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

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

GLOBAL WEB PROMOTIONS PTY LTD.,

MICHAEL JOHN ANTHONY VAN ESSEN, and

LANCE THOMAS ATKINSON,

Defendants.

Case No.

04C 3022

JUDGE ASPEN

MAGISTRATE JUDGE SCHENKIER

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 Defendants' 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) and 28 U.S.C. §§ 1391 (d).

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).

DEFENDANTS

6. Defendant Global Web Promotions Pty Ltd. (“GWP”) is an Australian proprietary company. GWP has a registered office at Suite 1 G, 907, Canning Highway, Applecross, Western Australia 6153 and a principal place of business at 56 Ashdale Boulevard, Darch, Western Australia 6065.

7. Defendant Michael John Anthony Van Essen (“Van Essen”) is a director of GWP. At all times material to this Complaint, acting alone or in concert with others, Defendant Van Essen has formulated, directed, controlled, or participated in the acts or practices set forth in this Complaint.
8. Defendant Lance Thomas Atkinson (“Atkinson”) is a registered member of GWP. At all times material to this Complaint, acting alone or in concert with others, Defendant Atkinson has formulated, directed, controlled, or participated in the acts or practices set forth in this Complaint.
9. “Defendants” means GWP, Van Essen, and Atkinson. Defendants have transacted business in the Northern District of Illinois within the meaning of 15 U.S.C. § 53(b). Defendants have operated as a common enterprise to advertise, market and sell products over the Internet.

COMMERCE

10. At all times material to this Complaint, Defendants have 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

11. “**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.
12. “**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.

13. **“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.

DEFENDANTS’ BUSINESS ACTIVITIES

14. Since at least January 2004 and continuing to the present, Defendants have marketed a variety of nutritional supplements or herbal products. These products have included the Herbal-RX Weight Loss Patch and Med Diet Patch (the “diet patches”), as well as HGH and Natural HGH (the “HGH products”).
15. Defendants have advertised, offered for sale, sold and/or distributed their diet patches and HGH products throughout the United States via dozens of Internet Web sites. Some of the Web sites Defendants have used to market their diet patches and other herbal supplements are: www.amyz.info; www.tupit.info; www.gainmeds.biz; www.herbalworld.biz; and www.rekkeaz.info. Consumers may purchase Defendants’ products by credit card from Defendants’ Web sites.
16. Defendants have advertised diet patches on their Web sites. The diet patches, which claim to contain fucus vesiculosus, are purported to cause substantial weight loss through, among other means, suppressing appetite and boosting metabolism. To induce consumers to purchase their diet patches, Defendants’ Web sites touting the diet patches contain the following statements:

LOSE WEIGHT THE EASIER WAY “IT’S NOT A DIET... IT’S A PATCH”
The Herbal-RX Diet Patch is a 100% percent all natural product that produces no side effects or allergic reactions and is completely safe to use. The SFP is so easy to use just peel and stick then watch the pounds melt away.

Herbal-RX Diet Patch is a cutting-edge, advanced appetite suppressant, metabolism booster, and energy enhancer...all in one! With Herbal RX Diet Patch, there are no more starvation diets and no difficult and dangerous exercises! It works all day & all night long! Just place a new adhesive skin patch anywhere on your body, each day for continuous, safe, and effective weight loss. Much like a Nicotine Patch takes away your craving for cigarettes, Herbal-RX Diet Patch drastically reduces your cravings for food, so you naturally do not want to over-eat. While at the same time, Herbal-RX Diet Patch is boosting your energy level, and jump-starting your metabolism to burn maximum body fat.

Herbal-RX Diet Patch is 100% all natural and is made with fucus (bladderwrack), an extract of marine algae. fucus (bladderwrack) has been used as a homeopathic remedy for over 100 years to speed up the metabolic rate and break down fatty tissues. (It burns up calories faster)

Amazingly, weight-loss is only one of the many benefits associated with the ingredients in Herbal-RX Diet Patch's proprietary blend! Regular use of Herbal-RX Diet Patch will nourish your muscles, remove toxins, and even reduce cholesterol levels, just to name a few!

How will Herbal-RX Diet Patch help me lose weight?

Herbal-RX Diet Patch works by controlling your appetite and food cravings. When you eat less you start automatically losing weight.

Do I need to diet while using Herbal-RX Diet Patch?

No! This is why our product is unique. You don't need to give up your favorite foods. You can still eat everything you like, but less of it.

Will the weight I lose stay off permanently?

Being overweight is the result of eating too much and giving in to cravings. With Slim Form Patch, eating less becomes a habit, resulting in permanent weight loss.

How much weight will I lose with Herbal-RX Diet Patch?

In recent laboratory studies results proved that most people lose from 2 to 4 lbs. per week. There have been cases reported of as much as 6-lbs. weight loss in one week. Results will vary from person to person, determined by how well you follow your weight loss program.

17. Defendants have also advertised HGH products on their Web sites. The HGH products are sprays that purport to contain a form of Human Growth Hormone and/or produce effects similar in nature to any form of Human Growth Hormone. To induce consumers to purchase their HGH products, Defendants' Web sites touting the HGH and Natural HGH products contain statements such as the following:

Turn Back Your Aging Process Naturally

- » **Increased muscle strength and size.**
- » **Loss in body fat.**
- » **Increased bone density.**
- » **Lower blood pressure.**
- » **Quickens wound healing.**
- » **Reduces cellulite.**
- » **Improved vision.**
- » **Wrinkle disappearance.**
- » **Increased skin thickness and texture.**
- » **New hair growth and color restored.**
- » **Increased energy levels and exercise endurance.**
- » **Improved sleep and emotional stability.**
- » **Improved memory and mental alertness.**
- » **Increased sexual potency / frequency.**
- » **Resistance to common illness.**
- » **Strengthened heart muscle.**
- » **Controlled cholesterol.**
- » **Controlled mood swings.**

Experts in the New England Journal of Medicine report that Human Growth Hormone therapy makes you look and feel 20 YEARS YOUNGER!

When is the best time to start taking HGH?

The best time to start taking [the HGH product] is now, because the reality is that you're not getting any younger. Ideally, if you have began [sic] this program between 30 to 40 years of age, you could maintain your appearance and current biological age for the next 10 to 20 years.

18. To induce consumers to purchase their Natural HGH product, Defendants' Web sites touting Natural HGH contain the following additional statements:

Reverse the Effects of Aging

- **Increase your energy**
- **Reduce Fat**
- **Increase Sexual Potency**
- **Gain Lean Muscle**
- **Sharpen Memory**
- **Improve [sic] Sleep Quality**
- **Wrinkle Reduction**

98.24% Success Rate: Nearly 100% of our customers have seen noticeable and positive results. Virtually every single person who has tried our product reports that they have more energy and feel younger.

19. Defendants have marketed their diet patch and HGH products by initiating millions of commercial e-mail messages. The text of these e-mail messages contain hyperlinks to Defendants' Web sites. These hyperlinks are composed of Defendants' Web site addresses and individual identifiers tacked on to the end of the Web site addresses. On information and belief, these identifiers are monikers of unknown parties or "affiliates" who transmit the e-mail messages as part of Defendants' enterprise. The FTC has identified at least 50 such affiliate monikers. From January 1, 2004 through mid-March 2004, consumers forwarded approximately 386,500 e-mails advertising Defendants' products to the FTC's spam database at uce@ftc.gov.
20. Commercial e-mail messages initiated by Defendants 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.

21. In numerous instances, commercial e-mail messages initiated by Defendants utilize header information that is materially false or materially misleading. In particular, commercial e-mail messages initiated by Defendants 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.”
22. Innocent third parties whose e-mail addresses or domain names are placed in the “from” or “reply-to” field of commercial e-mail initiated by Defendants without their authorization often suffer injury, such as receiving an unexpected influx of e-mail messages that were undeliverable as sent and “bounced” back to their e-mail address. In addition, consumers who receive commercial e-mail messages initiated by Defendants often reply and complain about the e-mail with “return” e-mails, which are sent to the innocent party whose e-mail address was placed in the “reply-to” field of the outgoing e-mail. As a result, third parties whose e-mail addresses or domain names are placed in the “from” or “reply-to” line of commercial e-mail initiated by Defendants without their authorization also often suffer injury to their reputations by having themselves wrongfully affiliated with the sending of bulk unsolicited e-mail.
23. In numerous instances, commercial e-mail initiated by Defendants fails to provide clear and conspicuous notice of the opportunity to decline to receive further commercial electronic mail messages from the sender.
24. In numerous instances, commercial e-mail initiated by Defendants fails to provide a valid physical postal address of the sender.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

25. 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 products sold by Defendants are either “drugs” or “devices” as defined in 15 U.S.C. §§ 55(c) & (d).
26. As set forth below, Defendants have engaged in unlawful practices in violation of Sections 5(a) and 12 of the FTC Act in connection with the marketing and/or sale of their product.

COUNT I

27. Through the means described in Paragraphs 15-16 and 19, Defendants have represented, expressly or by implication, that their diet patches:
- a. cause substantial weight loss, including as much as six pounds per week;
 - b. increase metabolism, decrease appetite, and reduce food cravings, thereby enabling users to lose substantial weight; and/or
 - c. cause permanent weight loss.
28. In truth and in fact, Defendants’ diet patches:
- a. do not cause substantial weight loss, including as much as six pounds per week;
 - b. do not increase metabolism, decrease appetite, or reduce food cravings, thereby enabling users to lose substantial weight; and/or
 - c. do not cause permanent weight loss.

29. Therefore, Defendants' representations as set forth in Paragraph 27 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 II

30. Through the means described in Paragraphs 15-16 and 19, Defendants have represented, expressly or by implication, that their diet patches enable users to lose substantial weight, cause permanent weight loss, work for all users, and reduce cholesterol levels.

31. Defendants did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 30 above at the time the representations were made.

32. Therefore, the making of the representations set forth in Paragraph 30 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.

COUNT III

33. Through the means described in Paragraphs 15 and 17-19, Defendants have represented, expressly or by implication, that their 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. can maintain a user's appearance and biological age for 10-20 years.

34. In truth and in fact, Defendants' 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. cannot maintain the user's appearance and biological age for 10-20 years.

35. Therefore, the making of the representations set forth in Paragraph 33 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.

COUNT IV

36. Through the means described in Paragraphs 15 and 17-19, Defendants have represented, expressly or by implication, that their HGH products:

a. produce effects similar in nature to a 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. can maintain a user's appearance and biological age for 10-20 years.

37. Defendants did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 36 above at the time the representations were made.
38. Therefore, the making of the representations set forth in Paragraph 36 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**

39. 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.

40. 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).

41. 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.

42. 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).

43. 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. 57a(a)(1)(B)).

15 U.S.C. § 7706(a).

COUNT V

44. In numerous instances, Defendants have 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.

45. Defendants' acts or practices, as described in paragraph 44, violate 15 U.S.C. § 7704(a)(1).

COUNT VI

46. In numerous instances, Defendants have 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.
47. Defendants' acts or practices, as described in paragraph 46, violate 15 U.S.C. § 7704(a)(5).

CONSUMER INJURY

48. Consumers throughout the United States have suffered, and continue to suffer, substantial monetary loss and other injury 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

49. 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.
50. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by Defendants' 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 Defendants 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 Defendants' 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: April 28, 2004

Respectfully submitted,

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General Counsel



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