

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	CIVIL NO. _____
QVC, INC.)	
1200 Wilson Drive)	
West Chester, PA 19380,)	
)	
Defendant.)	

COMPLAINT FOR CIVIL PENALTIES, INJUNCTIVE AND OTHER RELIEF

Plaintiff, United States of America, acting upon the notification and authorization to the Attorney General by the Federal Trade Commission ("Commission"), for its Complaint alleges that:

1. Plaintiff brings this action under Sections 5(a), 5(l), 12, 13(b), and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 45(l), 52, 53(b), and 56(a), to obtain monetary civil penalties, consumer redress, injunctive and other relief from defendant QVC, Inc., for its violations of a final order issued by the Commission, and consumer redress, injunctive and other relief for defendant QVC, Inc.'s deceptive acts or practices and making of false advertisements in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345 and 1355, and under 15 U.S.C. §§ 45(a), 45(l), 52, 53(b), and 56(a).

3. Venue in the United States District Court for the Eastern District of Pennsylvania is proper under 15 U.S.C. §§ 53(b) and under 28 U.S.C. §§ 1391(b-c) and 1395(a).

DEFENDANT

4. Defendant QVC, Inc. ("QVC") is a Delaware corporation with its principal office or place of business located within the Eastern District of Pennsylvania at 1200 Wilson Drive, West Chester, PA 19380. QVC is a majority owned and controlled subsidiary of Comcast Corporation, 1500 Market Street, Philadelphia, PA 19102-2148. QVC is principally engaged in the marketing and sale of a wide variety of consumer products directly to consumers through live, customer-interactive, televised sales programs ("programs"), disseminated via cable, broadcast, and satellite. In addition, QVC advertises, offers for sale, and sells consumer products through its Internet web sites (e.g., www.qvc.com).

PRIOR COMMISSION PROCEEDING

5. In a Commission proceeding bearing Docket No. C-3955, in which QVC was charged by the Commission with violating Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, the Commission, on June 14, 2000, issued a final order against QVC to cease and desist certain advertising practices ("Commission's Order").

6. The Commission's Order was served upon QVC on June 23, 2000, and thereafter became final and enforceable by operation of law, 15 U.S.C. § 45(g)(2). The Commission's Order has remained in full force and effect ever since. (A copy of the Commission's Complaint and Order is attached to this Complaint as Exhibit A.)

7. The Commission's Order includes the following provisions:

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by

persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

2. Unless otherwise specified, “respondent” shall mean QVC, Inc., its successors and assigns and its officers, agents, representatives, and employees.

3. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

* * *

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any dietary supplement, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such product can or will cure, treat, or prevent any disease, or have any effect on the structure or function of the human body unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

* * *

DEFENDANT’S COURSE OF BUSINESS

8. At all times mentioned herein, defendant QVC has been engaged in the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of consumer products, including but not limited to, foods, dietary supplements, drugs, and cosmetics, as “food,” “drug,” and “cosmetic” are defined in Section 15 of the FTC Act, 15 U.S.C. § 55, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

9. QVC sells a wide variety of products through its television home shopping network. QVC produces and disseminates live programs for products it selects and purchases from various vendors. These products range from dietary supplements and exercise equipment to clothing, jewelry and housewares.

10. QVC’s live programs run 24 hours per day, seven days per week, and are telecast to

approximately 85 million households in the United States. During some programs, including those at issue in this complaint, a QVC host presents the product and introduces the vendor's spokesperson. The host and spokesperson talk about the product and take telephone calls from individuals who have purchased, or are purchasing, the product and who may provide a testimonial about the product. During the program, consumers are directed to purchase the featured products through toll-free telephone lines.

11. Since on or about June 23, 2000, QVC has manufactured, advertised, packaged, labeled, promoted, offered for sale, sold or distributed numerous health-related consumer products.

These products have included, among others:

- a. For Women Only weight control products, which have included dietary supplements such as Zero Carb (with chromium, vanadium, glucosol, gymena sylvestre leaf, and other ingredients), Zero Fat (with chitosan, methylsulfonyl-methane, herbs, and other ingredients), and 30 Day Advanced Weight Control System (with chromium, garcinia cambogia, dahlulin, herbs and other ingredients). QVC has offered a 60 day supply of Zero Carb and Zero Fat for \$40 each, and the 30 Day Advanced Weight Control System for \$36.50.
- b. Bee-Alive products, which have included dietary supplements containing royal jelly and other ingredients. For example, QVC has offered the Bee-Alive Feel Good 90-Day System for \$79.50, and Bee-Alive Sweet Energy Royal Jelly (8 oz.) for \$29.50.
- c. Lite Bites weight control products, which have included dietary supplements containing chromium picolinate, garcinia cambogia, L-carnitine, herbs, vitamins, fiber, and other ingredients. For example, QVC has offered a package of 24 Lite Bites Fat Fighting Bars for \$38.50 and a package of 15 Lite Bites Fat Fighting

System Shakes for \$23.75.

- d. Lipofactor Cellulite Target Lotion, which contains water, propylene glycol, caprylic triglyceride, aloe, and other ingredients. QVC has offered a one-month supply of the Lipofactor Cellulite Target Lotion for \$35.

QVC'S ADVERTISING

12. On numerous occasions since June 23, 2000, defendant has disseminated or caused to be disseminated advertisements for:
 - a. For Women Only weight control products, including, but not limited to, programs that were aired on July 15, 2000, September 7, 2000, March 8, 2001, January 8, 2002, and March 15, 2002. These advertisements contain the statements and depictions, among others, set forth in Exhibit B to this Complaint;
 - b. Bee-Alive products, including, but not limited to, programs that were aired on August 13, 2000, December 1, 2000, June 5, 2001, March 8, 2002, and June 3, 2002. These advertisements contain the statements and depictions, among others, set forth in Exhibit C to this Complaint;
 - c. Lite Bites weight control products, including, but not limited to, programs that were aired on June 30, 2000, October 24, 2000, February 9, 2001, and March 26, 2001. These advertisements contain the statements and depictions, among others, set forth in Exhibit D to this Complaint; and
 - d. Lipofactor Cellulite Target Lotion, including, but not limited to, programs that were aired on July 22, 2000, October 20, 2000, December 29, 2000, and May 4, 2001. These advertisements contain the statements and depictions, among others, set forth in Exhibit E to this Complaint.

VIOLATIONS OF THE COMMISSION'S ORDER

FIRST CAUSE OF ACTION

13. Through the means described in Paragraph 12.a, defendant QVC, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of For Women Only weight control products, which include dietary supplements, has, on numerous occasions, represented, directly or by implication, that the use of these dietary supplements can or will cure, treat, or prevent a disease, or have an effect on the structure or function of the human body, as follows:

- a. For Women Only weight control products enable users to lose substantial weight, for example, 50, 60, or 100 pounds or more;
- b. For Women Only Zero Fat prevents a substantial portion or amount of dietary fat from being absorbed in the human body;
- c. For Women Only weight control products enable users to maintain their weight loss for a substantial period of time; and
- d. For Women Only Zero Carb prevents dietary sugar and carbohydrates from being stored as fat in the human body.

14. The representation set forth in Paragraph 13.b is false and was not substantiated at the time the representation was made. The representations set forth in Paragraphs 13.a, 13.c and 13.d were not substantiated at the time the representations were made. Therefore, defendant QVC has made the representations set forth in Paragraph 13 in violation of Part II of the Commission's Order.

SECOND CAUSE OF ACTION

15. Through the means described in Paragraph 12.b, defendant QVC, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of Bee-Alive products, which include dietary supplements, has, on numerous occasions, represented, directly or by implication, that the use of these dietary supplements can or will cure, treat, or prevent a disease, or have an effect on the structure or function of the human body, as follows:

- a. The Bee-Alive products significantly reduce fatigue in users with chronic or severe fatigue;
- b. The Bee-Alive products significantly increase energy, strength or stamina in users who have recently had surgery, are recovering from an illness, or suffer from various illnesses or conditions, such as fibromyalgia, chronic fatigue syndrome, extreme fatigue, Lupus, multiple sclerosis, arthritis, emphysema, Epstein Barr virus, and cancer; and
- c. The Bee-Alive products cannot or will not result in allergic reactions in users, including those users who are allergic to bee venom or bee pollen.

16. The representations set forth in Paragraph 15 were not substantiated at the time the representations were made. Therefore, defendant QVC has made the representations set forth in Paragraph 15 in violation of Part II of the Commission's Order.

THIRD CAUSE OF ACTION

17. Through the means described in PARAGRAPH 12.c, defendant QVC, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of Lite Bites weight control products, which include dietary supplements, has, on numerous occasions, represented, directly or by implication, that the use of these dietary supplements can or will cure, treat, or prevent a disease, or have an effect on the structure or

function of the human body, as follows:

- a. Lite Bites products enable users to lose substantial weight, including, for example, 52, 80, 110, 125 pounds or more;
- b. Lite Bites products enable users to maintain their weight loss for a substantial period of time; and
- c. Tests prove that Lite Bites products enable users to lose substantial weight.

18. The representations set forth in Paragraph 17 were not substantiated at the time the representations were made. Therefore, defendant QVC has made the representations set forth in Paragraph 17 in violation of Part II of the Commission's Order.

VIOLATIONS OF SECTIONS 5(a) and 12 OF THE FTC ACT

19. 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 purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, Lipofactor Cellulite Target Lotion is either a "drug" or "cosmetic" pursuant to Section 15(c) and (e) of the FTC Act, 15 U.S.C. § 55(c) and (e). As set forth below, defendant has engaged, and is continuing to engage, in such unlawful practices in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of Lipofactor Cellulite Target Lotion.

FOURTH CAUSE OF ACTION

20. Through the means described in PARAGRAPH 12.d, defendant QVC has, on numerous occasions, represented, directly or by implication, that:

- a. Lipofactor Cellulite Target Lotion eliminates or significantly reduces cellulite, without the need for a restricted calorie diet or increased exercise;

- b. Lipofactor Cellulite Target Lotion causes measurable inch loss from users' arms, thighs, and abdomens, without the need for a restricted calorie diet or increased exercise; and
- c. Tests prove that Lipofactor Cellulite Target Lotion eliminates or significantly reduces cellulite or causes measurable inch loss from users' thighs, without the need for a restricted calorie diet or increased exercise.

21. Defendant QVC has made the representations set forth in Paragraph 20 without, at the time of making the representations, possessing and relying upon a reasonable basis that substantiates the representations. Therefore, the making of the representations set forth in Paragraph 20 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.

CIVIL PENALTIES, REDRESS, INJUNCTIVE AND OTHER EQUITABLE RELIEF

22. Each dissemination by defendant of any representation in any program in violation of the Commission's Order, in one or more of the ways described above, constitutes a separate violation for which plaintiff seeks monetary civil penalties.

23. Section 5(l) of the FTC Act, 15 U.S.C. §§ 45(l), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and Section 1.98(c) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(c), authorizes this Court to award monetary civil penalties of not more than \$11,000 for each violation of the Commission's Order.

24. Sections 5(l) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(l) and 53(b), authorize this Court to issue a permanent injunction against defendant's violating the Commission's Order and the FTC Act, and to order ancillary relief.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests this Court, pursuant to 15 U.S.C. §§ 45(a), 45(l), 52, 53(b) and 56(a), and pursuant to the Court's own equitable powers to:

1. Enter judgment against defendant and in favor of plaintiff for each violation alleged in this Complaint;
2. Award plaintiff monetary civil penalties from defendant for each violation of the Commission's Order alleged in this Complaint;
3. Permanently enjoin defendant from violating the Commission's Order issued in FTC Docket No. C-3955 and the FTC Act, as alleged herein;
4. Award such relief as the Court finds necessary to redress injury to consumers resulting from defendant's violations of the Commission's Order and the FTC Act, including, but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten monies; and
5. Award plaintiff such additional relief as the Court may deem just and proper.

DATED: March 24, 2004

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