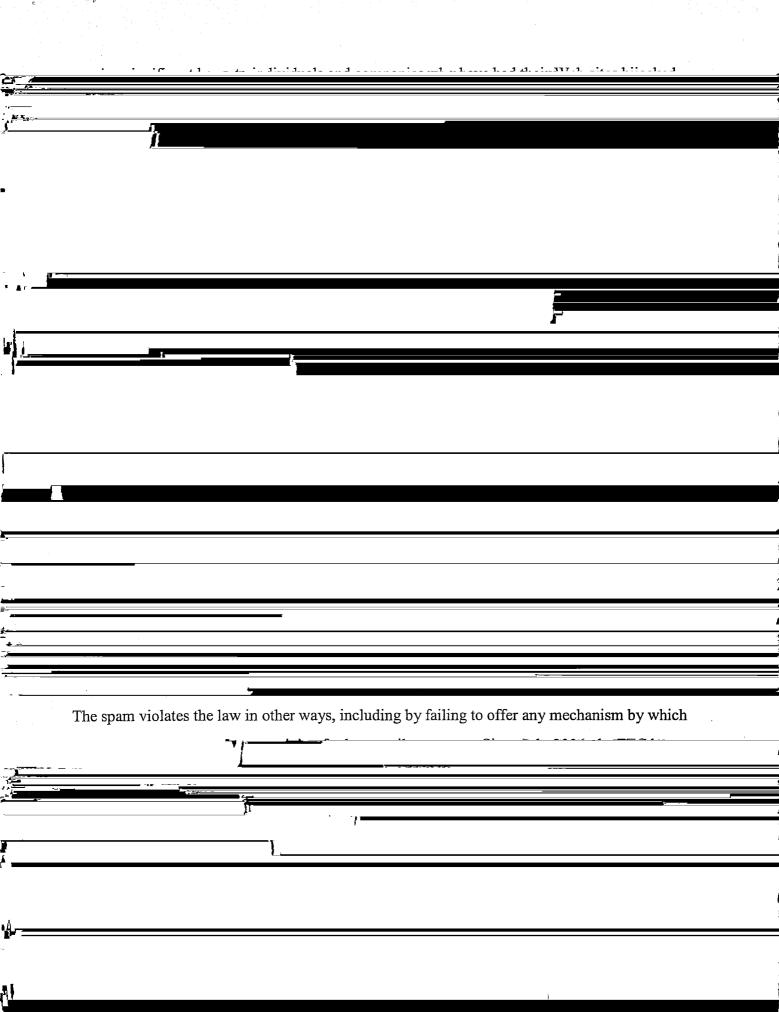
IN	THE	UNITED	TAIRS DIST	RICT COURT
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## FOR THE NORTHERN DISTRICT OF ILLINOIS

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	PE COMMISSION, Plaintiff, v. UTICALS, LLC, and	)	Case No. 07 C 4541 Judge David H. Coar	
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III. D	EFENDANTS' ILLEGAL			
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	They also sell diet pills under a variety of names including "HoodiaHerbal" that purportedly	
	contain Hoodia gordonii. a cactus-like plant found in Africa (collectively, the "Hoodia	
-	Langin Hoodia goldomi. a cactus like blant lound in Fillica toolicetivoly, the Hoodia	
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•	Products"). (Id. ¶¶ 6-12, Atts. A-G.) A single bottle of each of these products costs \$79.95 plus	
	\$9.95 for shipping and handling. $(Id. \P\P 8, 15.)^2$	
	and the control of t	
	1. Defendants deceptively promote their HGH Products	
	The Web sites and email messages promoting Defendants' HGH Products make a variety	
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 Defendants' HGH products have no physiological effect on users. (Id. ¶ 27.)
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 Defendants' HGH products have no physiological effect on users. (Id. ¶ 27.)  2. Defendants deceptively promote and sell Hoodia Products  The Web sites and email messages promoting Defendants' Hoodia Products make extravagant weight loss claims, relying on purported scientific studies about the Hoodia gordonic plant. Most notably, Defendants claim that the Hoodia Products safely can cause as much as forty pounds of weight loss in a month. Email messages touting the products claim:
 Defendants' HGH products have no physiological effect on users. (Id. ¶ 27.)  2. Defendants deceptively promote and sell Hoodia Products  The Web sites and email messages promoting Defendants' Hoodia Products make extravagant weight loss claims, relying on purported scientific studies about the Hoodia gordonii plant. Most notably, Defendants claim that the Hoodia Products safely can cause as much as

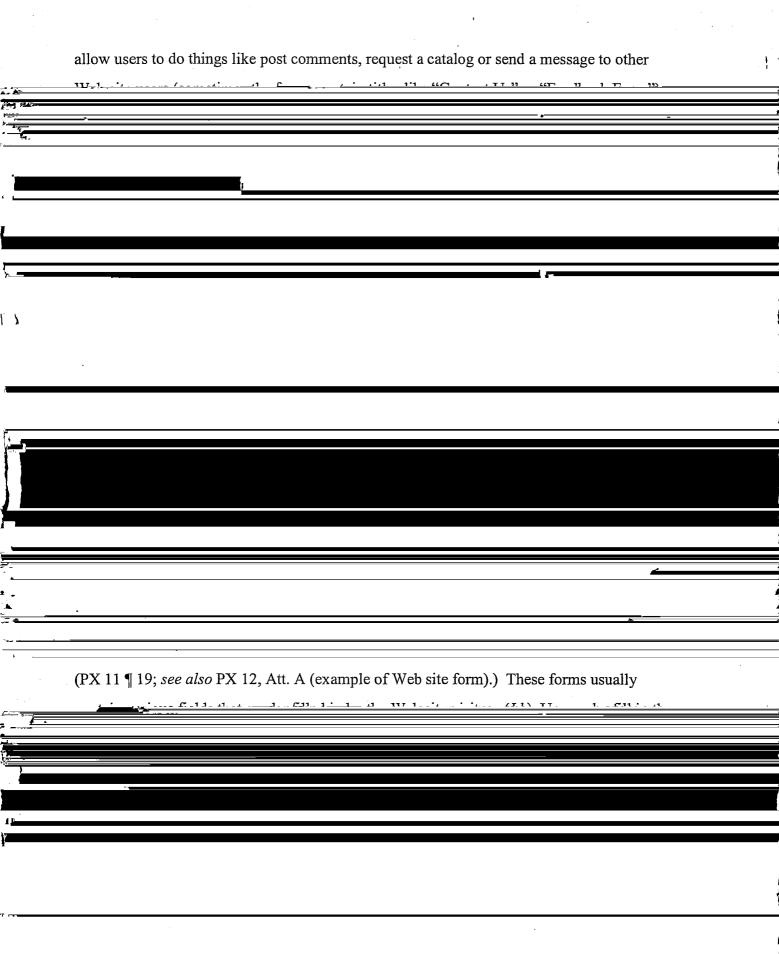
loss in the first place, their claim of permanent weight loss is also deceptive. (Id. ¶ 20.) Indeed, without a change in dietary or exercise habits, it is not feasible for users to experience permanent weight loss. (Id. ¶ 21.)

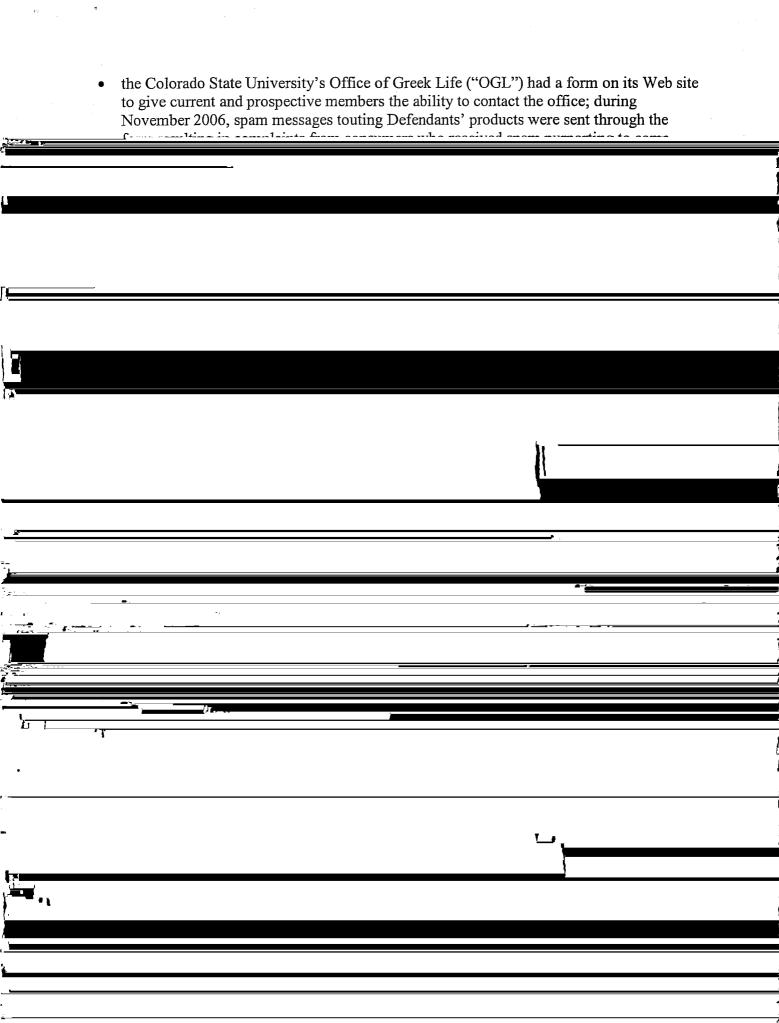
## B. Defendants' Illegal Spamming Practices

Defendants likely are responsible for millions of illegal commercial email messages promoting their products. Since July 2006, consumers have forwarded over 85,000 email messages advertising Defendants' products to an email address at which the FTC accepts spam as a line of the spam as

exhibits. (See PX 1 ¶ 25-26; PX 11 ¶ 17, Att. B.)<sup>4</sup> All of the messages blatantly disregard one or more of the protections Congress provided in the CAN-SPAM Act. 15 U.S.C. § 7701. et sea.. the

federal law regulating commercial e-mail (discussed *infra* § IV.B.2).<sup>5</sup> The messages falsify information that would identify the real sender, contain false subject lines designed to fool people into opening the messages, and fail to include an opt-out mechanism by which consumers could stop the spam messages from continuing. These illegal actions cause significant harm to consumers and Internet service providers.





<b>N</b> 7	ADCHMENT
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	In order to protect the public from Defendants' illegal activities and to prevent
	Defendants from continuing to make unlawful profits, the FTC requests that the Court enter a
	TRO with an asset freeze and additional ancillary relief to ensure the availability of restitution to
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	TROs in similar FTC actions. <sup>7</sup>
	A. Injunctive Relief Standard
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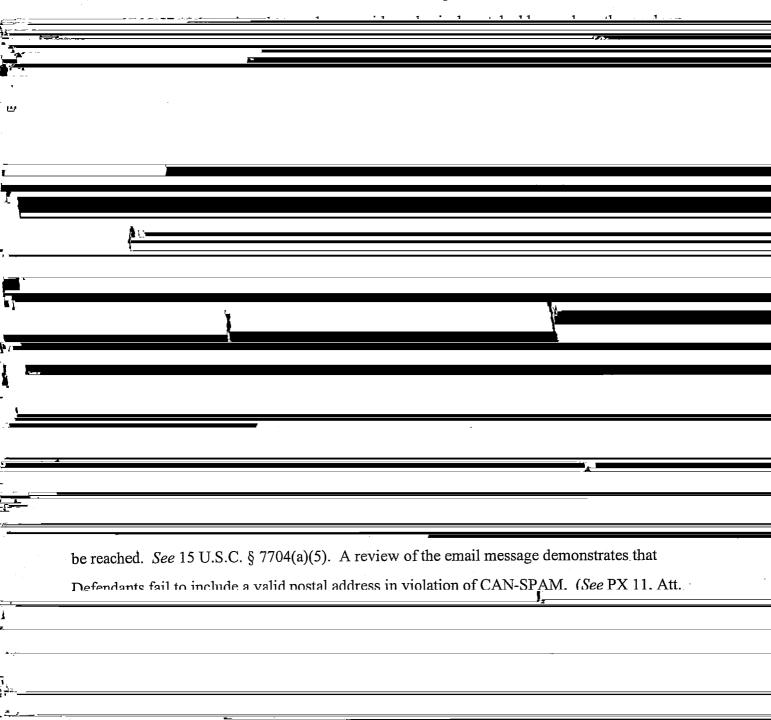
Defendants' product claims are deceptive 1. Defendants' false claims about their products are "deceptive acts or practices" prohibited under Section 5 of the FTC Act by demonstrating "material representations likely to mislead a reasonable consumer." FTC v. Bay Area Bus. Council, Inc., 423 F.3d 627, 635 (7th Cir. 2005); see also FTC v. Phoenix Avatar, No. 04 C 2897, 2004 WL 1746698, at \*9 (N.D. Ill. July 30,

## a. Defendants are "initiators" of commercial email

	Defendants are legally responsible for the email messages promoting their products.	
	CAN-SPAM imposes liability for a commercial email message upon "initiators" of the	
	messages. 15 U.S.C. § 7704(a)(1). The definition includes not only those who "originate or	,
	transmit" the message, i.e., the button pushers, but also those who "procure" the transmission of	
	15 II F.O. \$ 7700(0) CAN SDAM defines procurers as those who "intentionally	
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	Try or provide other consideration to or induce another person to initiate" a message on their	
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## i. False or misleading header information

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C. The Balance of the Equities Favors the FTC

uld prohibit Defendants from making false claims about products, would stop Defendants and ir agents from sending commercial email messages that violate CAN-SPAM, and would		2. The TRO would work no valid hardship on Defendants
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	would pr	ohibit Defendants from making false claims about products, would stop Defendants and
The TRO moved workers well-defend the control of the translation of th	their ager	nts from sending commercial email messages that violate CAN-SPAM, and would
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documents, will disappear if Defendants receive prior notice. As described in Section III above, Defendants already have demonstrated their ability to hide their identities. They use false information for Internet domain names that they purchase to market their products. They