

JAMES B. COMEY, JR.
United States Attorney
Southern District of New York
One St. Andrews Plaza
New York, NY 10007

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA

Plaintiff,
v.

GOODTIMES
ENTERTAINMENT, LTD., and

GT MERCHANDISING and
LICENSING CORPORATION,

Defendants.

CIVIL NO.

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 ("FTC" or "Commission"), for its Complaint alleges that:

1. Plaintiff brings this action under Sections 5(a)(1), 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a)(1),

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(a), 45(m)(1)(A), 53(b), and 56(a). This action arises under 15 U.S.C. § 45(a)(1) and 52.
3. Venue in the Southern District of New York is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b)-(c), and 1395(a).

THE DEFENDANTS

4. Defendant GoodTimes Entertainment, Ltd. (now known as GoodTimes Entertainment, LLC) (“GoodTimes”) is a Delaware corporation with its principal office or place of business at 16 East 40th Street, New York, New York 10016. GoodTimes is wholly owned by GT Brands, LLC. GoodTimes transacts business in the Southern District of New York.
5. Defendant GT Merchandising & Licensing Corporation (now known as GT Merchandising & Licensing, LLC) (“GT M&L”) is an incorporated division of GoodTimes and shares its offices at 16 East 40th Street, New York, New York 10016. GT M&L is wholly owned by GT Brands, LLC. GT M&L transacts business in the Southern District of New York.

COMMERCE

6. At all times relevant to this complaint, the alleged acts and practices of defendants 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

7. Since at least February 2000, defendants have engaged in the manufacturing, advertising, labeling, offering for sale, sale and distribution of a purported hair relaxing product called the "Copa Hair System" to consumers located throughout the United States via television and Internet advertising. Consumers may order the Copa Hair System by telephone, mail, and over the Internet. The Copa Hair System consists of three packets of a hair relaxer, a conditioning shampoo, and a pre-treatment conditioner. The active ingredient in the hair relaxer is sodium thiosulphate. Defendants charge approximately \$39.90, plus \$7.95 for shipping and handling, for one unit of the Copa Hair System. From February 2000 to October 2002, Copa sales (after returns) totaled over \$18 million.
8. To induce consumers to purchase the Copa Hair System, defendants have disseminated two advertisements of approximately thirty minutes in length ("infomercials") commencing in March 2000 on cable and local television stations throughout the United States. The infomercials feature two spokespersons and

4, 2002. Exhibit D is a transcript of this second infomercial. The infomercials include, among others, the following statements:

- a. "Copa has gone through rigorous clinical testing and safety studies, which prove it strengthens hair and won't harm it." (Exhibit B).
- b. "And the hair was actually stronger after they put Copa on than when they didn't put it on." (Exhibit B).
- c. "Copa nourishes and strengthens your hair from within." (Exhibit B; Exhibit D).
- d. "Guess what? No breakage." (Exhibit B).
- e. "And the beauty of it is that you can use it over and over and over and it doesn't damage the hair." (Exhibit B).
- f. "[You] can even use it [Copa] on hair that has been treated with harsh chemicals, such as relaxers, peroxides and perms." (Exhibit D).
- g. "If you don't feel immediate changes in your hair after just one application, just return what's left of the system and you'll receive a full refund of the purchase price (less s&h)." (Exhibit D).

9. The infomercials include a demonstration of a Copa Hair System relaxing treatment and several consumer testimonials with "before" and "after" photographs. For example, the 3nt 142awtls inc Afhasan-A coasaneveral conhav relhein youments:

eteactualaight. t B).

c. Thrmapplicationr

consumers located throughout the United States via television and Internet advertising. When consumers called the defendants to place an initial order for the Richard Simmons Blast Off the Pounds program, telemarketing operators asked consumers to provide billing information, including credit card or debit card numbers, to pay for initial orders. After the telemarketing operators obtained consumers' billing information, the operators offered consumers the option of purchasing additional products, including but not limited to the "Blast & Go Vitamins." Many consumers who were asked to purchase additional products declined, but were nevertheless charged for additional products, including but not limited to the "Blast & Go Vitamins."

THE MAIL ORDER RULE

13. The Mail Order Rule was promulgated by the Commission on October 22, 1975, under the FTC Act, 15 U.S.C. § 41 *et. seq.*, and became effective February 2, 1976. The Commission amended the Rule on September 21, 1993, under Section 18 of the FTC Act, 15 U.,S.C. § 57a, and these amendments became effective on March 1, 1994. The Rule applies to orders placed by mail, telephone, facsimile transmission, or on the Internet.

VIOLATIONS OF THE MAIL ORDER RULE

Count I

14. Beginning in 2000, defendants engaged in the mail order sale and telephone order sale of merchandise in commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

15. In numerous instances, after having solicited mail orders and telephone orders for merchandise and received “properly completed orders,” as that term is defined in Section 435.2(d) of the Mail Order Rule, 16 C.F.R. § 435.2(d), and having been unable to ship some or all of the ordered merchandise to the buyer within the Mail

the Mail Order Rule constitutes an unfair or deceptive act or practice in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

SECTIONS 5 AND 12 OF THE FTC ACT

17. 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 5(a) prohibits a practice as unfair if it causes or is likely to cause substantial consumer injury, which is not reasonably avoidable by consumers themselves, and is not outweighed by countervailing benefits to consumers or competition. 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, the Copa Hair System is either a “cosmetic” or a “drug” pursuant to Section 15 of the FTC Act, 15 U.S.C. § 55. As set forth below, the defendants have engaged and are continuing to engage in such unlawful practices in connection with the marketing and sale of the Copa Hair System.

VIOLATIONS OF SECTIONS 5 AND 12 OF THE FTC ACT UNAUTHORIZED CHARGING AND DEBITING PRACTICES

Count II

18. In numerous instances, in connection with the advertising, promotion, marketing, offering for sale, sale, or distribution of the Copa Hair System and the Richard Simmons Blast off the Pounds program, defendants have caused charges for automatic shipments in the Take Control Club and/or for Blast & Go Vitamins to

be billed to a consumer's credit card or debited from a consumer's bank account without the consumer's authorization.

19. Defendants' practice of causing charges to be billed to a consumer's credit card or debited from a consumer's bank account without the consumer's knowledge or authorization has caused or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and is not outweighed by

commerce, in violation of Sections 5(a) and 12 of the FTC Act. 15 U.S.C. § 45(a) and 52.

**FAILURE TO DISCLOSE THE NUMBER OF APPLICATIONS NEEDED TO
ACHIEVE DEPICTED RESULT**

Count IV

23. In numerous instances, including through the “before” and “after” depictions and photographs in their infomercial advertisements, defendants have represented, expressly or by implication, that Copa Hair System treatments cause hair, including tightly curled hair, to be substantially relaxed in a single application.
24. Defendants have failed to disclose the number of applications needed to achieve the depicted result. This fact would be material to consumers who buy this product as a means for straightening their hair. The failure to disclose this fact, in light of the representation made, 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.

CIVIL PENALTIES AND INJUNCTION

25. Defendants have violated the provisions of the Mail Order Rule as described above with knowledge.
26. Each sale or attempted sale in which defendants have violated the provisions of the Mail Order Rule in one or more of the ways described above constitutes a separate violation for which plaintiff seeks monetary civil penalties.
27. Section 5(m)(1)(a) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by

Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and Section 1.98(d) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(d), authorizes this Court to award monetary civil penalties of not more than \$11,000 for each such violation of the Mail Order Rule.

CONSUMER INJURY

28. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss 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

29. 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 any violations of any provision of law enforced by the FTC.

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:

- A. Enter judgment against defendants and in favor of plaintiff for each violation alleged in this Complaint;
- B. Award plaintiff monetary civil penalties from defendants for each violation of the Mail Order Rule;
- C. Enjoin defendants permanently from violating the Mail Order Rule;
- D. Enjoin defendants permanently from violating Sections 5 and 12 of the FTC Act, in connection with the advertising or sale of food, drugs, devices, cosmetics or other products, services or programs;
- E. 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

F. Award plaintiff the costs of bringing this action and any other equitable relief the Court may determine to be just and proper.

Dated:

OF COUNSEL:
JANET EVANS
DANIEL KAUFMAN
Attorneys
Federal Trade Commission
Division of Advertising Practices
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
202-326-2125, -2675 (voice)
202-326-3259 (fax)
dkaufman@ftc.gov
jevans@ftc.gov

FOR THE UNITED STATES OF AMERICA:
ROBERT D. MCCALLUM, JR.
Assistant Attorney General, Civil Division
U.S. Department of Justice

JAMES B. COMEY, JR.
United States Attorney
Southern District of New York

By: _____

Assistant United States Attorney
United States Attorney's Office
Southern District of New York
One St. Andrews Plaza
New York, NY 10007
212- (voice)
212- (fax)

EUGENE M. THIROLF
Director
Office of Consumer Litigation

By: _____

Attorney
Office of Consumer Litigation
Civil Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001
202- (voice)
202- (fax)