

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

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 or  
director of Spear Systems, Inc.; and

XAVIER RATELLE, individually, and doing business  
as eHealthyLife.com,

Defendants.

07 C 5597

Judge Anderson

Magistrate Judge Mason

**ANSWER OF LISA KIMSEY**

NOW COMES Defendant, Lisa Kimsey, individually, and for her Answer to the  
Complaint in this matter, states 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. § 706(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.

**Answer:** This defendant admits the existence of the acts and statutes as cited, but denies that she was in any way involved with violations of same or that the acts and statutes cited have any applicability to her.

### **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.

**Answer:** Admitted.

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).

**Answer:** Admitted.

### **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).

**Answer:** This defendant admits the existence of the acts and statutes as cited, but denies that she was in any way involved with violations of same or that the acts and statutes cited have any applicability to her.

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.

**Answer:** This defendant admits the existence of the acts and statutes as cited, but denies that she was in any way involved with violations of same or that the acts and statutes cited have any applicability to her.

### **DEFENDANTS**

6. Defendant Spear Systems, Inc. ("Spear Systems") is a Wyoming corporation with a registered agent located at 123 W. 1<sup>st</sup> St., Casper, Wyoming 82601 and a principal place of business at 4000 Eagle Point Corporate Drive, Birmingham, Alabama 35242.

**Answer:** Admitted.

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.

**Answer:** This defendant admits only that Bruce Parker is the President of Spear Systems, Inc. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of Bruce Parker to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

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.

**Answer:** Defendant admits only that she was listed as the Chief Financial Officer of Spear Systems, Inc., denies that she formulated, directed, controlled, or participated in the acts or practices of Spear Systems, Inc. set forth in this Complaint and makes no response to the remaining legal conclusions contained in this paragraph.

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.

**Answer:** This defendant is without sufficient information with which to either admit or deny the allegations of this paragraph of the Complaint.

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).

**Answer:** This defendant is without sufficient information with which to either admit or deny the allegations of this paragraph of the Complaint.

#### **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.

**Answer:** This defendant makes no response to the legal conclusions contained in this paragraph. To the extent the allegations are deemed not to be legal conclusions, they are denied.

## DEFINITIONS

12. **"Electronic mail message"** (or "email") means a message sent to a unique electronic mail address. 15 U.S.C. § 7702(6).

**Answer:** This defendant admits the existence of the act and statute as cited, but denies that she was in any way involved with violations of same or that the act and statute cited has any applicability to her.

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).

**Answer:** This defendant admits the existence of the act and statute as cited, but denies that she was in any way involved with violations of same or that the act and statute cited has any applicability to her.

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).

**Answer:** This defendant admits the existence of the act and statute as cited, but denies that she was in any way involved with violations of same or that the act and statute cited has any applicability to her.

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).

**Answer:** This defendant admits the existence of the act and statute as cited, but denies that she was in any way involved with violations of same or that the act and statute cited has any applicability to her.

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).

**Answer:** This defendant admits the existence of the act and statute as cited, but denies that she was in any way involved with violations of same or that the act and statute cited has any applicability to her.

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).

**Answer:** This defendant admits the existence of the act and statute as cited, but denies that she was in any way involved with violations of same or that the act and statute cited has any applicability to her.

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).

**Answer:** This defendant admits the existence of the act and statute as cited, but denies that she was in any way involved with violations of same or that the act and statute cited has any applicability to her.

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).

**Answer:** This defendant admits the existence of the act and statute as cited, but denies that she was in any way involved with violations of same or that the act and statute cited has any applicability to her.

#### **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.

**Answer:** This defendant, answering only for herself, admits that Spear Systems, Inc. marketed certain hoodia products, but is without sufficient information with which to answer the remaining allegations of this paragraph of the Complaint. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer

of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

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.

**Answer:** This defendant, answering only for herself, denies the allegations of this paragraph of the Complaint. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

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](http://ehealthylife.com), [formulaalxyz.com](http://formulaalxyz.com), [hppinequalsok.com](http://hppinequalsok.com) and [zckisyltiffiee.com](http://zckisyltiffiee.com). Consumers may purchase Defendants' products by credit card from Defendants' Web sites.

**Answer:** This defendant, answering only for herself, denies the allegations of this paragraph of the Complaint. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

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 associated 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

**Answer:** This defendant, answering only for herself, is without sufficient information with which to either admit or deny the allegations of this paragraph.

Pleading affirmatively, this defendant states that she has never seen the referenced websites and was not in anyway involved in its production or the language used. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

24. To induce consumers to purchase HoodiaPlus, Defendants' Web sites contain statements substantially identical to those in Paragraph 23 above.

**Answer:** This defendant, answering only for herself, is without sufficient information with which to either admit or deny the allegations of this paragraph. Pleading affirmatively, this defendant states that she has never seen the referenced websites and was not in anyway involved in their production or the language used. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

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 contained the image below, claiming users will safely lose 25 pounds in a month:

[image]

**Answer:** This defendant, answering only for herself, is without sufficient information with which to either admit or deny the allegations of this paragraph. Pleading affirmatively, this defendant states that she has never seen the referenced image or e-mails and was not in anyway involved in their production, the language or

any images used. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

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 HGB injections as they do not boost your overall production. Only the amino acids used by the body to create its own HGB 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.

**Answer:** This defendant, answering only for herself, is without sufficient information with which to either admit or deny the allegations of this paragraph. Pleading affirmatively, this defendant states that she has never seen the referenced websites and was not in anyway involved in their production or the language used. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

27. To induce consumers to purchase HGHLife, Defendants' Web sites contain statements substantially identical to those in Paragraph 26 above.

**Answer:** This defendant, answering only for herself, is without sufficient information with which to either admit or deny the allegations of this paragraph. Pleading affirmatively, this defendant states that she has never seen the referenced websites and was not in anyway involved in its production or the language used. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer

of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

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.

**Answer:** This defendant, answering only for herself, denies that she ever initiated a commercial email message, by either originating or transmitting a message and denies that she ever procured the origination or transmission of a message through payments or other consideration, or inducements. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

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.

**Answer:** This defendant, answering only for herself, denies that she ever was a "sender" of a commercial email message or advertised a Website by any such message. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

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.

**Answer:** This defendant, answering only for herself, denies the allegations of this paragraph and specifically denies that she initiated commercial email messages containing materially false or misleading header information. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

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.

**Answer:** This defendant, answering only for herself, denies the allegations of this paragraph and specifically denies that she initiated commercial email messages that contain subject headers that misrepresent the content or subject matter of the message. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

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.

**Answer:** This defendant, answering only for herself, denies the allegations of this paragraph. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

33. Defendants have initiated commercial email messages that failed to include a valid physical postal address of the sender.

**Answer:** This defendant, answering only for herself, denies the allegations of this paragraph and specifically denies that she initiated commercial email messages that failed to include a valid physical postal address of the sender. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

#### **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).

**Answer:** This defendant admits the existence of the acts and statutes as cited, makes no response to the legal conclusions made regarding the application of the acts and statutes cited, and pleading affirmatively denies that she was in any way involved with violations of same or that the acts and statutes cited have any applicability to her.

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.

**Answer:** This defendant, answering only for herself, denies the allegations of this paragraph and specifically denies that she 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. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

## 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.

**Answer:** This defendant, answering only for herself, denies the allegations of this paragraph. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

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.

**Answer:** This defendant, answering only for herself, is without sufficient information with which to either admit or deny the allegations of this paragraph. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

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.

**Answer:** This defendant, answering only for herself, denies the allegations of this paragraph and specifically denies that she made any false or misleading representations or was involved in any deceptive practice. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants

to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

## 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.

**Answer:** This defendant, answering only for herself, denies the allegations of this paragraph. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

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.

**Answer:** This defendant, answering only for herself, denies the allegations of this paragraph. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and

incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

### COUNT III

#### False Claims for the HGH Products

41. Though 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.

**Answer:** This defendant, answering only for herself, denies the allegations of this paragraph. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

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.

**Answer:** This defendant, answering only for herself, is without sufficient information with which to either admit or deny the allegations of this paragraph. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer

of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

43. Therefore, Defendants' representations as set forth, 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.

**Answer:** This defendant, answering only for herself, denies the allegations of this paragraph and specifically denies making any representations as alleged. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

#### **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.

**Answer:** This defendant, answering only for herself, denies the allegations of this paragraph. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and

incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

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.

**Answer:** This defendant, answering only for herself, denies the allegations of this paragraph. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

#### **VIOLATIONS OF THE CAN-SPAM ACT**

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

**Answer:** This defendant admits the existence of the acts and statutes as cited, but denies that she was in any way involved with violations of same or that the acts and statutes cited have any applicability to her.

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.

**Answer:** This defendant admits the existence of the acts and statutes as cited, states that the text of the statute speaks for itself, but denies that she was in any way involved with violations of same or that the acts and statutes cited have any applicability to her.

48. Section 5(a)(6) of CAN-SPAM, 15U.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.

**Answer:** This defendant admits the existence of the acts and statutes as cited, states that the text of the statute speaks for itself, but denies that she was in any way involved with violations of same or that the acts and statutes cited have any applicability to her.

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)).

**Answer:** This defendant admits the existence of the acts and statutes as cited, states that the text of the statute speaks for itself, but denies that she was in any

way involved with violations of same or that the acts and statutes cited have any applicability to her.

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.

**Answer:** This defendant admits the existence of the acts and statutes as cited, states that the text of the statute speaks for itself, but denies that she was in any way involved with violations of same or that the acts and statutes cited have any applicability to her.

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.

**Answer:** This defendant admits the existence of the act and statute as cited, states that the text of the statute speaks for itself, but denies that she was in any way involved with violations of same or that the acts and statutes cited have any applicability to her.

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

**Answer:** This defendant admits the existence of the act and statute as cited, states that the text of the statute speaks for itself, but denies that she was in any way involved with violations of same or that the act and statute cited has any applicability to her.

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)).

**Answer:** This defendant admits the existence of the act and statute as cited, states that the text of the statute speaks for itself, but denies that she was in any way involved with violations of same or that the act and statutes cited has any applicability to her.

#### **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.

**Answer:** This defendant, answering only for herself, denies the allegations of this paragraph and specifically denies that she ever initiated the transmission of commercial email messages, whether or not such messages contained, or were accompanied by, header information that is materially false or materially misleading. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

55. Defendants' acts or practices, as described in Paragraph 54 above, violate 15 U.S.C. § 7704(a)(2).

**Answer:** This defendant, answering only for herself, denies the allegations of this paragraph. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

#### **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.

**Answer:** This defendant, answering only for herself, denies the allegations of this paragraph and specifically denies that she ever initiated the transmission of commercial email messages, whether or not such messages 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. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

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

**Answer:** This defendant, answering only for herself, denies the allegations of this paragraph. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

#### **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.

**Answer:** This defendant, answering only for herself, denies the allegations of this paragraph. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and

incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

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).

**Answer:** This defendant, answering only for herself, denies the allegations of this paragraph. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

#### **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 address.

**Answer:** This defendant, answering only for herself, denies the allegations of this paragraph and specifically denies she ever initiated the transmission of commercial email messages that advertise or promote Defendants' Internet Web sites, products or services and do not include the senders' valid physical address. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

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

**Answer:** This defendant, answering only for herself, denies the allegations of this paragraph. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

### **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.

**Answer:** This defendant, answering only for herself, denies the allegations of this paragraph. Pursuant to Fed. R. Civ. Pro. 10(c), this defendant adopts and incorporates the answer of the remaining defendants to the remaining allegations of this paragraph, said allegations not being directed at this defendant.

### **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.

**Answer:** This defendant admits the existence of the acts and statutes as cited, states that the text of the statutes speaks for themselves, but denies that she was in any way involved with violations of same or that the acts and statutes cited have any applicability to her or that there is a basis for this Court to grant the relief sought against her.

WHEREFORE, Defendant Lisa Kimsey, individually, respectfully requests this Honorable Court enter judgment in her favor and against plaintiff, that plaintiff take nothing by way of its Complaint so wrongfully brought against this Defendant, that Defendant be awarded her attorney fees and costs incurred in defending this matter, or for such other relief the Court deems appropriate. Defendant Lisa Kimsey, demands trial by jury.

Respectfully submitted,

LISA KIMSEY, Individually

By: s/Terrence F. Guolee  
One of her Attorneys

Terrence Guolee  
Robert R. Benjamin (ARDC # 0170429)  
Paul O'Grady  
Eileen Sethna (ARDC # 6276640)  
QUERREY & HARROW, LTD.  
175 West Jackson, Suite 1600  
Chicago, Illinois 60604  
Phone: 312-540-7544  
Fax: 312-540-7001  
E-mail: tguolee@querrey.com