

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The spam violates the law in other ways, including by failing to offer any mechanism by which

[REDACTED]

[REDACTED]

[REDACTED]

III. DEFENDANTS' ILLEGAL BUSINESS PRACTICES

Internet Websites. Defendant Brian McDeid ("McDeid"), a resident of Downinotown

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

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.* ¶¶ 8, 15.)²

1. Defendants deceptively promote their HGH Products

The Web sites and email messages promoting Defendants' HGH Products make a variety

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 forty pounds of weight loss in a month. Email messages touting the products claim:

Hoodia is the most advanced (and by far the most successful) weight loss formula ever created, for one simple reason . . . it simply causes you to have less of an appetite, and eat less. Studies have proven time and time again that users of hoodia lose weight, an

average of 12 pounds a week, but as high as 20-40 pounds a month in some

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

complaints. (PX 1 ¶ 22, Att. C.) The FTC has submitted several examples of the spam as

exhibits. (See PX 1 ¶ 25-26; PX 11 ¶ 17, Att. B.)⁴ 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 seq.*, the

federal law regulating commercial e-mail (discussed *infra* § IV.B.2).⁵ 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.

Defendants' spam falsifies information that would identify the real

allow users to do things like post comments, request a catalog or send a message to other

(PX 11 ¶ 19; *see also* PX 12, Att. A (example of Web site form).) These forms usually

- the Colorado State University's Office of Greek Life ("OGL") had a form on its Web site to give current and prospective members the ability to contact the office; during November 2006, spam messages touting Defendants' products were sent through the form resulting in complaints from consumers who received spam advertising to some

1. Defendants' product claims are deceptive

Defendants' false claims about their products are "deceptive acts or practices" prohibited

1. B. C. 21. FTC Act, 15 U.S.C. § 45(a). The FTC can establish corporate liability.

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 U.S.C. § 7704(a). CAN-SPAM defines procurers as those who "intentionally

or provide other consideration to or induce another person to initiate" a message on their

i. *False or misleading header information*

Defendants initiate commercial email messages that contain "header information that is

[REDACTED]

iv. *Failure to include a postal address*

be reached. *See* 15 U.S.C. § 7704(a)(5). A review of the email message demonstrates that Defendants fail to include a valid postal address in violation of CAN-SPAM. (*See* PX 11. Att.

C. The Balance of the Equities Favors the FTC

2. The TRO would work no valid hardship on Defendants

would prohibit Defendants from making false claims about products, would stop Defendants and their agents from sending commercial email messages that violate CAN-SPAM, and would

to submit the necessary relief. The TRO would work no valid hardship on

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

identify themselves to consumers as a company in the Caribbean