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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
(Atlanta Division)

| | | |
|--------------------------------|---|-------------------------|
| FEDERAL TRADE COMMISSION, |) | |
| |) | Hon. |
| Plaintiff, |) | |
| |) | Civil Action No. |
| v. |) | |
| |) | COMPLAINT FOR PERMANENT |
| ADVANCED PATCH TECHNOLOGIES, |) | INJUNCTION AND OTHER |
| INC., SALOMON BTESH, BUCKHEAD |) | EQUITABLE RELIEF |
| MARKETING AND DISTRIBUTION, |) | |
| LLC, PAP SYSTEMS, LLC, RALF |) | |
| LESZINSKI, NANCY DUITCH, and |) | |
| JESSE STARKMAN, |) | |
| |) | |
| Defendants, and |) | |
| |) | |
| BERNARD SILVERFARB, and |) | |
| BUCKHEAD MARKETING GROUP, LLC, |) | |
| |) | |
| |) | |
| Relief Defendants. |) | |

Plaintiff, the Federal Trade Commission ("FTC") through its undersigned attorneys, alleges as follows:

1. 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, rescission of contracts and

deceptive acts or practices in or affecting commerce. The FTC 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 FTC may initiate federal district court proceedings, through its attorneys, to enjoin violations of the FTC Act and to secure such other equitable relief, including rescission of contracts and restitution, and disgorgement of ill-gotten gains, as may be appropriate in each case. 15 U.S.C. § 53(b).

5. Defendant Advanced Patch Technologies, Inc. ("APT") is a Florida corporation with its principal office or place of business at 12790 Northwest LeJeune, Opa Locka, Florida, 33054. At times relevant to this Complaint, acting alone or in concert with others, APT has manufactured Pound A Patch, a purported weight loss patch, and has advertised, marketed, sold and distributed Peel Away, a purported weight loss system that includes Pound A Patch. APT transacts or has transacted business in the Northern District of Georgia.

6. Defendant Salomon Btresh ("Btresh") is President and a shareholder of APT. At times relevant to this Complaint, acting alone or in concert with others, Btresh has formulated, directed, controlled or participated in the acts and practices of APT, including the various acts and practices set forth herein. He

14. Relief Defendant Buckhead Marketing Group, LLC ("BMG") is a Georgia limited liability company with its principal office at 815 Fairfield Road, Atlanta, Georgia 30327. BMG, whose sole officer is Ralf Leszinski, is a part owner of BMD. BMG received funds and other property from BMD that were derived unlawfully from payments consumers made as a consequence of the Defendants' acts and practices complained of herein. BMG transacts or has transacted business in the Northern District of Georgia.

COMMERCE

15. The acts and practices of the Defendants, as alleged herein, 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

16. Since in or about 2001, and continuing thereafter, defendant APT has manufactured, or caused to be manufactured, a transdermal patch to be applied to the skin called Pound A Patch. Pound A Patch contains fucus vesiculosus (seaweed), garcinia cambogia and Vitamin B6.

17. According to the Defendants, the ingredients in Pound A Patch are absorbed into the bloodstream through the skin and purportedly cause weight loss by suppressing appetite and boosting metabolism.

18. APT, BMD, PAP, Btresh, Leszinski, and Duitch have

advertised, marketed, sold and distributed Pound A Patch, marketed as Peel Away the Pounds ("Peel Away"), as a purported weight loss product.

19. To induce consumers to purchase Peel Away, Defendants have advertised Peel Away in program-length television advertisements or "infomercials", Internet websites, and a print advertisement.

20. APT, BMD, PAP, Btresh, Leszinski, and Duitch have offered Peel Away directly to consumers for \$59.98 through toll-free telephone numbers, mail-order forms, and Internet websites. When consumers have ordered Peel Away, they have received a 30-day supply of Pound A Patch (10 patches, each to be worn for three days), a 21-serving canister of "Drink and Shrink" snack/meal replacement powder, an instruction booklet including the "Eat and Shrink" four-week meal planner, and the "Move and Shrink" low-impact exercise program and video.

Advertisements

21. BMD, PAP, Leszinski, and Duitch, with assistance from APT and Btresh, have disseminated or caused to be disseminated several versions of an infomercial ("Infomercial") that appeared between June 2002 and January 2003. The Infomercial provided a toll-free number for consumers to call and purchase Peel Away. The transcripts and videotapes of two versions of the Infomercial

ingredients into the bloodstream and to increase metabolism, suppress appetite, and reduce fat cell production. *E.g.*, Ex. 2 at 11-12, 28, Ex. 4 at 12-13.

26.

Ad"). A copy of the Print Ad is annexed hereto at Exhibit 7.

30.

appear with the on-screen text "as much as 71 pounds" appearing in large highlighted letters.

The top of this screen also includes text in smaller poorly contrasting letters (white on a partially white background). In one Infomercial version (Ex. 2), the text reads: "Preliminary test results. Additional testing being conducted. Extraordinary results. Results achieved through 'Peel Away the Pounds' system, exercise & diet plan. Your results may vary." In another version (Ex. 4), the text reads: "Extraordinary results achieved using entire system including diet and exercise. Results not typical."

- Ex. 2 at 21, Ex. 4 at 23.

- (c) DARLA HAUN: "...and with our Peel Away the Pounds System, you can eliminate up to three to five pounds of fat a week."

ON SCREEN IMAGES: A digital image of a woman in a bikini wearing the Pound A Patch while her body is shrinking (including waist and thighs).

ON SCREEN TEXT: In one Infomercial version (Ex. 2) there is no on screen text. In another version (Ex. 4), the following text appears in large letters: "Lose up to 3-5 lbs in a week!" and "GUARANTEED or your Money Back!" and the following text appears at the bottom of the screen in small letters: "Follow the entire system."

- Ex. 2 at 12, Ex. 4 at 13.

- (d) MICHAEL GEORGE: "You know, that means if you follow our system, you can burn up to 4,000 calories every three days. Now, do you know how much 4,000 calories are? That's equal to three cheeseburgers, eight slices of pizza, and one chocoll.0eys00 0.Den aET1.00000 0.00000 0.00000 1.00000 0.00

ingredient has been scientifically proven to work."

- Ex. 5 at 4 (BMD/PAP Website), Ex. 6 at 1 (APT Website).

(f) "Lose Up to 3-5 Pounds per week guaranteed or your money back!"

- Ex. 5 at 1 (BMD/PAP Website), Ex. 7 at 1 (Print Ad).

(g) "Incredible? Peel Away the Pounds is that and more - a blessing to anyone who has struggled with a weight problem."

- Ex. 7 at 1 (Print Ad).

(h) "'I lost 77 pounds in 12 weeks. Fact is, I've been losing 5-8 pounds a week.' - Jeff Browning."

- Ex. 6 at 1 (APT Website).

(i) "Pound A Patch is built around two natural ingredients: Fucus Vesiculosus and Garcinia Cambogia. . . . By gently stimulating the body's metabolic rate, it [fucus vesiculosus] boosts energy while burning body fat. Garcinia Cambogia comes from an Indian herb that helps to lower the production of cholesterol and fatty acids, while suppressing the appetite."

- Ex. 5 at 2 (BMD/PAP Website), Ex. 6 at 1 (APT Website).

31. Defendant Starkman has appeared and made statements as an expert endorser in advertisements for Peel Away. In the Infomercial, he appears on screen with the word "Chemist" under his name. Starkman's representations include, but are not

necessarily limited to, the following statements:

- (a) "This system is designed for everyone who wants to lose weight."
- Ex. 2 at 28.
- (b) "What the Pound a Patch does is it does go through the skin right into the bloodstream. When you take a pill, you have to go through the stomach where you're attacked by the stomach acids. Therefore, it's not as effective."
- Ex. 2 at 28.
- (c) "Fucus Vesiculosus. This is a seaweed derivative from the ocean. It will increase metabolism. Therefore, you're going to burn up the calories a lot faster."
- Ex. 2 at 11-12, Ex. 4 at 12.
- (d) "Garcinia Cambogia will help curb the appetite. It reduces the production of fat cells."
- Ex. 2 at 12, Ex. 4 at 13.

32. The Infomercial also features Darla Haun's sister Pam, who purportedly lost 20 pounds in six weeks using Peel Away, her sister Laura, who purportedly lost 30 pounds in six weeks using Peel Away, and her brother-in-law Kevin, who purportedly lost 20 pounds in six weeks using Peel Away. Ms. Haun states: "The Peel Away the Pounds System really works, and my two sisters and brother-in-law are proof." Ex. 2 at 29, Ex. 4 at 31. This Infomercial segment includes, but is not limited to, the following statements and depictions:

DARLA HAUN: . . .
So, Pammy, what was your favorite thing about the
Peel Away the Pounds System?

ON SCREEN TEXT: Pam
Darla's Sister Lost 20 Lbs!

PAM: The greatest thing about the patch is that
you could have it on and not even know that you
had it on, and you just knew that your appetite --
you just were not nearly as hungry as you normally
would have been.

DARLA HAUN: So you found that it really actually
suppressed your appetite?

PAM: Exactly. Absolutely.

DARLA HAUN: But you just bought these pair of
pants that you have on how many days ago?

PAM: Four days ago.

. . . .

DARLA HAUN: We're going to stand up to show you

Your results may vary."

- Ex. 2 at 31-32, Ex. 4 at 33-34.

33. Defendants BMD, PAP, Leszinski and Dutich provided personal trainers to Pam and Laura in addition to providing them with Peel Away. The Infomercial does not state that Pam and Laura were provided with personal trainers.

34. The Infomercial also includes several unidentified consumer testimonialists, including, but not limited to, the following statements and depictions:

- (a) UNIDENTIFIED MALE: "Since being on the system, I've lost 45 pounds. And all I have to do is put on the patch every three days and the weight comes off."

ON SCREEN IMAGES: Two pictures of the man - an overweight picture on one side labeled "before" and a lean picture on the other labeled "after."

ON SCREEN TEXT: "Lost 45 lbs in 6 weeks!" appears in the middle of the screen in large letters. Text also appears at the bottom of this screen in poorly contrasted lettering. In one Infomercial version (Ex. 2), the text reads: "Individual results may vary." In another version (Ex. 4), the text reads: "Extraordinary results achieved using entire system including diet and exercise. Your results may vary."

- Ex. 2 at 23, Ex. 4 at 25.

- (b) UNIDENTIFIED FEMALE: I lost 35 pounds and it's so easy that I don't even know I'm wearing it.

ON SCREEN IMAGES: Two pictures of the woman - an

overweight picture on one side labeled "before" and a lean picture on the other labeled "after."

ON SCREEN TEXT: "Lost 35 lbs in 7 weeks!" appears in the middle of the screen in large letters. Text also appears at the bottom of this screen in poorly contrasted lettering. In one Infomercial version (Ex. 2), the text reads: "Extraordinary results. Results achieved through 'Peel Away the Pounds' system, exercise & diet plan. Your results may vary." In another version (Ex. 4), the text reads: "Extraordinary results achieved using entire system including diet and exercise. Your results may vary."

- Ex. 2 at 4, Ex. 4 at 4.

35. Defendants BMD, PAP, Leszinski and Duitch provided supervised exercise sessions three times per week for the above testimonialists and other users, in addition to providing them with Peel Away. The infomercial does not state that the above testimonialists and other users were provided with supervised exercise sessions three times per week.

36. The Infomercial also includes a segment at a shopping mall food court during lunch hour with purported actual patrons of the shopping mall, described as "hungry first-time users." This Infomercial segment includes, but is not limited to, the following statements and depictions:

FEMALE ANNOUNCER: We gave each person our Peel Away the Pounds System, which includes Pound A Patch and Drink & Shrink. How do you feel?

ON SCREEN TEXT: Just 30 minutes later!

UNIDENTIFIED FEMALE: Full. I'm just not craving the chocolate anymore.

UNIDENTIFIED MALE: I don't know what was in that patch and in that shake, but I no longer feel hungry anymore.

. . . .

UNIDENTIFIED MALE: I am full, and it's amazing. I can't believe it myself.

FEMALE ANNOUNCER: Isn't that amazing? Hunger pains are gone and cravings are suppressed. That's why people are losing weight so quickly.

- Ex. 2 at 40-41, Ex. 4 at 43-44.

37. Following the shopping mall segment, Darla Haun states:

15(c) and (d) of the FTC Act, 15 U.S.C. §§ 55(c) and (d). As set forth below, the Defendants have engaged in such unlawful practices in connection with the marketing and sale of Peel Away.

**COUNT ONE
FALSE CLAIMS**

limited to, rescission of contracts and restitution, and the disgorgement of ill-gotten gains, to prevent and remedy injury caused by Defendants' law violations.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's equitable powers, requests that this Court:

1. Permanently enjoin the Defendants from violating Sections 5(a) and 12 of the FTC Act as alleged herein, including committing such violations in connection with the advertising or sale of food, drugs, dietary supplements, devices, cosmetics or other products, services or programs;

2. Award the Plaintiff all temporary and preliminary injunctive and ancillary relief that may be necessary to avert the likelihood of consumer injury during the pendency of this action, and to preserve the possibility of effective and final relief;

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

4. Award the Plaintiff the costs of bringing this action and such other equitable relief as the Court may determine to be just and proper.

Dated: _____

Respectfully submitted,

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General Counsel

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Attorneys for the Plaintiff

Table of Exhibits

| | |
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| Exhibit 1: | Videotape 236, Peel Away the Pounds Infomercial |
| Exhibit 2: | Transcript of Infomercial Videotape 236 |
| Exhibit 3: | Videotape 260, Peel Away the Pounds Infomercial |
| Exhibit 4: | Transcript of Infomercial Videotape 260 |
| Exhibit 5: | BMD/PAP Website |
| Exhibit 6: | APT Website |
| Exhibit 7: | Print Advertisement |