

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

CIV

v.

Case No. 99-1485-Civ-OWH-LBA

DAVID M. ROTHBART, individually and doing
business as MEDIMAX, INC.

Defendant.

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

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

1. This is an action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure injunctive relief and other equitable relief against defendant for his deceptive acts and practices and false advertising 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 subject matter jurisdiction over plaintiff's claim 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 Middle District of Florida is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b).

THE PARTIES

4. **Plaintiff FTC** is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 - 58. The FTC enforces Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, which prohibit, respectively, deceptive acts or practices, and false advertisements for food, drugs, devices, services or cosmetics, in or affecting commerce. The FTC is authorized under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), to initiate federal district court proceedings to enjoin violations of the FTC Act, and to secure such equitable relief as may be appropriate in each case.

5. **Defendant David M. Rothbart** ("Rothbart"), an individual, does business as Medimax, Inc. Rothbart conducts business from his residence located at 1884 Kingway Drive, Deltona, Florida, and from a mailbox located at P.O. Box 5058, Deltona, Florida 32738. Individually, or in concert with others, Rothbart directs, controls, formulates, or participates in the acts and practices complained of below. He resides and transacts business in the Middle District of Florida.

COMMERCE

6. Defendant's course of trade is in or affecting commerce, within the meaning of Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANT'S BUSINESS PRACTICES

7. Since at least July 1999, and continuing thereafter, defendant has marketed "HIV - 1/2 Whole Blood Tests" ("HIV test kits") on the Internet to consumers throughout the United States. These HIV test kits purportedly test for infection with the human immunodeficiency virus ("HIV") in humans. HIV is the virus that causes acquired immunodeficiency syndrome ("AIDS"), an infectious disease characterized by immune system failure. To date, two strains of HIV have been identified: Type 1 and Type 2.

8. For purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, defendant's HIV test kit constitutes a "device" as "device" is defined in Section 15 of the FTC Act, 15 U.S.C. §55.

9. The Uniform Resource Locator ("URL") of defendant's Internet Web site is "www.medimaxrx.com." The Web site, www.medimaxrx.com, is a Web site registered to defendant. Order forms submitted through the Web site are transmitted to defendant.

10. In the course of marketing his HIV test kits, defendant represents that his tests provide accurate results. Defendant's Web site contains the following statements:

- This test is a chromatographic immunoassay (CIA) which is ***Fast, Accurate*** and ***Easy*** to use.
- Results in minutes with complete privacy and **99% sensitivity and 99% specificity.**

11. In the course of marketing his HIV test kits, defendant made the following oral statements in response to an inquiry about his HIV test kits in November 1999:

INVESTIGATOR: Are [the HIV tests] accurate?

ROTHBART: They're very accurate. The documented sensitivity and . . . specificity of the test is about 99 percent.

INVESTIGATOR: Ninety-nine percent?

ROTHBART: Right. And that's – that's documented through clinical trials and verified by the FDA.

DEFENDANT'S VIOLATIONS OF THE FTC ACT

12. Defendant has represented, expressly or by implication, that his HIV test kits accurately detect the presence of HIV antibodies. In fact, defendant's HIV test kits do not accurately detect the presence of HIV antibodies. Therefore, defendant's representation as set forth in this paragraph is false and misleading, and constitutes a deceptive act or practice and false advertising, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

CONSUMER INJURY

13. Defendant's violations of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, have injured and will continue to injure consumers. In addition, defendant has been unjustly enriched as a result of his unlawful practices. Absent injunctive relief by the Court, defendant is likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

14. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes this Court to issue injunctive and other equitable 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 FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C.

§ 53(b) and this Court's own equitable powers, requests that this Court:

(1) Enjoin defendant from violating Sections 5(a) and 12 of the FTC Act, 15 U.S.C.

§ § 45(a) and 52, including committing such violations in connection with the offer, sale, advertising, or other promotion or distribution of HIV test kits;

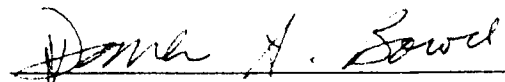
(2) Award the Commission all temporary and preliminary injunctive and ancillary relief that may be necessary to avert the likelihood of consumer injury during the pendency of this action, and to preserve the possibility of effective final relief;

(3) Award such relief as the Court finds necessary to redress injury to consumers resulting from defendant's violations of the FTC Act, including, but not limited to, refund of monies paid, rescission of contracts, and disgorgement of unlawfully obtained monies;

(4) Award plaintiff the cost of bringing this action as well as such additional equitable relief as the Court may determine to be just and proper.

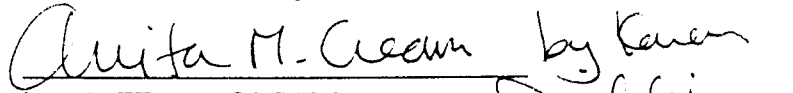
Respectfully submitted,

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by Karen Jagielski with express permission

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Attorneys for Plaintiff
FEDERAL TRADE COMMISSION