

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.

FEDERAL TRADE COMMISSION,

Plaintiff

v.

GARDEN OF LIFE, INC. AND
JORDAN S. RUBIN,

Defendants.

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

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

1. Plaintiff FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to secure a permanent injunction and other equitable relief against defendants for engaging in unfair or deceptive acts or practices in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a), 52.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a), 52, and 53(b) and 28 U.S.C. §§ 1331, 1337(a), and 1345.

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

THE PARTIES

4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The Commission 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 Commission 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 Commission, through its own attorneys, may 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 Garden of Life, Inc. (“Garden of Life”) is a Florida corporation with its principal office or place of business at 5500 Village Boulevard, Suite 202, West Palm Beach, Florida 33407. At times material to the complaint, acting alone or in concert with others, Garden of Life has distributed and sold Primal Defense, RM-10, Living Multi, and FYI to consumers throughout the United States. Garden of Life transacts business in the Southern District of Florida.

6. Defendant Jordan S. Rubin is the founder, sole shareholder, chairman, and former president of Garden of Life. Since at least 2000, individually or in concert with others, he has formulated, directed, controlled, or participated in the policies, acts, or practices of Garden of Life, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Garden of Life. He resides and/or transacts business in the Southern District of Florida.

COMMERCE

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

DEFENDANTS’ COURSE OF BUSINESS

8. Since at least 2000, the defendants have manufactured, advertised, labeled, offered for sale, sold, and distributed products to the public, including the dietary supplements Primal Defense, RM-10, Living Multi, and FYI. The defendants primarily advertise Primal Defense, RM-10, Living Multi, and FYI through their website, www.gardenoflifeusa.com, print magazine advertisements, direct mail catalogs, and product brochures. The defendants offer Primal Defense, RM-10, Living Multi, and FYI for sale through Internet distributors and at national retail stores such as Whole Foods Market, GNC, and the Vitamin Shoppe.

Primal Defense

9. Primal Defense is a dietary supplement containing 14 strains of bacteria (which defendants collectively refer to as “Homeostatic Soil Organisms” or “HSOs”), *dunaliella salina*, barley grass juice, oat grass juice, and yucca juice, among other ingredients. According to the Garden of Life 2004 product catalog, the recommended dosage for Primal Defense is three to twelve caplets per day; a 45-caplet bottle costs about \$25. The approximate monthly cost to consumers for Primal Defense ranges from \$50 to \$245.

10. To induce consumers to purchase Primal Defense, defendants have disseminated or have caused to be disseminated advertisements, including but not limited to the attached Exhibits A and B. These advertisements contain the following statements:

A. [EXCERPT FROM PRODUCT CATALOG]

Clinical Studies

Studies on Homeostatic Soil Organisms™ (HSOs™)

In 1993, three single-blind, placebo-controlled studies on HSOs™ were conducted at the Dispensario Medico, Partido de la Revolucion Democratica, a medical dispensary in Irapuato, Mexico. The researchers wanted to find out whether HSOs™ could help people with high cholesterol and leukemia. They also wanted to see if the HSOs™ made test subjects feel more energetic and improved memory and concentration.

* High cholesterol: Seventy patients with blood cholesterol counts higher than 300 milligrams per deciliter were given HSOs™ or a placebo. Subjects given the HSOs™ saw their total blood cholesterol count drop by 25 percent or more; the placebo subjects showed no change.

* Energy levels, memory and concentration: Seventy patients with no known pathologies were given HSOs™ or a placebo. Thirty-three of the 35 subjects given HSOs™ reported feeling more energetic and vital. HGB (hemoglobin) levels and red blood cell counts increased moderately in 33 subjects. In the placebo group, no subjects reported an increase in energy or vitality levels. Only two subjects out of 33 (two subjects dropped out of the study) saw their HGB levels increase. In only one subject did the red blood cell count increase. Conspicuous increases in memory and concentration improved in 28 out of 35 test patients with only 1 improving in the placebo group.

* Chronic Lymphocytic Leukemia stage II: Thirty-five subjects with chronic lymphocytic leukemia (CLL) were given HSOs™. The director of research reported that HSOs™ “attenuated the symptoms of approximately 80 percent of the treated patients.” In 80 percent of the subjects, white blood cell counts improved.

[Exhibit A (Page from the Clinical Studies section of 2003 Garden of Life product catalog)]

B. [MAGAZINE ADVERTISEMENT]

Dirt & Health

Asthma, Allergies, Irritable bowel syndrome, Rheumatoid arthritis, Lupus, Crohn’s disease, Chronic fatigue syndrome, Immune disorders. All are reaching

epidemic proportions.

...

Primal Defense™ to the Rescue

... Over time, the researchers perfected a process for selectively breeding superior strains of these HSOs until they produced cultures that furnished good, positive body reactions: more normal bowel movements; improved sleep patterns; fewer colds and flu; and greater amounts of energy. During the breeding experiments, the scientists brought their HSOs to university laboratories in California for further experiments. This work eventually resulted in **Primal Defense™ with HSOs™**, the first HSO formula from Garden of Life. ...

By reintroducing HSOs to the human body, persons suffering from immune disorders – including food allergies, irritable bowel syndrome, rheumatoid arthritis, lupus, and Crohn’s disease – enhance their healing response.

...

But, in fact, the reestablishment of the HSO-body link yields far more benefits than simply aiding in cases of autoimmune disease. Overall bodily functions and immunity are greatly improved. Cholesterol levels are naturally reduced; energy levels are increased; and resistance to disease-causing organisms is enhanced.

... I would urge anyone with intractable immune conditions, allergies, low energy, inability to gain weight, fibromyalgia and chronic fatigue syndrome to take advantage of HSOs. The formula that I recommend is Primal Defense™ with HSOs™.

[Exhibit B (Magazine ad, *The Doctors’ Prescription for Healthy Living*, Volume 5, Number 10)]

RM-10

11. RM-10 is a dietary supplement containing ten types of mushrooms, *Uncaria tomentosa* (cat’s claw), and aloe vera extract. According to the Garden of Life 2004 product catalog, the recommended dosage for RM-10 is two to nine caplets per day; a 60-caplet bottle costs about \$50. The approximate monthly cost to consumers for RM-10 ranges from \$50 to \$214.

12. To induce consumers to purchase RM-10, defendants have disseminated or have

caused to be disseminated advertisements, including but not limited to the attached Exhibits C and D. These advertisements contain the following statements:

A. [PRODUCT BROCHURE]

Beating Cancer at 80! **RM-10**TM

An imbalanced immune system may result in the following:

- Frequent Colds and Flu
- Allergies and Asthma
- Chronic Fatigue
- Fibromyalgia
- Candida Yeast Overgrowth
- Parasitic Infections
- Psoriasis and Eczema
- Rheumatoid Arthritis
- Viral Disorders
- Lupus
- Inflammatory Bowel Disease
- Diabetes
- Multiple Sclerosis
- AIDS

RM-10TM is a combination of 10 certified organic Medicinal Mushrooms, synergistically balanced with Aloe Vera and the healing herb *Uncaria tomentosa* (cat's claw). Medicinal mushrooms have been used traditionally for thousands of years for their remarkable healing potential, and are now being validated by medical science for their tremendous therapeutic value. Preliminary laboratory studies have shown that **RM-10**TM enhances natural killer cell and macrophage activity, thereby enhancing natural immunity. In addition, test results indicate that **RM-10**TM exhibits anti-tumoral properties.* According to hundreds of published studies, medicinal mushrooms and their extracts:

- May have powerful immunomodulatory activity*
- May increase overall energy & enhance immune system function*
- May have potent anti-tumor activity*
- May inhibit the growth of existing tumors*
- May help lower cholesterol*
- May prevent and treat cardiovascular disease*
- May have anti-viral and anti-bacterial properties*
- May protect against harmful effects of radiation*
- May have applications in treating viral diseases such as AIDS*

Food For Your Immune System

...

At age 77 Rose Menlowe was diagnosed with cancer in her ovaries, lymph nodes, appendix, small and large intestines. After surgical removal of visible tumors, Rose declined chemotherapy and radiation, and instead examined natural treatment options.

She began taking RM-10™ for its remarkable anti-cancer potential as well as its ability to significantly boost the immune system, enhancing her body's own capacity to battle cancer. Rose Menlowe is now cancer free, and today at age 80, Rose is so full of energy that she is producing an exercise video for seniors!

[Exhibit C (Garden of Life product brochure for RM-10)]

B. [MAGAZINE ADVERTISEMENT]

RM-10 — Our Choice for All-around Immune Support

. . . This combination of ten medicinal mushrooms together with aloe vera and properly harvested **cat's claw** offers one of the most important immune combinations. Plus, the formula is safe for everyone; persons with either overactive or underactive immune system function can use it.

Subjected to Scientific Study

RM-10 was specifically created to be a multi-faceted treatment approach for immune system disorders, especially cancer, and then subjected to experimental, laboratory, and clinical studies.

[Exhibit D (Magazine ad, *The Doctors' Prescription for Healthy Living*, Vol. 7, Number 7)]

Living Multi

13. Living Multi – Daily Formula (“Living Multi”) is a dietary supplement containing vitamins, minerals, vegetables, ocean vegetables, fruits, mushrooms, and a botanical blend.

According to the Garden of Life 2004 product catalog, the recommended dosage for Living Multi is nine caplets per day; a 126-caplet bottle costs about \$38. The approximate monthly cost to consumers for Primal Defense is \$81.

14. To induce consumers to purchase Living Multi, defendants have disseminated or have caused to be disseminated advertisements, including but not limited to the magazine

advertising supplement attached as Exhibit E. These advertisements contain the following statements and depictions:

Beyond Vitamins and Minerals
How Homeostatic Nutrients™ Can Change Your Life

There is a revolution under way in multiple vitamin/mineral supplements, started by a product called **Living Multi™**.

...

Scientific studies have now established the inferiority of synthetic vitamins as simplified imitations of the more complex structures found in nature, particularly in whole foods. This helps to explain why we as a nation are getting sicker as we get older, more fatigued, obese, . . . despite the fact that more than half of all Americans are now taking some type of nutritional supplement, the majority of which are multiple vitamins.

However the great news – the real challenge – is that we can do much better . . .

. . . **Reduce risk factors for Diabetes:** Restoring the body's ability to utilize insulin with the mineral and enzyme-rich homeostatic nutrient complexes in Living Multi helps to reduce sugar cravings, thereby lowering blood sugar and preventing diabetic-related syndromes, including hypertension, obesity, and elevated blood lipids.

. . . **Reduce risk of Age-related Neuro-degeneration:** There is evidence that our ancestors experienced peak audible, mental, and cognitive functions well into their old age. Today the elderly suffer up to 15% of their lives virtually robbed of full access to their brainpower. The powerful antioxidant complexes in Living Multi have been shown to reverse age-related neuro-degeneration.

. . . **Reduce risk of Obesity:** Normalizing blood sugar by increasing proper insulin activity is perhaps one of the most important factors in reducing caloric intake and weight gain.

. . . **Reduce Inflammatory Markers:** Living Multi's live probiotic mixture along with turmeric and ginger, have been shown to reduce inflammation. Alpha lipoic acid accomplishes the same thing by quenching free radicals.

...

"I truly believe that Living Multi is the most comprehensive, bioavailable

and truly effective nutritional product to date. Unlike the thousands of multi vitamin products on the market, Living Multi contains highly potent nutrients in therapeutic quantities. Most importantly, it has been clinically studied to verify its efficacy. This I have not seen in any other product of its kind.”

*Zakir Ramazanov, PhD,
Professor of Plant Biochemistry*

. . . Studies have proven that *Rhododendron caucasicum* enhances the body’s ability to burn fat and aid in healthy weight management.

[Exhibit E (four-page “Beyond Vitamins and Minerals” magazine advertising supplement)]

FYI - For Your Inflammation

15. FYI - For Your Inflammation (“FYI”) is a dietary supplement containing hydrolyzed chicken collagen type II, wild oregano, *Uncaria tomentosa* (cat’s claw), bromelain, papain, protease blend, amylase, lipase, cellulase, *Rhododendron caucasicum*, ginger, turmeric, green barley juice, phytosterol blend, laminaria, ulva, and bayberry bark. According to the Garden of Life 2004 product catalog, the recommended dosage for FYI is three to twelve caplets per day; a 90-caplet bottle costs about \$45. The approximate monthly cost to consumers for FYI ranges from \$45 to \$180.

16. To induce consumers to purchase FYI, defendants have disseminated or have caused to be disseminated advertisements, including but not limited to the attached Exhibits F through I. These advertisements contain the following statements:

A. **[PRODUCT BROCHURE]**

What is FYI™?

FYI™ was formulated to provide the body with the building blocks needed to rebuild and support healthy cartilage and connective tissue, as well as to control and prevent inflammation throughout the body. The synergistically balanced

whole food, herbal, and enzyme blend in FYI™ consists of cartilage building proteins and mucopolysaccharides from chicken collagen type 2 [sic], systemic enzymes, and specific whole foods and herbs specifically chosen for their proven anti-inflammatory abilities. Not only may the nutrients in FYI™ help to control and prevent inflammation, they have no side effects whatsoever and may, oftentimes, prevent the occurrence of unwanted side effects caused by prescription medications.

...

The following conditions involve high levels of inflammation:

- Back Pain
- Osteoarthritis
- Scleroderma
- Lupus
- Sports Injuries
- Rheumatoid Arthritis
- Asthma
- Psoriasis
- Fibromyalgia
- Bursitis
- Allergies
- Crohns' and Colitis [sic]

[Exhibit F (FYI product brochure)]

B. [MAGAZINE ADVERTISEMENT]

Although we tend to think of inflammation almost solely in terms of arthritis, persons with gout, bursitis, inflammatory bowel disease, sports injuries and other inflammatory conditions can greatly benefit from FYI.

[Exhibit G (Magazine advertisement, J. Rubin, "Attacking the Seven Causes of Inflammation")]

C. [PRODUCT CATALOG]

FYI™ is designed and clinically tested to offer the all-natural, time-honored support for inflammation without the costly side effects.

[Exhibit H (Garden of Life 2004 product catalog)]

iv. [GARDEN OF LIFE WEBSITE]

The Whole Truth about Rheumatoid Arthritis & Nothing But...

I want to tell consumers, as another national pundit (whom we all know) might

put it, “the rest of the story.”

I’m very happy to report preliminary results from university clinical trials have just come in and that they show without doubt the Garden of Life formula FYI™ (For Your Inflammation), which attacks inflammation in seven ways, is doing some great things for rheumatoid arthritis patients.

...

Clinical Results Support FYI™

Taken as a whole, it should not be surprising that in a recent clinical trial testing FYI™, 82 percent of the rheumatoid arthritis patients completing the study had a 60 percent or greater improvement in their condition, as measured by standard mobility evaluation tools.

[Exhibit I (Garden of Life website, J. Rubin, “Memo to Dr. Rosenfeld: ‘FYI™’ Means ‘For Your Inflammation’”)]

THE FTC ACT

17. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a), prohibits the dissemination of any false advertisement in or affecting commerce for the purpose of inducing, or which is likely to induce, the purchase of food, drugs, devices, services, or cosmetics. For the purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, Primal Defense, RM-10, Living Multi, and FYI are either “foods” or “drugs” as defined in Sections 15(b) and (c) of the FTC Act, 15 U.S.C. §§ 55(b), (c). As set forth below, defendants have engaged in such unlawful practices in connection with the marketing and sale of Primal Defense, RM-10, Living Multi, and FYI.

DECEPTIVE ACTS OR PRACTICES
IN VIOLATION OF THE FTC ACT

COUNT I

Unsubstantiated Efficacy Claims for Primal Defense

18. Through the means described in Paragraph 10, defendants have represented, expressly or by implication, that:

- i. Primal Defense treats intractable immune disorders, asthma, irritable bowel syndrome, chronic fatigue syndrome, arthritis, lupus, colds, flu, and Crohn's disease; and
- ii. Primal Defense reduces users' blood cholesterol levels.

19. Defendants did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 18 above at the time the representations were made. Therefore, the making of the representations set forth in Paragraph 18, above, constitutes a deceptive 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), 52.

COUNT II

False Establishment Claims for Primal Defense

20. Through the means described in Paragraph 10, defendants have represented, expressly or by implication, that clinical studies prove that:

- i. Primal Defense reduces users' blood cholesterol levels by 25 percent or more;
- ii. Primal Defense improves users' energy levels, memory, and concentration;

and

iii. Primal Defense mitigates the symptoms of most patients with chronic lymphocytic leukemia stage II.

21. In truth and in fact, clinical studies do not prove that:

i. Primal Defense reduces users' blood cholesterol levels by 25 percent or more;

ii. Primal Defense improves users' energy levels, memory, and concentration; or

iii. Primal Defense mitigates the symptoms of most patients with chronic lymphocytic leukemia stage II.

Therefore, the making of the representations set forth in Paragraph 20, above, constitutes a deceptive 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), 52.

COUNT III
Unsubstantiated Efficacy Claims for RM-10

22. Through the means described in Paragraph 12, defendants have represented, expressly or by implication, that:

i. RM-10 treats cancer;

ii. RM-10 helps lower users' blood cholesterol levels;

iii. RM-10 prevents and treats cardiovascular disease; and

iv. RM-10 treats immune system disorders.

23. Defendants did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 22 above at the time the representations were made. Therefore, the making of the representations set forth in Paragraph 22, above, constitutes a deceptive 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), 52.

COUNT IV
False Establishment Claims for RM-10

24. Through the means described in Paragraph 12, defendants have represented, expressly or by implication, that clinical studies prove that:

- i. RM-10 treats immune system disorders; and
- ii. RM-10 treats cancer.

25. In truth and in fact, clinical studies do not prove that:

- i. RM-10 treats immune system disorders; or
- ii. RM-10 treats cancer.

Therefore, the making of the representations set forth in Paragraph 24, above, constitutes a deceptive 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), 52.

COUNT V
Unsubstantiated Efficacy Claims for Living Multi

26. Through the means described in Paragraph 14, defendants have represented, expressly or by implication, that:

- i. Living Multi reduces the risk factors for diabetes and prevents diabetic-

related syndromes;

- ii. Living Multi reduces the risk of age-related neuro-degeneration;
- iii. Living Multi reduces the risk of obesity; and
- iv. Living Multi reduces inflammation.

27. Defendants did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 26 above at the time the representations were made. Therefore, the making of the representations set forth in Paragraph 26, above, constitutes a deceptive 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), 52.

COUNT VI
False Establishment Claim for Living Multi

28. Through the means described in Paragraph 14, defendants have represented, expressly or by implication, that Living Multi has a clinically proven nutritional formula.

29. In truth and in fact, Living Multi does not have a clinically proven nutritional formula. Therefore, the making of the representation set forth in Paragraph 28, above, constitutes a deceptive 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), 52.

COUNT VII
Unsubstantiated Efficacy Claims for FYI

30. Through the means described in Paragraph 16, defendants have represented, expressly or by implication, that FYI treats and prevents inflammation, including inflammation caused by arthritis, inflammatory bowel disease, sports injuries, asthma, allergies, fibromyalgia,

lupus, scleroderma, and other inflammatory conditions.

31. Defendants did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 30 above at the time the representations were made. Therefore, the making of the representations set forth in Paragraph 30, above, constitutes a deceptive 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), 52.

COUNT VIII
False Establishment Claims for FYI

32. Through the means described in Paragraph 16, defendants have represented, expressly or by implication, that clinical studies prove that:

- i. FYI treats rheumatoid arthritis; and
- ii. FYI reduces the effects of inflammation.

33. In truth and in fact, clinical studies do not prove that:

- i. FYI treats rheumatoid arthritis; or
- ii. FYI reduces the effects of inflammation.

Therefore, the making of the representations set forth in Paragraph 32, above, constitutes a deceptive 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), 52.

INJURY

34. 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

35. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award other ancillary relief, including but not limited to rescission of contracts and the disgorgement of ill-gotten gains.

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:

- (1) Award plaintiff temporary and preliminary injunctive 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;
- (2) Enjoin defendants permanently from violating Sections 5 and 12 of the FTC Act as alleged herein;
- (3) 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 and restitution, and disgorgement of ill-gotten gains; and

(4) Award plaintiff the costs of bringing this action and any other equitable relief the Court may determine to be just and proper.

Respectfully submitted this _____ day of _____, 2006,

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