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**UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF OKLAHOMA**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Hon.
v.)	Civil Action No.
)	
BLUE STUFF, INC.,)	COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF
)	
JACK MCCLUNG, and)	
)	
MCCLUNG ADVERTISING, INC.,)	
)	
Defendants, and)	
)	
EMMA MCCLUNG,)	
)	
Relief Defendant.)	
_____)		

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, restitution,

disgorgement, and other equitable relief for Defendants' deceptive acts or practices in connection with the advertising, marketing, and sale of products purporting to provide significant or complete relief from severe pain, and other health benefits, 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 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 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 Blue Stuff, Inc. ("BSI") is an Oklahoma corporation with its principal office or place of business at 3750 N. I-44 Service Road, Oklahoma City, Oklahoma, 73112. BSI transacts business in the Western District of Oklahoma.

6. Defendant Jack McClung is President of BSI and currently owns 88% of BSI. At

other times relevant to the complaint, Defendant Jack McClung, together with relief defendant Emma McClung, owned 95% of BSI. At all times relevant to the complaint, acting individually or in concert with others, Jack McClung has formulated, directed, or controlled the policies, acts, or practices of BSI, including the acts or practices alleged in this complaint. He resides and/or transacts business in this district.

7. Defendant McClung Advertising, Inc. (“McClung Advertising”), which sometimes does business as MacAds Advertising, is an Oklahoma corporation with its registered office at 4320 NW 23rd Street, Oklahoma City, Oklahoma, 73107. At times relevant to the complaint, McClung Advertising, Inc., disseminated the advertisements challenged in this complaint. Defendant McClung Advertising, Inc., has transacted business in the Western District of Oklahoma.

8. Defendant Jack McClung is the founder of the Loyd B. McClung Foundation, a Section 501(c)(3) tax-exempt not for profit charitable corporation. Defendants BSI and Jack McClung are sponsors of the Foundation and the close association between the parties is advertised on both BSI’s and the Foundation’s websites. Defendants BSI, Jack McClung, and McClung Advertising Inc. have donated to the Foundation funds that were derived from payments by consumers as a consequence of the defendants’ unlawful acts and practices complained of herein. The Foundation’s website states that Defendants BSI and Jack McClung contribute the maximum amount allowed by law to the Foundation.

9. Defendants BSI, Jack McClung, and McClung Advertising have operated a common business enterprise while engaging in the deceptive acts and practices alleged below and are therefore jointly and severally liable for said acts and practices.

10. Relief Defendant Emma McClung (“Relief Defendant”) is an individual who has received funds and other property that were derived unlawfully from payments by consumers as a consequence of the Defendants’ acts and practices complained of herein. She resides and/or transacts business in this district.

COMMERCE

11. 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 Federal Trade Commission Act.

DEFENDANTS’ COURSE OF BUSINESS

12. Since at least 1998, Defendants BSI and Jack McClung have manufactured, labeled, advertised, offered for sale, sold, and distributed products to the public, including Super Blue Stuff, Blue Stuff, Essential Stuff, and Her Stuff (the “target products”). For the period from 1999 through May 31, 2002, BSI’s total gross revenues exceeded \$83 million.

13. The target products contain the following ingredients and retail for the following amounts:

- a. Super Blue Stuff Gel, a topical cream, contains emu oil, whole leaf aloe vera, methylsulfonylmethane (MSM), menthol, capsicum oleoresin, and other ingredients. BSI charges \$39.95 for a 4-ounce jar of Super Blue Stuff, and has charged \$59.95 for an 8-ounce jar of Super Blue Stuff;
- b. Blue Stuff Gel, a topical cream, also contains emu oil, whole leaf aloe vera, methylsulfonylmethane (MSM), menthol, capsicum oleoresin, and other ingredients. BSI

charges \$59.95 for an 8-ounce jar of Blue Stuff and \$29.95 for a 4-ounce jar of Blue Stuff;

c. Essential Stuff capsules, a dietary supplement which is taken orally, contain 100% emu oil. BSI charges \$30 for a 90-capsule supply of Essential Stuff; and

d. Her Stuff, a topical cream, contains aloe vera, yam extract, natural progesterone extract, moisturizers and emollients, and small amounts of numerous other ingredients. BSI has sold Her Stuff for \$32.95 per 4 ounces.

14. To induce consumers to purchase Super Blue Stuff Gel, Defendants have disseminated or caused to be disseminated a 30-minute television infomercial; a company product brochure; and Internet advertisements, disseminated on www.bluestuff.com. These advertisements include but are not limited to the attached Exhibits A through D and contain, among other things, the following statements or depictions:

a. MALE NARRATOR: Every day millions of people suffer from pain. Now they can have pain relief in five minutes or less guaranteed.

* * *

UNIDENTIFIED FEMALE: I've tried all different products and nothing works like this does for me.

* * *

MALE NARRATOR: In the next few minutes, you're going to learn about an amazing new product, so powerful it's guaranteed to relieve pain in five minutes or less. Here to share this incredible discovery with you is Major League Baseball great, Jim LeFebvre.

[In baseball stadium, Jim LeFebvre swinging bat.]

JIM LEFEBVRE: Oh, that felt great. Hi, I'm Jim LeFebvre, former Major League player and manager, and until recently, a sufferer of extreme pain. In fact, my pain was so bad, I could barely walk, affecting not only my ability to stay active, but making it nearly impossible to interact with friends and family. Then I learned about a revolutionary new pain relief product that guaranteed to relieve my pain. Well, as you can imagine, I was skeptical, but my pain was so bad, I was willing to try anything. So, I tried it . . . and within minutes, I could feel the pain leave my body. It was fantastic. Today I'm active again, I'm enjoying my family, playing golf, playing tennis, completely pain free, thanks to this. It's called Super Blue Stuff. It's guaranteed to relieve your pain in five minutes. That's right. It's guaranteed to relieve your pain in just five minutes.

* * *

UNIDENTIFIED FEMALE: I arrived here in Arizona four years ago in a wheelchair. I had a lot of extensive nerve damage and resultant pain and breakdowns in other areas, muscle damage and so forth, and the Blue Stuff really . . . seems to help alleviate the pain, particularly the Super Blue Stuff. I carry a jar with me all the time.

* * *

[ON SCREEN (scrolling while narrator is speaking)]: Arthritis, Sciatic Nerve, Lower Back Pain, Hand, Feet, Shoulder, Knee & Hip Pain, Chronic Back and Neck Pain, Muscle Pain, Tendinitis, Bursitis, Insect Bites, Sunburn, Carpal Tunnel Pain, Shingles, & much more . . .

* * *

UNIDENTIFIED FEMALE: Over the past five years, I've had many surgeries on my legs. I had eight doctors want to amputate my left leg, and I'm just, in the past two months, coming through another surgery on my right leg. And about three weeks ago, I [came] across Blue Stuff . . . I took it and I rubbed it on, and before I could get the cap back on the jar, the pain was gone instantly.

* * *

JACK MCCLUNG [President, BSI]: [W]e've got what everybody calls a miracle. They

can't believe it. I still can't believe it. After using it on over 100,000 people, I have as many – one day I had 135 people come in with pain and . . . we relieved the pain on every one of them.

ON SCREEN: Guaranteed to relieve all types of chronic pain in five minutes!

JACK MCCLUNG: And I'm telling you, folks, this product is the most amazing product you'll ever use, and it's guaranteed.

* * *

MALE NARRATOR: Does the constant nagging of aches and the unbearable effects of pains keep you . . . from doing even simple tasks or enjoying the benefits of an active life style? Do you remember what its like to live without pain? Well, now you can have pain relief in just five minutes.

* * *

MALE NARRATOR: No other product compares to this. Super Blue Stuff is the only product on the market . . . that guarantees to relieve pain in just five minutes . . .

* * *

UNIDENTIFIED MALE: I had an accident three years ago and . . . crushed the two lower vertebrae, and there's nothing they can do. I'm just glad I can walk and do all right. But sometimes in the night, I wake up with severe pain. When I heard about this and I knew what it had done to my sinus headache, the first night I awakened with that severe lower pain, I just raised my pajama bottom and put some on my hands and rubbed it in. And immediately, I mean within two minutes, I was ready to go back to sleep. The pain was gone.

* * *

JIM LEFEBVRE: Pain is a terrible way to go through life . . . If you have pain, whether it's arthritis, hip or back pain, excruciating sciatic nerve pain, or just the ordinary day aches and pains from the workplace, you must try Super Blue Stuff. It really works. You

have nothing to lose but the pain itself.

– Exhibit A (videotape of infomercial); Exhibit B
(excerpts from transcript of infomercial) at pp. B-1 -
B-12.

b. Nothing compares with Super Blue Stuff for Pain Relief! 700% more MSM and a higher concentration of the pain relieving herbs than our original Blue Stuff make Super Blue Stuff unsurpassed as a pain reliever. [W]ith long term use, [MSM] is highly useful in targeting certain types of arthritis pain and stiffness, allowing the body to assist in the rebuilding and strengthening of connective tissue, as well as reducing joint degeneration and inflammation of tissue. Super Blue is our strongest and most remarkable pain reliever yet. “Super Blue, when nothing but the best will do for your pain.”

* * *

90% of our customers report Super Blue Stuff gives exceptional relief for osteo, degenerative, and rheumatoid arthritis. Super Blue Stuff also relieves lower back pain, carpal tunnel syndrome; knee, hip, shoulder, hand, and foot pain; automobile and sports injuries, post-surgery pain, shingles, fibromyalgia, and peripheral neuropathy pain . . . Many people who have been in constant pain for years applied Super Blue Stuff, and their pain was relieved - for most, relief came within 5 to 15 minutes.

– Exhibit C (Blue Stuff, Inc. product brochure) at
pp. C-1, C-2.

c. Nothing compares with Super Blue for Pain Relief!

* * *

Super Blue Stuff [is] unsurpassed as a pain reliever.

* * *

My arthritis was so painful in my feet that I would cry with pain. I had great difficulty walking and was unable to do the things that I needed and wanted to do. I would have

never dreamed there could be anything non-prescription and all natural that would take my pain away and make such a difference in my life. I tell everyone I can about Super Blue Stuff and what it has done for me and what it can do for them.

* * *

I would just like to thank the makers of this miracle cream! [F]or the past year I have been in tremendous pain [and] was giving up hope because I was injured at work and . . . all the doctors would do for me was give me addicting narcotics. They were not working! . . . Since I have been using [Super Blue Stuff] I cannot believe how much better I feel. . . My life is improving each day from using this Super Blue Stuff!

* * *

I received my order of Super Blue Stuff [two] days ago. I ordered it for my 90 year old mother who suffers greatly with osteo-related back pain. In the second day of use the relief is truly miraculous, particularly after experiencing failure after failure from conventional medicine.

– Exhibit D (printouts from www.bluestuff.com Internet website) at pp. D-1, D-6, D-7, D-8.

15. To induce consumers to purchase Blue Stuff, Defendants have disseminated or caused to be disseminated a product brochure and Internet advertisements, including but not limited to the attached Exhibits C and D. These advertisements contain, among other things, the following statements or depictions:

a. I am an elderly lady who has now used your Blue Stuff for little over a month. I have lived in a great deal of pain most of my life, and have only lately been diagnosed as having FIBROMYALGIA . . . [W]ith the help of your Blue Stuff I have already had many pain free hours, and lately a few pain free days! . . . I think at the stage where my pain level was, I would have considered arsenic if I thought it would help me. I am, of course, reordering today.

* * *

You see two years ago I shattered my ankle [and] it was bad enough that the doctor wanted to amputate it. I insisted that he save it and he did. He also told me that I would have pain for the rest of my life with it. I didn't know how bad the pain was going to be, but soon found out that it was unbearable. I felt like cutting it off myself several times in the past two years. Since I have started using Blue Stuff Gel and taking the Essential liquid pills, I have had almost no pain at all.

* * *

I was suffering with terrible lower back pain. When I woke up in the morning the pain was so unbearable it would bring tears to my eyes. I began to apply Blue Stuff and within minutes my pain was gone. [I have been] pain free for 40 days.

* * *

I am 80 years old, with Parkinsons, I have had several strokes and arthritis. I was unable to sleep because of so much pain. I used Blue Stuff two times a day for four days (no more pain).

– Exhibit C at pp. C-3, C-9, C-11.

b. A preacher came in [to the Blue Stuff Pain Clinic] with chronic back and sciatic nerve pain. He could hardly walk. He said it was hard to function in the day and [he] could not sleep very well at night . . . Within 5 minutes after applying Blue Stuff, he was jumping up and down trying to make his back hurt with no success.

* * *

I use Blue Stuff to alleviate my pain from surgery done in 1968. To date the balm has been the most effective pain reliever that I have tried and used – and this would include epidermal steroid injections.

* * *

How can I thank you for your wonderful Blue Stuff. It's a miracle. I have a brain tumor the pain is awful it's the only thing that helps me without taking morphine. I don't want to

take that because of the effects it gives you. I am going blind but Thank God the Blue Stuff takes away the pain.

* * *

I have had agonizing pain in my elbow for the past several years. Working as a machinist, I could not even pick up a wrench without unbearable pain. I had been having trouble sleeping at night because when I rolled over onto my arm I would wake up in pain. A co-worker recommended that I try using Blue Stuff Gel, and gave me a sample. I was amazed! It really works! I can now work without pain and I'm getting a full night of sleep thanks to Blue Stuff.

* * *

All my adult years I have had severe sinus headaches. They would occur every seven to ten days. I would take over the counter and prescription medication trying to get relief with very little success. A miracle happened to me two weeks ago when a friend told me about a product called Blue Stuff . . . I took a very small portion and rubbed it into the back of my neck[,] across my forehead and then to the exterior of my nasal passages. In three to five minutes all pain was gone. It was a miracle.

* * *

My mom has suffered from arthritis for some years, she is 87 years old. We saw the advertisement in the paper. She was hurting so bad she decided to try it. It worked!! She is pain free.

– Exhibit D at pp. D-3, D-4, D-5, D-9, D-10, D-11.

16. To induce consumers to purchase Essential Stuff capsules, Defendants have disseminated or caused to be disseminated a product brochure and Internet advertisements, including but not limited to the attached Exhibits C and D. These advertisements contain, among other things, the following statements or depictions:

- a. Essential Stuff gel caps . . . [have] been reported to reduce cholesterol . . .

* * *

I started taking [Essential Stuff] gel caps back in April of this year . . . When I started,

my cholesterol was 246 and as of last week it was 196.

– Exhibit C at pp. C-9, C-10; *see also* Exhibit D at

D-12.

17. To induce consumers to purchase Her Stuff, Defendants have disseminated or caused to be disseminated a product brochure and Internet advertisements, including but not limited to the attached Exhibits C and D. These advertisements contain, among other things, the following statements or depictions:

a. Her Stuff is a natural progesterone cream. Natural progesterone creams have been medically credited to slow bone loss, and even reverse it, improving bone density by up to 15% , and slowing bone loss . . . down to 1% a year, or halting it altogether.

– Exhibit C at p. C-4; *see also* Exhibit D at p. D-14.

THE FTC ACT

18. 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, each target product is either a “food” or a “drug” pursuant to Section 15(b) and (c) of the FTC Act, 15 U.S.C. § 55(b) and (c). As set forth below, the Defendants have engaged and are continuing to engage in such unlawful practices in connection with the marketing and sale of the target products.

DECEPTIVE ACTS OR PRACTICES IN VIOLATION OF THE FTC ACT

COUNT I (Unsubstantiated Claims for Super Blue Stuff and Blue Stuff)

19. Through the means described in Paragraphs 14 and 15, above, Defendants have represented, expressly or by implication, that:

a. Super Blue Stuff provides significant or complete relief from severe pain, including but not limited to pain from nerve damage, arthritis, shingles, crushed vertebrae, and other conditions;

b. Blue Stuff provides significant or complete relief from severe pain, including but not limited to pain from fibromyalgia, sciatic nerve injury, brain tumors, sinus headache, arthritis, and other conditions;

c. Super Blue Stuff is more effective than other products or treatments in significantly relieving or eliminating severe pain.

20. Defendants did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 19, above, at the time the representations were made. Therefore, the making of the representations set forth in Paragraph 19, 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 Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 52.

COUNT II (False Claim for Essential Stuff)

21. Through the means described in Paragraph 16, above, Defendants have represented, expressly or by implication, that Essential Stuff capsules, taken orally, reduce cholesterol.

22. In truth and in fact, Essential Stuff capsules, taken orally, will not reduce

cholesterol. Therefore, the making of the representation set forth in Paragraph 21, 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 Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 52.

COUNT III (False Establishment Claim for Her Stuff)

23. Through the means described in Paragraph 17, above, Defendants have represented, expressly or by implication, that natural progesterone creams, such as Her Stuff, have been medically proven to slow bone loss and improve bone density up to 15%.

24. In truth and in fact, natural progesterone creams, such as Her Stuff, have not been medically proven to slow bone loss and improve bone density up to 15%. Therefore, the making of the representations set forth in Paragraph 23, 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 Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 52.

**DISGORGEMENT OF RELIEF DEFENDANT'S
ILL-GOTTEN GAINS**

COUNT IV (Benefit from Funds Directly Traceable to Consumers)

25. Paragraphs 1 through 24 are incorporated herein by reference.

26. The Relief Defendant received assets, directly or indirectly from Defendants, which either are the proceeds or are traceable to the proceeds of the unlawful activities alleged herein. The Relief Defendant has no legitimate claim to these assets.

27. The Relief Defendant obtained the assets as part of, and in furtherance of, the violations of the FTC Act alleged above and under circumstances in which it is unjust, inequitable,

or unconscionable for her to retain the assets, and she has been unjustly enriched.

28. The Commission is entitled to an order requiring that the Relief Defendant disgorges those assets.

INJURY

29. 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

30. 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 consumer redress, disgorgement, and restitution, to prevent and remedy injury caused by Defendants' law violations.

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) Permanently enjoin Defendants from violating Sections 5(a) and 12 of the FTC Act, as alleged herein, in connection with the advertising, offering for sale, or other promotion of food, drugs, dietary supplements, devices, cosmetics, or other products, services or programs;

(2) Award Plaintiff 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 and final relief, including but not limited to an accounting;

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

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

Respectfully submitted,

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Federal Trade Commission
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FEDERAL TRADE COMMISSION

Dated: September ____, 2002