

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CREAGHAN A. HARRY,
individually and doing business as
HITECH MARKETING,
SCIENTIFIC LIFE NUTRITION, and
REJUVENATION HEALTH CORP.

Defendant.

Case No.

04C 4790

JUDGE MANNING

MAGISTRATE JUDGE KEYS

RECEIVED

JUL 21 2004

WILLIAM DOBBINS
CLERK OF DISTRICT COURT

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission (“FTC” or “the Commission”), for its Complaint alleges as follows:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (“CAN-SPAM”), 15 U.S.C. § 7706(a), to obtain preliminary and permanent injunctive relief, rescission of contracts, restitution, redress, disgorgement and other equitable relief for Defendant’s deceptive and unfair acts or practices and the making of false advertisements in violation of Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45 and 52, and for violations of CAN-SPAM, 15 U.S.C. § 7701 *et seq.*

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 the United States District Court for the Northern District of Illinois is proper under 15 U.S.C. § 53(b).

PLAINTIFF

4. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC is charged, *inter alia*, with enforcing Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, which prohibit, respectively, unfair or deceptive acts or practices, and false advertisements for food, drugs, devices, or cosmetics in or affecting commerce. The FTC is also charged with enforcing CAN-SPAM as if statutory violations of CAN-SPAM “were an unfair or deceptive act or practice proscribed under Section 18(a)(1)(B) of the [FTC Act] (15 U.S.C. 57a(a)(1)(B)).” *See* 15 U.S.C. § 7706(a).
5. Section 13(b) of the FTC Act authorizes the FTC to initiate federal district court proceedings, in its own name by its designated attorneys, to enjoin violations of any provision of law enforced by the FTC Act, and to secure such equitable relief as may be appropriate in each case, including redress, restitution, and disgorgement. 15 U.S.C. § 53(b).

DEFENDANT

6. Defendant Creaghan A. Harry, individually and doing business as “Hitech Marketing,” “Scientific Life Nutrition,” and “Rejuvenation Health Corp.,” has formulated, directed,

controlled, or participated in the acts or practices set forth in this Complaint. Defendant has transacted business in the Northern District of Illinois within the meaning of 15 U.S.C. § 53(b).

COMMERCE

7. At all times material to this Complaint, Defendant has 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.

DEFINITIONS

8. **“Header information”** means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person initiating the message.
9. **“Initiate,”** when used with respect to a commercial e-mail message, means to originate or transmit such message or to procure the origination or transmission of such message.
10. **“Procure,”** when used with respect to the initiation of a commercial e-mail message, means intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one’s behalf.

DEFENDANT’S BUSINESS ACTIVITIES

11. Since at least October 2003 and continuing to the present, Defendant has marketed nutritional supplement products. These products have included Supreme Formula HGH and Youthful Vigor HGH (the “HGH Products”). The HGH products are herbal capsules

that purport to contain a form of Human Growth Hormone and/or produce effects similar in nature to Human Growth Hormone.

12. Defendant has advertised, offered for sale, sold, and/or distributed the HGH products throughout the United States via dozens of Internet Web sites. Some of the Web sites Defendant has used to market Supreme Formula HGH are: www.popggg.com; www.purchze3.com; www.fanddc.com; www.creatorr.com; www.richemmdsz.com; and www.decrfrcc.com. Some of the Web sites Defendant has used to market Youthful Vigor HGH are www.bhgdrty.com; www.dfgytl.com; www.zcdemf.com; and www.hsaae.com. Consumers may purchase Defendant's products by credit card from Defendant's Web sites. Defendant has garnered approximately \$300,000 pursuant to the sale of his HGH products between November 2003 and May 2004.
13. To induce consumers to purchase his Supreme Formula HGH product, Defendant's Web sites contain the following statements:

LOSE WEIGHT WHILE YOU SLEEP WITHOUT DIETING OR EXERCISE

Endorsed by Doctors WorldWide!!

Body Fat Loss	82% Improvement
Wrinkle Reduction	61% Improvement
Energy Level	84% Improvement
Muscle Strength	88% Improvement
Sexual Potency	75% Improvement
Emotional Stability	67% Improvement
Memory	62% Improvement

Look and Feel 20 YEARS YOUNGER!!

Take 20 Years Off Your Age

...HGH reaches far beyond the scope of any one of these hormones to not only prevent biological aging, but to significantly reverse a broad range of the signs and symptoms associated with the aging.

Do You Suffer from ANY of These Signs of Aging?

- Wrinkles, Fine Lines
- Poor Memory
- Lack of Enthusiasm
- Sagging Skin
- Diminished Eyesight
- Failing Sexual Performance
- Joint Problems
- Low Energy
- Skin Problems
- Weight Problems
- Sleep Difficulties
- Blood Pressure, Low/High
- Lack of Muscle Tone

If You Want...

- A Flat Tummy
- Trim Thighs
- Erase Cellulite
- Lose those Wrinkles
- Tighter Skin
- More Energy
- Sleep Better
- More Lean Muscle
- Sexual Potency
- Increased Memory

A system that is 100% SAFE and ENDORSED by DOCTORS!

14. To induce consumers to purchase his Youthful Vigor HGH product, Defendant's Youthful Vigor HGH Web sites contain statements substantially identical to those in paragraph 13 above.
15. Defendant's Supreme Formula HGH Web sites also contain an informational page providing answers about what to expect when taking the product. To induce consumers to purchase the products, this page contains the following statements:

Monthly Breakdown of What to Expect

- | | |
|----------------|---|
| Month 1 | Improved stamina, better and sounder sleep, more optimistic attitude, increase in energy (some report "feeling 16 again"). |
| Month 2 | Improved muscle tone, enhanced sexual function, improved nail strength and growth, improved skin tone, better digestion, increased strength, weight loss. |
| Month 3 | Improved mental processes (includes desire to do & complete projects), increase muscle size, especially combined with working |

out, hair growth, reduction in PMS symptoms, increase in sexual desire, greater body flexibility.

Month 4 Same as above. Generally, most improvements are heightened and more consistent.

Month 5 Impressive weight loss and reduction of inches, since fat is reduced and muscle tissue is increased and toned. Improved skin texture and appearance, thickening of skin and greater elasticity, reduction of the appearance of wrinkles, thickening of hair with a shiny and healthy appearance.

Month 6 This is the really exciting stage! Cellulite Greatly Diminishes. Body is much more contoured. Eyesight greatly improved, better emotional stability, stronger resistance to flu's and other illnesses, some pain and soreness disappear, old wounds have healed or are healing, excellent exercise tolerance, greyed hair begins to return to natural color, medical tests show a reduction in cholesterol and triglycerides, blood pressure normalizes, heart rate improves, immune system improves.

16. Defendant's Youthful Vigor HGH product has an information page packaged with the product that contains statements substantially identical to those set out in paragraph 15 above.
17. Defendant has marketed his HGH products by initiating commercial e-mail messages. The text of these e-mail messages contain hyperlinks to Defendant's Web sites. From January 1, 2004 through May 31, 2004, consumers forwarded approximately 40,000 e-mails advertising Defendant's HGH products to the FTC's spam database at uce@ftc.gov.
18. Commercial e-mail messages initiated by Defendant contain header information, including "from" and "reply-to" fields. The "from" field purports to identify who sent the

e-mail; the “reply-to” field identifies to whom a return e-mail will be sent if the e-mail recipient clicks the “reply” button.

19. In numerous instances, commercial e-mail messages initiated by Defendant utilize header information that is materially false or materially misleading. In particular, commercial e-mail messages initiated by Defendant often contain an e-mail address or domain name of an unrelated third-party in the “reply-to” or “from” field of the e-mail without the third party’s consent or authorization. This practice is commonly referred to as “spoofing.”
20. In numerous instances, commercial e-mail initiated by Defendant fails to provide clear and conspicuous notice of the opportunity to decline to receive further commercial electronic mail messages from the sender.
21. In numerous instances, commercial e-mail initiated by Defendant fails to provide a valid physical postal address of the sender.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

22. 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 purpose of Section 12 of the FTC Act, the HGH products sold by Defendant are either “drugs” or “devices” as defined in 15 U.S.C. §§ 55(c) & (d).

COUNT ONE

23. Through the means described in Paragraphs 11-21 above, Defendant has represented, expressly or by implication, that his HGH products:

- a. contain a form of Human Growth Hormone and/or produce effects similar in nature to any form of Human Growth Hormone;
- b. will turn back or reverse the aging process, including, but not limited to, causing effects such as: (i) lower blood pressure, (ii) cellulite reduction, (iii) improved vision, (iv) new hair growth and hair color restoration, (v) improved sleep, (vi) emotional stability, and (vii) increased sexual potency and frequency; and/or
- c. will enable the consumer to lose weight without diet or exercise.

24. In truth and in fact, Defendant's HGH products:

- a. do not contain any form of Human Growth Hormone and/or do not produce effects similar in nature to any form of Human Growth Hormone;
- b. do not turn back or reverse the aging process, and do not: (i) lower blood pressure, (ii) cause cellulite reduction, (iii) improve vision, (iv) cause new hair growth and hair color restoration, (v) improve sleep, (vi) cause emotional stability, and (vii) increase sexual potency and frequency; and/or
- c. do not enable the consumer to lose weight without diet or exercise.

25. Therefore, Defendant's representations as set forth in Paragraph 23 above are false or misleading and constitute 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) and 52.

COUNT TWO

26. Through the means described in Paragraphs 11-21 above, Defendant has represented, expressly or by implication, that his HGH products:
- a. contain a form of Human Growth Hormone and/or produce effects similar in nature to any form of Human Growth Hormone;
 - b. will turn back or reverse the aging process, including, but not limited to, causing effects such as: (i) lower blood pressure, (ii) cellulite reduction, (iii) improved vision, (iv) new hair growth and hair color restoration, (v) improved sleep, (vi) emotional stability, and (vii) increased sexual potency and frequency; and/or
 - c. will enable the consumer to lose weight without diet or exercise.
27. Defendant 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.
28. 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) and 52.

**VIOLATIONS OF THE CONTROLLING THE ASSAULT OF
NON-SOLICITED PORNOGRAPHIC AND MARKETING ACT OF 2003**

29. The Controlling The Assault of Non-Solicited Pornography and Marketing Act of 2003 (“CAN-SPAM”), 15 U.S.C. § 7701 *et seq.*, became effective on January 1, 2004, and has since remained in full force and effect.

30. Section 5(a)(1) of CAN-SPAM states:

It is unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message . . . that contains, or is accompanied by, header information that is materially false or materially misleading.

15 U.S.C. § 7704(a)(1).

31. Section 5(a)(6) of CAN-SPAM states:

For purposes of [section 5(a)(1)], the term “materially,” when used with respect to false or misleading header information, includes the alteration or concealment of header information in a manner that would impair the ability of an Internet access service, processing the message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond to a person who investigated the alleged violation, or the ability of a recipient of the message to respond to a person who initiated the electronic message.

32. Section 5(a)(5)(A) of CAN-SPAM states:

It is unlawful for any person to initiate the transmission of any commercial electronic mail message to a protected computer unless the message provides:

- (i) clear and conspicuous identification that the message is an advertisement or solicitation;
- (ii) clear and conspicuous notice of the opportunity under [section 5(a)(3)] to decline to receive further commercial electronic mail messages from the sender; and
- (iii) a valid physical postal address of the sender.

15 U.S.C. § 7704(a)(5)(A).

33. Section 7(a) of CAN-SPAM states:

[T]his Act shall be enforced by the [FTC] as if the violation of this Act were an unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the [FTC Act] (15 U.S.C. 57(a)(1)(B)).

15 U.S.C. § 7706(a).

COUNT III

34. In numerous instances, Defendant has initiated the transmission, to protected computers, of commercial e-mail messages that contained, or were accompanied by, header information that is materially false or materially misleading.
35. Defendant's acts or practices, as described in paragraph 34 above, violate 15 U.S.C. § 7704(a)(1).

COUNT IV

36. In numerous instances, Defendant has initiated the transmission of commercial e-mail messages to protected computers that fail to provide:
- a. clear and conspicuous notice of the opportunity to decline to receive further commercial electronic mail messages from the sender; and/or
 - b. a valid physical postal address of the sender.
37. Defendant's acts or practices, as described in paragraph 36 above, violate 15 U.S.C. § 7704(a)(5).

CONSUMER INJURY

38. Consumers throughout the United States have suffered, and continue to suffer, substantial monetary loss and other injury as a result of Defendant's unlawful acts or practices. In addition, Defendant has been unjustly enriched as a result of his unlawful practices. Absent injunctive relief by this Court, Defendant is likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

39. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other relief, including redress, disgorgement, and restitution, to prevent and remedy violations of any provision of law enforced by the FTC.
40. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by Defendant's law violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), Section 7(a) of CAN-SPAM, 15 U.S.C. § 7706(a), and the Court's own equitable powers, requests that the Court:

1. Award Plaintiff such preliminary 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;
2. Permanently enjoin Defendant from violating the FTC Act and CAN-SPAM, as alleged herein;
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendant's violations of the FTC Act and CAN-SPAM, including, but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten monies; and

4. 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.

Dated: July 21, 2004

Respectfully submitted,

William E. Kovacic
General Counsel



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