

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,)
)
)
 Plaintiff,)
)
 v.)
)
) Civil Action No.
)
 NU SKIN INTERNATIONAL, INC.,)
 a corporation,)
)
 Defendant.)

**COMPLAINT FOR CIVIL PENALTIES,
INJUNCTIVE AND OTHER RELIEF**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("Commission"), for its Complaint alleges that:

1. Plaintiff brings this action under Sections 5(1), 9, 13(b), and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(1), 49, 53(b), and 56(a), to obtain monetary civil penalties and injunctive and other relief for violations of a final cease and desist order issued against defendant Nu Skin International, Inc. ("Nu Skin"), by the Commission.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355 and under 15 U.S.C. §§ 45(1), 49, 53(b), and 56(a).

3. Venue in the United States District Court for the District of Utah, Central Division, is proper under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b-c) and 1395(a).

THE DEFENDANT

4. Defendant Nu Skin is a Utah corporation with its office and principal place of business located within the District of Utah, Central Division, at 75 West Center, Provo, Utah 84601.

5. Defendant Nu Skin is engaged in the advertising, promotion, offering for sale, sale, and distribution of numerous different products, including foods, drugs, cosmetics, and devices, and in the recruitment of distributors for its products. Defendant Nu Skin maintains, and at all times mentioned herein has 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.

PRIOR COMMISSION PROCEEDING

6. In a Commission proceeding bearing Docket No. C-3489, in which defendant Nu Skin was charged with violating Sections 5(a)(1) and 12 of the FTC Act, 15 U.S.C. §§ 45(a)(1) and 52, the Commission on April 1, 1994, entered against Nu Skin, its successors and assigns, and its officers, agents, representatives and employees, a consent order to cease and desist from certain practices in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any food, drug, or device as those terms are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55, and from certain practices in connection with the recruitment of distributors ("the Commission's Order"). The Commission's Order was served upon defendant Nu Skin on April 15, 1994, and by operation of law became final and enforceable thereafter. It has remained in full force and effect ever since.

7. The Commission's Order contains the following provisions:

IV.

IT IS FURTHER ORDERED that [respondent] Nu Skin, . . . [its] successors and assigns, and [its] officers; . . . agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

- A. Making any representation, directly or by implication, regarding the performance, benefits, efficacy or safety of any food, drug, or device, as those terms are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55, unless at the time of making such representation respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

- B. Making any representation, directly or by implication, regarding the performance, benefits, efficacy or safety of any product or service (other than a product or service covered under Part IV.A. herein), unless at the time of making such representation respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

8. Copies of the Commission's Complaint and the Commission's Order are attached to this Complaint as Exhibit A.

VIOLATIONS OF PART IV OF COMMISSION'S ORDER

9. On numerous occasions since April 15, 1994, Nu Skin, directly or through its representatives or agents, has disseminated or caused to be disseminated advertisements, promotional materials, and product labels for Metabotrim, including but not necessarily limited to those attached hereto as Exhibits B-1 to B-8. These advertisements and promotional materials, and product labels contain the following statements:

- A.

Exhibit B-1
"Weight Management Lifestyle

SUPPLEMENTS TO GIVE METABOLISM A NUDGE

The supplement Metabotrim discourages laying down new fat, and stimulates the enzymes that remove fat from your hips, abdomen or wherever it lies.

* * * *

HOW TO SPEED UP METABOLISM

called carnitine--L-carnitine. And L-carnitine also mobilizes body fat so that it can be burned and used as energy. So here we have this incredible product sitting on this table which allows you to start eating sensibly, and all of a sudden you start to look different. You look smaller. And you look more shapely.

* * * *

C. **Exhibit B-3**
"Weight Management Lifestyle System" (Video Tape)

. . . Metabotrim, a remarkable new formula, scientifically developed with chromium picolinate to insure that the carbohydrates you consume are used for energy and not stored as fat. Plus, Metabotrim contains L-Carnitine, an essential nutrient which helps your body burn fat more efficiently.

* * * *

D. **Exhibit B-4**
"Head Start Success System (Workbook 2)"

Metabotrim has ingredients proven to:

- * *Burn food as energy --
not store it as fat.*
- * *Promote production of muscle*

* * * *

Chromium Picolinate, has been proven in scientific double blind test to assist the body in burning food as energy instead of storing it as fat!

* * * *

Another ingredient in Metabotrim, "l-Carnitine," is known to assist in converting stored fat to energy in the body. The ingredients in Metabotrim have been scientifically shown to establish and maintain proper metabolic rates assisting the body in burning fat while preserving lean muscle mass!

* * * *

E. **Exhibit B-5**
Sports Nutrition Video (Video Tape)

Metabotrim was developed to optimize your metabolism, that is, Metabotrim, twice a day, will actually help your body burn fat more efficiently and use carbohydrates for maximum energy production. Metabotrim contains chromium picolinate, a scarce mineral not abundant in our normal diet. Studies have shown that

this form of chromium actually promotes the increase of lean muscle mass in the body.

Metabotrim also contains L-carnitine, another natural nutrient essential for the efficient metabolizing of fats. So, the combination of chromium picolinate and L-carnitine helps you burn the fat while promoting the production of lean mass.

* * * *

F.

Exhibit B-6

Interior Design Nutritionals Product Catalogue 1994

Metabotrim helps your body digest food and utilize energy, rather than store it as fat. L-carnitine, chromium picolinate, . . . help preserve lean muscle mass and provide the body with energy.

* * * *

METABOTRIM provides nutrients like l-carnitine, chromium picolinate, . . . to help preserve lean muscle mass and utilize energy, not store it as fat. Metabotrim can help utilize body fat without depleting lean muscle mass.

* * * *

G.

Exhibit B-7
Metabotrim Product Card

Scientifically proven ingredients in Metabotrim help ensure that the food you consume is used as energy and not stored as fat. And this unique product helps your body utilize stored body fat without breaking down your lean body mass. Chromium picolinate is a highly bioavailable form of chromium . . . that's believed to preserve muscle mass and provide proper and normal stimulation of the metabolism. Metabotrim also incorporates l-carnitine l-tartrate to help your body use fat, thus preserving lean muscle mass.

* * * *

H.

Exhibit B-8
Metabotrim Product Label

Combining essential vitamins and minerals, METABOTRIM helps your body metabolize fat for energy, thus preserving lean body mass.

* * * *

10. On numerous occasions since April 15, 1994, Nu Skin, directly or through its representatives or agents, has disseminated or caused to be disseminated advertisements and promotional materials for OverDrive, including but not necessarily limited to those attached hereto as Exhibits B-9 and B-10. These advertisements and promotional materials contain the following statements:

A.

Exhibit B-9
"Sports Nutrition System Program Handbook"

OverDrive . . .

* Chromium picolinate helps maintain lean body mass

B.

Exhibit B-10
New Product Insert

OverDrive Sports Supplement

* Chromium picolinate and chelated chromium for effective function of insulin to help regulate blood glucose levels and support muscle building.

* * * *

11. On numerous occasions since April 15, 1994, Nu Skin, directly or through its representatives or agents, has disseminated or caused to be disseminated advertisements, promotional materials, and product labels for GlycoBar, including but not necessarily limited to those attached hereto as Exhibits B-11 and B-12. These advertisements, promotional materials, and product labels contain the following statements:

A.

Exhibit B-11
New Product Insert

GlycoBar Energy Source

* Chromium picolinate and chelated chromium help regulate blood glucose levels and assist muscle development.

* * * *

B.

Exhibit B-12
Product Label

GlycoBar contains both chromium picolinate and chromium chelate, believed to be essential for effective function of insulin, which regulates blood glucose levels and creates a muscle building effect by assimilating amino acids into proteins.

* * * *

12. On numerous occasions since April 15, 1994, Nu Skin, directly or through its representatives or agents, has disseminated or caused to be disseminated advertisements and

promotional materials for Appeal Lite, including but not necessarily limited to those attached hereto as Exhibits B-6 and B-13. These advertisements and promotional materials contain the following statements:

A. **Exhibit B-6**
Interior Design Nutritionals Product Catalogue 1994

Chromium picolinate helps maintain lean muscles and utilize energy.

* * * *

B. **Exhibit B-13**
Ingredient Quick Reference Brochure

CHROMIUM PICOLINATE . . .

* Helps utilize fat for energy while preserving lean muscle tissue.

* * * *

13. On numerous occasions since April 15, 1994, Nu Skin, directly or through its representatives or agents, has disseminated or caused to be disseminated advertisements and promotional materials for Breakbar, including but not necessarily limited to those attached hereto as Exhibit B-6. These advertisements and promotional materials contain the following statements:

A. **Exhibit B-6**
Interior Design Nutritionals Product Catalogue 1994

Breakbars . . .
Chelated chromium and chromium picolinate help maintain lean body mass and utilize stored body fat for energy.

* * * *

FIRST CAUSE OF ACTION

14. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph 9, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits B-1, B-3 through B-5, and B-7, defendant, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of Metabotrim, has, on numerous occasions, represented, directly or by implication, that scientific studies demonstrate that: (a) the ingredients in Metabotrim lower the percent of body fat and make the body leaner; (b) the ingredients in Metabotrim regulate the body's metabolic rate to assist in burning fat, while preserving muscle; (c) the ingredients in Metabotrim promote the utilization of ingested food for energy, and not for storage as fat; (d) the ingredients in Metabotrim promote muscle gain; (e) the chromium picolinate in Metabotrim promotes muscle gain; and (f) the chromium picolinate in Metabotrim promotes the utilization of ingested carbohydrates or

SECOND CAUSE OF ACTION

16. Through the use of the statements contained in the advertisements, promotional materials, and product labels referred to in paragraph 9, including but not necessarily limited to the advertisements, promotional materials, and product labels attached as Exhibits B-1 through B-8 quoted above, defendant, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of Metabotrim, has, on numerous occasions, represented, directly or by implication, that: (a) the ingredients in Metabotrim reduce the storage of fat in the body; (b) the ingredients in Metabotrim stimulate enzymes that remove fat from the body; (c) the ingredients in Metabotrim increase the body's metabolic rate; (d) the ingredients in Metabotrim help the body burn fat more efficiently; (e) the ingredients in Metabotrim promote the utilization of ingested food for energy and not for storage as fat; (f) the ingredients in Metabotrim promote the utilization of stored body fat for energy, thereby preserving muscle; (g) the ingredients in Metabotrim promote muscle gain; (h) the chromium picolinate in Metabotrim burns body fat; promotes the utilization of ingested carbohydrates or other foods for energy and not for storage as fat; and preserves muscle; and (i) the L-carnitine in Metabotrim helps the body burn fat more efficiently; and promotes

the utilization of stored body fat for energy, thereby preserving muscle.

17. Defendant has made the representations set forth in paragraph 16 regarding the performance, benefits, and efficacy of Metabotrim without possessing and relying upon competent and reliable scientific evidence substantiating such representations, thereby violating Part IV of the Commission's Order.

THIRD CAUSE OF ACTION

18. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph 10, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits B-9 and B-10 quoted above, defendant, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of OverDrive, has, on numerous occasions, represented, directly or by implication, that: (a) the chromium picolinate and chelated chromium in OverDrive help support muscle building; and (b) the chromium picolinate in OverDrive helps maintain muscle.

19. Defendant has made the representations set forth in paragraph 18 regarding the performance, benefits, and efficacy of OverDrive without possessing and relying upon competent and reliable scientific evidence substantiating such representations, thereby violating Part IV of the Commission's Order.

FOURTH CAUSE OF ACTION

20. Through the use of the statements contained in the advertisements, promotional materials, and product labels referred to in paragraph 11, including but not necessarily limited to the advertisements, promotional materials, and product labels attached as Exhibits B-11 and B-12 quoted above, defendant, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of GlycoBar, has, on numerous occasions, represented, directly or by

represented, directly or by implication, that the chromium picolinate in Appeal Lite helps promote the utilization of fat for energy and helps preserve muscle.

23. Defendant has made the representations set forth in paragraph 22 regarding the performance, benefits, and efficacy of Appeal Lite without possessing and relying upon competent and reliable scientific evidence substantiating such representations, thereby violating Part IV of the Commission's Order.

SIXTH CAUSE OF ACTION

24. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph 13, including but not necessarily limited to the advertisements and promotional materials attached as Exhibit B-6 quoted above, defendant, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of Breakbar, has, on numerous occasions, represented, directly or by implication, that the chelated chromium and chromium picolinate in Breakbar help promote the utilization of stored body fat for energy, and help preserve muscle.

25. Defendant has made the representations set forth in paragraph 24 regarding the performance, benefits, and efficacy of Breakbar without possessing and relying upon competent and reliable scientific evidence substantiating such representations, thereby violating Part IV of the Commission's Order.

CIVIL PENALTIES AND INJUNCTION

26. Each copy of any printed advertisement or promotional material, each copy of an audio tape or video tape, and each appearance of a product label containing any representations in violation of the Commission's Order in one or more of the ways described above, disseminated by defendant since April 15, 1994, the date the Commission's Order became final, constitutes a

separate violation for which plaintiff seeks monetary civil penalties.

27. Section 5(1) of the FTC Act, 15 U.S.C. § 45(1), authorizes the Court to award monetary civil penalties of not more than \$10,000 for each such violation of the Commission's Order.

28. Under Sections 5(1

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