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8 **UNITED STATES DISTRICT COURT**  
9 **WESTERN DISTRICT OF WASHINGTON**  
10 **AT SEATTLE**

11 FEDERAL TRADE COMMISSION,

12 Plaintiff,

13 v.

14 SEVILLE MARKETING, LTD., a British  
Columbia, Canada, corporation, and

15 GREGORY STEPHEN WONG, individually  
16 and as the owner and principal of Seville  
Marketing, Ltd.,

17 Defendants.

Case No.

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

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19 Plaintiff Federal Trade Commission (“FTC” or “Commission”) for its Complaint against  
20 Seville Marketing, Ltd. (“Seville”), and Gregory Stephen Wong, Seville’s owner and principal  
21 (collectively “defendants”), alleges:

22 1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act,  
23 (“FTC Act”), 15 U.S.C. § 53(b), to secure injunctive relief and other equitable relief against defendants  
24 for their deceptive acts and practices and false advertising in violation of Sections 5(a) and 12 of the  
25 FTC Act, 15 U.S.C. §§ 45(a) and 52.  
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1 **JURISDICTION AND VENUE**

2 2. This Court has subject matter over plaintiff’s claim pursuant to 15 U.S.C. §§ 45(a), 52,  
3 and 53(b), and 28 U.S.C. §§ 1331, 1337(a) and 1345.

4 3. Venue in the Western District of Washington is proper under 15 U.S.C. § 53(b) and 28  
5 U.S.C. § 1391(b), (c), and (d).

6  
7 **PLAINTIFF**

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

15  
16 **DEFENDANTS**

17 5. Defendant Seville Marketing, Ltd. (“Seville”) is a British Columbia, Canada  
18 corporation, located at 3017 Mountain Highway, North Vancouver, British Columbia, Canada, with its  
19 registered office located at 1199 Lynn Valley Road, North Vancouver, British Columbia, Canada.  
20 Seville has advertised, marketed, promoted, offered for sale, distributed, or sold products that  
21 purportedly test humans for infection with the human acquired immunodeficiency virus (“HIV”).  
22 Seville transacts or has transacted business in the Western District of Washington and throughout the  
23 United States.

24 6. Defendant Gregory Stephen Wong is the owner and principal of Seville, and resides in  
25 North Vancouver, British Columbia, Canada. Individually, or in concert with others, Wong directs,  
26 controls, formulates, or participates in the acts and practices set forth in this Complaint. He transacts  
27 or has transacted business in the Western District of Washington and throughout the United States.

1 **COMMERCE**

2 7. Defendants’ course of trade is in or affecting commerce, within the meaning of Section  
3 4 of the FTC Act, 15 U.S.C. § 44.  
4

5 **DEFENDANTS’ BUSINESS PRACTICES**

6 8. Since at least June 2001, and continuing thereafter, defendants have marketed “Discreet  
7 HIV/AIDS Tests” (“HIV test kits”) via the Internet to consumers throughout the United States. These  
8 HIV test kits purportedly test for infection with the human immunodeficiency virus (“HIV”) in  
9 humans. HIV is the virus that causes acquired immunodeficiency syndrome (“AIDS”), an infectious  
10 disease characterized by immune system failure.

11 9. The defendants market their HIV test kits via two interconnected Internet web sites,  
12 [www.discreetest.com](http://www.discreetest.com) and [www.aidshivtest.com](http://www.aidshivtest.com). Defendant Seville is the registrant of both web sites.  
13 Defendant Wong is the administrator of the first web site and defendant Seville is the administrator of  
14 the second web site.

15 10. According to the defendants’ Internet web sites, their HIV test kits are available for  
16 purchase only via the Internet. The web sites include links to two order forms, one labeled “US  
17 Orders” and one labeled “International Orders.” The U.S. order form states that each kit costs “\$29.95  
18 USD [United States dollars].” It offers three delivery options: “Regular,” “FedEx Overnight Delivery,”  
19 and “FedEx Overnight Saturday Delivery.” Each delivery option has a different shipping cost, also in  
20 U.S. dollars. The Internet web sites also offer consumers the option to order by mail, by sending a  
21 money order in “US funds only” to Seville Marketing, Ltd., at its address in North Vancouver, British  
22 Columbia, Canada.

23 11. In the course of marketing their HIV test kits, defendants represent that their HIV test  
24 kits provide accurate results and that tests prove that their HIV test kits are 99.4% accurate at detecting  
25 the presence or absence of HIV antibodies. Through these Internet web sites, defendants make the  
26 following statements:

27 a. “Our HIV test gives you immediate, accurate, and 100% private results.”  
28

1 b. “. . . Discreet’s accuracy, ease of use, and flexibility have made it a very popular  
2 and sensitive alternative for AIDS/HIV testing. . .”

3 c. “How accurate is the Discreet HIV testing kit?

4 If testing procedures are followed accurately and the test is taken at least twenty-  
5 eight days after exposure to the HIV virus, the test results are 99.4% accurate.

6 Over the past two years we’ve had three independent studies done on Discreet  
7 and our 99.4% accuracy rate is based upon these studies.”

8 d. “Get accurate results in just three minutes.”

9  
10 **SECTIONS 5 AND 12 OF THE FTC ACT**

11 12. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits deceptive acts or practices in  
12 or affecting commerce. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a), prohibits the dissemination of  
13 any false advertisement in or affecting commerce for the purpose of inducing, or which is likely to  
14 induce, the purchase of food, drugs, devices, services or cosmetics. For the purposes of Section 12 of  
15 the FTC Act, defendants’ HIV test kit constitutes a “device” as “device” is defined in Section 15 of the  
16 FTC Act, 15 U.S.C. § 55. As set forth below, the defendants have engaged in and are continuing to  
17 engage in violations of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, in connection  
18 with the marketing and sale of their HIV test kits.

19  
20 **DEFENDANTS’ FTC ACT VIOLATIONS**

21 **COUNT I**

22 13. In numerous instances, defendants have represented, expressly or by implication, that  
23 the Discreet HIV test kits accurately detect the presence or absence of HIV antibodies.

24 14. In truth and in fact, the Discreet HIV test kits do not accurately detect the presence of or  
25 absence of HIV antibodies.

26 15. Therefore, the representation set forth in Paragraph 13 above is false or misleading and  
27 constitutes a deceptive act or practice, and the making of false advertisements, in violation of Sections  
28 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

1 **COUNT II**

2 16. Defendants have represented, expressly or by implication, that tests prove that the  
3 Discreet HIV test kits are 99.4% accurate at detecting the presence or absence of HIV antibodies.

4 17. In truth and in fact, tests do not prove that the Discreet HIV test kits are 99.4% accurate  
5 at detecting the presence or absence of HIV antibodies.

6 18. Therefore, the representation set forth in Paragraph 16 above is false or misleading and  
7 constitutes a deceptive act or practice, and the making of false advertisements, in violation of Sections  
8 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

9  
10 **INJURY**

11 19. Defendants' violations of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and  
12 52, have injured and continue to injure consumers as a result of defendants' unlawful acts or practices.  
13 In addition, defendants have been unjustly enriched as a result of their unlawful practices. Absent  
14 injunctive relief by this Court, defendants are likely to continue to injure consumers, reap unjust  
15 enrichment, and harm the public interest.

16  
17 **THIS COURT'S POWER TO GRANT RELIEF**

18 20. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant  
19 injunctive and other ancillary relief, including redress, disgorgement, and restitution, to prevent and  
20 remedy any violations of any provision of law enforced by the FTC. The court, in the exercise of its  
21 equitable jurisdiction, may award other ancillary relief, including, but not limited to, rescission of  
22 contracts and restitution, and the disgorgement of ill-gotten gains, caused by the Defendants' law  
23 violations.

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25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff FTC requests that this Court, as authorized by Section 13(b) of the  
27 FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

1 (a) Permanently enjoin defendants from violating Sections 5(a) and 12 of the FTC Act, 15  
2 U.S.C. §§ 45(a) and 52, in connection with the offer, sale, advertising, or other promotion or  
3 distribution of HIV test kits;

4 (b) Award the Commission all temporary and preliminary injunctive and ancillary relief that  
5 may be necessary to avert the likelihood of consumer injury during the pendency of this action, and to  
6 preserve the possibility of effective final relief, including, but not limited to, preliminary injunctive  
7 relief;

8 (c) Award such equitable relief as the Court finds necessary to redress injury to consumers  
9 resulting from the Defendants' violations of Sections 5(a) and 12 of the FTC Act, including, but not  
10 limited to, rescission of contracts and restitution, and the disgorgement of ill-gotten gains; and

11 (d) Award the Plaintiff the costs of bringing this action, and such other equitable relief as  
12 the Court may determine to be just and proper.

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15 DATED: May 14, 2004

Respectfully submitted,

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19 Regional Director

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