

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Joseph J. Simons, Chairman**
 Noah Joshua Phillips
 Rohit Chopra
 Rebecca Kelly Slaughter
 Christine S. Wilson

In the Matter of

CREAXION CORPORATION, a corporation,

**MARK PETTIT, individually and as an officer of
Creaxion Corporation,**

**INSIDE PUBLICATIONS, LLC OF GEORGIA, a
limited liability corporation, and**

**CHRISTOPHER KOROTKY, individually and as a
member of Inside Publications, LLC of Georgia.**

DOCKET NO.

COMPLAINT

The Federal Trade Commission, having reason to believe that Creaxion Corporation, Mark Pettit, Inside Publications, LLC of Georgia, and Christopher Korotky (collectively, “Respondents”) have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Creaxion Corporation (“Creaxion”) is a Delaware corporation with its principal office or place of business at 1080 Peachtree Street NE, Suite 1810, Atlanta, Georgia 30309. Creaxion is a marketing and public relations company.
2. Respondent Mark Pettit is the Chief Executive Officer of Creaxion. Individually or in concert with others, he controls, or has the authority to control, or participated in, the acts and practices alleged in this complaint. His principal office or place of business is the same as that of Creaxion.
3. Respondent Inside Publications, LLC of Georgia (“Inside Publications”) is a Georgia limited liability company with its principal office or place of business at 1050 Crown Pointe Parkway, Atlanta, Georgia 30338. Inside Publications publishes specialty sports periodicals,

including *Inside Gymnastics*, *Inside Cheerleading*, *Inside Dance*, *Inside Volleyball*, and *Cheer Biz*.

4. Respondent Christopher Korotky is the sole member and owner of Inside Publications. Individually or in concert with others, he controls, or has the authority to control, or participated in, the acts and practices alleged in this complaint. His principal office or place of business is the same as that of Inside Publications.

5. The acts and practices of Respondents alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

Course of Conduct

6. In April 2016, Creaxion was hired by HealthPro Brands Inc. (“HealthPro”) to help launch and promote FIT Organic Mosquito Repellent to consumers, media, retailers, and others. The parties agreed that Creaxion would produce a strategic media campaign tied to the worldwide outbreak of the Zika Virus.

Promotional Agreements Related to the Zika Outbreak and the 2016 Summer Olympics in Brazil

7. In May 2016, Mr. Pettit (Creaxion) contacted Mr. Korotky (Inside Publications) to broker a partnership between HealthPro and Inside Publications, through which Inside Publications would distribute FIT Organic Mosquito Repellent to athletes and others attending the 2016 Summer Olympics in Brazil, the epicenter of the Zika outbreak.

8. HealthPro and Inside Publications subsequently entered a “Social and Digital Media Activation and Athlete Engagement” agreement for FIT Organic Mosquito Repellent [Ex. A], pursuant to which Inside Publications would be paid for providing the following services, among others:

- A. Publishing two magazine articles featuring FIT Organic Mosquito Repellent, including a “feature article” on the product discussing its background, use, and benefits, and an “advertorial” that would denote the product as the “Official Mosquito Repellent” of Inside Publications;
- B. Placing FIT Organic Mosquito Repellent in promotional “Good Luck” gift baskets from *Inside Gymnastics* to the top ten potential male and female athletes competing for spots on the U.S. Olympic Gymnastics team;
- C. Procuring athlete endorsements for FIT Organic Mosquito Repellent – the proposal identified as a potential endorser Jake Dalton, a 2012 Olympian and World Champion gymnast, while the female athlete would be determined later;
- D. Designating FIT Organic Mosquito Repellent as the “Official Mosquito Repellent” of Inside Publications and directing its employees to travel with, use, and promote the product before and during the Olympic Games; and

E. Promoting FIT Organic Mosquito Repellent on social media, specifically twenty-five posts by Inside Publications and fifteen or twenty posts by the athlete endorsers. The posts by Inside Publications would identify the product as the “Official Mosquito Repellent” of, as applicable, *Inside Gymnastics* or *Inside Volleyball* magazines. The proposal included an example post: “We’ve landed in Brazil and we’re applying our Fit Organic Mosquito Repellent as we cover the 2016 Olympic Games! USDA-certified organic. The real deal, just like us!”

9. Mr. Pettit acted as an intermediary between Inside Publications and HealthPro, forwarding the Inside Publications proposal to each for signature.

10. Olympic gold medal gymnast Carly Patterson Caldwell agreed in May 2016 to become a paid spokesperson for FIT Organic Mosquito Repellent. Under the agreement, Ms. Patterson Caldwell received several thousand dollars for her promotional activities, including taking part in social media posts and a feature advertorial published in *Inside Gymnastics*.

11. Olympic gold medal gymnast Jake Dalton agreed in July 2016 to become a paid spokesperson for FIT Organic Mosquito Repellent. Mr. Pettit negotiated the terms of that agreement with Mr. Dalton’s agent. Under the agreement, Mr. Dalton received several thousand dollars for his promotional activities, including promoting the product to his fans and social media followers in accordance with the Inside Publications proposal.

12. Creaxion’s responsibilities with respect to the FIT Organic Mosquito Repellent launch included managing gymnastics sponsorships and promotions, coordinating and managing the Inside Publications and Jake Dalton sponsorships, and coordinating the Carly Patterson Caldwell sponsorship. In this capacity, Mr. Pettit and Creaxion drafted, reviewed, and monitored social media posts endorsing FIT Organic Mosquito Repellent, including those by Jake Dalton and Inside Publications.

Social Media Promotions of FIT Organic Mosquito Repellent

13. Pursuant to their respective endorsement agreements, spokespersons Ms. Patterson Caldwell and Mr. Dalton posted social media endorsements of FIT Organic Mosquito Repellent. In numerous instances, the endorsements did not disclose the spokespersons’ paid promotional relationships with HealthPro. The posts include, but are not necessarily limited to, those compiled in the attached Exhibits B and C. These materials contain the following statements and depictions:

A. Carly Patterson shared *Inside Gymnastics*’s [sic] post
June 3 at 11:44am

I was definitely bummed to have to make the decision to not go to Rio for the summer Olympics because of the threat of the Zika virus, but working on starting a family and being safe and protecting myself was way more important to my husband and me! I am so thankful to have found a safe and organic product (FIT Organic) that will ease my worries as mosquito season approaches.

[Ex. B at 1 (Facebook post)]; and

- B. **jake_dalton** Looking forward to the holiday weekend! And, of course, I'll be using my organic mosquito repellent from @fitorganicusa. You should too!
#Organic #Safe

[Ex. C at 3 (Instagram post with a picture of Mr. Dalton holding a bottle of FIT Organic Mosquito Repellent)].

14. Inside Publications also posted and reposted statements on social media about FIT Organic Mosquito Repellent, primarily through its *Inside Gymnastics* accounts, including some featuring endorsements by Mr. Dalton and Ms. Patterson Caldwell. In numerous instances, Inside Publications did not disclose the spokespersons' paid promotional relationships with HealthPro or that its own statements were paid commercial advertising. The posts included, but were not necessarily limited to, those compiled in the attached Exhibit D. These materials contain the following statements and depictions:

- A. **Inside Gymnastics** @InsideGym · 8 Jun 2016
Great choice champ! @Jake_Dalton will use @fitorganic mosquito repellent on the Road to Rio! #FightZika

[Ex. D at 1 (Twitter post with a picture of Mr. Dalton applying FIT Organic Mosquito Repellent to arm)];

- B. **insidegym** With summer weather still making waves across the country, mosquitos are also still out and about! Make sure to throw @fitorganicusa in your backpack! #clean #organic #safe #indiansummer [emoji omitted]

[Ex. D at 2 (Instagram post showing a bottle of FIT repellent)];

- C. **insidegym** 👍👍
#Repost @fitorganicusa

U.S. Olympian @jake_dalton Ready for Closing Ceremonies in Rio. Protected by Fit Organic Mosquito Repellent!

[Ex. D at 2 (Instagram post with a picture of Mr. Dalton applying FIT Organic Mosquito Repellent to arm)];

- D. **insidegym** Yes! We'll be packing this for Brazil ourselves! 🇺🇸
#Repost @carlypatterson04 Thank you so much @fitorganicusa for the mosquito repellent! I love the smell & love that it's all organic & safe! I'm a buffet for mosquitoes so this is a game changer!

[Ex. D at 4 (Instagram post with a picture of Ms. Patterson Caldwell holding two bottles of FIT Organic Mosquito Repellent)].

***Inside Gymnastics* Magazine Print and Online Articles Promoting FIT Organic Mosquito Repellent**

15. On June 1, 2016, Mr. Pettit emailed HealthPro the text of a draft Carly Patterson Caldwell advertorial for *Inside Gymnastics*, which he helped craft with Mr. Korotky and Inside Publications.
16. Later that day, Mr. Pettit emailed a substantially similar draft to which he added a reference to the donation of FIT Organic Mosquito Repellent to charities.
17. Inside Publications published an online version of the “Caring for Carly” article on June 2, 2016, on the *Inside Gymnastics* website, www.insidegymnastics.com. [See Ex. B at 3.]
18. Inside Publication posted a link to the online article on the *Inside Gymnastics* Facebook page on June 3, 2016, which Ms. Patterson Caldwell reposted on Facebook the same day. [Ex. B at 1, 3.]
19. In July 2016, *Inside Gymnastics* magazine published its *Guide to the Games* print issue, which included the below “social scene” article [Ex. E at 5]:

Posts that have people talking!

social | scene

caring for carly
FIT ORGANIC STEPS UP TO PROTECT FORMER OLYMPIC GOLD MEDALIST FROM MOSQUITOS THAT COULD TRANSMIT ZIKA VIRUS

2004 Olympic Gold Medalist Carly Patterson-Caldwell was looking forward to joining her Olympic family in Rio for the 2016 summer Games. However, because she is focused on starting a family of her own, Patterson-Caldwell made the difficult decision not to attend the Games. "I just couldn't risk our future with the threat of the Zika virus," she said. So instead of Rio, Carly and her husband Mark will be spending the summer at home, just outside of Dallas. There's just one problem: The Texas State Health Department is preparing for what could be a large scale outbreak of the Zika virus. Patterson-Caldwell could be just as much at risk for Zika in her own backyard as she would have been in Rio.

Hearing about her story through the team at *Inside Gymnastics* magazine—and knowing of the potential Zika virus outbreak in Texas, Fit Organic CEO Todd Wichmann sprang into action. His marketing team contacted Patterson-Caldwell, offering her and her family a lifetime supply of his new USDA-Certified organic mosquito repellent, scientifically proven to repel mosquitos that might transmit the Zika virus. More importantly, the company says it's safe for pregnant women and children.

"I was so touched and thankful that Fit Organic reached out to me," said Patterson-Caldwell. "I've been looking for an organic product that would repel mosquitos and keep my family safe from the Zika virus. Fit Organic Mosquito Repellent is exactly what I was looking for. Fit Organic's CEO said it was the least he could do, especially when he learned that Patterson-Caldwell was planning on becoming a mom. "I'm a parent before anything else," said Wichmann. The goal is to protect them - like Carly and her family—from the Zika virus.

Fit Organic Mosquito Repellent can be purchased online at Amazon.com or at FitOrganic.com.



20. The *Guide to the Games* issue also included the following article [Ex. E at 6]:

the latest on
ZIKA

Many traveling to the Olympic Games are concerned about the Zika virus and its potential affects. Some, including former Olympic Champ Carly Patterson-Caldwell, even decided not to attend the Games because of Zika concerns (see story earlier in issue). Here is some information from the CDC on the disease.

"Zika virus disease (Zika) is a disease caused by the Zika virus, which is spread to people primarily through the bite of an infected Aedes species mosquito. The most common symptoms of Zika are fever, rash, joint pain, and conjunctivitis (red eyes). The illness is usually mild with symptoms lasting for several days to a week after being bitten by an infected mosquito. People usually don't get sick enough to go to the hospital, and they very rarely die of Zika. For this reason, many people might not realize they have been infected. However, Zika virus infection during pregnancy can cause a serious birth defect called microcephaly, as well as other severe fetal brain defects. Once a person has been infected, he or she is likely to be protected from future infections."

During the Games, the team at Inside Gymnastics will be using Fit Organic Mosquito Repellent Spray, the official mosquito repellent of Inside Gymnastics magazine. Five years in development, the new Fit Organic Mosquito Repellent Spray is a unique formula comprised of two key ingredients: organic lemongrass grown in Nepal and organic oleic acid derived from sunflowers in the United Kingdom. The company is providing product complimentary to a number of athletes, including U.S. gymnast Jake Dalton.



21. On or around August 17, 2016, Inside Publications also posted on the *Inside Gymnastics* website a third article referring to FIT Organic Mosquito Repellent [Ex. F]:

Move Over, Mosquitos!

A lot of headlines leading up to the Olympics have centered around Brazil's battle with Zika. Athletes are mindful of the situation and are taking precautions to ensure their protection. U.S. Gymnast Jake Dalton recently became a Brand

Ambassador for Fit Organic, a company that produces an organic mosquito repellent, which he uses daily in Rio. "I actually have Fit Organic right by the door and I use it right before we go out every day to protect ourselves. I use it if I want to go out and sit on the balcony because I like to be outdoors. It's just one less thing I have to worry about now. My family is also going to be using it here in Rio." The team at Inside Gymnastics is also using Fit Organic throughout our stay in Rio, and we thank them for supplying us with product!

22. The articles "Caring for Carly," "the latest on ZIKA," and "Move Over, Mosquitos!" did not disclose they were paid commercial advertising. [See, e.g., Exs. E, F.]

Creaxion's Online Consumer Review Program

23. Creaxion also conducted an online consumer review program that reimbursed individuals, including Mr. Pettit and other Creaxion employees, for purchasing FIT Organic Mosquito Repellent and posting online reviews. Examples of such reviews are compiled in the attached Exhibit F. These materials contain the following statements and depictions:

A. **Worked for me in Brazil**

9/29/2016



by **Mark**

I used this product on a recent hike in a Brazilian rainforest and didn't get a single mosquito bite. A fellow hiker had been bitten by several mosquitos. Apparently, the spray he was using did not work. I loaned him my Fit Organic repellent and he loved it. He finished the hike without any more bites. This product smells great and is light on your skin. I highly recommend it;

B. **Works great**

10/5/2016



by **BeewhisperDon**

With all the rain we have had in Southeast [sic] NC this year the mosquitoes have been terrible. After returning from Brazil, my [sic] brother Mark told me about this amazing [sic] spray he used there to combat the mosquitoes. I ordered mine right away. After only one application I was sold. The little buggers wouldn't even land. All natural, smells great, not greasy. It works!!!;

C. **Works and smells great!**

9/28/2016



by **Laura**

Great product and doesn't make you cough or feel like you're putting on chemicals when you spray it on like DEET. Not only does it work, it smells so fresh and natural. I'm very satisfied; and

D. **Great Product!**

11/8/2016



by **PatyG** **Verified purchaser**

I recommend this product. I really like the smell of it and that [sic] is deet free. I am constantly at parks with my kids and I feel comfortable reapplying the product without compromising [sic] my kids [sic] skin with chemicals. The lemongrass scent is awesome! I love this brand I was already using the vegetable wash.

[Ex. G at 1, 4-5.]

24. The reviews did not disclose that the reviewers were reimbursed for buying the product or the reviewers' relationships to the public relations and marketing company hired to promote the product. [See, e.g., Ex. G.]

Count I
False or Misleading Endorsement Claims

25. Through the means described in Paragraphs 13, 14, 19, and 20, Respondents have represented, directly or indirectly, expressly or by implication, that the statements by and depictions of Ms. Patterson Caldwell and Mr. Dalton about FIT Organic Mosquito Repellent reflected the independent experiences or opinions of impartial users.

26. Through the means described in Paragraphs 23 and 24, Respondents Creaxion and Pettit have represented, directly or indirectly, expressly or by implication, that the statements about FIT Organic Mosquito Repellent by Respondent Pettit and other participants in Respondent Creaxion's online consumer review program reflected the independent experiences or opinions of impartial users.

27. In fact, the statements by Ms. Patterson Caldwell, Mr. Dalton, Respondent Pettit, and other participants in Respondent Creaxion's online consumer review program did not reflect the independent experiences or opinions of impartial users because (a) they were created as a part of an advertising campaign to promote FIT Organic Mosquito Repellent, and (b) the online consumer reviews were by individuals who were reimbursed for buying the product and included statements by the owner and employees of the public relations firm hired to promote the product. Therefore, the representations set forth in Paragraphs 25 and 26 are false or misleading.

Count II
Deceptive Failure to Disclose Material Connections with Endorsers

28. Through the means described Paragraphs 13, 14, 19, and 20, Respondents have represented, directly or indirectly, expressly or by implication, that the statements by Ms. Patterson Caldwell and Mr. Dalton about FIT Organic Mosquito Repellent (and related depictions) reflected their experiences or opinions.

29. Through the means described in Paragraphs 23 and 24, Respondents Creaxion and Pettit have represented, directly or indirectly, expressly or by implication, that the statements about

FIT Organic Mosquito Repellent by Respondent Pettit and other participants in Respondent Creaxion's online consumer review program reflected the experiences or opinions of individuals who had used the product.

30. In numerous instances in which Respondents made the representations set forth in Paragraphs 28 and 29, they failed to disclose, or disclose adequately, that (a) Ms. Patterson Caldwell and Mr. Dalton were paid to endorse FIT Organic Mosquito Repellent, and (b) the online consumer reviews were by individuals who were reimbursed for buying the product and included statements by the owner and employees of the public relations firm hired to promote the product. These facts would be material to consumers in evaluating the endorsements of FIT Organic Mosquito Repellent in connection with a purchase or use decision.

31. Respondents' failure to disclose the material information described in Paragraph 30, in light of the representations made in Paragraphs 28 and 29, is a deceptive act or practice.

Count III
Deceptively Formatted Advertising

32. Through the means described in Paragraphs 14 and 19 through 22, Respondents have represented, directly or indirectly, expressly or by implication, that the social media posts by *Inside Gymnastics* and other Inside Publications magazines about FIT Organic Mosquito Repellent, and the articles "Caring for Carly," "the latest on ZIKA," and "Move Over Mosquitos!" were independent statements and opinions of impartial publications regarding FIT Organic Mosquito Repellent.

33. In fact, those posts and articles were not independent statements and opinions of impartial publications regarding FIT Organic Mosquito Repellent; they were paid commercial advertising. Therefore, the representation set forth in Paragraph 32 is false or misleading.

Violations of Section 5

34. The acts and practices of Respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this ____ day of _____, 2018, has issued this Complaint against Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL: