

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. _____ - **04-20904**

U.S. District Judge _____ / U.S. Magistrate Judge **CIV-HIGHSMITH**

MAGISTRATE JUDGE
TURNOFF

FEDERAL TRADE COMMISSION,)
)
) Plaintiff,)
)
) v.)
)
) AMERICAN DREAM ENTERPRISES, LLC, and)
) ANDRES FERNANDEZ SALVADOR,)
)
) Defendants.)

**NIGHT BOX
FILED**

APR 15 2004

CLARENCE MADDOX
CLERK, USDC / SDFL / MIA

COMPLAINT FOR PERMANENT INJUNCTIVE AND OTHER EQUITABLE RELIEF

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

1. Plaintiff 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, rescission of contracts, restitution, disgorgement of ill-gotten gains, and other equitable relief against defendants for engaging in deceptive acts or practices and disseminating false advertisements in connection with the advertising and sale of Fat Seltzer, a purported weight loss product, in or affecting commerce, 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 the United States District Court for the Southern District of Florida is proper under 15 U.S.C. §§ 45(a), 52, and 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 rescission of contracts, restitution, and disgorgement of ill-gotten gains, as may be appropriate in each case. 15 U.S.C. § 53(b).
5. Defendant American Dream Enterprises, LLC (“American Dream”) is a Florida limited liability corporation with its principal office or place of business at 42 NW 27th Ave., Suite 415, Miami, Florida 33125. At all times relevant to this complaint, acting individually or in concert with others, American Dream has marketed and sold Fat Seltzer to consumers. American Dream transacts or has transacted business in this district.
6. Defendant Andres Fernandez Salvador (“Fernandez Salvador”) is the sole owner of American Dream. At all times relevant to this complaint, acting individually or in

concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of American Dream, including the acts or practices set forth in this complaint. His principal office or place of business is the same as that of defendant American Dream. Fernandez Salvador transacts or has transacted business in this district.

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 CONDUCT

8. Since about January 2003, defendants have advertised, offered for sale, sold, and distributed dietary supplements to consumers nationwide. Defendants' products have included, but are not necessarily limited to, Fat Seltzer, a purported weight loss dietary supplement containing psyllium, inulin, garcinia cambogia, kelp powder, chromium chloride, and calcium. Defendants have offered and sold a one-month supply of Fat Seltzer for varying prices, from \$69 to \$299, plus shipping and handling. Fat Seltzer is a powder that when added to liquid produces effervescence that in combination with Fat Seltzer's ingredients purportedly produces weight loss.
9. Defendants have advertised Fat Seltzer throughout the United States through a direct-response, Spanish-language, 60-second commercial that appears on local Spanish TV stations, such as Channel WAPA in Puerto Rico, Channel KRCA 62 in Los Angeles, and Channel KZJL in Houston, and on national cable channels such as Univision and Telemundo. Defendants also solicit distributors through the website,

www.fatseltzer.com. Consumers have been able to purchase the product by calling a toll-free telephone number that appears in the commercial or from distributors.

Fat Seltzer

10. Defendants have disseminated, or caused to be disseminated, advertisements for Fat Seltzer, including, but not necessarily limited to, a direct response, 60-second television commercial and an Internet advertisement attached as Exhibits A and B. These advertisements contain the following statements and images (in italics), among others:

a. Obese? Gaining weight? Here is the answer.

*Computer-generated image of a person's stomach, showing an accumulation of fat and the effervescent effect of the product over the fat, until it disappears.
Running text over footage: "Detachment of fat"*

Lose up to 5 pounds a week. . . . Its natural ingredients, combined in an effervescent formula, help to accelerate the detachment of fat deposits accumulated in your tissues.

-Exhibit A, Fat Seltzer commercial (translated from the original Spanish to English)

b. *Images of a considerably sizeable and artificial mass of fat placed on a weight scale that indicates a weight of five pounds. Image again of a jar of Fat Seltzer.*

This is the real size that five pounds of fat occupies in your body. Fat Seltzer will help you lose them, it's that simple. Incredible!

-Exhibit A

c. You will not regain the pounds you lose with Fat Seltzer.

-Exhibit A

d. It is composed of a mixture of natural ingredients that, in combination with the fast acting effervescence [sic], will help you eliminate excess fat in your body.

-Exhibit B, website <http://www.fatseltzer.com> (original in English)

- e. With Fat Seltzer you don't have to do strenuous exercise [sic] or unhealthy diets. You take 2 teaspoons a day, preferably with a meal, and you are on your way to a leaner body.

-Exhibit B

DEFENDANTS' VIOLATIONS OF THE FTC ACT

11. 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 purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, Fat Seltzer is a "food" or "drug" as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.

COUNT I: False Claims

12. Through the means described in Paragraph 10 above, defendants have represented, expressly or by implication, that:
- a. Fat Seltzer causes substantial weight loss without the need to increase exercise or reduce caloric intake;
 - b. Fat Seltzer causes permanent weight loss; and
 - c. Fat Seltzer causes substantial weight loss in a short period of time, for example, 5 pounds a week.
13. In truth and in fact:
- a. Fat Seltzer does not cause substantial weight loss without the need to increase exercise or reduce caloric intake;
 - b. Fat Seltzer does not cause permanent weight loss; and

- c. Fat Seltzer does not cause substantial weight loss in a short period of time, for example, 5 pounds a week.

Therefore, defendants' representations set forth in Paragraph 12 above are false or misleading and constitute deceptive acts or practices, 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 II: Unsubstantiated Claims

14. Through the means described in Paragraph 10 above, defendants have represented, expressly or by implication, that:
 - a. Fat Seltzer causes weight loss; and
 - b. Fat Seltzer detaches and eliminates existing body fat.
15. Defendants did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 14 above at the time the representation was made. Therefore, defendants' representation set forth in Paragraph 14 constitutes a deceptive act or 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.

CONSUMER INJURY

16. Consumers throughout the United States have suffered and continue to suffer substantial injury as a result of defendants' unlawful acts or practices. In addition, defendants have been unjustly enriched as a result of their unlawful acts or 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

17. 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 rescission of contracts, restitution, and disgorgement of ill-gotten gains, to prevent and remedy injury caused by defendants' law violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that this Court:

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

(2) 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, restitution, and disgorgement of ill-gotten gains; and

(3) Award Plaintiff such other equitable relief as the Court may determine to be just and proper.

Dated: April 14, 2004

Respectfully submitted,

WILLIAM E. KOVACIC
General Counsel

Laureen Kapin

LAUREEN KAPIN (FL Bar 0768324)
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Exhibit A

**Federal Trade Commission
Bureau of Consumer Protection**

**Videocassette
Code: 0323193-ADE1**

LABEL:

**Fat Seltzer commercial taped on July 10, 2003 from TeleFutura Network channel 14 on
DirecTV in Washington, DC**

**REFERENCIA / LEGEND
(REFERENCE / LEGEND)
VOZ MASCULINA NO IDENTIFICADA EN OFF : UM
(UNIDENTIFIED MAN'S VOICE IN "OFF": UM)
DESCRIPCIÓN DE LAS IMÁGENES: DI
(IMAGE DESCRIPTION: DI)**

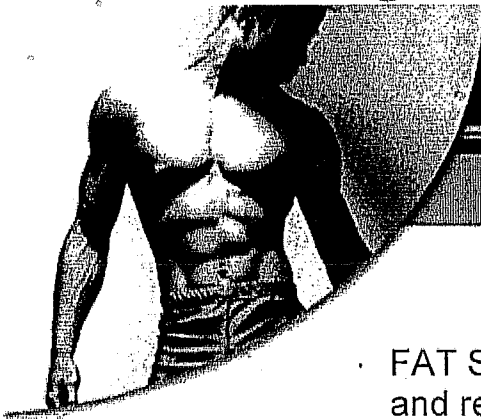
**CERTIFIED TRANSLATION
The Language Doctors, Inc.**

- | | | | |
|-----|-----------|---|--|
| | <i>DI</i> | <i>Descripción de las imágenes: Un hombre obeso desciende de un automóvil. Se muestra un abdomen desnudo con abundante grasa.</i> | <i>Description of the images: An obese man comes out of a car. Footage of a naked stomach, quite obese.</i> |
| 001 | <i>UM</i> | ¿Obesidad? ¿Aumento de peso? Aquí está la solución.
<i>Texto sobreimpreso en letras grandes de color amarillo "AQUÍ ESTÁ LA SOLUCIÓN"</i> | Obese? Gaining weight? Here is the answer.

<i>Text running over the image in big yellow letters "HERE IS THE ANSWER"</i> |
| | <i>DI</i> | <i>Mujer delgada mirando su figura en el espejo.</i> | <i>Thin woman looking at her image in a mirror.</i> |
| | <i>DI</i> | <i>Se muestra en pantalla el frasco de Fat Seltzer.</i> | <i>Footage of a jar of Fat Seltzer.</i> |
| | <i>DI</i> | <i>Imagen computarizada del abdomen de una persona en la que se muestra la grasa acumulada y el efecto efervescente del producto sobre la grasa hasta hacerla desaparecer. Texto sobreimpreso: "Desprendimiento de la grasa"</i> | <i>Computer-generated image of a person's stomach, showing an accumulation of fat and the effervescent effect of the product over the fat, until it disappears. Running text over footage: "Detachment of fat"</i> |
| 002 | <i>UM</i> | Pierda hasta cinco libras por semana. Presentamos Fat Seltzer, la más avanzada solución para ayudarle a combatir la obesidad.
Sus ingredientes naturales combinados en su fórmula efervescente, ayudan a acelerar el desprendimiento de la grasa acumulada en los tejidos: | Lose up to five pounds per week. We present to you Fat Seltzer, the most advanced solution to help you combat obesity. Its natural ingredients, combined in an effervescent formula, help to accelerate the detachment of fat deposits accumulated in your tissues. |
| | <i>DI</i> | <i>Se presenta una masa de grasa artificial de tamaño considerable sobre una balanza que indica un peso de cinco libras. Se muestra nuevamente el frasco de Fat Seltzer.</i> | <i>Images of a considerably sizeable and artificial mass of fat placed on a weight scale that indicates a weight of five pounds. Image again of a jar of Fat Seltzer.</i> |
| 003 | <i>UM</i> | Este es el tamaño real que representan cinco libras de grasa en su cuerpo, Fat Seltzer le ayudará a perderlas, así de simple ¡increíble! | This is the real size that five pounds of fat occupies in your body. Fat Seltzer will help you lose them, it's that simple. Incredible! |
| | <i>DI</i> | <i>Se repite la animación del efecto efervescente sobre la grasa, esta vez con un efecto de ampliación y aparece texto sobreimpreso "Desprendimiento de la grasa"</i> | <i>Repeat computer-generated animation of the effervescent effects over the mass of fat, but this time with a zoom effect with superimposed text: "Detachment of fat."</i> |
| 004 | <i>UM</i> | Observe nuevamente, Fat Seltzer, el novedoso producto efervescente de acción inmediata, ciento por ciento natural. | Observe once again, Fat Seltzer, the new effervescent product of immediate action, one hundred percent natural. |
| | <i>DI</i> | <i>Se muestra nuevamente el frasco de Fat Seltzer y a continuación una mujer delgada mirándose al espejo con un sobreimpreso en color amarillo indicando el número de teléfono para ordenar el producto 1-800-754-1311. Vaso con agua dentro del que se</i> | <i>Image again of a jar of Fat Seltzer followed by footage of a thin woman looking at her image in a mirror with superimposed yellow text indicating the number to call to order the product: 1-800-754-1311. Image of a glass of water with a spoonful of Fat Seltzer</i> |

- 005 UM *pone una cucharada de Fat Seltzer.* *being poured into it.*
Con Fat Seltzer las libras que pierde no las You will not regain the pounds you lose with
volverá a recuperar. Aplique una cuchara Fat Seltzer. Add a spoonful to a glass of
en un vaso con agua y tómelo cada noche. water and have one every night. Fat Seltzer
Fat Seltzer trabaja mientras usted duerme. works while you sleep.
- DI *Un frasco de Fat Seltzer grande y uno más* *Image of a large jar and a small jar with Fat*
pequeño con un sobreimpreso en color rojo *Seltzer added with superimposed red text:*
que dice "GRATIS con su orden", otro *"FREE with your order." Superimposed text*
sobreimpreso al pie que dice *at the bottom of the screen: "WE ACCEPT*
"ACEPTAMOS TARJETAS Y MONEY *CREDIT CARDS AND MONEY ORDERS*
ORDERS *1-800- 754- 1311*
1-800- 754- 1311 *2818 NW 72 Ave. MIAMI FL. 33122"*
2818 NW 72 Ave. MIAMI FL. 33122"
- 006 UM Llame ahora mismo y ordene Fat Seltzer, Call right now to order a giant 16 ounce jar
frasco gigante de 16 onzas, con su orden of Fat Seltzer, and receive a free 8 ounce jar
reciba gratis de regalo un segundo frasco with your order. Yes! Free with your order.
adicional con 8 onzas. ¡Sí! Gratis con su Call now using the number at the bottom of
orden. Llame ahora mismo al número que your screen.
- 015 //FIN DE LA CINTA DE VÍDEO // //END OF RECORDING //

Exhibit B



FAT SELTZER is wholly owned by ADE, LLC. It is a new, r and revolutionary weight loss treatment. It is composed of a of natural ingredients that, in combination with the fast actin effervescense, will help you eliminate excess fat in your boc it will help you control your apetite because it contains the a ingredient Garcinia Cambogia.

With Fat Seltzer you don't have to do strenous excercise or unhealthy diets. You take 2 teaspoons a day, preferably wit meal, and you are on your way to a leaner body.

100 % Natural

ADE, LLC is currently looking for distributors worldwide. If you are interested, fill contact information sheet provided below and a sales representative will contact

CONTACT INFORMATION

Jorge Mendoza

Email : pktito@fatseltzer.com

Contact Information

First Name:

Last Name:

Company Name:

City:

State:

ZIP/Postal Code:

Country:

Daytime Phone: () -

Fax: () -

E-Mail: