



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

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by

Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Clickbooth and IntegraClick, including the acts and practices set forth in this Complaint. Among other things, he has negotiated agreements with merchants to advertise, market, and promote weight loss and other products to consumers, and has recruited others to advertise, market, and promote the products. Defendant Lemp, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

9. Defendants Clickbooth and IntegraClick (collectively, "Corporate Defendants") have operated as a common enterprise while engaging in the deceptive acts and practices alleged below. Defendants have conducted the business practices described below through interrelated companies that have common ownership, officers, managers, business functions, employees, and office locations, and that commingle funds and operate a common scheme. Because these Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Defendant Lemp has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Corporate Defendants that constitute the common enterprise.

#### COMMERCE

10. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

#### DEFENDANTS' BUSINESS ACTIVITIES

11. Since at least 2008, using a network of affiliate marketers, Defendants have advertised, marketed, and promoted various products to consumers throughout the United States,

including weight loss products, which include but are not limited to Acai Pure, Acai Max, Pure Berry Max, Acai Advanced Cleanse, AcaiBerry Slim, TriSlim, Slimberry, and HCG Xtreme (collectively, the "Weight Loss Products"), and also including colon cleanse products, which include but are not limited to ColoThin, Tone DeTox, and ColoPure (collectively, the "Colon Cleanse Products"), which Defendants advertise, market, and promote with Weight Loss Products.

12. Defendants enter into contracts with merchants who sell products, including without limitation the Weight Loss Products and Colon Cleanse Products. Pursuant to these contracts, Defendants agree to promote the products in exchange for commissions or other payments from the merchants. Defendants promote the products through a network of affiliate marketers who act on behalf of and for the benefit of Defendants.

13. Defendants control and monitor their network of affiliate marketers by, among other things, soliciting affiliate marketers to advertise through Defendants' network, deciding which affiliate marketers to admit to, or expel from, the network, monitoring the advertisements used by their affiliate marketers, suggesting and designing advertisements for their affiliate marketers' use, and tracking the consumer traffic and revenue generated by each affiliate marketer. Affiliate marketers seeking to join Defendants' network must request admission, provide background and contact information, agree to Defendants' terms and conditions. Defendants approve or reject the requests for admission. Defendants also decide which affiliate marketers in the network are allowed to market specific products. The affiliate marketers typically have no direct contact with the merchants who sell the products.

14. Defendants' affiliate marketers promote the products through websites. Some of these sites are designed to look like news reports. These sites use domain names such as

channel5healthnews.com, dailyconsumeralerts.com, and online6health.com, and mastheads such as “Channel 5 Health News” and “News 6.” The reports have titles such as “Acai Berry Diet Exposed: Miracle Diet or Scam?” and “1 Trick of a Tiny Belly: Reporter Loses Her ‘Belly’



21. In promoting the Weight Loss Products and the Colon Cleanse Products, Defendants, through their affiliate marketers, also make deceptive claims about the Weight Loss Products and the Colon Cleanse Products. Defendants' affiliate marketers have represented in their websites, for example, that taking the Weight Loss Products and the Colon Cleanse Products, alone or in combination, causes rapid and substantial weight loss. Defendants' affiliate marketers typically claim on their sites that persons who tested the Weight Loss Products and Colon Cleanse Products, alone or in combination, lost twenty-five pounds or more in four weeks without any special diet or intense exercise.

22. In truth and in fact, the Weight Loss Products and the Colon Cleanse Products, alone or in combination, do not cause rapid and substantial weight loss, nor do Defendants or their affiliate marketers possess and rely upon a reasonable basis to substantiate representations that consumers who use the Weight Loss Products and the Colon Cleanse Products, alone or in combination, will rapidly lose a substantial amount of weight.

23. Defendants know or should know about the deceptive practices their affiliate marketers have used to promote the Weight Loss Products and the Colon Cleanse Products, including but not limited to the fakes news websites and false product claims described above. Defendants have failed to employ reasonable, appropriate measures to prevent the deceptive practices.

24. In addition to advertising, marketing, and promoting various merchants' products through their network of affiliate marketers, Defendants also in some instances have actively participated in the preparation and design of the websites of merchants, including but not limited to the websites of Central Coast Nutraceuticals, Inc. Defendants in some instances have actively participated in the preparation and design of merchant websites that include deceptive claims







- a. Websites of Defendants' affiliate marketers are objective news reports;
- b. Objective news reporters have performed independent tests demonstrating the effectiveness of the products featured, including but not limited to the Weight Loss Products and the Colon Cleanse Products, alone or in combination; and
- c. The comments following the "articles" on the websites of Defendants' affiliate marketers express the views of independent consumers.

33. In truth and in fact:

- a. The websites of Defendants' affiliate marketers are advertisements made to appear as objective news reports;
- b. Objective news reporters have not performed independent tests demonstrating the effectiveness of the products featured, including but not limited to the Weight Loss Products and the Colon Cleanse Products, alone or in combination; and
- c. The comments following the "articles" on the websites of Defendants' affiliate marketers do not express the views of independent consumers.

34. Therefore, the making of the representations as set forth in Paragraph 32 of this Complaint constitutes a deceptive act or practice, in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

### COUNT THREE

#### Failure to Disclose (Connection to Seller)

35. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of the Weight Loss Products, the Colon Cleanse Products and other products, including through the means described in Paragraphs 11 through 26 of this Complaint, Defendants, through affiliates acting on their behalf and for their benefit, have represented,

expressly or by implication, that the content of the affiliate marketers' websites has been authored by an objective journalist who has conducted independent tests.

36. In numerous instances in which Defendants have made the representations set forth in Paragraph 35 of this Complaint, Defendants and their affiliates have failed to disclose or disclose adequately to consumers that the content of the websites has not been authored by an objective journalist but is in fact an advertisement placed by Defendants' affiliate marketers. Defendants receive commissions or other payments when consumers purchase the products or sign up for "free trials" on the product-selling websites.

37. Defendants' failure to disclose or disclose adequately the material information described in Paragraph 36 above, in light of the representation described in Paragraph 35 above, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

#### COUNT FOUR

##### Failure to Disclose (Trial Offer)

38. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of products, including the Weight Loss Products and the Colon Cleanse Products, Defendants, through their own actions and those of their affiliates acting on their behalf and for their benefit, have represented, expressly or by implication, that consumers who pay a nominal fee to receive a trial supply of the product will incur no risks or obligations.

39. In numerous instances in which Defendants and their affiliates have made the representations set forth in Paragraph 38 of this Complaint, Def

- a. consumers who sign up to receive a trial supply of the products are charged for the trial supply of the product if they do not return it within a certain period of time; and
- b. consumers who sign up to receive a trial supply of the products are automatically enrolled in a continuity program for the products and must cancel the program within a specified period of time to avoid additional recurring shipments of products and charges.

40. Defendants' failure to disclose or to disclose adequately the material information described in Paragraph 39 above, in light of the presentation described in Paragraph 38 above, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

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THIS COURT'S POWER TO GRANT RELIEF

42. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to ~~Sec~~ 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to

D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

WILLARD K. TOM  
General Counsel

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