

**DECLARATION OF DOUGLAS M. MCKENNEY  
PURSUANT TO 28 U.S.C. § 1746**

I, Douglas M. McKenney, hereby declare as follows:

1. My name is Douglas M. McKenney. I am an investigator with the Federal Trade Commission ("FTC"). I have been employed by the FTC for approximately 4 years. My business address is FTC, Midwest Region, 55 West Monroe Street, Suite 1825, Chicago, Illinois 60603. I am the same Douglas M. McKenney who previously signed two declarations in the case *FTC v. Spear Systems, Inc., et al*, No. 07 C 5597 (N.D. IL.), which were filed with the Plaintiff's Motion for Temporary Restraining Order as Plaintiff's Exhibit ("PX") 1 and Plaintiff's Motion for Entry of a Preliminary Injunction as to Xavier Ratelle as PX 4.

2. As an investigator, my duties include monitoring and investigating parties who are suspected of engaging in unfair or deceptive acts or practices in violation of the FTC Act and other laws or rules enforced by the FTC. I am also a custodian of documents and records obtained by the FTC during the course of investigations to which I am assigned. In the course of this investigation, I have acquired personal knowledge and information about the facts stated herein, and, if called, would testify to the same.

**NET PRODUCT SALES TOTALS**

3. During the investigation of the *Spear Systems* matter, I made numerous undercover purchases by credit card of herbal products connected to the operation. Following the money trail for the undercover purchases disclosed that credit card transactions for the herbal product sales were processed using three separate merchant accounts. These accounts comprise the herbal product sales for this operation. As discussed below in more detail, my best estimate is that the three accounts took in profits totaling \$3,701,088.33 – an amount that includes gross sales minus consumer product returns and charge backs.

"HERBAL SALES" Account

4. On or about January 11, 2007, FTC staff ordered one bottle of HoodiaLife on-line, using an undercover name, address, phone number, and e-mail address. An undercover credit card was used to make the purchase. After I submitted my order, I was directed to an invoice web page which stated that "Herbal Sales" would appear as the billing descriptor for the charge. (See Docket Entry #10, McKenney TRO Decl. ¶ 8 & Att. B, FTC 0000043.)

5. On or about January 15, 2007, the undercover credit card account I used to purchase "HoodiaLife" from the website was charged \$65.94. The merchant descriptor for the transaction was "HERBAL SALES 205-995-7433 AL." Attached hereto as **McKenney Att. A** is a true and correct copy of the credit card statement displaying the Herbal Sales charge. I have redacted undercover account information and information from an unrelated charge.

6. Through the issuing of Civil Investigatory Demands, the FTC was able to determine that First Data Corporation ("First Data"), was the credit card processor used to process the "HERBAL SALES" transaction. The FTC issued a Civil Investigative Demand to First Data, requesting business records concerning the company associated with the merchant descriptor "Herbal Sales." On or about March 22, 2007, the FTC received information from First Data in response to the CID. I have reviewed this information and kept it in my custody and control. True and correct copies of relevant documents from that request are attached hereto as **McKenney Att. B**. The documents include:

- a. an affidavit signed by Paula Carrasco, a representative of First Data; and
- b. a Merchant Application and Agreement, entered into between Spear Systems, Inc. and First Data.

7. First Data also produced a disk containing spreadsheets entitled “truncated data” and “Naturaslim-CBs.” These two spreadsheets provide detailed information on the credit card transactions run through the Spear Systems account, and indicate that First Data processed charges for Spear Systems between March 2006 and March 2007. The first spreadsheet, entitled “truncated data,” details card transactions processed for Spear Systems, including the amount and date of each card transaction. The second spreadsheet, entitled “Naturaslim - CBs,” details the amount for each chargeback for the Spear Systems merchant account. I have reviewed the spreadsheets and totaled the amount of sales for Herbal Sales. The total net sales, which have subtracted chargeback and customer returns, are as follows:

<b>Month</b>	<b>Net Sales</b>
March 2006	\$203.10
April 2006	\$6,658.11
May 2006	\$21,066.75
June 2006	\$39,799.31
July 2006	\$42,888.44
August 2006	\$58,067.74
September 2006	\$111,674.14
October 2006	\$88,044.72
November 2006	\$106,401.96
December 2006	\$54,600.12
January 2007	\$94,901.58
February 2007	-\$3,891.85
March 2007	-\$894.78
<b>Total</b>	<b>\$619,519.34</b>

8. On October 23, 2007, Defendant Bruce Parker provided the FTC with a proffer. Attached hereto as **McKenney Att. C** is a true and correct copy of Bruce Parker's proffer and its attachments. In that proffer, Parker explains that Spear Systems initially used the First Data account to process sales of its own herbal product, Naturaslim. (*See id.*) Sales of the Naturalism product totaled \$8,166. In April 2006, Spear Systems entered into a contract with Xavier Ratelle and Ratelle's company, Q Web Inc. (*See id.*) A copy of this agreement is attached to Parker's proffer. (*Id.*) The contract between Spear Systems and Ratelle allowed Ratelle to process credit card transactions for sales of his own products through Spear Systems's First Data account. Subsequently, the account was used solely to process payments for Ratelle's products until the account was closed in March 2007.

9. As reported above, the net sales that were charged through First Data was \$619,519.34. Subtracting the amount that Parker and Spear Systems processed through First Data - \$8,166 - results in the net sales amount of \$611,353.34 in consumer payments for herbal products made through the "Herbal Sales" account.

*IP-EHEALTHYLIFE.COM Account*

10. On or about April 25, 2007, using an undercover computer, FTC staff ordered one bottle of HoodiaPlus on-line, using an undercover name, address, phone number, and e-mail address. An undercover credit card was used to make the purchase. (*See* Docket Entry #10, *McKenney TRO Dec ¶ 14.*)

11. On or about April 26, 2007, the undercover credit card account I used to purchase one bottle of HoodiaPlus was charged \$65.94. The merchant descriptor for the transaction was, "IP-EHEALTHYLIFE.COM 800-9758851 KN." Attached hereto as **McKenney Att. D** is a

true and correct copy of the credit card statement displaying the IP-eHealthylife.com charge. I have redacted undercover account information.

12 The FTC learned through Civil Investigative Demands that InterSphere Payments, Ltd. (“InterSphere”) processed the credit card purchases for “IP-EHEALTHYLIFE.COM.” The FTC contacted InterSphere, requesting business records concerning the company associated with the merchant descriptor “IP-eHealthylife.com.” On or about December 4 and December 26, 2007, InterSphere voluntarily produced, through counsel, documents relating to its merchant processing relationship with HBE Inc. and Xavier Ratelle. I have reviewed this information and kept it in my custody and control. True and correct copies of relevant documents from that request are attached hereto as **McKenney Att. E**. The documents include:

- a. application for the setup of a merchant account for HBE Inc. signed by Xavier Ratelle, in which Ratelle lists a bank account in the name of 9064-9252 Qc Inc. as the Primary Company Bank Account;
- b. a letter dated December 5, 2006 from HBE Inc. to InterSphere requesting the setup of a new merchant account for the website ehealthylife.com using the merchant descriptor IP-EHEALTHYLIFE.COM; and
- c. monthly merchant account statements from January 2007 to October 2007, which detail the number and amount of sales, returns and chargebacks.

13. I have reviewed the monthly merchant accounts statements provided by InterSphere for the IP-EHEALTHYLIFE.COM account. The total net sales, which have subtracted chargeback and customer returns, are as follows:

<b>Month</b>	<b>Net Sales</b>
January 2007	\$55,307.90
February 2007	\$196,832.48
March 2007	\$178,600.08
April 2007	\$95,479.78
May 2007	\$71,637.20
June 2007	\$78,782.28
July 2007	-\$2,684.63
August 2007	-\$1,656.83
September 2007	-\$127.27
October 2007	\$0
<b>Total</b>	<b>\$672,170.99</b>

*IP-ONLINESALES.COM Account*

14. On or about September 27, 2007, using an undercover computer, FTC staff ordered one bottle of HGHLife on-line from the website www.ehealthylife.com, using an undercover name, address, phone number, and e-mail address. An undercover credit card was used to make the purchase.

15. On or about September 28, 2007, the undercover credit card account I used to purchase one bottle of HGHLife was charged \$65.94. The merchant descriptor for the transaction was, "IP-ONLINESALES.COM 6055414728 KN." Attached hereto as **McKenney Att. F** is a true and correct copy of the credit card statement displaying the IP-ONLINESALES.COM charge. I have redacted undercover account information and information from an unrelated charge.

16. The FTC contacted Visa U.S.A., Inc. (“Visa”) and requested sales information regarding “IP-ONLINESALES.COM.” On or about October 12, 2007, Visa provided to the FTC a spreadsheet detailing sales and chargeback amounts for Visa card transactions processed for the merchant descriptor “IP-ONLINESALES.COM” between June and September 2007. Attached hereto as **McKenney Att. G** is a true and correct printout of the spreadsheet Visa produced to the FTC, relating to Visa card transactions for the IP-ONLINESALES.COM merchant descriptor.

17. I have reviewed the Visa spreadsheet attached hereto as **McKenney Att. G**. The total net sales, which have subtracted chargeback and customer returns, are as follows:

<b>Month</b>	<b>Net Sales</b>
June 2007	\$235,421
July 2007	\$442,683
August 2007	\$462,260
September 2007	\$479,428
<b>Total</b>	<b>\$1,619,792</b>

18. As demonstrated by the IP-EHEALTHYLIFE.COM transactions (*see* **McKenney Att. E**), this operation accepted both Visa and MasterCard credit cards. Based on my review of the InterSphere documents attached as **McKenney Att. E** and the Visa spreadsheet attached as **McKenney Att. G**, I have calculated an estimate of the total amount of MasterCard transactions processed for the merchant descriptor “IP-ONLINESALES.COM” from June 2007 to September 2007. In order to determine the amount of MasterCard transactions processed for the merchant descriptor “IP-ONLINESALES.COM,” I reviewed the InterSphere documents. The InterSphere monthly merchant account statements detailed the number of card transactions, and amount of

sales by card type, specifically Visa and MasterCard. Using this information, I calculated the volume of MasterCard sales as a percentage of the total sales volume for the IP-EHEALTHYLIFE.COM merchant descriptor and then applied that percentage to the sales figures from the Visa spreadsheet.

19. Based on the monthly merchant account statements for January 2007 through June 2007, I was able to conclude that Visa card transactions represented 67% of both the number and amount of all card transactions, while MasterCard card transactions represented 33%. I then applied these percentages to the Visa card transaction data for IP-ONLINESALES.COM from the Visa spreadsheet.

20. Using this information, which assumes that the percentage of MasterCard transactions remained at 33% of all card transactions for IP-ONLINESALES.COM, as it was with IP-EHEALTHYLIFE.COM, the number and amount of MasterCard transactions would be 9739 transactions for \$852,503 in sales.

21. In order to calculate the estimated number of MasterCard chargebacks for IP-ONLINESALES.COM, I applied the same chargeback percentages calculated from the Visa spreadsheet for Visa transactions (number of chargebacks represent 3.72% and chargeback amount represents 6.42%) to the estimated MasterCard totals calculated above. The number and amount of estimated chargebacks for MasterCard transactions would be 362 chargebacks for \$54,731.

22. To calculate the net estimate amount I subtracted the estimated chargeback totals from the estimated gross sales totals. The net estimate amount of MasterCard transactions for IP-ONLINESALES.COM is \$797,772.

Sales Totals

23. In order to come to a final sales amount, I added the net sales amounts brought in by HERBAL SALES from June 2006 to March 2007 (\$611,353.34), IP-EHEALTHYLIFE.COM from January 2007 to October 2007 (\$672,170.99), and IP-ONLINESALES.COM from June 2007 to September 2007 (\$2,417,564). Based on these number, the total final amount of net sales was \$3,701,088.33.

**DOCUMENTS OBTAINED FROM THIRD PARTIES**

Documents Obtained from NHS Labs, Inc.

24. On or about October 25, 2007, the FTC received documents from NHS Labs Inc. in response to a document request. I have reviewed this information and kept it in my custody and control. True and correct copies of relevant documents from that request are attached hereto as

**McKenney Att. H.** The documents include:

- a. invoices billed to “Abby” at eHealthy Life, including an October 3, 2006 invoice for 5,000 bottles of HGH and a March 2, 2007 invoice for 5,000 bottles of Hoodia;
- b. an e-mail message dated September 17, 2006 from “Abby” [Abby@eBullz.com] to [nutrition@nutritionmanufacturer.com](mailto:nutrition@nutritionmanufacturer.com), discussing, among other things, ordering HGH and hoodia;
- c. an e-mail message dated November 11, 2006 from “Abby” [Abby@eBullz.com] to [nutrition@nutritionmanufacturer.com](mailto:nutrition@nutritionmanufacturer.com), ordering 5000 bottles of hoodia; and
- d. an October 3, 2006 purchase order for HGH in which the “requisitioner” is listed as “Xavier Ratelle.”

Documents Obtained from eFulfillment

25. On or about October 10, 2007, the FTC received documents from eFulfillment Service LLC in response to a document request. I have reviewed this information and kept them in my custody and control. True and correct copies of relevant documents from that request are attached hereto as **McKenney Att. I**. The documents include:

- a. a client profile for eHealthyLife Distribution, noting that products include “HGHLife” and “HOODIALIFE”;
- b. a document containing “eHealthyLife Distribution” client contact information which identifies the primary contact as “Abby” at “abby@ebullz.com”; and
- c. a “Setup Questionnaire” which lists “eHealthyLife Distribution” contact information as “Abby or Xavier” and the website [www.ehealthylife.com](http://www.ehealthylife.com).

Documents Obtained from Intercosmos

24. On or about August 9, 2007, the FTC received a signed declaration from Vivian Solares, the custodian of records for Intercosmos Media Group, Inc. A true and correct copy of Ms. Solares’s declaration is attached as **McKenney Att. J**. Among other things, Intercosmos is the registrar for the domain name ehealthylife.com. (*See id.* at ¶ 3.) The credit card that purchased this domain name was issued in the name of Xavier Ratelle. (*Id.*)

“Whois” Records

25. Internet domain names (such as mydomain.com or ftc.gov) are purchased from an accredited domain name registrar. When an individual registers a domain name, he or she provides information to the registrar. The information – called “whois” information – is publicly available on the website of the domain name’s registrar, and is compiled on various information

sites on the Internet, including www.domaintools.com. Attached as **McKenney Att. K** are true and correct copies of “whois” information for domain names registered to “Abby Gnanendran,” including distributionbullz.org, distributionbullz.net, bullzgroup.com and bullzdistribution. The e-mail address used by Mr. Gnanendran to register these domain names is abby@ebullz.com.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED ON: January 21, 2009

  
DOUGLAS M. McKENNEY