making of the representation set forth in Paragraph 26 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 FIVE

Failure to Disclose Material Connection

29. Through the means described in Paragraph 13, including, but not limited to, the statements and depictions contained in the infomercial attached as Exhibit A and in excerpts from the website attached as Exhibit B, Defendants have represented, expressly or by implication, that Defendant Poudyal endorses Supple's products.

30. Defendants have failed to disclose, or to disclose adequately, that Defendant Poudyal was married to Defendant Apatow, Supple's founder and CEO, at the time of the making of the infomercial and when Defendant Poudyal's endorsement appeared on the website. This additional information would be material to consumers in their purchase or use of Supple products.

31. Defendants' failure to disclose the information described in Paragraph 30, in light of the representation set forth in Paragraph 29, 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.

CONSUMER INJURY

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

33. 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, but not limited to, 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, 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 such 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 or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies;

B. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants; and

C. Award Plaintiffs 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,

DAVID C. SHONKA
Acting General Counsel

Dated: October 4, 2016

s/ Elizabeth Jones Sanger
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