

1 WILLIAM E. KOVACIC
General Counsel

2 SERENA VISWANATHAN
3 RIELLE C. MONTAGUE
4 HEATHER HIPPSLEY
Federal Trade Commission
600 Pennsylvania Avenue, NW
5 Mail Drop NJ-3212
Washington, DC 20580
6 Tel: (202) 326-3244 (SV), -2645 (RM), -3285(HH)
Fax: (202) 326-3259

7 JEFFREY A. KLURFELD
8 Regional Director

9 RAYMOND E. MCKOWN
Calif. Bar No. 150975
10 Federal Trade Commission
10877 Wilshire Boulevard, Suite 700
11 Los Angeles, CA 90024
Tel: (310) 824-4325
12 Fax: (310) 824-4380

13 Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

14
15 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA
16 **WESTERN DIVISION**

17 FEDERAL TRADE COMMISSION,

18 Plaintiff,

19 v.

20 MEDIA MAVERICK, INC.,
21 d/b/a MAVERICK MARKETING GROUP,
22 d/b/a MAVERICK MEDIA,
23 d/b/a BALANCE BRACELET USA,
MARK JONES, and
CHARLES CODY,

24 Defendants.

Case No.

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

25
26 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), through
27 its undersigned attorneys, alleges as follows:
28

1 advertising, marketing, and sale of the Balance Bracelet via the dissemination of a
2 television infomercial aired on U.S. media outlets, identical Internet sites
3 www.balanceusa.com and www.balancebraceletusa.com, and through the
4 distribution of the product.

5 6. Defendant Mark Jones is the President and CEO of Maverick. At all
6 times material to this Complaint, acting alone or in conjunction with others, Mr.
7 Jones has formulated, directed, controlled or participated in the acts and practices
8 set forth in this Complaint. Mr. Jones resides and/or transacts business in this
9 District.

10 7. Defendant Charles Cody is Vice President of Maverick. At all times
11 material to this Complaint, acting alone or in conjunction with others, Mr. Cody
12 has formulated, directed, controlled or participated in the acts and practices set
13 forth in this Complaint. Mr. Cody resides and/or transacts business in this District.

14 **COMMERCE**

15 8. The acts and practices of the Defendants, as alleged herein, are in or
16 affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15
17 U.S.C. § 44.

18 **DEFENDANTS’ COURSE OF BUSINESS**

19 9. Since at least May 2001, and continuing thereafter, Defendants have
20 advertised, promoted, offered for sale, sold, and distributed the purported pain-
21 relieving Balance Bracelet to the public, using advertisements on the Internet and
22 on cable television stations such as The Golf Channel, Bravo, and Women’s
23 Entertainment. The retail price of the Balance Bracelet is \$79.90.

24 10. To induce consumers to purchase the Balance Bracelet, Defendants
25 have disseminated or have caused to be disseminated television infomercials,
26 including the 30-minute program, and Internet advertisements disseminated on
27 www.balanceusa.com and www.balancebraceletusa.com described below. These
28 advertisements include but are not limited to the attached Exhibits A through C,

1 and contain, among other things, the following statements or depictions:

2 A. [EXCERPTS FROM INFOMERCIAL TRANSCRIPT]

3
4 BRAD DENTON (Golf Entertainer): I figured I'd give it a try
5 because in my golf shows that I do, occasionally I have a little bit of
6 soreness in my joints [I]nterestingly enough, the first time I put
7 it on, I did a golf show a couple of days later and I didn't notice any
8 pain at all.

9 ***

10 JOHN BALAS: It gets rid of those little joint pains, wrist pains, my
11 back pains, a little kink in the side that I may get from turning the
12 wrong way. They're gone.

13 ***

14 CHRIS HURT: Recent studies have shown that the electrical
15 imbalance of positive and negative ions in the body can cause pain.
16 The Balance Bracelet is designed to help the body help itself by
17 restoring that balance through a process known as electro-
18 polarization.

19 ***

20 DR. JOSE LUIS RAMOS ("Leading Authority on Electro-
21 Polarization," via interpreter): When we feel pain in any part of our
22 body, this means that there is an excess of static electricity in that
23 particular area. This static energy is the result of an imbalance
24 between positive and negative ions. The Balance Bracelet is designed
25 to act on the body's nervous system by absorbing the static electricity
26 and naturally bringing the body back to its normal ionic balance.

27 ***

28 GARY CECIL (Contractor & Former Wrestler): The Balance

1 Bracelet is something that's worth trying because of the money that
2 you can spend on chiropractic visits or regular doctor visits. . . . And
3 for the investment that I made with the Balance Bracelet, by far the
4 best investment I've made for my body. . . .

5 ***

6 MALE NARRATOR: If you or someone you know is looking for an
7 all-natural way to help reduce pain . . . call the 800 number on your
8 screen right now and experience for yourself the difference a Balance
9 Bracelet can make in your life. . . . Take advantage of the chance to
10 enjoy life's activities without pain and discomfort by simply wearing
11 a Balance Bracelet. Order yours now. All you have to lose is your
12 pain.

13 ***

14 JOE DEPANTILIS: The first 15 minutes I put the bracelet on, I felt
15 the tingling up the arm and I went and ended up playing golf that
16 afternoon, felt great. The next day I played golf again and noticed
17 substantially less pain than I went through normally.

18 ***

19 MALE NARRATOR: Only the Balance Bracelet with its patented
20 design and technology can deliver the unmatched style and
21 performance you'd expect from the genuine article.

22 ***

23 GARY CECIL: [B]eing an ex-athlete, I have a lot of inflammation in
24 the knees, elbows, a lot of lower back pain. I was going to the
25 chiropractor twice a month. It's been nine months now. I haven't had
26 to go to the chiropractor. The pain level has dropped, which, for me,
27 that, in itself, is priceless. . . . The Balance Bracelet is something that
28 is worth trying because of the money that you can spend on

1 chiropractic visits or regular doctor visits.

2 ***

3 PAM TORRES: My lifestyle was very limited, very limited. And for
4 me to try something like this, I did not want another surgery, and it
5 worked [.]

6 ***

7 KIMI PENNINGTON: I have full use of my hand and my arm and
8 I'm not getting the shooting pains that are waking me up at night
9 anymore. So, it's been really great.

10 ***

11 UNIDENTIFIED MALE: You got to try the Balance Bracelet, it
12 really does work. It takes away some of those aches and pains[.]

13 UNIDENTIFIED MALE: I've noticed with the Balance Bracelet that
14 even the day after playing [golf], I have no back pain at all and I feel
15 great [.]

16 – Exhibit A (videotape of infomercial);
17 Exhibit B (excerpts from transcript of
18 infomercial) at pp. 5, 6, 12, 15-17, 23, 27,
19 29, 33, and 34.

20 B. [EXCERPTS FROM INTERNET SITE]

21 “The design of the Balance Bracelet is believed to assist the body in
22 helping itself through electro-polarization. This helps the body return
23 to its normal balance. If we feel pain in any area of our body, there
24 may be too much static energy in that particular part. This static
25 electricity may be the result of an imbalance of [sic] between positive
26 and negative energy. Our bodies are built by millions of cells that
27 form the different tissues and organs. . . . These cells work like small
28 batteries, but when they are harmed, they lose energy, which can

1 produce pain and discomfort in different areas of the body.”

2 ***

3 *Coco d’Este, Actress*: “I have tried so many things to relieve my pain
4 . . . things help for a little while, but nothing really worked until I
5 tried the Balance Bracelet . . . [T]ry the Balance Bracelet – you have
6 nothing to lose except the pain.”

7 – Exhibit C (printed excerpts from
8 www.balancebraceletusa.com Internet site)
9 at pp. 1 and 4.

10 11. The television infomercial provides ordering information, a
11 telephone number, and also directs consumers to the Defendants’ website,
12 www.balanceusa.com, to order. To further induce consumers to purchase the
13 Balance Bracelet, Defendants’ infomercial advertises a 30-day risk-free money-
14 back guarantee that allows customers to return the Balance Bracelet within 30 days
15 for a full refund of the purchase price, if they are not satisfied.

16 **DEFENDANTS’ VIOLATIONS OF THE FTC ACT**

17 12. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or
18 deceptive acts or practices in or affecting commerce. Section 12(a) of the FTC
19 Act, 15 U.S.C. § 52(a), prohibits the dissemination of any false advertisement in or
20 affecting commerce for the purpose of inducing, or which is likely to induce, the
21 purchase of food, drugs, devices, services, or cosmetics. For purposes of Section
22 12 of the FTC Act, 15 U.S.C. § 52, the Balance Bracelet is a “device” as defined in
23 Section 15 of the FTC Act, 15 U.S.C. § 55.

24 13. As set forth below, Defendants have violated Sections 5(a) and 12(a)
25 of the FTC Act in connection with the marketing and sale of the Balance Bracelet.

1 **COUNT ONE**

2 **(Unlawful Claim for the Balance Bracelet)**

3 14. Through the means described in Paragraph 10, Defendants have
4 represented, expressly or by implication, that the Balance Bracelet relieves various
5 types of pain, including, but not limited to, arthritis pain, joint pain, back pain, and
6 injury-related pain.

7 15. The representation set forth in Paragraph 14, above, is false or was
8 not substantiated at the time the representation was made. Clinical testing shows
9 that ionized bracelets are no better than a placebo (non-ionized) bracelet at
10 relieving musculoskeletal pain. Therefore, the making of the representation set
11 forth in Paragraph 14 constitutes a deceptive practice, and the making of false
12 advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of
13 the Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 52.

14 **CONSUMER INJURY**

15 16. Defendants' law violations have injured consumers and will continue
16 to injure consumers throughout the United States. In addition, Defendants have
17 been unjustly enriched as a result of their unlawful practices. Absent injunctive
18 relief by this Court, Defendants are likely to continue to injure consumers, reap
19 unjust enrichment, and harm the public interest.

20 17. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this
21 Court to grant injunctive and other relief as the Court may deem appropriate to
22 prevent and remedy any violations of the FTC Act. The Court, in the exercise of
23 its equitable jurisdiction, may award ancillary relief or other relief, including
24 rescission of contracts and restitution, and the disgorgement of ill-gotten gains
25 caused by Defendants' law violations.

26 **PRAYER FOR RELIEF**

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

1 powers:

2 (1) Enjoin Defendants permanently from violating Sections 5(a) and 12
3 of the FTC Act, as alleged herein, in connection with the offer, sale, advertising, or
4 other promotion or distribution of pain-relief products, or any food, drugs, devices,
5 cosmetics, or services;

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

10 (3) Award the Plaintiff the costs of bringing this action, as well as such
11 additional equitable relief as the Court may determine just and proper.

12
13 Respectfully submitted,

14
15 WILLIAM E. KOVACIC
16 General Counsel

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24 Dated: May 13, 2004