

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

JUDGE COAR

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SILI NEUTRACEUTICALS, LLC, and

BRIAN MCDAID, individually and doing
business as KAYCON LTD.,

Defendants.

MAGISTRATE JUDGE DENLOW

Case No.

07C 4541

RECEIVED

AUG 13 2007

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

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

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

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and under Section 7(a) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM"), 15 U.S.C. § 7706(a), to obtain injunctive relief and other equitable relief for Defendants' deceptive and unfair acts or practices and the making of false advertisements in violation of Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45 and 52, and for violations of CAN-SPAM, 15 U.S.C. § 7701 *et seq.*

JURISDICTION AND VENUE

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

PLAINTIFF

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

DEFENDANTS

6. Defendant 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.

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.
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).

COMMERCE

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.

DEFINITIONS

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

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).
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).
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).
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).
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).

DEFENDANTS’ BUSINESS ACTIVITIES

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.

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.

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.

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

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

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.

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!

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!

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.
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.

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

VIOLATIONS OF THE FTC ACT

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).

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.

COUNT I

False Claims for the Hoodia Products

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.

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.

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.

COUNT II

Unsubstantiated Claims for the Hoodia Products

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.

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.

COUNT III

False Claims for the HGH Products

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.
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.
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.

COUNT IV

Unsubstantiated Claims for the HGH Products

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.
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.

VIOLATIONS OF THE CAN-SPAM ACT

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

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.

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)).

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.

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.

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.

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)).

COUNT V

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.

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

COUNT VI

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.

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

COUNT VII

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.

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).

COUNT VIII

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

CONSUMER INJURY

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.

THIS COURT'S POWER TO GRANT RELIEF

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.

PRAYER FOR RELIEF

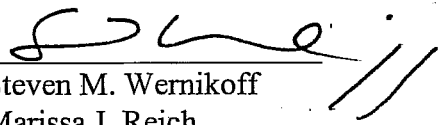
WHEREFORE, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, Section 7(a) of CAN-SPAM, 15 U.S.C. § 7706(a), and the Court's own equitable powers, requests that the Court:

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

4. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

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General Counsel


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