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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

FEDERAL TRADE COMMISSION,)
)
)
 Plaintiff,)
)
 v.)
)
 SPEAR SYSTEMS, INC., a)
 Wyoming corporation;)
)
 BRUCE PARKER, individually, and as an officer)
 or director of Spear Systems, Inc.;)
)
 LISA KIMSEY, individually, and as an officer)
 of Spear Systems, Inc.; and)
)
 XAVIER RATELLE, individually, and doing)
 business as eHealthyLife.com,)
)
 Defendants.)

Case No. 07 C 5597

JUDGE ANDERSEN

MAGISTRATE JUDGE MASON

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its Complaint alleges as follows:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and under Section 7(a) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM"), 15 U.S.C. § 7706(a), to obtain injunctive relief and other equitable relief for Defendants' deceptive and unfair acts or practices and the making of false advertisements in violation

of Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45 and 52, and for violations of CAN-SPAM, 15 U.S.C. § 7701 *et seq.*

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a), 52, 53(b), 57b, 7706(a) and 28 U.S.C. §§ 1331, 1337(a) and 1345.
3. Venue in the United States District Court for the Northern District of Illinois is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391 (b), (c) and (d).

PLAINTIFF

4. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The Commission enforces Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, which prohibit, respectively, deceptive or unfair acts or practices and false advertisements for food, drugs, devices, services, or cosmetics, in or affecting commerce. The FTC is also charged with enforcing CAN-SPAM as if statutory violations of CAN-SPAM “were an unfair or deceptive act or practice proscribed under Section 18(a)(1)(B) of the [FTC Act] (15 U.S.C. 57a(a)(1)(B)).” 15 U.S.C. § 7706(a).
5. Sections 13(b) and 19 of the FTC Act authorize the FTC to initiate federal district court proceedings, in its own name by its designated attorneys, to enjoin violations of any provision of law enforced by the FTC, and to secure such equitable relief as may be appropriate in each case. 15 U.S.C. §§ 53(b), 57b.

DEFENDANTS

6. Defendant Spear Systems, Inc. (“Spear Systems”) is a Wyoming corporation with a registered agent located at 123 W. 1st St., Suite 675, Casper, Wyoming 82601 and a principal place of business at 4000 Eagle Point Corporate Drive, Birmingham, Alabama 35242.
7. Defendant Bruce Parker is the President of Spear Systems, Inc. Parker has formulated, directed, controlled, or participated in the acts or practices of Spear Systems, Inc. set forth in this Complaint.
8. Defendant Lisa Kimsey is, or has held herself out as, an officer of Spear Systems, Inc., including, but not limited to, as the chief financial officer of Spear Systems, Inc. Kimsey has formulated, directed, controlled, or participated in the acts or practices of Spear Systems, Inc. set forth in this Complaint.
9. Defendant Xavier Ratelle has formulated, directed, controlled, or participated in the acts or practices set forth in this Complaint. Ratelle also does business as eHealthyLife.com.
10. “Defendants” means Spear Systems, Bruce Parker, Lisa Kimsey, and Xavier Ratelle. Defendants have transacted business in the Northern District of Illinois within the meaning of 15 U.S.C. § 53(b).

COMMERCE

11. 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.

DEFINITIONS

12. **“Electronic mail message”** (or “email”) means a message sent to a unique electronic mail address. 15 U.S.C. § 7702(6).
13. **“Electronic mail address”** means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the “local part”) and a reference to an Internet domain (commonly referred to as the “domain part”), whether or not displayed, to which an electronic mail message can be sent or delivered. 15 U.S.C. § 7702(5).
14. **“Commercial electronic mail message”** means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including the content on an Internet website operated for commercial purposes). 15 U.S.C. § 7702(2).
15. **“Header information”** means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person initiating the message. 15 U.S.C. § 7702(8).
16. **“Initiate,”** when used with respect to a commercial email message, means to originate or transmit such message or to procure the origination or transmission of such message. 15 U.S.C. § 7702(9).
17. **“Procure,”** when used with respect to the initiation of a commercial email message, means intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one’s behalf. 15 U.S.C. § 7702(12).

18. **“Protected Computer”** means a computer which is used in interstate or foreign commerce or communication, including a computer located outside the United States that is used in a manner that affects interstate or foreign commerce or communication of the United States. 15 U.S.C. 7702(13).
19. **“Sender”** means a person who initiates a commercial email message and whose product, service, or Internet Web site is advertised or promoted by the message. 15 U.S.C. § 7702(16).

DEFENDANTS’ BUSINESS ACTIVITIES

20. Since at least April 2006, and continuing to the present, Defendants have marketed and sold a variety of dietary supplement products. One line of products marketed by Defendants under a variety of different names such as HoodiaLife and HoodiaPlus is a pill that purports to contain hoodia gordonii and cause substantial weight loss by suppressing appetite (the “Hoodia Products”). Defendants also market a pill they claim causes the body to produce human growth hormone, using a variety of different names such as HGHLife and HGHPlus (the “HGH Products”). The Hoodia and HGH Products are each sold for \$55.95, plus \$9.99 shipping and handling.
21. Defendants have marketed their products by initiating commercial email messages. The primary purpose of these commercial email messages has been the commercial advertisement or promotion of Internet Web sites operated for a commercial purpose by Defendants. Particularly, the text of the commercial email messages contains hyperlinks to Web sites at which consumers can order Defendants’ products.

22. Defendants have advertised, offered for sale, sold, and/or distributed their products via dozens of Internet Web sites. Four of the Web sites Defendants have used to market their products are ehealthylife.com, formulaalxyz.com, hppinequalsook.com, and zckisyltiffiee.com. Consumers may purchase Defendants' products by credit card from Defendants' Web sites.

23. To induce consumers to purchase the HoodiaLife, Defendants' Web sites make the following statements:

DIET PILL BREAKTHROUGH!

What if you could actually shed 10, 15, or even 25 pounds quickly and safely in less than 30 days? Now you can...

* * *

About HoodiaLife™

If you haven't heard of HoodiaLife™ yet, you soon will because it is being touted as the new miracle supplement for safe, effective weight loss. Hoodia gordonii, (Hoodia) is the botanical name for a cactus like plant that grows in Southern Africa. Scientists have recently isolated several compounds in this amazing plant that are responsible for dramatic weight loss. This all-natural appetite suppressant is also being applauded for containing no dangerous stimulants that caused adverse side effects associates with weight loss products of the last decade.

Advantages

- Curbs your Appetite
- Fast weight loss
- Certified 100% Pure South African Hoodia
- Boosts Energy
- Completely Safe...NO Side Effects
- Goes to Work After First Dosage
- Supports Total Healthy Lifestyles
- Regulates Blood Sugar
- Doesn't Keep You Up At Night...Stimulant Free
- Improve self esteem and confidence

* * *

Our sustained release formula helps you reach your optimal weight zone, the continued weight loss will pace itself to allow your body and metabolism to adjust to your new weight. The sustained release slowly releases the powerful Hoodia into your system so the effects last all day. This balance is crucial to maintaining your weight-loss and keeping those unwanted inches off...and HoodiaLife™ is proven to do exactly just that so you can KEEP THE WEIGHT OFF PERMANENTLY

24. To induce consumers to purchase HoodiaPlus, Defendants' Web sites contain statements substantially identical to those in Paragraph 23 above.
25. To induce recipients to visit the Web sites and purchase Defendants' Hoodia Products, commercial email messages promoting Web sites operated by Defendants or their agents contain the image below, claiming users will safely lose 25 pounds in a month:

HoodiaLife™
Lose 25 pounds in 1 Month!
Discover the New Miracle Supplement for Safe, Effective Weight Loss!

→ **Click Here To Order!**

Featured on: **OPRAH** **60 MINUTES** **abc** **ABC-7** **TODAY**

The advertisement is a rectangular graphic with a textured background. At the top left, a bottle of HoodiaLife is shown. To its right, a hand is shown holding a scale. The text is arranged in a central column, with the product name and a bold claim at the top, followed by a descriptive sentence. A large, dark button with a white arrow and text is positioned below the text. At the bottom, a row of logos for various television shows is displayed.

26. To induce consumers to purchase HGHPlus, Defendants' Web sites make the following statements:

HGHPlus: Making you look and feel younger, naturally...

* * *

Why Choose HGHPlus™

- Grow new muscle mass
- Reduce fat stores in the body
- Metabolize fat faster
- Have more energy
- Increase memory & concentration
- Grow new hair and skin
- Feel revitalized and youthful
- Intensify romance and libido

* * *

Researchers say the steady drop in our HGH level is what causes many health problems and diseases related to aging. These symptoms include weight gain, muscle loss, reduced energy, poor mental alertness, weak immune system, hearing/vision problems, wrinkles and cellulite, decreased libido and the list goes on. To put it simply, there is a direct relationship between your body's level of HGH production and the signs and symptoms of modern aging. So, it would be logical that all you need to do in order to reduce these symptoms or even reverse aging itself, is to give yourself a steady supply of HGH....

Dr. Robert Klaz, MD says, "You can boost your hGH levels by taking certain natural supplements. And you can do it safely, effectively, and economically," but don't be fooled into resorting to expensive and painful HGH injections as they do not boost your overall production. Only the amino acids used by the body to create its own HGH can do this, in powerful combination with other things, which is the beauty of HGH Plus™. It contains all the amino acids and trace minerals needed to restore your own HGH production, along with everything you need to be more vital, youthful and alive with vigorous energy than ever before. HGH Plus™ is such a powerful, ultra high-quality blend, the benefits are almost too many to list.

* * *

HGH Plus™ will aid your body in almost every function that it performs, from regulating metabolism and burning fat to maintaining bone density, muscle mass, mental functions, digestive functions, immuno-defense activity and skin and organ repair. You will have a whole new body in only a few short months.

* * *

HGH Plus™ can reduce stress and anxiety, improve emotional balance, and provide a great enhancement to one's self-confidence.

27. To induce consumers to purchase HGHLife, Defendants' Web sites contain statements substantially identical to those in Paragraph 26 above.
28. Defendants "initiate" a commercial email message when they have either originated or transmitted a message themselves or have procured the origination or transmission of a message through payments or other consideration, or inducements.
29. Defendants are "senders" with respect to a commercial email message when they have initiated a message and it is Defendants' Web sites that are being advertised or promoted by such message.
30. Defendants have initiated commercial email messages containing materially false or misleading header information. In many instances, the email contains an originating email address that was not assigned by the email service provider or was used without the authorization of the subscriber who obtained the email address from the email service operator. In other instances, the email message fails to identify accurately the protected computer used to initiate the message because the email message was relayed or retransmitted through another protected computer for purposes of disguising its origin.

31. In order to induce consumers to open and read their commercial emails, Defendants have initiated commercial email messages that contain subject headers that misrepresent the content or subject matter of the message.
32. Defendants' commercial email messages fail to include any notification to recipients of their ability to decline receiving future email messages from Defendants, and they fail to include a reply email address or other mechanism that recipients can use to decline receiving future email messages from Defendants.
33. Defendants have initiated commercial email messages that failed to include a valid physical postal address of the sender.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

34. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a), 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 purpose of Section 12 of the FTC Act, the Hoodia Products and the HGH Products are "foods" or "drugs" as defined in 15 U.S.C. §§ 55(b), (c).
35. As set forth below, Defendants have engaged in unlawful practices in violation of Sections 5(a) and 12 of the FTC Act in connection with the marketing and/or sale of the Hoodia and HGH Products.

COUNT I

False Claims for the Hoodia Products

36. Through the means described in Paragraphs 20-25 above, Defendants have represented, expressly or by implication, that:
- a. their Hoodia Products cause rapid and substantial weight loss, including as much as twenty-five pounds in a month;
 - b. their Hoodia Products cause users to lose safely three or more pounds per week for multiple weeks; and/or
 - c. their Hoodia Products cause permanent weight loss.
37. In truth and in fact:
- a. their Hoodia Products do not cause rapid and substantial weight loss, including as much as twenty-five pounds in a month;
 - b. their Hoodia Products do not cause users to lose safely three or more pounds per week for multiple weeks; and/or
 - c. their Hoodia Products do not cause permanent weight loss.
38. Therefore, Defendants' representations as set forth in Paragraph 36 above are false or misleading and constitute a deceptive practice, and 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

Unsubstantiated Claims for the Hoodia Products

39. Through the means described in Paragraphs 20-25 above, Defendants have represented, expressly or by implication, that:
- a. their Hoodia Products cause rapid and substantial weight loss, including as much as twenty-five pounds in a month;
 - b. their Hoodia Products cause users to lose safely three or more pounds per week for multiple weeks; and/or
 - c. their Hoodia Products cause permanent weight loss.
40. Defendants did not possess and rely upon a reasonable basis that substantiated the representations made in Paragraph 39 above at the time the representations were made. Therefore, the making of the representations set forth in Paragraph 39 above constitutes a deceptive practice, and 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 III

False Claims for the HGH Products

41. Through the means described in Paragraphs 20-22 and 26-27 above, Defendants have represented, expressly or by implication, that the HGH Products:
- a. contain human growth hormone and/or cause a clinically meaningful increase in a consumer's growth hormone levels; and/or
 - b. will turn back or reverse the aging process, including, but not limited to, causing effects such as: (i) reducing cellulite, (ii) improving hearing and vision,

(iii) causing new hair growth, (iv) improving emotional stability, (v) increasing muscle mass, and (vi) causing fat and weight loss.

42. In truth and in fact, Defendants' HGH Products:

a. do not contain human growth hormone or cause a clinically meaningful increase in a consumer's growth hormone levels; and

b. will not turn back or reverse the aging process, and do not: (i) reduce cellulite, (ii) improve hearing and vision, (iii) cause new hair growth, (iv) improve emotional stability, (v) increase muscle mass, or (vi) cause fat and weight loss.

43. Therefore, Defendants' representations as set for in Paragraph 41 above are false or misleading and constitute a deceptive practice, and 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 IV

Unsubstantiated Claims for the HGH Products

44. Through the means described in Paragraphs 20-22 and 26-27 above, Defendants have represented, expressly or by implication, that their HGH Products:

a. contain human growth hormone and/or cause a clinically meaningful increase in a consumer's growth hormone levels; and/or

b. will turn back or reverse the aging process, including, but not limited to, causing effects such as: (i) reducing cellulite, (ii) improving hearing and vision, (iii) causing new hair growth, (iv) improving emotional stability, (v) increasing muscle mass, and (vi) causing fat and weight loss.

45. Defendants did not possess and rely upon a reasonable basis that substantiated the representations made in Paragraph 44 above at the time the representations were made. Therefore, the making of the representations set forth in Paragraph 44 above constitutes a deceptive practice, and 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.

VIOLETIONS OF THE CAN-SPAM ACT

46. CAN-SPAM became effective on January 1, 2004, and has since remained in full force and effect.

47. Section 5(a)(1) of CAN-SPAM, 15 U.S.C. § 7704(a)(1), states:

It is unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message . . . that contains, or is accompanied by, header information that is materially false or materially misleading.

48. Section 5(a)(6) of CAN-SPAM, 15 U.S.C. § 7704(a)(6), states:

For purposes of [section 5(a)(1)], the term “materially”, when used with respect to false or misleading header information, includes the alteration or concealment of header information in a manner that would impair the ability of an Internet access service processing the message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond to a person who initiated the electronic mail message or to investigate the alleged violation, or the ability of a recipient of the message to respond to a person who initiated the electronic message.

49. Section 5(a)(2) of CAN-SPAM, 15 U.S.C. § 7704(a)(2), states:

It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message if such person has actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that a subject heading of the message would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding

the content or subject matter of the message (consistent with the criteria used in enforcement of Section 5 of the Federal Trade Commission Act (15 U.S.C. § 45)).

50. Section 7(e) of CAN-SPAM, 15 U.S.C. § 7706(e), states that in any action to enforce compliance through an injunction with Section 5(a)(2) and other specified sections of CAN-SPAM, the FTC need not allege or prove the state of mind required by such sections.

51. Section 5(a)(3) of CAN-SPAM, § 7704(a)(3) states:

It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message that does not contain a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that –

(i) a recipient may use to submit, in a manner specified in the message, a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from that sender at the electronic mail address where the message was received; and

(ii) remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message.

52. Section 5(a)(5)(A) of CAN-SPAM, § 7704(a)(5)(A) states:

It is unlawful for any person to initiate the transmission of any commercial electronic mail message to a protected computer unless the message provides:

- (i) clear and conspicuous identification that the message is an advertisement or solicitation;
- (ii) clear and conspicuous notice of the opportunity under [section 5(a)(3)] to decline to receive further commercial electronic mail messages from the sender; and
- (iii) a valid physical postal address of the sender.

53. Section 7(a) of CAN-SPAM, 15 U.S.C. § 7706(a), states:

[T]his Act shall be enforced by the [FTC] as if the violation of this Act were an unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the [FTC Act] (15 U.S.C. 57(a)(1)(B)).

COUNT V

54. In numerous instances, Defendants have initiated the transmission, to protected computers, of commercial email messages that contained, or were accompanied by, header information that is materially false or materially misleading.

55. Defendants' acts or practices, as described in Paragraph 54 above, violate 15 U.S.C. § 7704(a)(1).

COUNT VI

56. In numerous instances, Defendants have initiated the transmission, to protected computers, of commercial email messages that contained subject headings that would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message.

57. Defendants' acts or practices, as described in Paragraph 56 above, violate 15 U.S.C. § 7704(a)(2).

COUNT VII

58. In numerous instances, Defendants have initiated the transmission, to protected computers, of commercial email messages that advertise or promote Defendants' Internet Web sites, products or services, and do not include:

- a. a clear and conspicuous notice of the recipient's opportunity to decline to receive further commercial electronic mail messages from Defendants at the recipient's electronic mail address; and/or

b. a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that a recipient could use to submit a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from Defendants at the electronic mail address where the message was received, and that remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message.

59. Defendants' acts or practices, as described in Paragraph 58 above, violate 15 U.S.C. § 7704(a)(5)(A)(ii) and/or § 7704(a)(3).

COUNT VIII

60. In numerous instances, Defendants have initiated the transmission, to protected computers, of commercial email messages that advertise or promote Defendants' Internet Web sites, products or services and do not include the senders' valid physical postal address.

61. Defendants' acts or practices, as described in Paragraph 60 above, violate 15 U.S.C. § 7704(a)(5)(A)(iii).

CONSUMER INJURY

62. Consumers throughout the United States and beyond have suffered, and continue to suffer, substantial monetary loss and other injury as a result of Defendants' unlawful acts or practices. In addition, Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive and other equitable relief by this

Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

63. Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, empowers this Court to grant injunctive and other ancillary equitable relief to prevent and remedy Defendants' violations of the FTC Act, and in the exercise of its equitable jurisdiction, to award redress to remedy the injury to individuals and businesses, to order the disgorgement of monies resulting from Defendants' unlawful acts or practices, and to order other ancillary equitable relief. A violation of CAN-SPAM may be remedied in the same manner as a violation of the FTC Act. 15 U.S.C. § 7706.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, Section 7(a) of CAN-SPAM, 15 U.S.C. § 7706(a), and the Court's own equitable powers, requests that the Court:

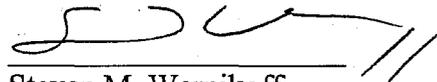
1. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including, but not limited to, temporary and preliminary injunctions and an order freezing assets;
2. Enter a permanent injunction to prevent future violations of the FTC Act and the CAN-SPAM Act by defendants;
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the CAN-SPAM Act,

including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

4. 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,

William Blumenthal
General Counsel



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