

On August 26, 2004, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, the Court entered a default against Defendants Van Essen and Atkinson. On May 19, 2005, upon counsel for Defendant GWP's withdrawal from this matter, the Court entered a default against GWP.

The FTC now has moved for entry of a default judgment on all counts of the Complaint against Defendants GWP, Van Essen and Atkinson, pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure. The FTC's Motion for Entry of Default Judgment Against Defendants

is hereby granted, and **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED**

follows:

FINDINGS

5. The Complaint states a claim upon which relief may be granted against

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

57b.

6. Defendants were served with the Complaint and Summons as required by Rule

[REDACTED]

[REDACTED]

[REDACTED]

11. Default was entered against Defendants Van Essen and Atkinson on August 26,

2004. The FTC is therefore entitled to a default judgment pursuant to Rule 55(b) of the Federal

Rules of Civil Procedure.

12. Defendant GWP appeared in this matter through counsel. On July 28, 2004, GWP

cholesterol] levels when Defendants did not possess and rely upon a reasonable basis that

substantiated the representations.

16. The Court further finds that, in connection with the advertising, marketing, and sale of HGH products, Defendants violated Sections 5(a) and 10 of the FTC Act, 15 U.S.C.

(C) can maintain a user's appearance and biological age for 10-20 years, when Defendants did not possess and rely upon a reasonable basis that substantiated the representations.

18. The Court further finds that in numerous instances, Defendants have initiated the transmission, to protected computers, of commercial e-mail messages that contained, or were accompanied by, header information that is materially false or materially misleading in violation of Section 5(a)(1) of CAN-SPAM, 15 U.S.C. § 7704(a)(1).

19. The Court further finds that in numerous instances, Defendants have initiated the transmission of commercial e-mail messages to protected computers that fail to provide:

- (A) clear and conspicuous notice of the opportunity to decline to receive further commercial electronic mail messages from the sender; and/or

of CAN-SPAM. *See FTC v. Febre*, 128 F.3d 530, 534 (7th Cir. 1997); *Amy Travel*, 875 F.2d at 572.

22. It is proper in this case to enter a monetary judgment against Defendants for

sale of diet patches and HGH products. *See Febre*, 128 F.3d at 534 (court may “order repayment

2. **“Assisting others”** means: (1) performing customer service functions including, but not limited to, receiving or responding to consumer complaints, receiving identifying and financial information from consumers, and communicating with consumers; (2) developing

providing or arranging for the development or provision of marketing materials, including, but

not limited to, Web site and commercial electronic message content; (3) providing names of, or arranging for the provision of, names of potential customers; (4) performing marketing services of any kind; or (5) acting as an officer or director of a business entity.

2. **“Clear and conspicuous”** or **“clearly and conspicuously”** with respect to the

6. **“Defendant”** or **“Defendants”** means Global Web Promotions Pty Ltd., Michael John Anthony Van Essen and Lance Thomas Atkinson, or each of them, by whatever names each may be known.

7. **“Document”** is synonymous in meaning and equal in scope to the term, as defined in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, [REDACTED]

photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of this term.

8. **“Electronic mail address”** “means a destination commonly expressed as a string [REDACTED]

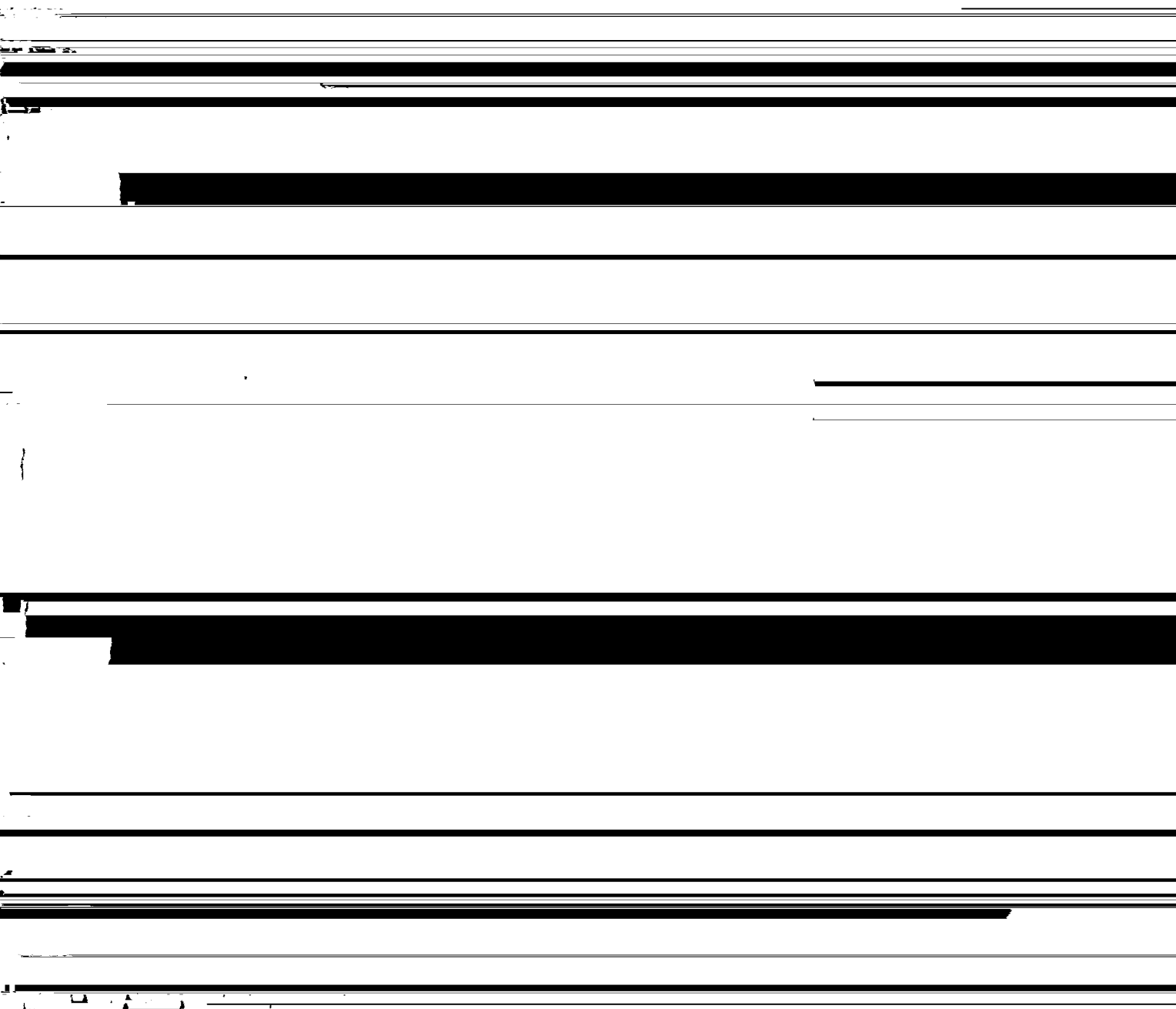
to any form of Human Growth Hormone, and include, but are not limited to, "HGH" and "Natural HGH," or any other substantially similar products.

11. **"Initiate,"** "when used with respect to a commercial email message, means to originate or transmit such message or procure the origination or transmission of such message."

15 U.S.C. § 7702(9).

12. **"Material"** means likely to affect a person's choice of, or conduct regarding, goods or services.

13. **"D"** _____



I.

PROHIBITIONS AGAINST PRODUCT MISREPRESENTATIONS

employees and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and

include, but are not limited to, (i) lower blood pressure, (ii)

cellulite reduction, (iii) improved vision, (iv) new hair growth and

hair color restoration, (v) improved sleep, (vi) emotional stability,
and (vii) increased sexual potency and frequency; and/or

d. can maintain a user's appearance and biological age for 10-20
years.

4. Misrepresenting that any product, or any ingredient contained in it is effective in the diagnosis, cure, mitigation, treatment, or prevention of any disease;
5. Making any representation about the health benefits, performance, efficacy, or safety of any product unless, at the time of making such representation, Defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation; and
6. Misrepresenting any other fact material to a consumer's decision to purchase any product.

B. Assisting others who violate any provision of Section I.A of this Order.

II.

PROHIBITIONS AGAINST VIOLATIONS OF CAN-SPAM

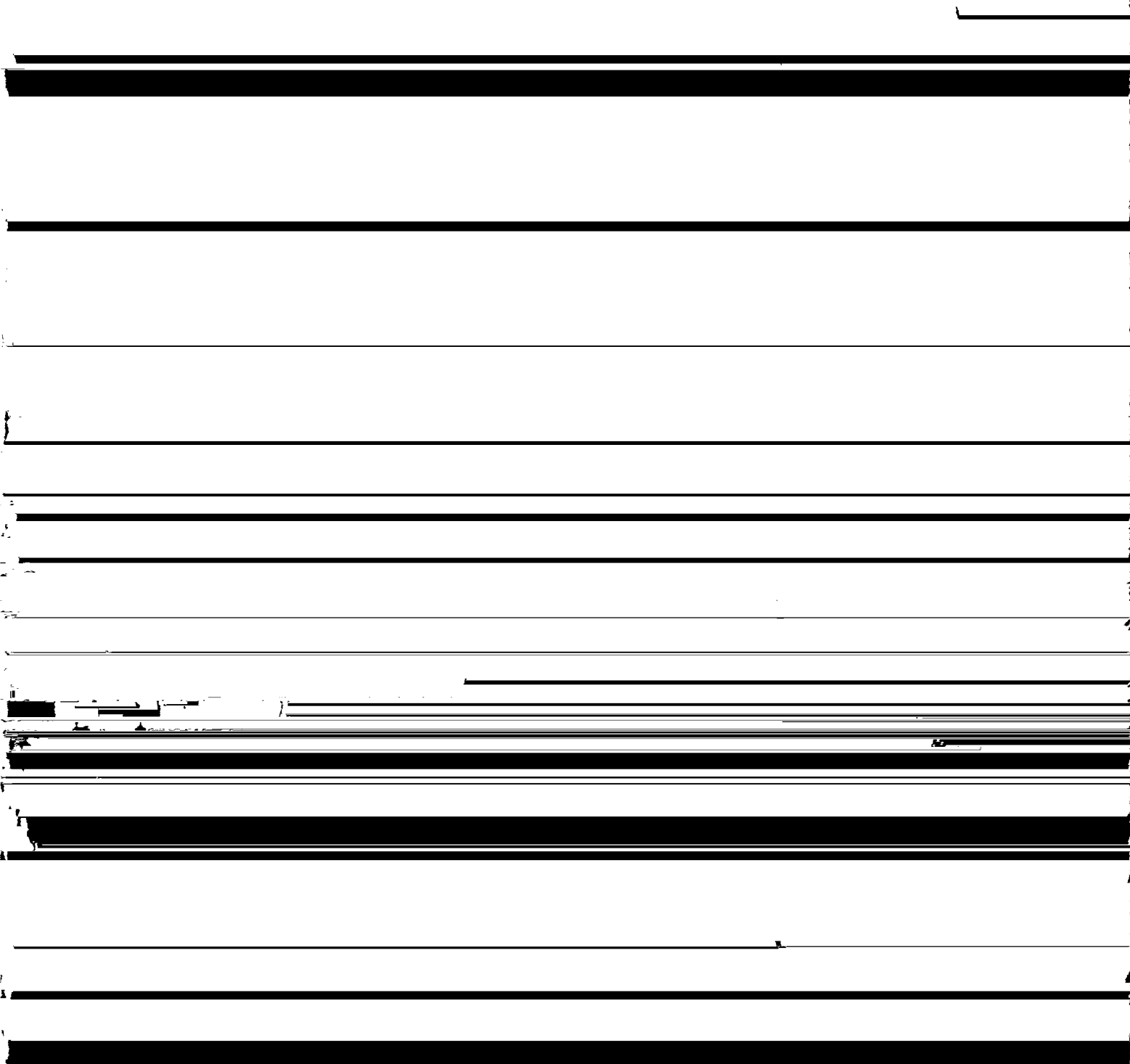
enjoined from violating CAN-SPAM, including by initiating the transmission of a commercial email that:

- A. Contains, or is accompanied by, materially false or materially misleading

by redaction information including but not limited to

an originating electronic mail address, domain name, or Internet Protocol

communication requesting not to receive future commercial electronic mail messages from the sender at the electronic mail address where the message was received, and that remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message.



D. Any and all funds paid pursuant to this Section shall be deposited into a fund administered by the FTC or its agent to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the FTC may apply any remaining funds for other equitable relief.

(including consumer information remedies) as it determines to be reasonably related to the Defendants' practices alleged in the Complaint. Defendants shall have no right to challenge the

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

1. obtaining discovery from any person, without further leave of Court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36 and 45.

2. posing as consumers and suppliers to Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice; and

C. Defendants shall permit representatives of the Commission to interview any

1. Defendants Michael John Anthony Van Essen and Lance Thomas Atkinson shall notify the FTC of the following:

(a) Any changes in residence, mailing addresses and telephone numbers, within ten (10) days of the date of such change;

(b) Any changes in employment status (including self-employment)

within ten (10) days of such change. Such notice shall include the name and address of each business the Defendant is affiliated with or employed by, or performs services for; a statement of the nature

of the business, and a statement of the defendant's duties and

responsibilities in connection with the business or employment.

address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about what the

defendant learns less than thirty (30) days prior to the date such action is to take place, defendants shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order, Defendants

- (a) A copy of each acknowledgment of receipt of this Order obtained by Defendants pursuant to Section VII; and
- (b) Any other changes required to be reported under subparagraph A of this Section.

For the purposes of this Order, Defendants shall, unless otherwise directed by the

Commission's authorized representatives, mail all written notifications to the Commission to:

employees and independent contractors engaged in sales or other customer service functions comply with Sections I and II of this Order;

- B. Failing to investigate promptly and fully any consumer complaint received by any business to which this Section applies; and
- C. Failing to take corrective action with respect to any sales person whom any Defendant determines is not complying with this Order, which may include training, disciplining, and/or terminating such sales person.

VII.

DISTRIBUTION OF ORDER BY DEFENDANTS

the Defendant must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Such Defendant must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon the defendant. For new personnel, delivery shall occur prior to them assuming their

- C. **Defendants as employee or non-control person:** For any business where Defendant Van Essen or Defendant Atkinson is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this

corporations, successors and assigns, and those persons in active concert or participation with

him who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Records accurately reflecting: the name, address, and telephone number of each

person employed in any capacity by such business, including [redacted]

IX.

IT IS FURTHER ORDERED that each Defendant, within five (5) business days after