

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,)
600 Pennsylvania Avenue, N.W.)
Washington, D.C. 20580)
)
Plaintiff,)
)
v.)
)
HEALTH LABORATORIES OF)
NORTH AMERICA, INC.,)
14500 N. Northsight Blvd., Suite 200)
Scottsdale, Arizona 85260)
)
and)
)
MARC J. KAPLAN)
8711 E. Pinnacle Peak Drive, Suite 321)
Scottsdale, Arizona, 85255)
)
Defendants.)

**COMPLAINT FOR
PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF PURSUANT TO
SECTION 13(b) OF THE
FEDERAL TRADE
COMMISSION ACT**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), through its undersigned attorneys, for its Complaint alleges:

5. 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, consumer redress, disgorgement, and other equitable relief against Defendants for having engaged in unfair or deceptive acts or practices in connection with the advertising, marketing, and sale of products purporting to cause substantial weight loss without dieting or exercising, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a), 52.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a), 52, 53(b) and 28 U.S.C. §§ 1331, 1337(a), and 1345.

7. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

THE PARTIES

8. 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, through its own attorneys, 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).

9. Defendant Health Laboratories of North America, Inc. (HLNA) is a Nevada corporation with its principal office or place of business at 14500 N. Northsight Blvd., Suite 200, Scottsdale, Arizona, 85260. At all times relevant to the complaint, acting individually or in concert with others, HLNA has advertised, marketed, and sold Berry Trim Plus products to consumers throughout the United States. HLNA has transacted business in this district.

10. Defendant Marc J. Kaplan is the sole officer and director of Health Laboratories of North America, Inc. At all times relevant to this Complaint, acting individually or in concert

with others, Mr. Kaplan has formulated, directed, or controlled the policies, acts, or practices of HLNA, including the acts or practices alleged in this Complaint. His business address is 8711 E. Pinnacle Peak Drive, Suite 321, Scottsdale, Arizona, 85255. He has transacted 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 FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ COURSE OF CONDUCT

12. Defendants have advertised, labeled, offered for sale, sold, and distributed weight loss products to the public, including Berry Trim Plus, which was sold in two formulations under the same name (collectively “Berry Trim Plus products”). One formulation contained Hydroxycitrate (Brindal Berry Extract) (“HCA”), Vitamin B6, Chromium Picolinate, Green Tree Extract, L-Carnitine Complex, L-Phenylalanine, Cellulose Fiber, and ten other ingredients. The other formulation was identical except that it also contained ephedrine alkaloids from Ma Huang Extract.

13. To induce consumers to purchase Berry Trim Plus products, the defendants have disseminated or caused to be disseminated advertisements through direct mail. Defendants’ direct mail advertisements appeared to be full-page newspaper advertisements that have been removed from real newspapers. Defendants also advertised through an Internet Web site, <www.berrytrim.com>, Internet spam, and toll-free telephone numbers. Advertisements for Berry Trim Plus products include, but are not necessarily limited to, the attached Exhibit A. This

advertisement contains the following statements, among others:

Recommended by Hollywood Stars and American Doctors. . .

**Teacher Loses 70 lbs. in *Only 8 Weeks*
Easily. . . Without Being Hungry. . . After
Everything Else Fails Her!**

This is how over 1 million people have safely lost millions of pounds!

NO calorie counting! NO hunger! Guaranteed to work for you too!

Dear Friend,

* * *

It was especially hard losing all the extra weight after my second child was born. . . .

*That's when I found a 100% natural weight loss secret that melts away extra pounds and inches. Doctors told me this breakthrough scientific discovery actually helps overcome the chemical imbalance that makes your body add weight. That means you can't help but lose unwanted pounds. It's a remarkable product available only from Health Laboratories of North America (HLNA) called *Berry Trim Plus*. It works for me, and I know it will work for you too!*

* * *

NEW YORK: FOR IMMEDIATE RELEASE

Doctors have found a natural herb from Asia that helps overcome the chemical imbalance that keeps people overweight.

This has become the #1 choice of famous TV and movie stars to lose weight ... and the public ... with over 1 million people using it to lose millions of pounds.

The product is called *Berry Trim Plus*[®] named after the curious-looking purple fruit called *brindall berry*. It has unlocked the secret to losing all the weight you want, safely, naturally and quickly by turning your body into a super fat-burning machine without dieting, hunger or exercise.

TRIPLE WEIGHT LOSS POWER

- 1) Gets Rid of Stored Fat
- 2) Prevents Formation of New Fat
- 3) Stops Hunger Dead In Its Tracks.

Brindall berries are naturally loaded with a nutrient called HCA. 7 different clinical studies showed that HCA from brindall berries causes *very rapid and substantial weight loss by reducing fat absorption by 76% and food intake by 43%!*

This is what the medical publication TAAGline CITATIONS (which condenses information from scientific literature) says about this aspect of HCA usage: “Figure IV (a statistical table) shows that the optimal time of administration is one-half hour to one hour before eating. Fat synthesis was inhibited 76% and 77% respectively at those times. Even two hours prior yielded a 54% inhibition!”

Berry Trim Plus combines this HCA with a synergistic blend of key nutrients which, used in conjunction with the simple Berry Trim Plus guide, causes **fat and inches to melt off** your body.

Even Works For People Who Love to Eat Fattening Foods!

The real secret of Berry Trim Plus is that **you will lose weight without hunger and without giving up the foods you love**. The powerful Berry Trim Plus formula forces your body to convert food into fat-burning energy instead of fat!

When you take one Berry Trim Plus tablet 30 to 60 minutes before eating, it's like stoking the fat-burning furnace so that whatever you eat gets burned up and eliminated from your body.

Lose 20 ... 40 ... 80 Pounds or More Faster and Easier Than Ever Before!

With no new fat being absorbed, your body has no choice but to use up the fat that's stored on your hips, thighs, belly and behind. Soon, without any effort at all, you have lost pounds and inches just like over 1 million satisfied users of Berry Trim Plus:

“This product is amazing! It is the answer I've been seeking for years – a simple, fast, hassle free way to lose those dreadful unwanted pounds I carried around too long. After gaining weight gradually for several years, I'd grown into a size 20 at the age of 38. Finally, after using Berry Trim Plus, I was able to lose 70 pounds fast and easy and went down to a slim size 12 without ever being hungry! . . .”

[before and after photos]

*“I am writing to thank you for inventing your amazing Berry Trim Plus. Over the past 15 years I have tried every diet conceivable with no success. I am pleased to inform you that Berry Trim Plus has succeeded where all others have failed and I am ecstatic over your product. **In 6 weeks, I lost 40 pounds along with 10 inches I’ve been carrying for years, and it was so easy!**” . . .*

*“Thank you from my heart. **I have lost 35 lbs. and have gone down two sizes.**” . . .*

[before and after photos]

*“I have been on Berry Trim Plus for about 4 months now and **have lost 80 lbs.**” . . .*

“As a result of a permanent disability, I was not able to participate in sports or exercise to the extent where I could lose weight. In just over one month with Berry Trim Plus, I have already lost 30 pounds without feeling hungry!” . . .

*“I have been taking Berry Trim Plus for two months and **shed the 25 pounds that I could not lose.**” . . .*

**Doctors Recommend Berry Trim Plus
Because It Works and It's 100% Safe!**

NO Fen-Phen or Drugs Of Any Kind!

“Berry Trim Plus is not only effective, but it is safe. I am recommending Berry Trim Plus not only to my patients, but to my nursing staff and family as well!”

– Stuart A. Medoff, M.D., . . .

*“My experience with obese patients who need to lose excess pounds is that hunger is what must be overcome. In this respect, your Berry Trim Plus weight loss tablets are excellent. No unpleasant side effects have been reported to me. Indeed, a high level of energy and vigor is to be expected since this product contains essential natural nutrients. **Berry Trim Plus, in my professional judgment, is the answer for safe and effective weight loss.**”*

– Jeff Davidson, M.D., . . .

“After years of watching patients struggle with diets, I can't tell you how thrilled I am to recommend Berry Trim Plus. Not only is its all-natural formula perfectly safe,

but most important, it works without dieting. Thanks to Berry Trim Plus, my patients are happier, healthier and trimmer than ever ... and so am I!”

– Roger Aimklov, M.D., . . .

*“Berry Trim Plus is an excellent product. **It suppresses my appetite without food cravings or side effects.** I have used nutrition in my practice for 10 years and do recommend the product to my staff, patients and family.”*

– Dr. Linda Gosey, . . .

*“Research clearly indicates the effectiveness of Berry Trim Plus' ingredients. **I recommend Berry Trim Plus to my patients for two reasons: It's safe, and it works.** In fact, most of my patients report noticeable weight loss in just a few days. **The fact that it works without unhealthy dieting makes it nothing short of a miracle.**”*

– DeMille W. Madoux, M.D., . . .

* * *

**Guaranteed To Turn Your Body
Into A Fat-Burning,
High-Energy Machine!**

In addition to HCA, the unique **Thermopgenic** [sic] **Berry Trim Plus Blend** includes these 100% natural fat-busting, energizing natural nutrients that give your body no choice but to make fat and inches disappear like magic.

* * *

**Here's How To Lose Pounds
And Inches For 60 Days
Without Risking A Penny!**

Try Berry Trim Plus for 60 days at no risk. If you don't see an amazing change ... if friends aren't raving about how much weight you've lost ... if you are not 100% satisfied with your initial order ... simply send back the empty containers within 60 days. You'll **get back every penny of your entire purchase price** ... no questions asked.

Berry Trim Plus is not available in any store or from TV. Simply send your name and address on a piece of paper along with your choice of: 1 month's supply for only \$39.95, or **SAVE \$10** with a 2 months' supply for only \$69.90 (add \$4.95 shipping & handling to your order).

**You may order by phone
24 hours a day, 7 days a week.
CALL THIS NUMBER NOW**

* * *

Now you will lose your extra pounds and inches quickly, easily and safely with **NO** drugs, **NO** diet, **NO** exercise at all. And you have ***NO RISK AT ALL***. You either lose your excess pounds and inches, or Berry Trim Plus *costs you* **NOTHING!**

* * *

If you are not a candidate for weight loss, please disregard this advertisement. Those with chronic health problems, including eating disorders, should consult their health professional before beginning any weight loss program. Common sense dictates that moderate aerobic exercise and simple dietary calorie control are always intelligent practices as part of any weight loss program.

(Exhibit A)

THE FTC ACT

10. 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, Berry Trim Plus products are either “foods” or “drugs” as defined in Sections 15(b) and (c) of the FTC Act, 15 U.S.C. §§ 55(b), (c). As set forth below, the defendants have engaged in such unlawful practices in connection with the advertising, marketing and sale of Berry Trim Plus products.

UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN VIOLATION OF THE FTC ACT

COUNT I

False Claims

11. Through the means described in Paragraph 9, including through the statements contained in the advertisement attached as Exhibit A, the defendants have represented, expressly or by implication, that Berry Trim Plus products cause rapid and substantial weight loss, without the need to exercise or reduce caloric intake, enabling users to lose as much as 40 pounds in six weeks and 70 pounds in 8 weeks.

12. In truth and in fact, Berry Trim Plus products do not cause rapid and substantial weight loss, without the need to exercise or reduce caloric intake, enabling users to lose as much

as 40 pounds in six weeks and 70 pounds in 8 weeks. Therefore, the representation set forth in Paragraph 11 was, and is, false or misleading.

13. Therefore, the making of the representation set forth in Paragraph 11 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 II

Unsubstantiated Claims

14. Through the means described in Paragraph 9, above, the defendants have also represented, expressly or by implication, that:

- A. Berry Trim Plus products prevent fat absorption from whatever the user eats.
- B. The blend of ingredients in Berry Trim Plus products have a synergistic effect, eliminating fat from the body and causing weight loss.
- C. Berry Trim Plus is safe.

15. The defendants did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraphs 11 and 14, above, at the time the representations were made. For example, with regard to the claim that the blend of ingredients in the Berry Trim Plus products have a synergistic effect, there are no studies of the combination of ingredients contained in the Berry Trim Plus products. Moreover, the available studies relating to individual ingredients are not adequate to substantiate that Berry Trim Plus products cause rapid and substantial weight loss, without the need to exercise or reduce caloric intake, or that the Berry Trim Plus formulation containing ephedrine alkaloids from Ma Huang Extract is safe.

16. Therefore, the making of the representations set forth in Paragraphs 11 and 14, 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), 52.

COUNT III

False Establishment Claims

17. Through the means described in Paragraph 9, above, the defendants have represented, expressly or by implication, that Berry Trim Plus products are clinically proven to cause very rapid and substantial weight loss in humans by reducing fat absorption by 76% and food intake by 43%.

18. In truth and in fact, Berry Trim Plus products are not scientifically proven to cause very rapid and substantial weight loss in humans by reducing fat absorption by 76% and food intake by 43%.

19. Therefore, the making of the representations set forth in Paragraph 17, 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), 52.

INJURY

20. Consumers throughout the United States have suffered and continue to suffer monetary loss as a result of defendants' unlawful acts or practices. In addition, the defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, the defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

21. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement, and restitution, to prevent and remedy violations of any provision of law enforced by the Commission.

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 and restrain Defendants from violating Sections 5 and 12 of the FTC Act;

(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 redress, refund of monies paid, or disgorgement of ill-gotten gains; and

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

Dated:

Respectfully submitted,

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