

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“FTC”) pursuant to Section 16(a)(1) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 56(a)(1), for its Complaint alleges:

NATURE OF THE CASE

1. Defendants Xlear Inc. and Nathan Jones sell a variety of products

formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Jones actively participates in promotions for Xlear through, among other things, videos posted on the company's website and appearances on television and podcasts. He also responded directly to FTC staff's July 29, 2020 warning letter to the company about false or unsubstantiated advertising claims about its nasal spray products.

10. Defendant Xlear, formed by Jones in June 2000, is a Utah corporation with its principal place of business at 723 South Auto Mall Drive, American Fork, Utah 84003. Xlear transacts or has transacted business in this District and throughout the United States. At all times relevant to this Complaint, acting alone or in concert with others, Xlear has advertised, marketed, distributed, or sold Xlear-brand saline nasal spray products to consumers throughout the United States. Xlear's nasal spray products are available for purchase at national retailers including Rite-Aid, CVS, Walgreens, and Target, and online at Amazon.com.

THE FTC ACT

11. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

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

13. 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, drugs, devices, services, or cosmetics. For the purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, Xlear nasal spray products are "drugs" as defined in Section

15(c) of the FTC Act, 15 U.S.C. § 55(c).

THE COVID-

predated January 13, 2021. *See* 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114-74, sec. 701, 129 Stat. 599 (2015); *see also* 16 C.F.R. § 1.98(d).

DEFENDANTS'

22. Defendants lack any competent and reliable scientific evidence to support the foregoing claims and other similar statements they have disseminated or caused to be disseminated regarding Xlear nasal spray's use in treating or preventing COVID-19.

II. Defendants Deceptively Imply That Scientific Research Supports Their Claims

23. Defendants have made or caused to be made numerous deceptive statements regarding the results of scientific

25. In reality, the cited studies

valuable reference data for futu

sales. Upon information and belief, Defendants have earned a substantial amount of money from sales of its nasal spray products during the pandemic.

32. Numerous posts on Defendants' own Facebook page and online product reviews

IV.

the COVID-19 Consumer Protection Act.

COUNT ONE

FTC Act Section 5(a) and Section 12 Violations

38. Paragraphs 1 through 37 are incorporated as if set forth herein.

39. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of Xlear nasal spray products, including through the means described in Paragraphs 18-30 of this Complaint, Defendants have represented, directly or indirectly, expressly or by implication, that Xlear nasal spray products are effective in treating or preventing COVID-19, and that the results of scientific studies show that Xlear is effective in treating or preventing COVID-19 in humans.

40. Defendants' representations are false or misleading, or were not substantiated at the time the representations were made.

41. Defendants' representations are material to consumers' decisions.

42. Upon information and belief, Defendants continue to make similar misrepresentations regarding the efficacy of Xlear nasal spray and/or its ingredients.

COUNT TWO

COVID-19 Consumer Protection Act Violations

44. Paragraphs 1 through 43 are incorporated as if set forth herein.

45. In numerous instances since December 27, 2020, Defendants have made false, misleading, or unsubstantiated representations that Xlear nasal spray products are effective for the treatment or prevention of COVID-19.

46. In support of their advertising, marketing, promotion, offering for sale, or sale of Xlear nasal spray products, Defendants have represented, directly or indirectly, expressly or by implication, that there is a causal connection between Xlear nasal spray and the treatment or prevention of COVID-19, including claims that:

- a. Use of Xlear nasal spray is proven to provide four hours of protection against infection with the SARS-CoV-2 virus. Ex. A.
- b. Xlear can prevent deaths from COVID-19: “With the pandemic raging worldwide, we must use every tool we can to fight it. Failing that needlessly risks millions of lives. Weighing our 20-year safety record, against the risks of this deadly virus, it’s clear Xlear needs to be in widespread use.” Ex. C.
- c. Xlear should be used to prevent COVID-19: “People should be using Xlear as part of a layered defense to prevent getting COVID-19. If everyone used Xlear, in addition to taking other steps recommended by

public health officials, we believe we could help the nation defeat COVID-19 faster.” Ex. E.

47. Defendants’ representations are false or misleading, or were not substantiated at the time the representations were made.

48. Defendants’ representations are material to consumers’ decisions.

49. Defendants have been aware of the COVID-19 Consumer Protection Act since March 2021 at the latest.

50. Upon information and belief, Defendants continue to make similar misrepresentations regarding the efficacy of Xlear nasal spray for treating or preventing COVID-19.

51. These ongoing false, misleading, or unsubstantiated representations constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

52. Therefore, these representations also constitute deceptive acts or practices in violation of Section 1401(b)(1) of the COVID-19 Consumer Protection Act.

53. Each dissemination of an advertisement that makes deceptive COVID-19-related representations is a separate violation of the COVID-19 Consumer Protection Act subject to civil penalties.

CONSUMER INJURY

54. Consumers are suffering, have suffered, and likely will continue to suffer substantial injury as a result of Defendants’ violations of the FTC Act and the COVID-19

Consumer Protection Act. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

PRAYER FOR RELIEF

55. Wherefore, Plaintiff, pursuant to Sections 5(a)(1), 5(m)(1)(A), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and 57b, Section 1401(c)(2)(A) of the COVID-19 Consumer Protection Act, and the Court's own equitable powers, requests that the Court:

A. Enter a permanent injunction to prevent future violations of the FTC Act and the COVID-19 Consumer Protection Act by the Defendants;

B. Award such relief pursuant to Section 19 of the FTC Act as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of Section 5 pursuant to the COVID-19 Consumer Protection Act, including rescission or reformation of contracts, the refund of money or return of property, the payment of damages, and public notification respecting the unfair or deceptive act or practice;

C. Award Plaintiff monetary civil penalties from Defendants for every violation of the COVID-19 Consumer Protection Act alleged in this Complaint; and

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.

Dated: October 28, 2021

FOR THE UNITED STATES OF AMERICA:

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INDEX OF EXHIBITS

Exhibit A: Xlear.com video (*Transformational Hygiene with Xlear Nasal Spray*,
WWW.XLEAR.COM (captured Feb. 3, 2021))

Exhibit B: Apr. 14, 2020 Xlear Facebook post (Xlear, FACEBOOK (captured Aug. 21, 2020),
facebook.com/pg/xylitolexperts/posts/?ref=page_internal))

Exhibit C: Press release