

COPY

FILED

2005 SEP 16 PM 3:07
CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

BY _____

1 WILLIAM BLUMENTHAL
General Counsel
2
3 KENNETH H. ABBE (Cal. Bar No. 172416)
kabbe@ftc.gov
4 JENNIFER M. BRENNAN (Cal. Bar No. 225473)
jmbrennan@ftc.gov
Federal Trade Commission
5 10877 Wilshire Blvd., Ste. 700
Los Angeles, CA 90024
6 (310) 824-4343 (voice)
(310) 824-4380 (fax)

7 Attorneys for Plaintiff FTC
8

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

11 CV05-6823 ABC (RZX)

12 FEDERAL TRADE COMMISSION,)
13)
14 Plaintiff,)
15 v.)
16 LA GRANA, LLC,)
a California corporation;)
17 LA GRANA, INC.,)
a California corporation;)
18)
19 LOSINI, LLC,)
a California corporation;)
20 CARLOS IÑIGUEZ, individually)
and as an officer or)
21 director of La Grana,)
LLC, La Grana, Inc., and)
22 Losini, LLC; and)
23 CLAUDIA IÑIGUEZ, individually)
and as an officer or)
24 director of La Grana,)
LLC, and Losini, LLC;)
25)
26 Defendants.)

Case No.

COMPLAINT FOR INJUNCTIVE AND
OTHER EQUITABLE RELIEF

27
28

1 Plaintiff, the Federal Trade Commission, by its undersigned
2 attorneys, alleges:

3 1. The Federal Trade Commission brings this action under
4 Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15
5 U.S.C. § 53(b), to secure a permanent injunction, rescission of
6 contracts and restitution, disgorgement of ill-gotten gains, and
7 other equitable relief against Defendants for engaging in
8 deceptive acts or practices in connection with the advertising,
9 marketing, promoting, offering for sale, and sale of weight loss
10 packages in violation of Sections 5(a) and 12 of the FTC Act, 15
11 U.S.C. §§ 45(a) and 52, and a music collection on compact discs
12 ("CDs") in violation of Section 5(a) of the FTC Act, 15 U.S.C.
13 § 45(a).

14 JURISDICTION AND VENUE

15 2. This Court has subject matter jurisdiction over the
16 FTC's claims pursuant to 15 U.S.C. §§ 45(a), 52 and 53(b) and 28
17 U.S.C. §§ 1331, 1337(a) and 1345.

18 3. Venue in the Central District of California is proper
19 under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

20 PLAINTIFF

21 4. Plaintiff, Federal Trade Commission ("FTC" or
22 "Commission"), is an independent agency of the United States
23 government created by statute. 15 U.S.C. §§ 41 et seq. The
24 Commission enforces Section 5(a) of the FTC Act, 15 U.S.C.
25 § 45(a), which prohibits unfair or deceptive acts or practices in
26 or affecting commerce. The Commission also enforces Section 12 of
27 the FTC Act, 15 U.S.C. § 52, which prohibits false advertisements
28 for food, drugs, devices, services or cosmetics in or affecting

1 commerce. The Commission may initiate federal district court
2 proceedings by its own attorneys to enjoin violations of the FTC
3 Act and to secure such equitable relief as is appropriate in each
4 case. 15 U.S.C. § 53(b).

5 DEFENDANTS

6 5. Defendant La Grana, LLC, is a California limited
7 liability corporation incorporated in 2001. The business address
8 of La Grana, LLC, is 13441 Dalewood Street, Baldwin Park,
9 California 91706. At all times material to this Complaint, La
10 Grana, LLC, has conducted business in the Central District of
11 California and throughout the United States.

12 6. Defendant La Grana, Inc., is a California corporation
13 incorporated in 2000; on September 1, 2004, the California
14 Franchise Tax Board reported its status as "suspended." The
15 business address of La Grana, Inc., is also 13441 Dalewood Street,
16 Baldwin Park, California 91706. At all times material to this
17 Complaint, La Grana, Inc., has conducted business in the Central
18 District of California and throughout the United States.

19 7. Defendant Losini, LLC, is a California limited liability
20 corporation incorporated in 2004. The business address of Losini,
21 LLC, is also 13441 Dalewood Street, Baldwin Park, California
22 91706. Losini operates a call center for La Grana in Mexico. At
23 all times material to this Complaint, Losini, LLC, has conducted
24 business in the Central District of California and throughout the
25 United States.

26 8. Defendant Carlos Iñiguez is an individual who resides in
27 La Puente, California. He is the President and Registered Agent
28 for Defendants La Grana, LLC, La Grana, Inc., and Losini, LLC

1 (collectively, the "Corporate Defendants"), as well as a Director
2 of those companies. At all times material to this complaint,
3 acting alone or in concert with others, he has formulated,
4 directed, controlled, or participated in the acts and practices of
5 the Corporate Defendants, including the acts and practices set
6 forth in this complaint. At all times material to this Complaint,
7 he has transacted business in the Central District of California
8 and throughout the United States.

9 9. Defendant Claudia Iñiguez is an individual who resides
10 in La Puente, California. She is an Officer or Director of La
11 Grana, LLC and Losini, LLC, and was listed as the contact person
12 in a 1999 California Fictitious Business Name filing for "La Grana
13 Enterprises." At all times material to this complaint, acting
14 alone or in concert with others, she has formulated, directed,
15 controlled, or participated in the acts and practices of the
16 Corporate Defendants, including the acts and practices set forth
17 in this complaint. At all times material to this Complaint, she
18 has transacted business in the Central District of California and
19 throughout the United States.

20 COMMERCE

21 10. At all times material to this Complaint, Defendants
22 maintained a substantial course of business in the advertising,
23 marketing, promoting, offering for sale and sale of weight loss
24 packages and a music collection on CDs, in or affecting commerce,
25 as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C.
26 § 44.

27 ///

28 ///

1 supplement Patch as able to cause weight loss "twenty-four hours a
2 day" through the absorption of its active ingredients directly
3 through the skin.

4 16. Both the Svelt Body Complete and Imagen Enlínea
5 commercials represent that the advertised weight loss packages
6 contain the active ingredient "chitosan." Chitosan is represented
7 to be a dietary supplement that supposedly converts fat into fiber
8 in the body. Once converted into fiber, the fat is supposedly
9 eliminated from the body.

10 17. The Svelt Body Complete commercials also represent that
11 the active ingredient for the Svelt Body Patch is *fucus*
12 *vesiculosus*, or sea kelp.

13 18. The Svelt Body Complete advertisements expressly
14 represent that users of the chitosan-based product need not
15 increase their exercise levels or change their diets in order to
16 lose weight:

17 ¿No tiene tiempo de hacer ejercicios?

18 ¿Ultimamente se siente demasiado pesado? ¿No

19 puede controlar su apetito? ¿Su piel se

20 siente más flácida que nunca y ya se cansó de

21 probar todo sin éxito alguno? No busque más.

22 Aquí está Svelt Body Complete. Y esta hecho

23 en tres practicos pasos. El primer paso está

24 compuesto por cuatro productos. El primer

25 producto son unas cápsulas que contiene

26 chitosan y que a través de él, ayudan a

27 convertir la grasa que consumimos en fibra

28 para desecharla más fácilmente. Para

1 disminuír el apetito se ha diseñado un spray
2 que con sus vitaminas e ingredientes naturales
3 relajan el sistema nervioso logrando no comer
4 con ansiedad o sin hambre. Las cápsulas para
5 la buena digestión logran activar los
6 nutrientes que el cuerpo necesita eliminando
7 los efectos acumulados en nuestro organismo.
8 Y por su puesto, un gel reductor que estimula
9 naturalmente la circulación local eliminando
10 las toxinas que se acumulan en el tejido
11 adiposo logrando la tonificación de la piel.

12 In English, this narration translates as:

13 Don't have time to exercise? Been feeling too
14 heavy lately? Can't control your appetite?
15 Your skin feels more flaccid than ever and
16 you're tired of trying everything without
17 success? Don't look further. Svelt Body
18 Complete is here. And it is made in three
19 practical steps. The first step is composed
20 of four products. The first product is some
21 capsules that contain chitosan and through it,
22 help convert the fat that we consume into
23 fiber to get rid of more easily. To decrease
24 appetite, a spray has been designed that with
25 its vitamins and natural ingredients relax the
26 nervous system allowing one to eat anxiety
27 free or without hunger. The capsules for good
28 digestion help activate the nutrients our body

1 needs eliminating the accumulated effects on
2 our system. And of course, a reduction gel
3 that naturally stimulates the local
4 circulation eliminating the toxins that are
5 accumulated in the fatty tissue achieving the
6 toning of the skin.

7 19. The narration to the Svelt Body Complete advertisements
8 continues by expressly representing that the sea kelp based Svelt
9 Body Patch will burn calories:

10 El segundo paso es, Svelt Body Patch que con
11 su *fucus vesiculosus* estimula el quemar
12 calorías solo aplicándolo en cualquier zona
13 del cuerpo. Trabaja durante las 24 horas del
14 día. Y los resultados son sorprendentes.

15 In English, this narration represents:

16 The second step is, Svelt Body Patch with its
17 *fucus vesiculosus* stimulates calorie burning
18 by just applying it on any part of the body.
19 It works 24 hours a day. And the results are
20 surprising.

21 20. The "third step" described in the Svelt Body Complete
22 advertisements is a pair of shaping "Svelt Body Hose." The
23 narration summarizes the three steps contained in the Svelt Body
24 Complete package as causing rapid weight loss:

25 Estos tres pasos están diseñados para
26 complementarse unos a otros. De esta manera,
27 Usted bajará más rápido de peso. Qué espera
28

1 en llamar. No batalle más. Luzca como
2 siempre ha soñado. No pierda más su tiempo y
3 su dinero. Llame a lo seguro y use hoy mismo
4 Svelt Body Complete.

5 In English, the narration states the following in summary:

6 These three steps are designed to complement
7 each other. This way, you will lose weight
8 more quickly. What are you waiting for?
9 Don't struggle anymore. Look as you've always
10 dreamed of looking. Don't waste your time or
11 your money any more. Call the sure thing and
12 start using Svelt Body Complete today.

13 21. One of the hosts of the Svelt Body Complete
14 advertisement, identified as Alexandra Tamayo, explains, as
15 follows, that the Svelt Body Complete package will enable an obese
16 person to become thin:

17 Me da mucho gusto estar aqui con Ustedes y
18 explicarles la importancia y el por qué nace
19 Svelt Body Complete. Pues déjame y te digo
20 que Svelt Body Complete nace a raíz de la
21 importancia de estar delgado ya no por
22 estética sino por salud porque el sobrepeso y
23 la obesidad nos traen muchas enfermedades como
24 lo es la diabetes, los problemas
25 cardiovasculares, la falta de energía. A
26 veces no podemos ir al gimnasio para hacer
27 ejercicios pero Svelt Body Complete que es una
28 fórmula 100% natural actúa las 24 horas y no

1 tiene efectos secundarios y es la mejor opción
2 que ustedes tienen para lucir una figura
3 radiante, saludable porque comeremos sin que
4 las grasas se nos quede en el cuerpo. Vamos a
5 acumular los nutrientes que necesitamos y a
6 parte, vamos a tonificar nuestro cuerpo.

7 Ms. Tamayo's representations translate into English as:

8 I am very happy to be here with you and to
9 explain to you the importance of and why Svelt
10 Body Complete was conceived. Well let me tell
11 you that Svelt Body Complete was conceived
12 based on the importance of being thin not just
13 because of esthetics but because of health
14 because being overweight and obesity bring
15 many diseases such as diabetes, cardiovascular
16 problems, lack of energy. Sometimes we can't
17 go to the gym to do exercises but Svelt Body
18 Complete is a 100% natural formula that acts
19 24 hours and it doesn't have side effects and
20 it is the best option that you have to show
21 off a radiant figure, healthy because we eat
22 without the fats staying in our body. We are
23 going to accumulate the nutrients we need and
24 also, we are going to tone our body.

25 22. Later in the Svelt Body Complete advertisements, the
26 narrator again summarizes the weight loss capabilities of the
27 first two steps of the package as follows:
28

1 El primero [paso] se efectúa a través de
2 chitosan que es lo que absorbe todas las
3 grasas que consumimos diariamente
4 convirtiéndolas en fibra para así desecharlas
5 posteriormente. Este método genera el proceso
6 metabólico eliminando desechos y toxinas al
7 mismo tiempo disminuirá nuestro apetito y
8 ayudaremos a los tejidos de nuestra piel a
9 tonificarlo. El segundo paso es Svelt Body
10 Patch que es un parche que podrás llevar
11 contigo las 24 horas. Es cómodo y fácil de
12 usar y lo mejor va quemando calorías adonde
13 vaya y hagan lo que haga.

14 In English translation, this later narration states:

15 The first [step] works through chitosan which
16 is what absorbs all the fats that we daily
17 consume converting them into fiber so that
18 they get eliminated later. This method
19 generates the metabolic process of eliminating
20 wastes and toxins while at the same time it
21 reduces our appetite and helps us tone our
22 skin. The second step is Svelt Body Patch
23 that is a patch you can take with you 24
24 hours. It is comfortable and easy to use and
25 the best thing is you are burning calories
26 wherever you go and whatever you do.

27 23. The Svelt Body Complete advertisements include the
28 statement of a man, identified as César Baldovinos, who claims to

1 have lost 100 pounds as a result of using the Svelt Body Complete
2 package:

3 Cuando escuche Svelt Body Complete, pensé que
4 solo era para mujeres. Pero no. Primero lo
5 usó mi novia. Ella me lo recomendó. No me
6 arrepiento de haberlo intentado. Disminuyé mi
7 peso. Hasta perdí 100 libras. Ahora me
8 siento otro. Definitivamente Svelt Body
9 Complete me ayudó. No solo con mi sobrepeso
10 sino con mi auto-estima. Ahora no solo me veo
11 bién sino que me siento bién.

12 Mr. Baldovinos' representations translate into English as:

13 When I heard about Svelt Body Complete, I
14 thought that it was only for women. But that
15 wasn't the case. My girlfriend first began
16 using it. She recommended it. I don't regret
17 having tried it. I decreased my weight. I
18 even lost 100 pounds. Now I feel different.
19 Definitely Svelt Body Complete helped me. Not
20 only with my [being] overweight but also with
21 my self-esteem. Not only do I look good but I
22 feel good.

23 24. The Imagen Enlínea advertisements include the statement
24 of an unidentified woman who claims to have lost 20 pounds in 6
25 weeks as a result of using the Imagen Enlínea package:

26 Sabes, estoy bien contenta. He bajado 20
27 libras en tan solo seis semanas. Y la verdad
28 que si funciona.

1 These representations about Imagen Enlínea translate as:

2 You know, I'm happy. I lost 20 pounds in only
3 six weeks. And it really works.

4 The advertisements show similar testimonials interspersed with
5 "before and after" pictures. One woman claims she lost two dress
6 sizes using Imagen Enlínea, while another woman claims the package
7 enabled her to reverse a 25 pound weight gain and get back to her
8 original weight. A man also claims that he lost many pounds using
9 Imagen Enlínea.

10 25. The narration in the Imagen Enlínea advertisements
11 states that "ahora puede perder peso sin dietas extenuantes, ni
12 ejercicios pesados." In English translation, this representation
13 means "now you can lose weight without rigorous diets or heavy
14 exercises." The commercials list colon cancer, acne, heart
15 attacks, headaches, liver problems, high blood pressure and other
16 ailments as being caused by obesity - obesity which can be
17 eliminated through using the Imagen Enlínea product.

18 26. The advertisements' narration goes on to state:
19 Imagen Enlínea es un tratamiento que controla
20 los problemas internos y externos de nuestro
21 cuerpo provocados por el exceso de peso,
22 elimina las grasas, desintoxica el organismo y
23 regula el metabolismo.

24 In English, this translates as:

25 Imagen Enlínea is a treatment that controls
26 the internal and external problems of our body
27 caused by excessive weight, eliminates fat,
28 detoxifies the system and regulates

1 metabolism.

2 27. The Imagen Enlínea advertisements' narration explicitly
3 states that consumers who use the product can eat all they want
4 without depriving themselves of favorite foods or fear of gaining
5 weight: "Este es un novedoso tratamiento que le permitirá comer
6 todo lo que Usted desee sin preocuparse de nada." In English,
7 this means "This is a new treatment that allows you to eat
8 everything you want without worrying about anything." While this
9 narration is playing, the following phrases are displayed on the
10 screen: "Coma todo lo que Usted quiera ... Coma todo lo que
11 Usted desee con Imagen Enlínea." In English, this reads: "Eat
12 all you want ... Eat all you want with Imagen Enlínea."

13 28. The Svelt Body Complete and Imagen Enlínea commercials
14 display toll free numbers operated by Defendants for consumers to
15 call to order the weight loss packages: (800) 263-0702 for Svelt
16 Body Complete; and (800) 571-0787 for Imagen Enlínea. Calls to
17 these toll free numbers are answered by Defendants' telemarketers,
18 who repeat many of the representations contained in the television
19 advertisements.

20 29. Defendants' telemarketing sales script for Svelt Body
21 Complete includes the following representations; except for the
22 trade name, the script for Imagen Enlínea is identical:

23 La Obesidad afecta Esteticamente, y sobre todo
24 afecta como enfermedad, porque pone en riesgo
25 su salud con padecimientos como alto
26 colesterol, provocando que se tapen las venas
27 arteriales y le ocasione un infarto, tambien
28 le provoca coagulos en la sangre, embolias,

1 estrefimiento, cancer de colon, fatiga,
2 dolores de espalda y muchos problemas mas,
3 pero no se preocupe porque ahora con SVELT
4 BODY COMPLETE, Usted puede combatir esta
5 terrible enfermedad que es la OBESIDAD, es un
6 Tratamiento que controla los problemas
7 internos y externos de nuestro cuerpo
8 provocadas por el exceso de peso. Elimina las
9 grasas[,] desintoxica el organismo, y regula
10 el metabolismo. [Capitalization in original.]

11 In English translation, this portion of the script reads:

12 Obesity affects you esthetically, and overall
13 affects you like a disease, because you put
14 your health at risk with sicknesses like high
15 cholesterol, causing arterial blockage and
16 causing a heart attack, as well as causing
17 blood clots, embolisms, constipation, colon
18 cancer, fatigue, back pain, and many more
19 problems, but do not worry because now with
20 Svelt Body Complete, you can combat the
21 terrible disease of obesity, it is a treatment
22 that controls the internal and external
23 problems of our body brought on by excess
24 weight. Eliminate the fat[,] detoxify the
25 body, and regulate the metabolism.

26 30. The Svelt Body Complete telemarketing sales script
27 continues with the following two sentences; the Imagen Enlínea
28 script contains a sentence similar to the first and identical to

1 the second, save for the trade name:

2 Sientase bien y vease mejor con este
3 maravilloso tratamiento lider en el mercado
4 por muchos años, diseñado en 3 PASOS para
5 obtenga esa figura que tanto desea de una
6 forma segura y garantizada. ¿Porque privarse
7 de todo lo que le gusta, si con SVELT BODY
8 COMPLETE, usted podra comer de todo y si [sic]
9 peligro de volver a engordar, y tendra un
10 cuerpo esbelto y saludable. [Capitalization in
11 original.]

12 In English translation, this portion of the sales script reads:

13 Feel good and look better with this marvelous
14 treatment[,] the market leader for many years,
15 designed in three steps for you to get the
16 figure that you've always wanted in a safe and
17 guaranteed manner. Why deny yourself
18 everything you've always liked, if with Svelt
19 Body Complete, you could eat everything and
20 without risk of gaining the weight back, and
21 you will have a svelte and healthy body.

22 31. The Svelt Body Complete telemarketing sales script
23 describes the four weight loss products as follows; except for the
24 trade names, this portion of the script for Imagen Enlínea is
25 identical:

26 Un poderoso BLOQUEADOR DE GRASA, que absorbe y
27 envuelve las grasas que ingerimos
28 desechandolas de nuestro organismo.

1 Un tratamiento de LA BUENA DIGESTION, que
2 contiene 11 ingredientes naturales que ayudan
3 a desintoxicar y limpiar el organismo [sic]
4 eliminando las toxinas y ayudando a regular
5 las funciones de nuestro cuerpo.

6 Un spray REGULADOR DEL APETITO, que contiene
7 vitaminas e ingredientes [sic] que ayudan a
8 reducir la ansiedad por la comida haciendola
9 (a) sentir satisfecho (a) como si acabara de
10 comer y le relajan el sistema nervioso. [sic]
11 Svelt Body Gel, una CREMA REDUCTORA, que con
12 su accion termogenetica ataca directamente las
13 zonas afectadas por la grasa haciendo que esa
14 gordura sea desechada mas facilmente.

15 [Capitalization in original.]

16 In English translation, this portion of the sales script reads:

17 A powerful fat blocker, which absorbs and
18 envelopes the fat we ingest and eliminates it
19 from our body.

20 A treatment for good digestion, which contains
21 11 natural ingredients that help to detoxify
22 and clean the body eliminating toxins and
23 helping to regulate body functions.

24 A spray appetite regulator, which contains
25 vitamins and ingredients that help to reduce
26 food anxiety making you feel satisfied as if
27 you just finished eating and it relaxes the
28 nervous system.

1 Svelt Body Gel, a reduction cream, which with
2 a thermogenic action directly attacks the
3 zones affected with fat deposits making that
4 fat more easily eliminated.

5 32. The Imagen Enlínea advertising and telemarketing sales
6 script only detail the four weight loss products described above.
7 The advertising and telemarketing sales script for Svelt Body
8 Complete, however, state that these four products are just the
9 first step in the package. Defendants represent that the Svelt
10 Body Complete package contains two more "steps" towards losing
11 weight. One of these steps is an additional dietary supplement:

12 SVELT BODY PATCH, es un PARCHE REDUCTIVO
13 natural que function las 24 horas del dia y
14 con solo un parchesito por dia notara
15 rapidamente los beneficios, no se nota y no
16 causa molestias. [Capitalization in
17 original.]

18 In English translation, this portion of the script reads:

19 Svelt Body Patch, is a natural reduction patch
20 that works 24 hours a day and with just one
21 little patch per day you will quickly notice
22 the benefits, and you won't notice it or be
23 bothered by it.

24 The third "step" described in the script is a pair of body hose.

25 33. The Svelt Body Complete script includes the following
26 summary of what you can expect from Defendants' weight loss
27 packages; the Imagen Enlínea script reads the same except for the
28 trade name:

1 They're 1,500 original hits with the best
2 singers, the best groups and the best bands
3 ... They're 1,500 guaranteed hits.

4 37. In another television advertisement for the Hot
5 Collection, Defendants represent that consumers will receive:

6 La colección más esperada de todos los
7 tiempos. Todos los géneros y artistas
8 favoritos reunidos en una sola colección. La
9 colección musical más caliente la cual incluye
10 todos los géneros, banda, salsa, merengue,
11 gruperas, pop, cumbia, tex-mex, hip-hop, rock
12 & roll y muchos más. Son 1,000 exitazos con
13 los mejores solistas, grupos y bandas de hoy y
14 siempre. Es la Colección Caliente ... Son
15 1,000 exitazos musicales con títulos
16 originales garantizados.

17 1,000 éxitos musicales más 500 regalados ...
18 son 1,500 éxitos calientitos para ti. Es la
19 colección más caliente de todos los tiempos
20 está aquí. Los mejores artistas como Vicente
21 Fernandez, Los Tiranos del Norte, Sin Bandera
22 ... Ricky Martin, Shakira [Emphasis
23 added.]

24 In English translation, Defendants represent that the Hot
25 Collection is:

26 The most anticipated collection of all time.
27 All the favorite genres and artists united in
28 one collection. The hottest musical

1 collection which includes all the genres,
2 band, salsa, merengue, gruperas, pop, cumbia,
3 tex-mex, hip-hop, rock & roll and many more.
4 They're 1,000 hits with the best soloists,
5 groups and bands of today and forever. It is
6 the Hot Collection ... They're 1,000 musical
7 hits with original titles guaranteed.
8 1,000 musical hits plus 500 as a bonus ...
9 they're 1,500 very hot hits for you. It is
10 the hottest collection of all time is here.
11 The best artists such as Vicente Fernandez,
12 Los Tiranos del Norte, Sin Bandera ... Ricky
13 Martin, Shakira

14 38. The television advertisements offer the music collection
15 at a bargain price. Consumers are directed to call a toll-free
16 number. (800) 848-5571 operated by Defendants to order the Hot
17 Collection music CDs.

18 39. Calls to this toll-free number are answered by
19 Defendants' telemarketers, who repeat many of the representations
20 made in the television commercials. Defendants' telemarketers
21 read to consumers from sales scripts that reinforce and expand
22 upon the representations made in Defendants' advertisements. Two
23 of Defendants' telemarketing sales scripts for the Hot Collection
24 read as follows:

25 Tal como lo miro en televisión, es una de las
26 mejores colecciones de la música de Hoy y
27 Siempre, con los artistas originales que las
28 hicieron famosas. [Emphasis added.]

1 Usted recibirá Musica de Los Mejores Artistas
2 como: ... Pancho Barraza, Pepe Aguilar, Joan
3 Sebastian, La Migra, Los Iracundos

4 In English translation, these scripts read:

5 As seen on television, this is one of the best
6 collections of music from today and always,
7 with the original artists that made them
8 famous.

9 You will receive Music from the Best Artists,
10 such as: ... Pancho Barraza, Pepe Aguilar,
11 Joan Sebastian, La Migra, Los Iracundos

12 40. Consumers who wish to purchase the Hot Collection are
13 told that the total price, including shipping and handling, is
14 \$198. Consumers are also told that, because the collection is
15 offered at a special price, orders cannot be cancelled after being
16 placed. Neither Defendants' advertising nor their telephone sales
17 pitches otherwise mention a refund policy.

18 41. Consumers who order the Hot Collection from Defendants
19 receive a parcel containing a number of CDs. The parcel contains
20 a packing slip that purports to disclose, for the first time, a
21 "guarantee" that instructs consumers they may return defective
22 products to the Defendants within six months of receipt.

23 42. Consumers who play the CDs discover that the music
24 contained in the collection is not performed by the original
25 artists, as advertised. Instead, consumers receive CDs filled
26 with songs they have never heard before, familiar songs performed
27 by unknown artists, or both. Consumers report that many, if not
28 most, of the songs sound as if they have been recorded by a single

1 person using a karaoke machine.

2 43. Consumers who call to try to resolve these problems and
3 obtain what they ordered are put off by Defendants. Consumers are
4 told that Defendants do not offer refunds, a policy not previously
5 disclosed to consumers. When consumers try to make use of the
6 "guarantee" included in their packages, Defendants sometimes offer
7 exchanges for items of similar quality. Other times, Defendants
8 adhere to their policy of not offering refunds.

9 44. Consumers are often unable to obtain refunds from
10 Defendants. Consumers report that Defendants have a pattern and
11 practice of answering refund requests with abuse or derision.

12 45. Consumers who file complaints with the Better Business
13 Bureau about the Defendants fare better in obtaining refunds.
14 When Defendants offer refunds, they often require consumers to
15 send back the CDs at consumers' own expense. The refunds that
16 consumers then receive typically are reduced by \$30 for "shipping
17 and handling," which Defendants maintain is not refundable.

18 VIOLATIONS OF THE FTC ACT

19 46. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),
20 prohibits unfair or deceptive acts or practices in or affecting
21 commerce. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a),
22 prohibits the dissemination of any false information in or
23 affecting commerce for the purpose of inducing, or which is likely
24 to induce, the purchase of food, drugs, devices, services, or
25 cosmetics. For the purposes of Section 12 of the FTC Act, 15
26 U.S.C. § 52, the Svelt Body Complete and Imagen Enlínea packages
27 are "food," "drugs," or "devices" as defined in Sections 15(b),
28 (c) and (d) of the FTC Act, 15 U.S.C. §§ 55(b), (c) and (d). As

1 set forth below, Defendants have engaged and continue to engage in
2 violations of Sections 5(a) and 12 of the FTC Act in connection
3 with the advertising, marketing and sale of weight loss packages,
4 including the products sold as Svelt Body Complete and Imagen
5 Enlínea.

6 47. As set forth below, Defendants have engaged and continue
7 to engage in violations of Sections 5(a) of the FTC Act in
8 connection with the advertising, marketing and sale of a music
9 collection on CDs.

10 COUNT I

11 False or Unsubstantiated Claims for Weight Loss Products

12 48. Through the means described in paragraphs 11-34 above,
13 Defendants have represented, expressly or by implication, that:

- 14 (a) the Svelt Body Complete and Imagen Enlínea packages
15 cause rapid and substantial weight loss without the
16 need to reduce caloric intake or to exercise;
- 17 (b) the Svelt Body Complete and Imagen Enlínea packages
18 cause substantial weight loss by blocking the
19 absorption of fat;
- 20 (c) the Svelt Body Complete and Imagen Enlínea packages
21 cause permanent weight loss;
- 22 (d) the reduction cream contained in the Svelt Body
23 Complete and Imagen Enlínea packages causes fat to
24 be reduced in specific parts of the body; and
- 25 (e) the Svelt Body Patch contained in the Svelt Body
26 Complete package burns calories and causes weight
27 loss 24 hours a day.

28 49. The representations set forth in Paragraph 48 above are

1 false or were not substantiated at the time the representations
2 were made.

3 50. Therefore, Defendants' representations as set forth in
4 Paragraph 48 above constitute a deceptive act or practice, and the
5 making of false advertisements, in or affecting commerce, in
6 violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C.
7 §§ 45(a) and 52.

8 COUNT II

9 False Claims for Music CDs

10 51. Through the means described in paragraphs 11-12 and
11 35-45 above, in connection with the marketing of the Hot
12 Collection music collection, Defendants have represented,
13 expressly or by implication, that consumers will receive CDs that
14 contain songs by the original artists listed or described in
15 Defendants' television advertising and by Defendants' sales
16 representatives.

17 52. In truth and in fact, consumers who purchase the Hot
18 Collection music collection from Defendants do not receive CDs
19 that contain songs by the original artists listed or described in
20 Defendants' television advertising or by Defendants' sales
21 representatives.

22 53. Therefore, the representation set forth in paragraph 51
23 above is false and misleading and constitutes a deceptive act or
24 practice in or affecting commerce in violation of Section 5(a) of
25 the FTC Act, 15 U.S.C. § 45(a).

26 CONSUMER INJURY

27 54. Consumers throughout the United States have suffered and
28 continue to suffer substantial injury, including monetary loss, as

1 a result of Defendants' unlawful acts or practices. In addition,
2 Defendants have been unjustly enriched as a result of their
3 unlawful practices. Absent injunctive relief by this Court,
4 Defendants are likely to continue to injure consumers, reap unjust
5 enrichment, and harm the public interest.

6 THIS COURT'S POWER TO GRANT RELIEF

7 55. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),
8 empowers this Court to grant injunctive and such other relief as
9 the Court may deem appropriate to halt and redress violations of
10 the FTC Act. The Court, in the exercise of its equitable
11 jurisdiction, may award other ancillary relief, including but not
12 limited to, rescission of contracts and restitution, and the
13 disgorgement of ill-gotten gains, to prevent and remedy injury
14 caused by Defendants' law violations.

15 PRAYER FOR RELIEF

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

19 1. Permanently enjoin Defendants from violating the FTC Act
20 as alleged herein;

21 2. Award such equitable relief as the Court finds necessary
22 to redress injury to consumers resulting from Defendants'
23 violations of Sections 5(a) and 12 of the FTC Act, including but
24 not limited to rescission of contracts and restitution, and the
25 disgorgement of ill-gotten gains by the Defendants; and

26 ///

27 ///

28 ///


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Award Plaintiff such other equitable relief as the Court determines to be just and proper.

Dated: Sept. 16, 2005

Respectfully submitted,

WILLIAM BLUMENTHAL
General Counsel



KENNETH H. ABBE
JENNIFER M. BRENNAN
Federal Trade Commission
10877 Wilshire Blvd, Suite 700
Los Angeles, CA 90024
(310) 824-4343
Attorneys for Plaintiff
Federal Trade Commission