

1 Raymond E. McKown (Cal. Bar No. 150975)

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1 **JURISDICTION AND VENUE**

2 2. This Court has subject matter jurisdiction over this matter pursuant to  
3 15 U.S.C. §§ 45(a), 52, and 53(b), and 28 U.S.C. §§ 1331, 1337(a) and 1345.

4 3. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C.  
5 § 1391(b) and (c).

6 **THE PARTIES**

7 4. Plaintiff, the Federal Trade Commission, is an independent agency of  
8 the United States Government created by the FTC Act. 15 U.S.C. §§ 41-58. The  
9 Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which  
10 prohibits unfair or deceptive acts or practices in or affecting commerce. The  
11 Commission also enforces Section 12 of the FTC Act, 15 U.S.C. § 52, which  
12 prohibits false advertisements for food, drugs, devices, services, or cosmetics in or  
13 affecting commerce. The Commission, through its own attorneys, may initiate  
14 federal district court proceedings to enjoin violations of the FTC Act and to secure  
15 such equitable relief, including consumer redress, as may be appropriate in each  
16 case. 15 U.S.C. § 53(b).

17 5. Defendant Smart Inventions, Inc. (“Smart Inventions”) is a California  
18 corporation with its principal place of business at 6319 E. Alondra Boulevard,  
19 Paramount, CA 90723. Smart Inventions has promoted, advertised, offered for  
20 sale, sold, and distributed various products to the public through the use of  
21 infomercials, the Internet, direct mail, and retail. Since at least January 2003, and  
22 continuing thereafter, acting alone and in concert with others, Smart Inventions  
23 promoted, marketed, offered for sale, and distributed a purported pain-relief  
24 product called Biotape to consumers throughout the United States. Smart  
25 Inventions has transacted or transacts business in the Central District of California.

26 6. Defendant Jon D. Nokes (“Nokes”) is the President and Chief  
27 Operating Officer of Smart Inventions. Since at least January 2003, Nokes, acting  
28 individually or in concert with others, promoted the product Biotape to consumers

1 throughout the United States. He directs, controls, formulates, or participates in  
2 the acts and practices of Smart Inventions, including the acts and practices  
3 complained of below. Nokes resides and/or transacts or has transacted business in  
4 the Central District of California.

5 7. Defendant Darrell Stoddard (“Stoddard”) contracted with Smart  
6 Inventions and Nokes to promote, market, advertise, offer for sale, and distribute  
7 the product Biotape to consumers throughout the United States. He participated in  
8 at least one infomercial that advertised Biotape. Stoddard transacts or has  
9 transacted business in the Central District of California.

### 10 **COMMERCE**

11 8. The acts and practices of Smart Inventions and Nokes (collectively,  
12 “Defendants”) alleged in this Complaint are or have been in or affecting  
13 commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C.  
14 §§ 44.

### 15 **DEFENDANTS’ COURSE OF CONDUCT**

16 9. Since at least January 2003, Defendants packaged, labeled, advertised,  
17 offered for sale, sold, and distributed the product Biotape to the public throughout  
18 the United States. Biotape is an adhesive tape that defendants have promoted as an  
19 effective means to cure the cause of severe pain from surgical procedures,  
20 debilitating back, knee, and neck injuries, and such conditions as arthritis, frozen  
21 shoulder, sciatica, and migraines. The cost to consumers for one sheet of ten  
22 Biotape strips is typically \$10, plus shipping and handling. Defendants directed  
23 consumers to apply the Biotape strips to the parts of their bodies where they are  
24 experiencing pain.

25 10. Defendants primarily have advertised Biotape through a 30-minute  
26 infomercial that aired on national cable networks such as Women’s Entertainment,  
27 Bravo, the Travel Channel, the Discovery Channel, Inspirational Network, and  
28 Hallmark. *See* Exhibit 1 (transcript of infomercial). The infomercial featured

1 Stoddard as the developer of Biotape and another individual named Kevin Trudeau  
2 as the host of the show. The infomercial was filmed in Studio City, CA. During  
3 the course of the infomercial, Defendants supply viewers with a toll-free telephone  
4 number to call to purchase Biotape.

5 11. To induce consumers to purchase Biotape, Defendants have widely  
6 disseminated advertisements and promotional materials, including, but not limited  
7 to, Exhibit 1, which contains, among others, the following statements:

8 A. KEVIN TRUDEAU: Well, we all have pain. If you have pain  
9 or know someone that has pain, stay with us. We have Darrell  
10 Stoddard, who's the author of Pain-Free For Life. He's also the  
11 founder of the Pain Research Institute and he has discovered the  
12 cause of pain. Now, if you can discover the cause of pain,  
13 whether it's lower back pain, knee pain, arthritis pain, any type  
14 of pain that you've experienced, headaches, migraines, if you  
15 know the cause of pain, then potentially, you could find a cure  
16 for pain.

17 Darrell Stoddard has put together Pain-Free For Life and  
18 has discovered and put together a system that can get rid  
19 of pain, not just temporarily, but potentially permanently  
20 eliminate pain. [Exhibit A, 16-17].

21  
22 B. KEVIN TRUDEAU: Now, this is a study -- this is a study or a  
23 paper that you presented.

24 DARRELL STODDARD: Yes. This is a paper that was  
25 published in a medical journal.

26 KEVIN TRUDEAU: Okay. Now, as I was reading this before  
27 -- and this is why I had you on my radio show -- some of the  
28 people that are in this published paper, that was published in a

1 medical journal --

2 DARRELL STODDARD: Yeah, the case studies.

3 KEVIN TRUDEAU: These are case studies. Low back pain so  
4 severe, she couldn't stand or walk, used magnets for a week.

5 The magnets did nothing. Biotape relieved pain immediately  
6 and patient could stand and walk. [Exhibit A, 21].

7  
8 C. KEVIN TRUDEAU: Okay. And let me continue on with some of  
9 these. Very painful frozen shoulder, Biotape applied, received near  
10 100 percent instant relief.

11 DARRELL STODDARD: Yes.

12 KEVIN TRUDEAU: Is that common where people see an instant  
13 elimination of pain?

14 DARRELL STODDARD: More often than you would believe. It  
15 really is. [Exhibit A, 24-25].

16  
17 D. KEVIN TRUDEAU: And up until now, people take what for  
18 pain, aspirin, ibuprofen, Tylenol?

19 [Female Host]: Drugs basically.

20 DARRELL STODDARD: That's right.

21 KEVIN TRUDEAU: Pretty much drugs.

22 [Female Host]: Yeah.

23 KEVIN TRUDEAU: They also use skin things, like Super Blue  
24 Stuff has been on television for a long time. There's a bunch of  
25 other roll-ons, all different types of products to "eliminate"  
26 pain. What do those products do? How do they work?

27 DARRELL STODDARD: Well, the pain medication – and this  
28 is real, real flaw in the Western medical approach to pain is the

1 only thing we know how to do is shut off the pain signal.  
2 Because we've never defined what pain is, we can't correct  
3 what causes pain. That's why they just talk about pain  
4 management. You can't talk about healing pain because how  
5 do you know whether somebody's healed or not if you don't  
6 know what caused the pain in the first place.

7 KEVIN TRUDEAU: Um-hum.

8  
9 [Female Host]: Right.

10 DARRELL STODDARD: And that's the big problem with the  
11 Western approach to pain.

12 KEVIN TRUDEAU: So, all of these – all of these other  
13 products then, the electrical signal between the tissues is still  
14 impeded?

15 \* \* \*

16 DARRELL STODDARD: That's – pain medication just shuts  
17 off the pain signal. That treats the pain signal. That doesn't  
18 treat the cause of pain.

19 KEVIN TRUDEAU: But this –

20 DARRELL STODDARD: Yes.

21 [Female Host]: So –

22 KEVIN TRUDEAU: – corrects the cause?

23 DARRELL STODDARD: Corrects the cause of the pain.

24 KEVIN TRUDEAU: Which means it could be gone forever?

25 DARRELL STODDARD: That's right. [Exhibit A, 26-28].

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E. KEVIN TRUDEAU: Pain so severe in low back, the patient couldn't walk. Biotape applied. There was almost immediate miraculous relief. Pain relieved again with Biotape when the patient (sic) started to return.

[Female Host]: Right.

KEVIN TRUDEAU: Patient reported four months later that the pain never came back.

[Female Host]: Wow.

KEVIN TRUDEAU: Again, a permanent elimination of the pain.

[Exhibit A, 29].

F. KEVIN TRUDEAU: Tell us about your results with the Biotape.

1 pain, sciatica, headaches, migraine, any type of pain -- up until  
2 now, in my opinion, all pain relief products, whether it's  
3 something you take in a pill or something you put on your skin,  
4 all they do is eliminate the symptom or reduce the symptom of  
5 pain. But the reason you have the pain is still there. That's why  
6 you have to reapply the stuff over and over and over again or  
7 keep taking all those pills or medications over and over again.  
8 Right now, Darrell Stoddard believes that the cause of  
9 pain has been discovered by the Chinese, and in his  
10 research, he believes it to be true. Based on what he's  
11 been sharing with me and the information I have, I believe  
12 it's true, too. I think the cause of pain is now known and  
13 this Biotape could potentially eliminate the cause of pain  
14 so your pain can go away potentially permanently.  
15 If you have any pain at all and you've tried these other  
16 dangerous, potentially dangerous medications or drugs or  
17 these other salves and creams that may have given you  
18 temporary relief, get on the phone and call and get Pain-



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lose.  
I'm so passionate about this. You know, I had another person who's been calling me for months trying to get me to promote a pain product on the show, and I kept on asking them, what makes it different, what makes it different, what makes it different, and I kept hearing, well, you know, it has ingredients that the FDA says we can claim help pain. I go, no, that's -- that's not telling me why it's the best in the world for pain.  
And it was months and I kept on struggling with the guy.

1 cause of the pain or can eliminate the pain permanently. [Exhibit  
2 A, 45].

3 **SECTIONS 5 AND 12 OF THE FTC ACT**

4 12. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or  
5 deceptive acts or practices in or affecting commerce. Section 12(a) of the FTC Act,  
6 15 U.S.C. § 52(a), prohibits the dissemination of any false advertisement in or  
7 affecting commerce for the purpose of inducing, or which is likely to induce, the  
8 purchase of food, drugs, devices, services, or cosmetics. For the purposes of  
9 Section 12 of the FTC Act, Biotape is either a “drug” or “device” as defined in  
10 Section 15(c) and (d) of the FTC Act, 15 U.S.C. § 55(c) and (d). As set forth  
11 below, the Defendants have engaged and are continuing to engage in such unlawful  
12 practices in connection with the marketing and sale of Biotape.

13 **DECEPTIVE ACTS OR PRACTICES IN VIOLATION OF THE FTC ACT**

14 **COUNT I**

15 **Unlawful Claims Regarding the Pain Relief Benefits and Superiority of**  
16 **Biotape**

17 13. Through the means described in Paragraph 11, including, but not  
18 limited to, the statements contained in the advertisement attached as Exhibit 1,  
19 Defendants have represented, expressly or by implication, that Biotape:

- 20 A. Provides significant and/or permanent relief from severe pain,  
21 including, but not limited to, debilitating back pain, and pain  
22 from arthritis, frozen shoulder, surgical procedures, sciatica,  
23 migraines, and other conditions; and  
24 B. Is more effective than other products or treatments, such as over-  
25 the-counter analgesics and topical creams and ointments, in  
26 relieving or eliminating severe pain.

27 14. The representations set forth in Paragraph 13 are false or were not  
28 substantiated at the time the representations were made. Therefore, the making of

1 the representations set forth in Paragraph 13 constitutes a deceptive practice, and  
2 the making of false advertisements, in or affecting commerce, in violation of  
3 Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

4 **CONSUMER INJURY**

5 15. Consumers throughout the United States have suffered and continue to  
6 suffer substantial monetary loss and possible injury to their health because of  
7 Defendants' violations of the FTC Act. In addition, Defendants have been unjustly  
8 enriched as a result of their unlawful acts and practices. Absent injunctive relief by  
9 this Court, Defendants are likely to continue to injure consumers, reap unjust  
10 enrichment, and harm the public interest.

11 **THIS COURT'S POWER TO GRANT RELIEF**

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

18 **PRAAYER FOR RELIEF**

19 WHEREFORE, Plaintiff requests that this Court, as authorized by Section  
20 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

- 21 (1) Permanently enjoin and restrain Defendants from violating Sections  
22 5(a) and 12 of the FTC Act in connection with the advertising or sale  
23 of food, drugs, devices, cosmetics, or other products, services, or  
24 programs.
- 25 (2) Award such equitable relief as the Court finds necessary to redress  
26 injury to consumers resulting from Defendants' violations of the FTC  
27 Act, including, but not limited to, rescission of contracts and  
28 restitution, and the disgorgement of ill-gotten gains; and

1 (3) Award Plaintiff the costs of bringing this action as well as such  
2 additional equitable relief as the Court may determine to be just and  
3 proper.  
4

5 Dated: June 17, 2004  
6

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