

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

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Case No. 07 C 4541
)	
v.)	Judge David H. Coar
)	
SILI NEUTRACEUTICALS, LLC, and)	Magistrate Judge Morton Denlow
BRIAN MCDAID, individually and doing)	
business as KAYCON LTD.,)	
Defendants.)	

DEFENDANTS' ANSWER TO COMPLAINT

AND NOW, Come defendants, by their attorneys, and respond to the plaintiff's

Complaint as follows:

Allegation 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.

Answer 1. It is admitted that plaintiff is authorized to bring this action pursuant to federal law.

Allegation 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 2. It is admitted that the Court has subject matter jurisdiction.

Allegation 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) and (c).

Answer 3. It is specifically denied that venue is proper in the Northern District of Illinois. Even if venue is theoretically available in this District, transfer is proper on *forum non conveniens* principles.

Allegation 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 4. It is admitted that plaintiff is a federal agency.

Allegation 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 5. It is admitted that plaintiff has statutory authority to initiate this action and seek equitable relief.

Allegation 6. Defendant Sili Neutraceuticals, LLC is a limited liability company registered in Nevada. Sili Neutraceuticals has a registered office at 101 Convention Center Drive, #700, Las Vegas, Nevada 89109.

Answer 6. It is admitted that Defendant Sili Neutraceuticals, LLC is a limited liability company registered in Nevada.

Allegation 7. Defendant Brian McDaid is the sole member of Sili Neutraceuticals,

LLC. McDaid has formulated, directed, controlled, or participated in the acts or practices of Sili Neutraceuticals, LLC set forth in this Complaint. McDaid also does business as Kaycon, Ltd.

Answer 7. It is admitted that defendant McDaid has participated in the affairs of Sili.

Allegation 8. "Defendants" means Sili Neutraceuticals, LLC and Brian McDaid. Defendants have transacted business in the Northern District of Illinois within the meaning of 15 U.S.C. § 53(b).

Answer 8. It is denied that defendants have transacted business within the Northern District of Illinois.

Allegation 9. 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 9. It is admitted that defendants have engaged in commerce.

Allegation 10. "Electronic mail message" (or "email") means a message sent to a unique electronic mail address. 15 U.S.C. § 7702(6).

Answer 10. Allegations concerning the meaning and content of statutory terms constitute conclusions of law to which no response is required.

Allegation 11. "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 11. Allegations concerning the meaning and content of statutory terms constitute conclusions of law to which no response is required.

Allegation 12. "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 12. Allegations concerning the meaning and content of statutory terms constitute conclusions of law to which no response is required.

Allegation 13. "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 13. Allegations concerning the meaning and content of statutory terms constitute conclusions of law to which no response is required.

Allegation 14. 14. "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 14. Allegations concerning the meaning and content of statutory terms constitute conclusions of law to which no response is required.

Allegation 15. "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 15. Allegations concerning the meaning and content of statutory terms constitute conclusions of law to which no response is required.

Allegation 16. "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 16. Allegations concerning the meaning and content of statutory terms

constitute conclusions of law to which no response is required.

Allegation 17. "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 17. Allegations concerning the meaning and content of statutory terms constitute conclusions of law to which no response is required.

Allegation 18. Since at least August 2004, and continuing to the present, Defendants have marketed and sold a variety of herbal or "natural" supplement products. One line of products marketed by Defendants under a variety of different names such as HoodiaHerbal and Hoodia Maximum Strength purports to contain hoodia gordonii and cause substantial weight loss by suppressing appetite (the "Hoodia Products"). Defendants also have marketed "natural" products they claim cause the body to produce human growth hormone, using a variety of different names such as Dr-HGH and Perfect HGH (the "HGH Products"). The Hoodia and HGH Products were each sold for \$79.95.

Answer 18. Denied. Plaintiff's conclusory, summary descriptions of the representations made by defendant are incomplete and inaccurate.

Allegation 19. 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 19. Denied. Defendants have not initiated commercial e-mail messages.

Allegation 20. Defendants have advertised, offered for sale, sold and/or distributed their products throughout the United States via dozens of Internet Web sites. Some of the Web sites Defendants have used to market their products are: www.kg-hood.com, www.forbefore.com, and www.iveboughtthisandamhappy.com. Consumers may purchase Defendants' products by credit card from Defendants' Web sites.

Answer 20. Admitted.

Allegation 21. To induce consumers to purchase HoodiaHerbal, Defendants' Web

sites make the following statements, among others:

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 HoodiaHerbal™

If you haven't heard of HoodiaHerbal™ 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 HoodiaHerbal™ is proven to do exactly just that so you can KEEP THE WEIGHT OFF PERMANENTLY

Answer 21. It is admitted that the allegations of this paragraph contain some of the representations made about the subject product(s). The representations made by defendants about the products were warranted by statements made by others on which defendants were permitted reasonably to rely.

Allegation 22. To induce consumers to purchase Hoodia Maximum Strength, Defendants' Web sites contain statements substantially identical to those in paragraph 21 above.

Answer 22. It is admitted that the allegations of this paragraph contain some of the representations made about the subject product(s). The representations made about the products were warranted by statements made by others on which defendants were permitted reasonably to rely.

Allegation 23. 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 make various claims, including claims that:

Hoodia is the most advanced (and by far the most successful) weight loss formula ever created, for one simple reason . . . it simply causes you to have less of an appetite, and eat less. Studies have proven time and time again that users of hoodia lose weight, an average of 1-3 pounds per week, but as high as 20-40 pounds a month in many, participants.

* * *

There is no more effective product on the market, if you're looking to lose weight quickly yet SAFELY, and naturally . . . and the results speak for themselves, with over 94% of users reporting significant weight loss within the first two weeks of usage.

Answer 23. Denied. Defendants neither sent nor controlled e-mail messages sent

by others.

Allegation 24. To induce consumers to purchase Perfect HGH and Dr-HGH, Defendants' Web sites make the following statements:

Warning! Boosting your Natural Supply of HGH can cause you to:

- Lose weight and decrease cellulite through increasing lean muscle mass and decreasing body fat!
- Look and Feel 20 Years Younger!
- Boost your energy (most people feel it immediately) and Increase Your Strength!
- Reduce wrinkles and sags by increasing collagen and elastin!
- Revitalize hair and nail growth!
- Increase your sexual function and vigor! Refresh your memory, mood and mental energy!
- Sleep more soundly and awake rested! Help eliminate stress, fatigue and depression!
- Improve your vision, speed injury recovery and help relieve chronic pain!

* * *

Q. How does "HGH" work:

A. "HGH" is a Revolutionary, First and Only, One of a Kind HGH precursor. What this means is, our incredible proprietary blend of amino acids and other "Fountain of Youth" ingredients stimulates your pituitary gland to naturally increase your own growth hormone level.

Q. What benefits will I first see and how long will it take?

A. That of course depends on you. Most people feel an increase in energy right away. We have customers who report dramatic decreases in high blood pressure after only one week; Significant weight loss in only two weeks; Grey hair returning to it's natural color in three to four weeks; Many also report unbelievable relief from chronic pain in less than a week. "HGH" users report having achieved every miracle under the sun in time frames ranging from a few hours to several months.

* * *

You Can't Change the Fact that You're Getting Older But You Can Change the
Way You Look and Feel!

HGH is Being Compared to the Eternal Fountain of Youth!

Imagine Looking and Feeling 20 Years Younger!

Answer 24. Admitted in part. The quoted portions of the marketing materials

describe the benefits of increased levels of HGH. The marketing materials also explained that the product encouraged the body to increase the amount of HGH that the body naturally created.

Allegation 25. To induce recipients to visit the Web sites and purchase Defendants' HGH Products, commercial email messages promoting Web sites operated by Defendants or their agents make various claims, including claims that:

HGH [is] the only substance on earth proven by science to stall (and in many cases even reverse) the aging process, from wrinkles, to fat gain and muscle loss, to cellulite, to hair loss and decreased sexual libido/performance . . . this simple little pill causes your body to produce more natural HGH, after just a week or two of usage, and helps your body (and mind!) look and feel 5-10-15 years younger!

Answer 25. Defendants have not initiated commercial e-mail messages, and have not exercised control over the content of any such messages.

Allegation 26. 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 26. Allegations concerning the meaning and content of statutory terms constitute conclusions of law to which no response is required. Defendants have not exercised control over the content of any such messages.

Allegation 27. 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 27. Allegations concerning the meaning and content of statutory terms constitute conclusions of law to which no response is required. Defendants have not exercised control over the content of any such messages.

Allegation 28. 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 28. Allegations concerning the meaning and content of statutory terms constitute conclusions of law to which no response is required. Defendants have not exercised control over the content of any such messages.

Allegation 29. 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 29. Allegations concerning the meaning and content of statutory terms constitute conclusions of law to which no response is required. Defendants have not exercised control over the content of any such messages.

Allegation 30. 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 30. Allegations concerning the meaning and content of statutory terms constitute conclusions of law to which no response is required. Defendants have not exercised control over the content of any such messages.

Allegation 31. Defendants have initiated commercial email messages that failed to include a valid physical postal address of the sender.

Answer 31. Allegations concerning the meaning and content of statutory terms constitute conclusions of law to which no response is required. Defendants have not exercised control over the content of any such messages.

Allegation 32. 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 32. Allegations concerning the meaning and content of statutory terms constitute conclusions of law to which no response is required.

Allegation 33. 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 33. Allegations concerning the meaning and content of statutory terms constitute conclusions of law to which no response is required. It is specifically denied that the defendants have violated the FTC Act.

COUNT I

False Claims for the Hoodia Products

Allegation 34. Through the means described in Paragraphs 18-23 above, Defendants have represented, expressly or by implication, that:

- a. the Hoodia Products cause rapid and substantial weight loss, including as much as forty pounds in a month;
- b. the Hoodia Products cause users to lose safely three or more pounds per week for multiple weeks;

c. the Hoodia Products cause permanent weight loss; and/or

d. scientific research establishes that the Hoodia Products cause substantial weight loss.

Answer 34. It is admitted that the allegations of this paragraph contain some of the representations made about the subject product(s). The representations made about the products were warranted by statements made by others on which defendants were permitted reasonably to rely.

Allegation 35. In truth and in fact:

a. the Hoodia Products do not cause rapid and substantial weight loss, including as much as forty pounds in a month;

b. the Hoodia Products do not cause users to lose safely three or more pounds per week for multiple weeks;

c. the Hoodia Products do not cause permanent weight loss; and/or

d. scientific research does not establish that the Hoodia Products cause substantial weight loss.

Answer 35. Denied. It is specifically denied that the defendants made any materially false representations in the entire context of the marketing of these products.

Allegation 36. Therefore, Defendants' representations as set forth in Paragraph 34 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 36. Denied. It is specifically denied that defendants engaged in deceptive

practices or made false advertisements.

COUNT II

Unsubstantiated Claims for the Hoodia Products

Allegation 37. Through the means described in Paragraphs 18-23 above, Defendants have represented, expressly or by implication, that:

a. the Hoodia Products cause rapid and substantial weight loss, including as much as forty pounds in a month;

b. the Hoodia Products cause users to lose safely three or more pounds per week for multiple weeks; and/or

c. the Hoodia Products cause permanent weight loss.

Answer 37. It is admitted that the allegations of this paragraph contain some of the representations made about the subject product(s). The representations made about the products were warranted by statements made by others on which defendants were permitted reasonably to rely.

Allegation 38. Defendants did not possess and rely upon a reasonable basis that substantiated the representations made in Paragraph 37 above at the time the representations were made. Therefore, the making of the representations set forth in Paragraph 37 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 38. Denied. It is specifically denied that the defendants made any materially false representations in the entire context of the marketing of these products. The representations made about the products were warranted by statements made by others on which defendants were permitted reasonably to rely.

COUNT III

False Claims for the HGH Products

Allegation 39. Through the means described in Paragraphs 18-20, 24, and 25 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) lowering blood pressure, (ii) reducing cellulite, (iii) improving vision, (iv) causing new hair growth, (v) improving sleep, (vi) improving emotional stability, (vii) speeding injury recovery, (viii) relieving chronic pain, (ix) increasing muscle mass, and (x) causing fat and weight loss.

Answer 39. It is admitted that the allegations of this paragraph contain some of the representations made about the subject product(s). The representations made about the products were warranted by statements made by others on which defendants were permitted reasonably to rely.

Allegation 40. 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) lower blood pressure, (ii) reduce cellulite, (iii) improve vision, (iv) cause new hair growth, (v) improve sleep, (vi) improve emotional stability, (vii) speed injury recovery, (viii) relieve chronic pain, (ix) increase muscle mass, or (x) cause fat and weight loss.

Answer 40. Denied. It is specifically denied that the defendants made any materially false representations in the entire context of the marketing of these products.

Allegation 41. Therefore, Defendants' representations as set for in Paragraph 39 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 41. Denied. It is specifically denied that defendants engaged in deceptive practices or made false advertisements.

COUNT IV

Unsubstantiated Claims for the HGH Products

Allegation 42. Through the means described in Paragraphs 18-20, 24, and 25 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) lowering blood pressure, (ii) reducing cellulite, (iii) improving vision, (iv) causing new hair growth, (v) improving sleep, (vi) improving emotional stability, (vii) speeding injury recovery, (viii) relieving chronic pain, (ix) increasing muscle mass, and (x) causing fat and weight loss.

Answer 42. It is admitted that the allegations of this paragraph contain some of the representations made about the subject product(s). The representations made about the products were warranted by statements made by others on which defendants were permitted reasonably to rely.

Allegation 43. Defendants did not possess and rely upon a reasonable basis that substantiated the representations made in Paragraph 42 above at the time the representations were made. Therefore, the making of the representations set forth in Paragraph 42 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 43. Denied. It is specifically denied that the defendants made any

materially false representations in the entire context of the marketing of these products. The representations made about the products were warranted by statements made by others on which defendants were permitted reasonably to rely.

VIOLATIONS OF THE CAN-SPAM ACT

Allegation 44. CAN-SPAM became effective on January 1, 2004, and has since remained in full force and effect.

Answer 44. Allegations concerning the meaning and content of statutory terms constitute conclusions of law to which no response is required.

Allegation 45. 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 45. Allegations concerning the meaning and content of statutory terms constitute conclusions of law to which no response is required.

Allegation 46. 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.

Answer 46. Allegations concerning the meaning and content of statutory terms

constitute conclusions of law to which no response is required.

Allegation 47. 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 47. Allegations concerning the meaning and content of statutory terms constitute conclusions of law to which no response is required.

Allegation 48. 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 48. Allegations concerning the meaning and content of statutory terms constitute conclusions of law to which no response is required.

Allegation 49. 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 49. Allegations concerning the meaning and content of statutory terms constitute conclusions of law to which no response is required.

Allegation 50. 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.

Answer 50. Allegations concerning the meaning and content of statutory terms constitute conclusions of law to which no response is required.

Allegation 51. 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 51. Allegations concerning the meaning and content of statutory terms constitute conclusions of law to which no response is required.

COUNT V

Allegation 52. 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 52. Denied. Defendants have not initiated or exercised control over the content of any such messages.

Allegation 53. Defendants' acts or practices, as described in paragraph 52 above, violate 15 U.S.C. § 7704(a)(1).

Answer 53. Denied. Defendants have not violated the Act.

COUNT VI

Allegation 54. 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 54. Denied. Defendants have not initiated or exercised control over the content of any such messages.

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

Answer 55. Denied. Defendants have not violated the Act.

COUNT VII

Allegation 56. 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 56. Denied. Defendants have not initiated or exercised control over the content of any such messages.

Allegation 57. Defendants' acts or practices, as described in paragraph 56 above, violate 15 U.S.C. § 7704(a)(5)(A)(ii) and/or § 7704(a)(3).

Answer 57. Denied. Defendant have not violated the Act.

COUNT VIII

Allegation 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 the senders' valid physical postal address.

Answer 58. Denied. Defendants have not initiated or exercised control over the content of any such messages.

Allegation 59. Defendants' acts or practices, as described in paragraph 58 above, violate 15 U.S.C. § 7704(a)(5)(A)(iii).

Answer 59. Denied. Defendants have not violated the Act.

CONSUMER INJURY

Allegation 60. 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 60. Denied. It is specifically denied that consumers have suffered any loss as the result of defendants' unlawful acts or practices, or that defendants have been

unjustly enriched.

POWER TO GRANT RELIEF

Allegation 61. Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, empower 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.

61. It is admitted that the Court has authority to grant relief in an appropriate case, but it is specifically denied that this is an appropriate case for the entry of such relief.

PRAYER FOR RELIEF

WHEREFORE, defendants respectfully request that the Court dismiss the Complaint filed against defendants and dissolve the interim injunctive Orders heretofore entered.

AFFIRMATIVE DEFENSES

62. Venue is not proper in the Northern District of Illinois, but even if venue is theoretically available in this District, transfer to the Eastern District of Pennsylvania is proper on *forum non conveniens* principles. A [parallel grand jury investigation into the same or substantially similar claims is underway in that District, and much of the proof concerning the claims made by plaintiff is available from defendants' suppliers near that District.

63. The plaintiff has failed to state claims on which relief can be granted.

64. Defendants demand trial by jury on plaintiffs claims.

65. Defendants's representations did not constitute material misrepresentations in the context of the entire marketing program(s).

66. Defendants reasonably relied on the representations of others and did not wilfully, knowingly or intentionally make any material misrepresentations.

WHEREFORE, defendants respectfully request that the Court dismiss the Complaint filed against defendants and dissolve the interim injunctive Orders heretofore entered.

Respectfully submitted,

DUFFY & GREEN

Dated: October 29, 2007

By: /s/ Joseph P. Green, Jr.
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Dated: _____

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