## UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS

FEDERAL TRADE COMMISSION,

Plaintiff,

V.

WALGREEN CO., a corporation, also d/b/a WALGREENS,

Defendant.

Case No. 10-1813

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

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

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief against Defendant Walgreen Co. ("Walgreens") for acts or practices 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 subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).
- Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 15 U.S.C.
   § 53(b).

### **PLAINTIFF**

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces Section 12 of the FTC Act, 15 U.S.C. § 52, which prohibits false advertisements for

food, drugs, devices, services, or cosmetics in or affecting commerce.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including restitution and disgorgement. 15 U.S.C. §§ 53(b), 56(a)(2)(A).

### **DEFENDANT**

6. Walgreens is an Illinois corporation with its principal place of business at 200 Wilmot Road, Deerfield, Illinois 60015. Walgreens transacts or has transacted business in this district and throughout the United States. At all times material to this Complaint, acting alone or in concert with others, Walgreens has advertised, marketed, distributed, or sold Wal-born products to consumers throughout the United States.

### COMMERCE

 At all times material to this Complaint, Defendant has 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.

### DEFENDANT'S BUSINESS ACTIVITIES

- Since December 2004 and continuing thereafter, Defendant Walgreens has advertised, promoted, offered for sale, sold, and distributed Wal-born, formerly known as Walborne, to the public.
- 9. Wal-born purportedly contains Vitamins C and A, minerals, herbs, electrolytes, antioxidants, and amino acids and is available in three versions two tablet forms, a powder form, and lozenge drops and multiple flavors.
  - 10. The formulas used in Wal-born products purportedly replicate the formula

originated by and used in Airborne products manufactured and sold by Airborne Health, Inc.

According to product usage instructions, both children and adults can use Wal-born.

- 11. Wal-born is available at Walgreens retail stores and, until July 2009, on its websites at http://walgreens.com and http://aarp.walgreens.com. Sales of Wal-born from December 2004 through June 2009 exceeded \$31.7 million.
- 12. To induce the purchase of Wal-born, Defendant has advertised and promoted the product on packaging, on websites, and through print advertisements in circulars in various newspapers nationwide.
- 13. Defendant created, prepared, disseminated, or caused to be disseminated advertisements, product labels, and other promotional material, including, but not limited to, the attached Exhibits A through F, containing, among other things, the following statements and depictions:
  - a. Walgreens Wal-borne Packaging (December 2004 September 2006) (Exhibit A)

[Graphics: several cartoon multicolored germs, including two surrounded by a red circle with a diagonal line drawn through it; and a cartoon illustration of a man and a woman sneezing on each other with bottles of medicine in front of them, all surrounded by a red circle with a diagonal line drawn through it]

Walgreens
The Brand America Trusts®

Compare to Airborne® ingredients\*

Wal-borne<sup>TM</sup>
Immune System Defense
Against Airborne Viruses
Effervescent Health Formula
for Cold & Flu
A Dietary Supplement

Take at the first sign of a cold symptom or before entering crowded, germ filled environments, like airports, offices and schools.\*

### Effervescent Health Formula

- Antioxidants!
- · Amino Acids!
- · Electrolytes!
- 1000mg of Vitamin C!
- · Seven Herbal Extracts!
- · Great Taste!

### Wal-borne<sup>TM</sup>

### For Use In:

- Schools
- Offices
- · Theaters

. . . . . .

. . . . . .

- Airplanes
- · Restaurants
- · Health Clubs

### **Effervescent Health Formula**

Great Tasting Dietary Supplement

\* These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.

DIRECTIONS: AT THE FIRST SIGN OF A COLD SYMPTOM, SIMPLY DROP (1) TABLET IN A SMALL AMOUNT OF PLAIN WATER. LET DISSOLVE (ABOUT 1 MINUTE) AND DRINK.\* REPEAT EVERY THREE HOURS AS NECESSARY. CHILDREN: ONE HALF TABLET.

TAKE AT THE FIRST SIGN OF COLD SYMPTOM OR IN CROWDED PLACES\*

Walgreens Wal-Born Packaging (October 2006 – August 2009) (Exhibit
 B)

[Graphics: The word "GERMS" in large capital letters next to smaller drawings of a bus and an airplane in profile, all surrounded by a red circle with a diagonal line drawn through it; and two other small drawings of a bus and an airplane in profile.]

### Walgreens

The Brand America Trusts®

Compare to Airborne® ingredients\*

### Wal-born<sup>TM</sup>

Immune System Defense Against Airborne Viruses Effervescent Health Formula A Dietary Supplement

Antioxidants, Electrolytes, Amino Acids, Vitamin C and More! Take to boost your immune system before entering crowded, germ filled environments, like airports, offices and schools.\*

### Effervescent Health Formula

- · Antioxidants!
- · Amino Acids!
- Electrolytes!
- 1000mg of Vitamin C!
- Seven Herbal Extracts!
- · Great Taste!

### Wal-Born<sup>TM</sup>

### For Use In:

- Schools
- · Offices
- · Theaters
- Airplanes
- · Restaurants
- · Health Clubs

### **Effervescent Health Formula**

Great Tasting!

**Dietary Supplement** 

\* These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.

DIRECTIONS: SIMPLY DROP (1) TABLET IN A SMALL AMOUNT OF PLAIN WATER, LET DISSOLVE (ABOUT 1 MINUTE) AND DRINK.\* REPEAT **EVERY THREE HOURS** AS NECESSARY. CHILDREN: ONE HALF TABLET.

Take to boost your immune system before entering a crowded environment\*

Walgreens Circular Used in Newspapers Nationwide (Exhibit C, dated 07/23/06)

[Shows two packages of Walgreens Wal-borne, together with other Walgreens Brand and other products, some of which are FDA-approved over-the-counter drugs used to treat cold symptoms; handwritten notations on exhibit were on copy of document provided to Federal Trade Commission by Walgreens]

[picture of airplane]
Compare to Airborne!
Great for airline travel!

. . . . . .

\$4 SALE! Wal-borne™ Effervescent 10 ct. Regular or Lemon-Lime.

Wal-borne™ Efervescente, pqte. de 10. Regular o Lima Limón. ¡Compárelo con Airborne!

 Walgreens Circular Used in Newspapers Nationwide (Exhibit D, dated 10/29/06)

[Shows two packages of Walgreens Wal-born together with other Walgreens Brand and other products, some of which are FDA-approved over-the-counter drugs used to treat cold and cough symptoms; handwritten notations on exhibit were on copy of document provided to Federal Trade Commission by Walgreens]

FREE \$10 Walgreens GIFT CARD by mail-in rebate when you buy \$20 or more of these Walgreens Cold/Flu products

Tarjeta de Regalo Walgreens de \$10 GRATIS. Reembolso por correo con la compra de \$20 o más de estos productos para el Resfriado/Influenza de Walgreens

Compare to National Brands & Save!

### 3/\$10

### Cold and Flu Relief

e. Walgreens Circular Used in Newspapers Nationwide (Exhibit E, dated 05/13/07)

[Shows two packages of Walgreens Wal-born together with other Walgreens Brand and other products, some of which are FDA-approved over-the-counter drugs used to treat cold and cough symptoms; handwritten notations on exhibit were on copy of document provided to Federal Trade Commission by Walgreens]

[picture of airplane]
Compare to Airborne!
Great for airline travel!

3/\$10 SALE!

Wal-born<sup>TM</sup>

10 ct. Assorted flavors.

Medicamento Wal-born™ para Aliviar Síntomas del Resfriado, pqte. de 10. Sabores variados. ¡Excelente para cuando viaja por avión!

f. Walgreens Website Advertisement (Exhibit F, website)

[Shows picture of Wal-born package and contains following text:]

Shop > Health Care > Cough & Cold > Cold Prevention/Immunity

Walgreens Wal-born Effervescent Health Formula, Tablets

### Description

- Compare to Airborne ingredients This product is not manufactured or distributed by Knight-McDowell Labs, Owner of the registered trademark Airborne.
- · A Dietary Supplement.
- · Immune system defense against airborne viruses.
- · For Use in:
  - o Schools

- o Offices
- o Theaters
- Airplanes
- Restaurants
- · Health clubs
- Great tasting!
- · Antioxidants!
- · Amino acids!
- · Electrolytes!
- · 1000mg of Vitamin C!
- · Seven herbal extracts!
- Take to boost your immune system before entering crowded germ filled environments, like airports, offices and schools.
- Effervescent technology offers 100% immediate absorption. Made in Germany.

These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

### Instructions

. . . . . .

- Simply drop 1 tablet in a small amount of plain water, let dissolve about 1 minute and drink.
- · Repeat every three hours as necessary.
- · Children: One half tablet.
- · May be used in hot or cold water.

### VIOLATIONS OF THE FTC ACT

- 14. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce." Misrepresentations or omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.
- 15. 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, Defendant's Wal-born products are either "food" or "drugs" as defined in Section 15(b) and (c) of the FTC Act, 15 U.S.C. § 55(b), (c).

- 16. Through the means described in Paragraph 13, including the statements and depictions contained in the advertisements attached as Exhibits A through F, among others, Defendant has represented, directly or indirectly, expressly or by implication, that Wal-born:
  - Reduces the risk of or prevents colds and flu;
  - Protects against or helps fight germs;
  - Protects against colds and flu in crowded places, such as schools, offices,
     theaters, airplanes, restaurants, and health clubs;
  - d. Reduces the severity or duration of colds and flu; and
  - Boosts the body's immune system, thereby providing protection against cold and flu viruses.
- 17. The representations set forth in Paragraph 16 were not substantiated at the time the representations were made.
- 18. Therefore, the representations set forth in Paragraph 16 constitute deceptive acts or practices, 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.

### CONSUMER INJURY

19. Consumers have suffered and will continue to suffer substantial injury as a result of Defendant's violations of the FTC Act. In addition, Defendant has been unjustly enriched as a result of its unlawful acts or practices. Absent injunctive relief by this Court, Defendant is likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

### THIS COURT'S POWER TO GRANT RELIEF

20. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations

of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

### PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

- A. Enter a permanent injunction to prevent future violations of the FTC Act by Defendant;
- B. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendant's violations of the FTC 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

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C. 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,

WILLARD K. TOM General Counsel

Dated: March 23, 2010

s/John C. Hallerud

JOHN C. HALLERUD Federal Trade Commission

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GREGORY W. FORTSCH CAROL J. JENNINGS KAREN MANDEL

Federal Trade Commission

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cjennings@ftc.gov kmandel@ftc.gov

Attorneys for Plaintiff

FEDERAL TRADE COMMISSION

# Exhibit A



# Wal-DOYNe The Immune System Defense

Take at the first sign of a cold symptom or before entering crowded, germ filled environments, like airports, offices and schools.\*

Against Airborne Viruses

### Effervescent Health Formula

- Antioxidants!
- . Ammo Acids!
- \* Electrolytes!
- 1000mg of Vitamin C!
- Seven Herbal Extracts!
  - Great Tastel

## Wal-borne"

#### For Use In:

- Schools
- Offices
- Theaters
- · Airplanes
- Restaurants
- Health Clubs



Effervescent Health Formula

Great Tasting Dietary Supplement

NET WT 1.7 OZ (47G) 10 TABLETS

### Wal-borne

"Market sent Hearth Formula

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This preduct is not infemaed to diagnose, iteal, curs, or prevent any disserse.

Sucraldae, Acesultame Potassium.

Offlet Ingredients: Citric Acid, Sodium Bicartronate, Sorbitol. Orange Flavor,

SUPPLEMENT FACTS: Serving size 1 tablet, Servings, 10. Amount per serving: Calories 5. Total Fat 0g, Sodium 230mg (10% DV\*), Total Carb 0g, Sugars 0g, Protein 0g, Vitamin A (100% Palmitate) 5,000 J.U. (100% DV\*), Vitamin E (Acetate) 30 J.U. (100% DV\*) Albertavin 2 Serio (170% DV\*) Vitamin E (Acetate) 15mcg (20% DV\*), Manganese (Gluconate) 3mg (150% DV\*) Potasetum (Binario) 10mg (10% DV\*) Tine (Sulfate) 8mg (55% DV\*), Selentum (Amino Acid Chelate) 15mcg (20% DV\*) Manganese (Gluconate) 3mg (150% DV\*) Potasetum (Bicarbonate) 5mg (23% DV\*), Herbal Extracts (Proprietary blend of Lonicera, Forsythia Schizopreptia, Glugar, Chinese Vitex, Isafes floot Echinaces) 550mg (DV\*\*) (Daily Value) 8mg (55% DV\*\*) (DV\*\*) (Daily Value) 8mg (50% DV\*\*) (Daily Value) 8mg (50% DV\*\*)

Take at the first sign of a cold symptom of before entering crowded, germ filled environments, like airports, offices and schools.\*

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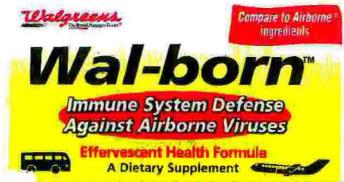


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# Exhibit B



Antioxidants, Electrolytes, Amino Acids, Vitamin C and More!

Take to boost your immune system before entering crowded, germ filled environments, like airports, offices and schools.

#### Effervescent Health Farmula

- Antioxidants!
- \* Electrolytes!
- Vitamin C
- Seven Herbal **Extracts!**

- Schools
- Offices
- \* Theaters
- Airplanes
- Restaurants
- Health Clubs

NET WT 1.7 OZ (47G) TO TABLETS



Great Tasting! Dietary Supplement

### Wal-born



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Sucraiuse, Acceuitame Potassium, Other Ingredients: Citric Acid, Sodium Bicarbanate, Sorbital, Grange Flavor

SUPPLEMENT FACTS: Serving, size 1 tablet. Servings, 10. Amount per servings. 20 Total Fat 0g. Sodium S20mg (10% DV"), Total Carb 0g. Sugars 0g. Protein 6. Goding (10% DV"), Vitamin 6. (Accorbic Acid) (100% DV"), Vitamin 6. (Accorbic Acid) (100% DV"), Vitamin 6. (Accorbic Acid) (100% DV"), Vitamin 7. (Accorbic Acid) (100% DV"), Vitamin 6. (Acid) (100% DV"), Vitamin 6. (A

germ filled environments, like airports, offices and schools.\* Take to boost your immune system betore entering crowded,

> Against Airborne Viruses immune System Detense

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# Exhibit C



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# Exhibit D



Dd. 29, 2006

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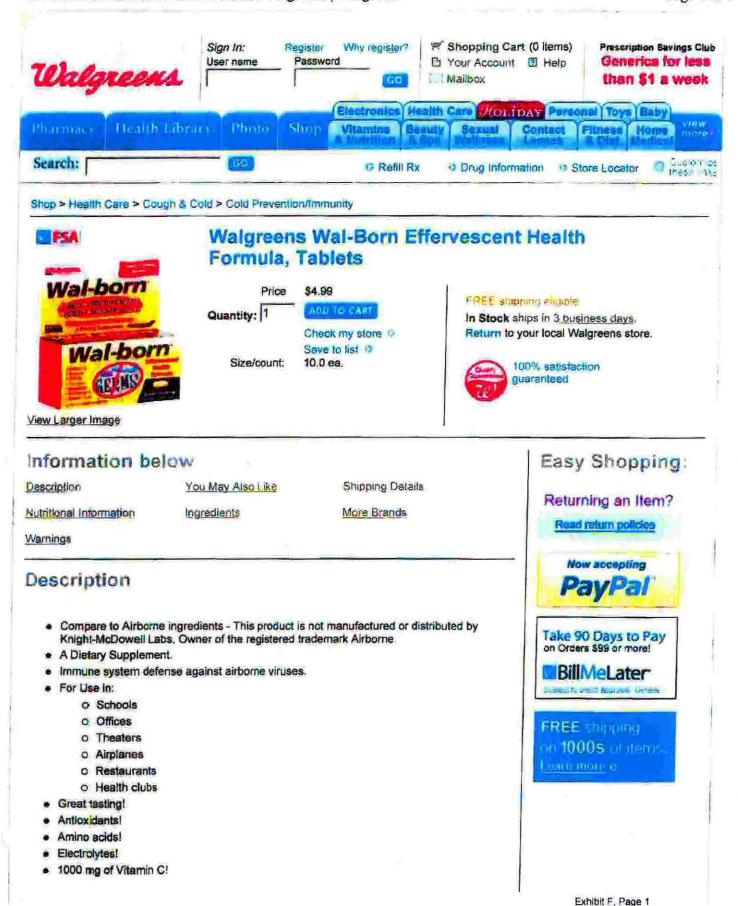
# Exhibit E



May 13, 2000

Bilingual

# Exhibit F



- Seven herbal extracts!
- Take to boost your immune system before entering crowded germ filled environments, like airports, offices and schools.
- Effervescent technology offers 100% immediate absorption Made in Germany.

These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

### More Brands

Walgreens

Puranol

Airborne Finest Natural

Windmill Zicam

Grandma's Herbs

Nature Made

View all Cold Prevention/Immunity

### Site Features

- Shopping List
- · Weekly Ad
- Online Specials
- Rebates
- Sweepstakes & Promotions

### You May Also Like



Walgreens By Homedics Automatic Blood Pressure Monitor

Reg.

ADD TO CART

\$59.99

Ships har all the



Walgreens Omeprazole Acid Reducer 20 mg

Reg.

\$22.99 \$21.99 ea.

ADD TO CART

FREE shipping singlie







Walgreens Lactobacillus Capsules

Reg. 9.99 en.

\$14.99 ADD TO CART

FREE shapping eligible



Walgreens 3 Position Lift Chair/Recliner Chaise Style Designed by Pride in Watnut Brown

Reg \$799.99 \$579.99 ga.

ADD TO CART

SAIM IN PRES



### Ingredients

Herbal Extracts , Proprietary Blend of Lonicera , Forsythia , Schizonepeta , Ginger , Chinese Vitex , Isatis Root , Echinacea , Amino Acids , Glutamine as L-Glutamine , Lysine as L-Lysine HCI , Citric Acid , Sodium Bicarbonate , Sorbitol , Orange Flavor , Sucralose , Acesulfame Potassium

#### **Nutritional Facts**

Serving Size 1 tablet

Servings Per Container 10

Calories

5

Calories from Fat

Amount Per Serving % Daily Value\* Total Fat 0.0 g Sodium 230.0 mg 10.0% Total Carbohydrate 0.0 g 0.0% % % Sugars 0.0 g

Exhibit F, Page 1

Protein 6.0 g	%	%
Vitamin A (100% Palmitate) 5000.0 IU	100.0%	%
Vitamin C (Ascorbic Acid) 1000.0 mg	1670.0%	%
Vitamin E (Acetate) 30.0 IU	100.0%	%
Riboflavin 2.8 mg	170.0%	%
Magnesium (Sulfate) 40.0 mg	10.0%	%
Zinc (Sulfate) 8.0 mg	55.0%	%
Selenium (Amino Acid Chelate) 15.0 mcg	20.0%	%
Manganese (Gluconate) 3.0 mg	150.0%	%
Potassium (Bicarbonate) 75.0 mg	2.0%	%
Herbal Extracts 350.0 mg	%	%
Amino Acids 50.0 mg	%	%
Comme Preside South In-		52

### Instructions

- . Simply drop 1 tablet in a small amount of plain water, let dissolve about 1 minute and drink.
- Repeat every three hours as necessary.
- Children: One half tablet.
- May be used in hot or cold water.

### Warnings

- As with all dietary supplements, pregnant women or people on medication should consult physician before taking.
- Sealed with a tamper evident cap for your protection.

100% Satisfaction Guaranteed.

### Item shipping Details

Package Weight: 0.16LB

Package Dimensions: W: 3.85" x H: 4.0" x D: 1.35"

### Walgreens Information

Shipping Information Return Policy Walgreens Brand Guarantee Privacy Policy

All product information @ Walgreen Co.



Sign up to receive W.Photo News and Offers, plus Special Offers and Savings, by email.

Email address

ZIP code

SIGN UP 0

By signing up, I'm agreeing to Walgreens Terms of Use.



Diversity | Disability Outreach | Flealth Corner TV | Español | Walgreens Brand Products
Walgreens Health Services



Notice of Privacy Practices | Terms of Use | Online Privacy & Security

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