

3. Venue is proper in this district under 15 U.S.C. § 1391(b)(1), (c)(1), and (c)(2), and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces Section 12 of the FTC Act, 15 U.S.C. § 52, which prohibits false advertisements for food, drugs, devices, services, cosmetics in or affecting commerce.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b).

DEFENDANTS

6. Defendant LearningRx Franchise Corp. (LFC) is a Colorado corporation with its principal office or place of business at 5085 List Drive, Suite 200, Colorado Springs, Colorado 80919. LFC sells LearningRx franchises, and has franchised more than eighty LearningRx centers which provide one-on-one private training to consumers across the United States (collectively, "LearningRx centers"). LFC transacts or has transacted business in this district and throughout the United States through its websites, including LearningRx.com, and its network of franchised LearningRx centers.

7. Defendant Ken Gibson is the CEO, secretary, and sole director of LFC. He is the department manager of LFC's "executive department," which is responsible for overseeing all aspects of LFC. Mr. Gibson signs LearningRx franchise agreements, conducts training for franchisees as part of LFC's Training Program which includes training on marketing and sales, reviews and approves advertising, and is responsible for LearningRx advertising claim substantiation issues. He has the authority to review and approve advertising and marketing materials for LearningRx programs including the materials disseminated to franchisees. At all times material to this 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 LFC, including the acts and practices set forth in this Complaint. Defendant Gibson resides in this district and, in connection with the matters alleged herein, transacted business in this district.

COMMERCE

8. 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' COURSE OF CONDUCT

9. Since at least 2002, LearningRx centers have offered one-on-one cognitive training, purported to correct weak or underdeveloped cognitive learning skills. At present, the centers offer this cognitive training through at least five LearningRx programs. In the ThinkRx program, trainers lead clients through cognitive tasks that allegedly improve processing speed,

attention, memory, auditory and visual processing, and reasoning. The centers also offer

A. Claims about Increased Income

- Our programs raise IQ an average of 15 points in 12 weeks, and 20 points in 24 weeks. And because higher IQ has been linked to college scholarships, job advancement and higher income for life[], dollars spent at LearningRx can provide impressive financial returns. [brochure at centers; Ex. A, p.1]
- [A] study by the US Department of Labor Statistics showed that a gain of even 10 IQ points can result in a \$9,000 to \$18,000 increase in annual earnings. Multiply that by 40 years of employment and the numbers become even impressive! LearningRx brain training is proven to increase IQ by an average of 15 points or more. That means for every dollar spent on brain training, there's a return of \$127 over a client's lifetime. [brochure at centers and direct mail piece; Ex. C, p.8]
- Did you know that LearningRx brain training raises IQ by an average of 15 points,[] which statistics link to higher salaries? In fact, statistics prove that even a 10-point increase in IQ can result in as much as \$20,000 more in earnings per year. [Excerpt from 2014 Report of Learning Rx Training Results (Expanded Edition); Ex. S, p.4]

B. Claims about School Grades and Performance on Standardized Tests

- BRAIN TRAINING IMPROVES GRADES . . . [direct mail piece; Ex. B]
- LearningRx clients don't just get better grades and greater IQ, they get faster, sharper brains that help them succeed in every area of life over the course of their entire life." [Excerpt from 2014 Report of Learning Rx Training Results (Expanded Edition); Ex. S, p.4]
- "LearningRx graduates get better grades..." and please follow-up letter to parents; Ex. T]

- o

[Testimonial from ...] was that ... wasn't spend ... finished his assignments so ... lucky to ... only thing that convinced ... was ...
A ...
...
...
calculus class.

- o

Don't just ...
LearningRx is both the short-term ... for the ACT or SAT and the long-term solution to preparing for life!

- o



[Twitter post]

- o

January 29, 2012
We are so proud of you, Hailey!

Hailey, a University of North Dakota student climbs from a 1.38 GPA to 4.0 ...
Hailey completed an intensive 12-week brain training regimen last summer at LearningRx and dramatically improved her ...
... reasoning.

[Twitter post]

o HOST: Lori & Julia here for LearningRx...Let me tell you about a student named Alex, who came to LearningRx last spring because he was struggling in school and had a tough time paying attention in class....Mom and Dad decided to enroll him at LearningRx....When Alex returned to school in the fall and took a standardized test, his math score jumped 43 percentage points, and his reading score went up 18 points. His teachers were blown away by the change in him. If your child is struggling in school, LearningRx could be a much better alternative to the "same old, same old" of summer school and tutoring.... [radio endorsement from the Lori & Julia Show on myTalk 107.1 FM in Minnesota; Ex. Z]

C. Claims about Attention Deficit Hyperactivity Disorder (ADHD)

- o Our programs guarantee improvements for:
 - Kids and adults with ADHD, autism, ... and learning disabilities [brochure at centers; Ex. E]
- o Teens with ADHD who have undergone cognitive skills training for one or more of the three types of attention have shed their labels and gotten off stimulant medication for good. [press release and in-center handout; Ex. F. p.1]
- o Brain training often minimizes or eliminates the need for medication
Brain training can be added to any student's treatment plan. *Does your child currently depend on medication-based treatment only?* Cognitive skills brain training can supplement, and in many cases mitigate or eliminate, medication. [direct mail piece; Ex. G, p.6]

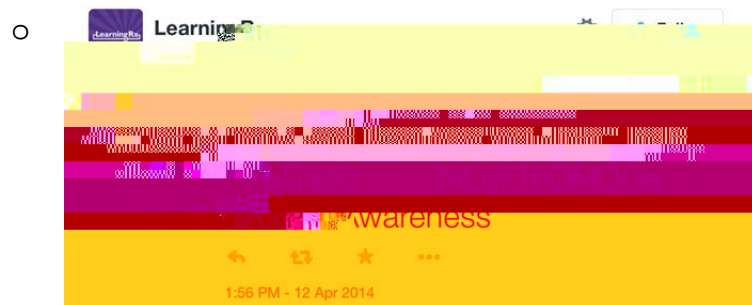
- “With the right program, most children who have been labeled as having ADHD, ADD or other learning disabilities can improve from 1st to five grade levels and about half the students no longer require medication.” [press release titled *Beyond Ritalin: An alternative therapy to helping kids with ADHD*, also available at the centers; Ex. H, p.2]
- [Testimonial from Danne Ziegler re daughter Ariel]: “Homework took less time, and school started making more sense. She al



Ankeny that takes a different approach to help students, and helping students during this summer can give them a step ahead on the fall....A mind-boggling statistic says that forty percent of LearningRx clients who begin the program on medication for ADHD were able to reduce their dosage or altogether by the end of the program.... [radio endorsement from Eddie Hatfield of KJJY-FM in Des Moines, Iowa; Ex. AA]

D. Claims about Autism

- o Brain training can add a life-changing option to the treatment of Autism, Asperger's Syndrome, Pervasive Developmental Disorder (PDD), and other learning conditions. [direct mail piece Ex. G, p.10]
- o *[Testimonial from Phil Parham re son Rhett] Doctors had told us there were some things Rhett [who was diagnosed with autism] could never do. Now he's in regular classes, he's reading on grade level, he's doing well in math like never before. We attended LearningRx two years ago, and we're still seeing the results of training. He's building on the gains that were made in that time." [brochure at centers and direct mail piece; Ex. C., p.4]



[Twitter post]

E. Claims about Strokes, Concussions, and Traumatic Brain Injury

- o Would a Gridiron Concussion Keep Da

LEANNA: When somebody experiences a concussion, it can do great damage to the brain, especially in their cognitive skills areas....And what cognitive skills training does is really get them back to normal functioning or even excel and go beyond what they were doing previous to concussion.... [radio endorsement from Lori & Julia Show on myTalk 107.1 FM in Minnesota; Ex. CC]

F. Claims about Age-Related Memory Decline and Dementia

- Seniors with age-related cognitive decline have seen incredible results in restoring memory function to delay the onset of dementia. [from release and in-center handout; Ex. N, p.1]
- Senior adults can forestall or even reverse age-related mental and memory decline. [from learningrx.com; Ex. O, p.1]
- Alzheimer's/dementia:Brain training increases cognitive reserve and also helps reverse dementia— even after the symptoms are apparent. [article for media and in-center handout; Ex. L, p.1]
- Seniors. . . . Postpone memory decline.. Improve problem solving abilities. . . . Strengthen concentration [in-center brochure; Ex. P, p.1]
- [Virginia Romero Testimonial]: “I Didn’t Let Alzheimer’s Steal My Future. . . . Ever since my stroke, I’d been talking slower and got confused. I couldn’t even remember my address! . . . When a neurologist told me I was in the early stages of Alzheimer’s, I was devastated. . . . I got on the phone and called the LearningRx Brain Training Center in Bossier City, Louisiana where I live. Could brain training help me? I’d soon know. . . . Thinking, reading, talking— even making decisions— got faster and easier. My

neurologist tested my brain function and ~~said~~ jumped from 77.1 to 95.9! . . . BETTER MEMORY, ANYONE? Virginia's short-term memory improved a whopping 33 percentile points!" [in-center brochure and direct mail piece; Ex. I, pp. 4-5]

G. Claims about Athletic Performance

o

The image is a collage of promotional materials for LearningRx brain training. At the top, a purple circle contains the text "If you are an athlete, LearningRx brain training can help you ...". Below this, there are several sections with different backgrounds and colors:

- Strengthen This... To Do This...:** A header with two columns. Under "Strengthen This...", there are icons for Basketball, Soccer, and Tennis. Under "To Do This...", there are icons for Logic Reasoning, Recognize defenses, and Football.
- Basketball:** A section with a basketball player icon. Text includes "Process speed" and "Make better, faster decisions." Below this, it says "Visual processing" and "Judge movement and speed to determine route/location of other players during game".
- Soccer:** A section with a soccer ball icon. Text includes "better at remembering to bring home books and assignments." Below this, it says "Logic Reasoning" and "Recognize defenses".
- Baseball:** A section with a baseball icon. Text includes "homework done".
- Tennis:** A section with a tennis player icon. Text includes "His tennis coach even..." and "more focus". Below this, it says "Visual processing" and "See defensive movements and potential openings if you're a runner, and open receivers and defensive coverage if you're a quarterback".
- Golf:** A section with a golfer icon. Text includes "To get started, call the team today".
- Brain Training:** A section with a person icon. Text includes "Use your brain".

The collage also features various charts, graphs, and decorative elements in shades of purple, green, and blue.

[in-center handout; Ex. Q, p.2] 14

I. Claims about Scientific Substantiation and Permanence of Results

- o LearningRx helps children and adults who feel like they are falling behind in school, work or life. We also help people with ADHD, autism..., even traumatic brain injuries. We get scientifically measurable, clinically proven results that are unmatched by any other training product or company on the market today. [flyer; Ex. V, p.2]
- o LearningRx uses the applied science of neuroplasticity to rewire the brain, strengthening the underlying brain skills that make thinking and learning possible. Our results are clinically proven, scientifically measurable and permanent. [brochure; Ex. W, p.2]
- o Results of our clinically proven programs are dramatic and permanent.

More success in school	Faster mental performance on the athletic field
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[brochure; Ex. X, p.2]

- o Clinically proven. Research based.
 - Our clinically proven programs are based on the latest in brain science research. [in-center brochure; Ex. K, p.6]

- o Brain training done with a brain trainer...is clinically proven to get dramatic improvements that literally change the way the brain performs in school, work and daily life. [in-center brochure; Ex. Y, p.3]

- o Seven things you need to know:
 1. ...
 2. ...
 3. Our programs are researched and clinically proven.
 4. Our results are both dramatic and scientifically measurable.

5. ...We also help kids and adults ~~who~~ have experienced concussions or TBIs, or who have been diagnosed with ADHD, ..., autism and more.
6. ...
7. We offer serious brain ~~train~~ing that translates into significant and practical improvements in daily living.

[Excerpt from *Vital Connections* publication; Ex. M, p.12]

VIOLATIONS OF THE FTC ACT

12. Section 5(a) of the FTC Act, 15 U.S.C. ~~45~~(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

13. Misrepresentations or omissions of ~~material~~ fact constitute deceptive acts or practices prohibited by ~~Section~~ 5(a) of the FTC Act.

14. Section 12 of the FTC Act, 15 U.S.C. § 52, prohibits the dissemination of any false advertisement in or affecting commerce ~~for~~ the purpose of inducing, ~~or~~ which is likely to induce, the purchase of food, ~~drug~~ devices, services, or cosmetics.

15. For the purposes of Section 12 of the ~~CFR~~ Act, the Defendants’ cognitive training programs constitute a service.

COUNT I

False or Unsubstantiated Efficacy Claims

16. Through the means described in ~~Paragraphs~~ 10 through 11 of this Complaint, Defendants have represented, ~~directly~~ or indirectly, expressly ~~or~~ by implication, that LearningRx cognitive training:

- A. substantially increases one's income over a career;
- B. substantially improves school grades in all subjects and scores on standardized tests, such as state achievement tests, and college entrance exams such as the SAT and ACT;
- C. substantially improves the cognitive function of people with ADHD, often enough that they can stop or reduce ADHD medication and shed their ADHD diagnosis;
- D. substantially improves the cognitive function of people with autism, leading to practical improvements in daily living, such as attending regular school classes and reading at grade level;
- E. substantially improves the cognitive function of stroke, concussion, and traumatic brain injury victims, and rebuilds their injured brains, leading to practical improvements in daily living, such as improved vision, memory, concentration, organizing thoughts, decision-making, communication, and social skills;
- F. substantially improves the cognitive function of older people, such as by slowing age-related memory decline, postponing dementia, improving problem-solving abilities, strengthening concentration, and reversing the symptoms of Alzheimer's disease;
- G. substantially improves work and athletic performance;
- H. is ten times more effective in terms of results and costs than tutoring; and
- I. that the benefits of Learning Cognitive training set forth in subparagraphs A through G, above, are lasting and permanent.

17. The representations set forth in Paragraph 16 are false and misleading or were not substantiated at the time the representations were made.

18. Therefore, the making of the representations set forth in Paragraph 16 of this Complaint constitutes a deceptive act or practice, the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT II

False Proof Claim

19. Through the means described in Paragraphs 10 through 11 of this Complaint, above, Defendants have represented, directly or indirectly, expressly or by implication, that the

materials that contain the false, misleading, deceptive, or unsubstantiated representations set forth in Paragraphs 16 and 19, above.

23. By furnishing others with the materials described in Paragraph 22, above,

A. [Redacted]

Defendants:

B. Award such relief as the Court finds necessary to redress injuries resulting from Defendants' violations of the FCPA, including [Redacted]

[Redacted]

C. Award Plaintiff the costs of bringing this action, as well as such other and additional [Redacted] which the Court determines to be just.

Respectfully submitted,

DAVID C. SHONKA
Acting General Counsel

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KEITH FENTON MILLER
EDWIN RODRIGUEZ
Division of Advertising Practices
600 Pennsylvania Ave. NW, Suite 600
Washington, D.C. 20580
(202) 326-2775 (Fentonmiller)
kfenton@fcpa.gov
(202) 326-3477 (Rodriguez)
erodrig@fcpa.gov
(202) 326-3259 (Fax)

Attorneys for Plaintiff
FERRELL