

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.

3. Venue in the United States District Court for the Southern District of Florida is proper under 15 U.S.C. §§ 45(a), 52, and 53(b) and 28 U.S.C. §§ 1391(b) and (c).

THE PARTIES

4. 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 may initiate federal district court proceedings to enjoin violations of the FTC Act and to secure such equitable relief, including rescission of contracts, restitution, and disgorgement of ill-gotten gains, as may be appropriate in each case. 15 U.S.C. § 53(b).
5. Defendant Alternative Medical Technologies, Inc. (“AMT”) is a Florida corporation with its principal office or place of business at 8001 W. 26th Avenue, Suite 2, Hialeah, Florida 33016. At all times relevant to this complaint, acting individually or in concert with others, AMT has marketed and sold dietary supplements to consumers. AMT transacts or has transacted business in this district.
6. Defendant Jose Fernandez (“Fernandez”) is an officer and 70 percent owner of AMT. At all times relevant to this complaint, acting individually or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of AMT, including the acts or practices set forth in this complaint. His principal office or place of business is the same as that of AMT. Fernandez transacts or has transacted business in this district.

COMMERCE

7. 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

8. Since at least 2001, defendants have advertised, offered for sale, sold, and distributed dietary supplements to consumers nationwide. Defendants' products have included, but are not limited to, the following:
 - a. X-TOX 10, a purported weight loss supplement containing *s. cordifolia* (ephedra), niacin, ascorbic acid, green tea, goldenrod, hawthorn, bladderwrack, ginseng, horsetails, and alder buckthorn. Defendants have offered and sold a one-month supply of X-TOX 10 for \$30.95.
 - b. X-TOX 80, a purported smoking cessation dietary supplement containing tobacco, eucalyptus, ginkgo biloba, blue mallow, horsemint, sweet orange, walnut, sage, lime tree, and thyme, among other ingredients. Defendants have offered and sold a one-month supply of X-TOX 80 for \$30.95.
9. Defendants have advertised their products throughout the United States through Spanish-language print advertisements in national Hispanic magazines, such as *Prevention en Español*, *Vanidades*, and *Glamour en Español*, the Internet, radio advertisements, program-length television advertisements ("infomercials"), and other means. Defendants have also advertised their products through English-language print advertisements in newspapers, such as *The New York Press* and *The Houston Press*. Consumers have been able to purchase the products by calling a toll-free telephone number or by ordering over the Internet.

X-TOX 10

10. Defendants have disseminated, or caused to be disseminated, advertisements for X-TOX 10, including, but not necessarily limited to, the website, print, and infomercial advertisements attached as Exhibits A, B, and C. These advertisements contain the following statements, among others:
- a. When you take X-TOX 10 not only will you lose weight, but you will reduce sizes in your wardrobe very quickly and your health will improve.

 . . . [X-TOX 10] controls excessive appetite, . . .
 - Ex. A, <http://www.x-tox.com>
 - b. Taking X-Tox you will not just lose weight, you will also drop sizes quickly
 - Ex. B, print ad (translated from the original Spanish to English)
 - c. [I]n a few days, you will notice a progressive loss of appetite, up to a point where it will be 50% controlled.
 -Ex. C at 7, infomercial (translated from the original Spanish to English)
 - d. When you are lo[osing weight, through conventional diets or regular treatments, you are actually lo[osing muscle[], that's why you lo[se weight fast. . . . But when you are treating yourself with X-TOX, you don't lo[se muscle, because it does not affect your musculature, you only lo[se fat and that's why you lo[se more volume than weight.
 -Ex. C at 8 (translated from the original Spanish to English)
 - e. [X-TOX 10] produces in the body a molecule called "absorbo." "Absorbo" generates changes in such a way that it makes fat dissolve in water and so the fat is easily eliminated.
 -Ex. C at 11 (translated from the original Spanish to English)
 - f. [X-TOX-10] can be taken . . . for an indefinite period of time.
 -Ex. C at 6 (translated from the original Spanish to English)
 - g. [T]here are no problems to combine X-TOX products, with other products prescribed by your doctor, with vitamins, and there is no problem, as well, if you want to combine the X-TOX products among themselves.
 -Ex. C at 11-12 (translated from the original Spanish to English)
 - h. You can perfectly take X-TOX 10 without any type of diet. It is effective without any type of diet.
 -Ex. C at 12 (translated from the original Spanish to English)

- i. Four months ago I discovered [X-TOX. I have lost almost 50 (fifty) pounds and I keep losing.
-Ex. C at 8-9 (translated from the original Spanish to English)
- j. . . . Dr. Jose Ramon Fernandez, an invited foreign Scientist, who is here with us today, welcome Doctor.
-Ex. C at 2 (translated from the original Spanish to English)
- k. Studies made during the last twenty five (25) years show approximately a 90% (ninety) success in all and each one of our formulas.
-Ex. C at 4 (translated from the original Spanish to English)

X-TOX 80

11. Defendants have disseminated, or caused to be disseminated, advertisements for X-TOX 80, including, but not necessarily limited to, the package insert and the Internet, print, and infomercial advertisements attached as Exhibits A through E. These advertisements contain the following statements, among others:

- a. Over 85% of all smokers feel a reduction of 70% in their desire to smoke.
-Ex. D, package insert
- b. [X-TOX 80] eliminate[s] residues left behind by smoking. Also helps reduce cigarette addiction and reduces the desire to smoke.
-Ex. A, <http://www.x-tox.com>
- c. Want to quit smoking?
[X-TOX graphic]
Detoxifying you drop by drop and without anxiety, with the only product on the market that rids the body of nicotine and the more than 4,000 toxins produced when you smoke.
-Ex. E, print advertisement (translated from the original Spanish to English)
- d. The best and most complete smoking cessation product, corrects the respiratory and circulatory damage caused by smoking.
-Ex. E (translated from the original Spanish to English)

- e. . . . Dr. Jose Ramon Fernandez, an invited foreign Scientist, who is here with us today, welcome Doctor.
-Ex. C at 2, infomercial (translated from the original Spanish to English)
- f. Studies made during the last twenty five (25) years show approximately a 90% (ninety) success in all and each one of our formulas. We evaluated about 400,000 (four hundred thousand) patients from 200 (two hundred) or 300 (three hundred) Clinics in different parts of the world.
-Ex. C at 4 (translated from the original Spanish to English)

DEFENDANTS' VIOLATIONS OF THE FTC ACT

- 12. 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 purposes of Section 12 of the FTC Act, 15 U.S.C. § 52,

example, 50 pounds in four months; and

- b. X-TOX 10 does not cause substantial weight loss without the need to reduce caloric intake.

Therefore, defendants' representations set forth in Paragraph 13 above are false or misleading and constitute deceptive acts or practices, 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

X-TOX 10: UNSUBSTANTIATED CLAIMS

- 15. Through the means described in Paragraph 10 above, defendants have represented, expressly or by implication, that:
 - a. X-TOX 10 suppresses appetite by 50 percent;
 - b. X-TOX 10 dissolves and eliminates existing body fat;
 - c. X-TOX 10 causes loss of body fat, not muscle;
 - d. X-TOX 10, containing ephedra, can be taken safely for an indefinite period of time; and
 - e. X-TOX 10, containing ephedra, can be taken safely with other medicines, including prescription medicines.

- 16. Defendants did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 15 above at the time the representations were made. Therefore, defendants' representations set forth in Paragraph 15 constitute deceptive acts or practices, 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 III

X-TOX 80: UNSUBSTANTIATED CLAIMS

17. Through the means described in Paragraph 11 above, defendants have represented, expressly or by implication, that:
- a. X-TOX 80 reduces the desire to smoke by 70 percent in most users;
 - b. X-TOX 80 reduces cigarette addiction;
 - c. X-TOX 80 eliminates or reduces nicotine and more than 4,000 toxins in the body that result from smoking;
 - d. X-TOX 80 helps users quit smoking; and
 - e. X-TOX 80 eliminates or reduces the respiratory and circulatory damage caused by smoking.
18. Defendants did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 17 above at the time the representations were made. Therefore, defendants' representations set forth in Paragraph 17 constitute deceptive acts or practices, 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 IV

FALSE CLAIM ABOUT EXPERT ENDORSER

19. Through the means described in Paragraphs 10 and 11, defendants have represented, expressly or by implication, that Fernandez is an independent expert endorser.
20. In truth and in fact, Fernandez is not an independent expert endorser. Instead, he is an officer and majority owner of AMT. Therefore, defendants' representation set forth in Paragraph 19 above is false or misleading and constitutes a deceptive act or 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 V

FALSE CLAIM ABOUT STUDIES

21. Through the means described in Paragraphs 10 and 11, defendants have represented, expressly or by implication, that studies show that X-TOX 10 and X-TOX 80 are effective for approximately 90 percent of users.
22. In truth and in fact, studies do not show that X-TOX products are effective for approximately 90 percent of users. Therefore, defendants' representation set forth in Paragraph 21 above is false or misleading and constitutes a deceptive act or 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.

CONSUMER INJURY

23. Consumers throughout the United States have suffered and continue to suffer substantial injury as a result of defendants' unlawful acts or practices. In addition, defendants have

gotten gains, to prevent and remedy injury caused by defendants' law violations.

PRAYER FOR RELIEF

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

(1) Permanently enjoin defendants from violating Sections 5(a) and 12 of the FTC Act, as alleged herein, including committing violations in connection with the advertising, offering for sale, or distribution of products, services, or programs;

(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, rescission of contracts, restitution, and disgorgement of ill-gotten gains; and

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

Dated: _____

Respectfully submitted,

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