

**FILED**

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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY *s/ joanag* DEPUTY

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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

13 FEDERAL TRADE COMMISSION,  
14  
15 Plaintiff,

16 v.

17 TRIANGLE MEDIA CORPORATION, a  
18 Delaware corporation, also doing business  
19 as Triangle CRM, Phenom Health, Beauty  
and Truth, and E-Cigs;

20 JASPER RAIN MARKETING LLC, a  
21 California limited liability company, also  
22 doing business as Cranium Power and  
Phenom Health;

23 HARDWIRE INTERACTIVE INC., a  
24 British Virgin Islands corporation, also  
25 doing business as Phenom Health, Beauty  
and Truth, and E-Cigs; and

26 BRIAN PHILLIPS, individually and as an  
27  
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Case No.: '18CV1388 BEN NLS

**COMPLAINT FOR PERMANENT  
INJUNCTION AND OTHER  
EQUITABLE RELIEF**

1 officer of Triangle Media Corporation,  
2 Defendants.

3  
4 Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), for its  
5 Complaint alleges:

6 1. The FTC brings this action under Section 13(b) of the Federal Trade  
7 Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b), Section 5 of the Restore Online  
8 Shoppers' Confidence Act ("ROSCA"), 15 U.S.C. § 8404; and Section 918(c) of the  
9 Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. § 1693o(c), to obtain temporary,  
10 preliminary, and permanent injunctive relief, rescission or reformation of contracts,  
11 restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other  
12 equitable relief for Defendants' acts or practices in violation of Section 5(a) of the FTC  
13 Act, 15 U.S.C. § 45(a), Section 4 of ROSCA, 15 U.S.C. § 8403, Section 907(a) of the  
14 EFTA, 15 U.S.C. § 1693e(a), and Section 1005.10(b) of Regulation E, 12 C.F.R.  
15 § 1005.10(b).

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20 **JURISDICTION AND VENUE**

21 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331,  
22 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b); and Section 5(a) of ROSCA, 15  
23 U.S.C. § 8404(a).

24  
25 3. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(1), (b)(2), (c)(1),  
26 (c)(2), (c)(3), and (d), and 15 U.S.C. § 53(b).  
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**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. Additionally, the FTC enforces ROSCA, 15 U.S.C. §§ 8401-05, which prohibits certain methods of negative option marketing on the Internet, as well as the EFTA, 15 U.S.C. § 1693 *et seq.*, which regulates the rights, liabilities, and responsibilities of participants in electronic fund transfer systems.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act, ROSCA, and the EFTA, and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 8404, and 1693o(c).

**DEFENDANTS**

6. Defendant **Triangle Media Corporation** ("Triangle Media"), also doing business as Triangle CRM, Phenom Health, Beauty and Truth, and E-Cigs, is a Delaware corporation registered at 108 West 13th Street, Wilmington, Delaware 19801. Its principal place of business was 1350 Columbia Street, San Diego, California 92101 until May 17, 2018, when it filed paperwork with the California Secretary of State changing its principal place of business to 4519 George Road, Tampa, Florida 33634. At all times

1 material to this complaint, acting alone or in concert with others, Triangle Media  
2 Corporation has advertised, marketed, distributed, or sold skincare products, electronic  
3 cigarettes, and dietary supplements to consumers throughout the United States. Triangle  
4 Media transacts or has transacted business in this district and throughout the United  
5 States.  
6

7  
8 7. Defendant **Jasper Rain Marketing LLC** ("Jasper Rain"), also doing  
9 business as Cranium Power and Phenom Health, is a California limited liability company  
10 registered and with its principal place of business at 4370 La Jolla Village Drive, Suite  
11 400, San Diego, California 92122. At all times material to this complaint, acting alone or  
12 in concert with others, Jasper Rain has advertised, marketed, distributed or sold dietary  
13 supplements to consumers throughout the United States. Jasper Rain transacts or has  
14 transacted business in this district and throughout the United States.  
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17 8. Defendant **Hardwire Interactive Inc.** ("Hardwire Interactive"), also doing  
18 business as Phenom Health, Beauty and Truth, and E-Cigs, is a British Virgin Islands  
19 corporation with its principal place of business at R.G. Hodge Plaza 3/Floor, Upper Main  
20 Street, Wickham's Cay 1, Road Town, Tortola, British Virgin Islands. At all times  
21 material to this complaint, acting alone or in concert with others, Hardwire Interactive  
22 has advertised, marketed, distributed or sold skincare products, electronic cigarettes, and  
23 dietary supplements to consumers throughout the United States. Hardwire Interactive  
24 transacts or has transacted business in this district and throughout the United States.  
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1           9. Defendant **Brian Phillips** is an owner and officer of Triangle Media. At all  
2 times material to this complaint, acting alone or in concert with others, he has formulated,  
3 directed, controlled, had the authority to control, or participated in the acts and practices  
4 of **Triangle Media, Jasper Rain, and Hardwire Interactive**, including the acts and  
5 practices set forth in this Complaint. Defendant Phillips resides in this district and, in  
6 connection with the matters alleged herein, transacts or has transacted business in this  
7 district and throughout the United States. Among other things, Defendant Phillips has  
8 had the authority to control the advertising and marketing of Defendants' products,  
9 including by registering websites used to track Defendants' online advertising and  
10 marketing activities; the processing of payments from consumers victimized by  
11 Defendants' practices, including by having signatory authority over bank accounts used  
12 to receive and process consumer payments; and Defendants' customer service operations,  
13 including Defendants' restrictive cancellation and refund policies.

14           10. Defendants **Triangle Media, Jasper Rain, and Hardwire Interactive**  
15 (collectively, "Corporate Defendants") have operated as a common enterprise while  
16 engaging in the deceptive and unfair acts and practices and other violations of the law  
17 alleged below. Defendants have conducted the business practices described below  
18 through an interrelated network of companies that have common ownership, officers,  
19 managers, business functions, employees, and office locations and that use common  
20 business names and commingle funds. Because these Corporate Defendants have  
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1 operated as a common enterprise, each of them is jointly and severally liable for the acts  
2 and practices alleged below. Defendant Phillips has formulated, directed, controlled, had  
3 the authority to control, or participated in the acts and practices of the Corporate  
4 Defendants that constitute the common enterprise.  
5

6  
7 **COMMERCE**

8 11. At all times material to this complaint, Defendants have maintained a  
9 substantial course of trade in or affecting commerce, as “commerce” is defined in Section  
10 4 of the FTC Act, 15 U.S.C. § 44.  
11

12 **DEFENDANTS’ BUSINESS PRACTICES**

13 12. Defendants advertise, market, promote, distribute, and sell skincare  
14 products, electronic cigarettes, and dietary supplements online. Defendants claim to offer  
15 trials of these products for just the cost of shipping and handling, typically \$4.95 or less.  
16 Instead, Defendants charge consumers who accept the trial offers as much as \$98.71 for a  
17 single shipment and enroll them in a continuity program costing the same amount on a  
18 monthly basis. Additionally, Defendants frequently also charge consumers for additional  
19 products and enroll consumers in continuity programs related to these additional  
20 products, all without the consumers’ knowledge or consent. Consumers who discover  
21 Defendants’ charges and seek a refund often find that they are unable to get their money  
22 back because of Defendants’ undisclosed refund restrictions. Defendants have brought in  
23 tens of millions of dollars through their deceptive trial offers.  
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***Defendants' Deceptive Trial Offers***

13. Defendants advertise through third-party websites, blog posts, banner advertisements, and surveys, offering consumers a "trial" of products such as "Wrinkle Rewind," "ProVapor," "Cerebral X," "Test X Core," and "Garcinia Clean XT." These advertisements often say that consumers can receive a "trial" for just the cost of shipping and handling. When consumers click on these advertisements, they are directed to Defendants' websites, which include findbeautyandtruth.com, trycerebralx.com, tryphenomcore.com, tryprovapor.com, and trygarciniaclean.com.

14. Defendants' websites offer consumers a "RISK FREE" trial of one of Defendants' products. The websites create a sense of urgency by telling consumers there is a limited supply of the trial product and that they need to act quickly. Representative statements include:

- Warning: Due to extremely high media demand, there is limited supply of [PRODUCT] in stock as of [today's date]. HURRY!
- ONLY [X] NUMBER OF TRIALS AVAILABLE NOW!
- ATTENTION: Due to high demand from recent media coverage we can no longer guarantee supply. As of [TODAY'S DATE] we currently have product in-stock and will ship within 24 hours of purchase.

1 The websites also prominently display the logos of news organizations such as CBS  
2 News, NBC, Fox News, and CNN, suggesting that these products have been featured on  
3 those outlets.  
4

5 15. Consumers who are interested in the trial offer are asked to provide their  
6 contact information. Upon doing so, consumers are directed to a payment page on which  
7 Defendants request their credit or debit card information and represent that consumers  
8 need to pay only a shipping and handling charge, typically \$4.95 or less, to receive a trial  
9 of Defendants' product. Defendants' websites prominently state that the "Total" cost of  
10 the product is equal to the cost of shipping and handling. As shown in the screenshot  
11 below of Defendants' website for Cerebral X, for example, Defendants list the shipping  
12 cost of \$4.95 and highlight the "Total," also \$4.95, in yellow:  
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**Product**      **Price**

**1 Bottle of Cerebral X**      **TRIAL**  
Order your 30 day supply today!

Shipping: \$4.95  
**Total \$4.95**

☒ Yes, add **Protect Package™** for \$2.95 to my order.

**FedEx Express**      **UNITED STATES POSTAL SERVICE**

Your order is due to arrive on Oct 14, 2017.

**FINAL STEP: PAYMENT INFORMATION**

**VISA**      **DISCOVER**

☒ **Billing Address Same As Shipping**

Credit Card:

Expiry Date: Jan (1) 2017

CVV:  CVV is the last 3 digits on the back of your card.

**GET MY RISK FREE TRIAL**

Secure 256-bit SSL Encryption

**PRIVACY**      **CERTIFIED**      **SECURITY**      **BUSINESS**      **VISA**      **DISCOVER**      **FedEx Express**      **UNITED STATES POSTAL SERVICE**

Shop Online with Confidence

Figure 1

16. Similarly, in the following screenshots of Defendants' website for Garcinia Clean XT as depicted on a mobile device, Defendants list the "Price" of the product as \$0.00, highlighted in green, the \$4.95 shipping and handling charge, and a "Total" of \$4.95 in bold, followed by a request for billing information when consumers scroll down on their mobile device:

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Figure 2

17. Once consumers enter their billing information, they are asked to place their order by clicking a brightly colored button labeled either “GET MY RISK FREE TRIAL” or “CONTINUE.”

18. Unbeknownst to consumers, 15 days after they click “GET MY RISK FREE TRIAL” or “CONTINUE,” Defendants will charge consumers the full price of the product—as much as \$98.71.

19. Defendants also enroll consumers who accept the trial offer into a continuity program. Under the continuity program, Defendants send consumers additional

1 shipments of the product each month and charge consumers' credit or debit cards the full  
2 price of each product shipped.

3  
4 20. Consumers typically only learn that the trial was not free and that they have  
5 been enrolled in a continuity program when they see Defendants' monthly charges on  
6 their credit card or bank statements.

7  
8 21. As Figs. 1 and 2 illustrate, Defendants either hide the terms of their offer in  
9 barely discernable print far below the colorful graphics and text where consumers input  
10 their personal and payment information and continue with their purchase, or bury them in  
11 a separate "Terms & Conditions" hyperlink. Those terms typically reveal that the  
12 consumer has a limited time to cancel the trial, usually 15 days, or the consumer will be  
13 charged the full price of the product. The terms also state that the consumer will receive  
14 and be charged for additional shipments of the product every 30 days until they cancel.

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17 22. On the desktop page depicted in Fig. 1, consumers would not encounter  
18 these terms unless they were to look closely at the small, faint type far below where they  
19 enter their payment information and click "GET MY RISK FREE TRIAL." On the  
20 mobile pages depicted in Fig. 2, to see the terms, consumers would need to click on the  
21 separate "terms and conditions" hyperlink or scroll past the large, brightly colored  
22 "CONTINUE" button. But there is nothing on the billing screen in Fig. 2 to indicate that  
23 consumers should look beyond the "CONTINUE" button to find additional content  
24 below.  
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1       23. As a result of these inadequate disclosures, Defendants' websites  
2 misrepresent the total cost of Defendants' trial products, and fail to adequately apprise  
3 consumers that they are being enrolled in a continuity program.  
4

5                   ***Defendants' Deceptive Order Completion Page***

6       24. After clicking "GET MY RISK FREE TRIAL" or "CONTINUE" to order a  
7 trial of one of Defendants' products, consumers are then directed to a webpage that  
8 indicates that their order is not complete. For example, consumers who think they  
9 already have ordered a trial of Defendants' brain supplement Cerebral X are taken to a  
10 page on the same website that has a "Cerebral X" banner at the top but that indicates in  
11 large, red type directly beneath the banner, "Wait! Your Order is Not Complete!" That  
12 page then offers a "FREE" trial of the product VitaMood+, which, the ad indicates,  
13 should be "paired together" with Cerebral X.  
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### Wait! Your Order Is Not Complete!

We want to offer you a free Vitamood+ trial bottle because we're so confident that when paired together with Cerebral X you'll see unparalleled results! There's no reason to feel blue. Add **Vitamood+** to your order.



Secure 256-bit SSL Encryption

COMPLETE CHECKOUT

MasterCard. Verified by  
SecureCode. VISA

☒ Yes, add **Protect Package™** for \$6.95 to my order.

☐ No, I don't want to improve my mood.



Figure 3

1       25. As noted in Fig. 3, Defendants represent that consumers have not completed  
2 their order of the initial trial product until they click the "COMPLETE CHECKOUT"  
3 button located under the advertisement for the second product.  
4

5       26. But when consumers click the "COMPLETE CHECKOUT" button, they  
6 are deemed by Defendants to have ordered a trial of both the original product and the  
7 second product. If consumers do not click the "COMPLETE CHECKOUT" button,  
8 however, they will still receive a trial of the first product.  
9

10       27. Defendants represent that the second product is free, but in reality, the  
11 consumer will be charged the full price of the product 18 days later. Defendants also will  
12 enroll consumers who click the "COMPLETE CHECKOUT" button in a second  
13 continuity program, meaning that consumers also will receive and be charged for  
14 monthly shipments of the second product.  
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17       28. As with Defendants' initial offers, the "order completion" pages also fail to  
18 disclose important terms and conditions of the offer. For example, the order page for the  
19 VitaMood+ offer (Fig. 3) does not disclose adequately that Defendants will charge  
20 consumers the full price of the product after 18 days, and will also enroll them in a  
21 continuity program. These terms only appear in small, faint print well below the  
22 prominent "COMPLETE CHECKOUT" button.  
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25       29. Below the "COMPLETE CHECKOUT" button, and below a line-break, in  
26 tiny, faint print, Defendants include a hyperlink that consumers can click to decline the  
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1 second offer. For example, the order page for the VitaMood+ offer, depicted in Fig. 3  
2 above, includes a faint hyperlink that says "No, I don't want to improve my mood."  
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4 Consumers who click on this hyperlink are then redirected to a series of web pages that  
5 make similar deceptive offers.

6 30. Once consumers place an order for one or more of Defendants' products,  
7  
8 they receive a confirmation email that either does not list any charges associated with the  
9 products or lists only the shipping and handling charge. The confirmation email thus  
10 reinforces the false impression from the websites that, other than the obligation to pay  
11 shipping and handling, the trial product is free.  
12

13 ***Defendants' Restrictive Cancellation and Refund Practices***

14 31. In numerous instances, consumers who ordered Defendants' trial products  
15 report that Defendants subsequently charge them without their knowledge or consent for  
16 the full price of these products and sign them up for one or more continuity programs.  
17 Many consumers subsequently attempt to cancel their enrollment in the continuity  
18 program and to obtain a refund of Defendants' unauthorized charges, but they often have  
19 difficulty cancelling and obtaining a refund.  
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22 32. Consumers who call Defendants to cancel the trial and continuity program  
23 often have difficulty reaching Defendants' customer service representatives, despite  
24 calling numerous times. Even if they are able to reach a customer service representative  
25 to request cancellation, consumers report that they often continue to receive and be  
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1 charged for shipments of Defendants products even after cancelling. The same is  
2 sometimes true when consumers use Defendants' "easy" online cancellation.  
3

4 33. Consumers who request a refund are often told that they cannot get one  
5 because, according to Defendants, their "terms and conditions" require that refund  
6 requests be made within 30 days. Where the refund period has not lapsed, consumers are  
7 told they can only get a refund if the trial product is returned unopened and at the  
8 consumer's expense. Often, consumers who send back the trial product unopened and  
9 within the refund period are nevertheless refused a refund, with Defendants' customer  
10 service representative telling them that Defendants never received the return shipment.  
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13 34. In many instances, consumers attempt to get their money back by initiating  
14 chargebacks with their credit card companies. In other instances, consumers receive  
15 refunds directly from Defendants only after they complain to the Better Business Bureau  
16 or a state regulatory agency. Even in those instances, however, Defendants have not  
17 always issued full refunds, but have refunded only the monthly continuity program  
18 charges.  
19  
20

#### 21 VIOLATIONS OF THE FTC ACT

22 35. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or  
23 deceptive acts or practices in or affecting commerce."  
24

25 36. Misrepresentations or deceptive omissions of material fact constitute  
26 deceptive acts or practices prohibited by Section 5(a) of the FTC Act.  
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37. Acts or practices are unfair under Section 5 of the FTC Act if they cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

**COUNT I**

### *Misrepresentations of the Price of the Trial Offers*

38. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of skin care products, electronic cigarettes, and dietary supplements, Defendants have represented, directly or indirectly, expressly or by implication, that Defendants will charge consumers at most only a shipping and handling fee for a one-time shipment of Defendants' product.

39. In truth and in fact, in numerous instances in which Defendants have made the representation set forth in paragraph 38 of this Complaint, Defendants have charged consumers more than a shipping and handling fee for one or more shipments of Defendants' product.

40. Therefore, Defendants' representation described in paragraph 38 of this Complaint, is false and misleading, and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

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**COUNT II**

***Misrepresentation that Order is Not Complete***

41. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of skin care products, electronic cigarettes, and dietary supplements to consumers who have already ordered a trial of one of Defendants' products, Defendants have represented, directly or indirectly, expressly or by implication, that consumers' initial orders are not complete and that clicking the "COMPLETE CHECKOUT" button will merely complete their initial orders.

42. In truth and in fact, in numerous instances in which Defendants have made the representation set forth in paragraph 41 of this Complaint, consumers' initial orders were complete, and clicking the "COMPLETE CHECKOUT" button ordered an additional product and enrolled consumers in a continuity plan for that product.

43. Therefore, Defendants' representation described in paragraph 41 of this Complaint is false and misleading, and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**COUNT III**

***Failure to Disclose Adequately Material Terms of Trial Offer***

44. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of skin care products, electronic cigarettes, and dietary supplements, Defendants have represented, directly or indirectly, expressly or by

1 implication, that consumers can obtain a trial of Defendants' product for the cost of  
2 shipping and handling, or for free.

3  
4 45. In numerous instances in which Defendants have made the representation set  
5 forth in Paragraph 44 of this Complaint, Defendants have failed to disclose, or disclose  
6 adequately to consumers, material terms and conditions of their offer, including:

- 7  
8 (a) The total cost of the product;  
9 (b) That Defendants will charge consumers the total cost of the trial  
10 product upon the expiration of the trial period, typically 15 days;  
11 (c) That Defendants will automatically enroll consumers in a continuity  
12 plan with additional charges; and  
13 (d) The cost of the continuity plan, and the frequency and duration of the  
14 recurring charges.  
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17 46. Defendants' failure to disclose, or disclose adequately, the material  
18 information described in Paragraph 45, above, in light of the representation described in  
19 Paragraph 44, above, constitutes a deceptive act or practice in violation of Section 5(a) of  
20 the FTC Act, 15 U.S.C. § 45(a).  
21

22 **COUNT IV**

23 ***Unfairly Charging Consumers Without Authorization***

24  
25 47. In numerous instances, Defendants have charged consumers without their  
26 express informed consent.  
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1       48. Defendants' actions cause or are likely to cause substantial injury to  
2 consumers that consumers cannot reasonably avoid themselves and that is not  
3 outweighed by countervailing benefits to consumers or competition.  
4

5       49. Therefore, Defendants' practices as described in Paragraph 47, above,  
6 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C.  
7 §§ 45(a) and 45(n).  
8

9               **VIOLATIONS OF THE RESTORE ONLINE SHOPPERS' CONFIDENCE ACT**

10       50. In 2010, Congress passed the Restore Online Shoppers' Confidence Act, 15  
11 U.S.C. §§ 8401-05, which became effective on December 29, 2010. Congress passed  
12 ROSCA because "[c]onsumer confidence is essential to the growth of online commerce.  
13 To continue its development as a marketplace, the Internet must provide consumers with  
14 clear, accurate information and give sellers an opportunity to fairly compete with one  
15 another for consumers' business." Section 2 of ROSCA, 15 U.S.C. § 8401.  
16  
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18       51. Section 4 of ROSCA, 15 U.S.C. § 8403, generally prohibits charging  
19 consumers for goods or services sold in transactions effected on the Internet through a  
20 negative option feature, as that term is defined in the Commission's Telemarketing Sales  
21 Rule ("TSR"), 16 C.F.R. § 310.2(w), unless the seller: (a) clearly and conspicuously  
22 discloses all material terms of the transaction before obtaining the consumer's billing  
23 information; (b) obtains the consumer's express informed consent before making the  
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1 charge; and (c) provides a simple mechanism to stop recurring charges. *See* 15 U.S.C.  
2 § 8403.

3  
4 52. The TSR defines a negative option feature as: “in an offer or agreement to  
5 sell or provide any goods or services, a provision under which the consumer’s silence or  
6 failure to take an affirmative action to reject goods or services or to cancel the agreement  
7 is interpreted by the seller as acceptance of the offer.” 16 C.F.R. § 310.2(w).

8  
9 53. As described above, Defendants advertise and sell Defendants’ skincare,  
10 electronic cigarette, and dietary supplement products to consumers through a negative  
11 option feature as defined by the TSR. *See* 16 C.F.R. § 310.2(w).

12  
13 54. Under Section 5 of ROSCA, 15 U.S.C. § 8404, a violation of ROSCA is a  
14 violation of a rule promulgated under Section 18 of the FTC Act, 15 U.S.C. § 57a, and  
15 therefore constitutes an unfair or deceptive act or practice in or affecting commerce in  
16 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

17  
18 **COUNT V**

19  
20 ***Violation of ROSCA – Auto-Renewal Continuity Plan***

21 55. In numerous instances, in connection with the selling of their products on the  
22 Internet through a negative option feature, Defendants have failed to:

- 23  
24 (a) clearly and conspicuously disclose all material terms of the negative  
25 option feature of the product transaction before obtaining the  
26 consumer’s billing information;

- (b) obtain the consumer's express informed consent to the negative option feature before charging the consumer's credit card, debit card, bank account, or other financial account for the transaction; and/or
- (c) provide simple mechanisms for a consumer to stop recurring charges for products to the consumer's credit card, debit card, bank account, or other financial account.

56. Defendants' practices as set forth in Paragraph 55 are a violation of Section 4 of ROSCA, 15 U.S.C. § 8403, and are therefore a violation of a rule promulgated under Section 18 of the FTC Act, 15 U.S.C. § 57a, 15 U.S.C. § 8404(a), and therefore constitute an unfair or deceptive act or practice in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

#### **VIOLATIONS OF THE ELECTRONIC FUND TRANSFER ACT AND REGULATION E**

57. Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), provides that a "preauthorized" electronic fund transfer from a consumer's account may be "authorized by the consumer only in writing, and a copy of such authorization shall be provided to the consumer when made."

58. Section 903(10) of the EFTA, 15 U.S.C. § 1693a(10), provides that the term "preauthorized electronic fund transfer" means "an electronic fund transfer authorized in advance to recur at substantially regular intervals."

59. Section 1005.10(b) of Regulation E, 12 C.F.R. § 1005.10(b), provides that “[p]reauthorized electronic fund transfers from a consumer’s account may be authorized only by a writing signed or similarly authenticated by the consumer. The person that obtains the authorization shall provide a copy to the consumer.”

60. Section 1005.10 of the Consumer Financial Protection Bureau's Official Staff Commentary to Regulation E, 12 C.F.R. § 1005.10(b), cmt. 5, Supp. I, provides that "[t]he authorization process should evidence the consumer's identity and assent to the authorization." The Official Staff Commentary to Regulation E further provides that "[a]n authorization is valid if it is readily identifiable as such and the terms of the preauthorized transfer are clear and readily understandable." 12 C.F.R. § 1005.10(b), cmt. 6, Supp. I.

## COUNT VI

### *Unauthorized Debiting from Consumers' Accounts*

61. In numerous instances, Defendants debit consumers' bank accounts on a recurring basis without obtaining a written authorization signed or similarly authenticated from consumers for preauthorized electronic fund transfers from their accounts, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 1005.10(b) of Regulation E, 12 C.F.R. § 1005.10(b).

62. Further, in numerous instances, Defendants debit consumers' bank accounts on a recurring basis without providing a copy of written authorization signed or similarly

1 authenticated by the consumer for preauthorized electronic fund transfers from the  
2 consumer's account, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a),  
3 and Section 1005.10(b) of Regulation E, 12 C.F.R. § 1005.10(b).  
4

5 63. Under Section 918(c) of the EFTA, 15 U.S.C. § 1693o(c), a violation of the  
6 EFTA and Regulation E constitutes a violation of the FTC Act.  
7

8 64. Accordingly, by engaging in violations of the EFTA and Regulation E as  
9 alleged in Paragraphs 61 and 62 of this Complaint, Defendants have engaged in  
10 violations of the FTC Act. 15 U.S.C. § 1693o(c).  
11

#### 12 CONSUMER INJURY

13 65. Consumers have suffered and will continue to suffer substantial injury as a  
14 result of Defendants' violations of the FTC Act, ROSCA, and the EFTA. In addition,  
15 Defendants have been unjustly enriched as a result of their unlawful acts or practices.  
16 Absent injunctive relief by this Court, Defendants are likely to continue to injure  
17 consumers, reap unjust enrichment, and harm the public interest.  
18

#### 19 THIS COURT'S POWER TO GRANT RELIEF

20 21 66. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to  
22 grant injunctive and such other relief as the Court may deem appropriate to halt and  
23 redress violations of any provision of law enforced by the FTC. The Court, in the  
24 exercise of its equitable jurisdiction, may award ancillary relief, including rescission or  
25 reformation of contracts, restitution, the refund of monies paid, and the disgorgement of  
26  
27  
28



1 ill-gotten monies, to prevent and remedy any violation of any provision of law enforced  
2 by the FTC.

3  
4 67. Section 5 of ROSCA, 15 U.S.C. § 8404, and Section 917(c) of the EFTA, 15  
5 U.S.C. § 1693o(c), authorize this Court to grant such relief as the Court finds necessary  
6 to redress injury to consumers resulting from Defendants' violations of the FTC Act,  
7  
8 ROSCA, and the EFTA, including the rescission or reformation of contracts and the  
9 refund of money.

10 **PRAYER FOR RELIEF**

11  
12 Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C.  
13 § 53(b), Section 5 of ROSCA, 15 U.S.C. § 8404, Section 917(c) of the EFTA, 15 U.S.C.  
14 § 1693o(c), and the Court's own equitable powers, requests that the Court:

- 15  
16 A. Award Plaintiff such temporary and preliminary injunctive and ancillary  
17 relief as may be necessary to avert the likelihood of consumer injury during  
18 the pendency of this action and to preserve the possibility of effective final  
19 relief, including but not limited to temporary and preliminary injunctions, an  
20 order freezing assets, immediate access, and appointment of a receiver;  
21  
22 B. Enter a permanent injunction to prevent future violations of the FTC Act,  
23 ROSCA, and the EFTA by Defendants;  
24  
25 C. Award such relief as the Court finds necessary to redress injury to  
26 consumers resulting from Defendants' violations of the FTC Act, ROSCA,  
27  
28

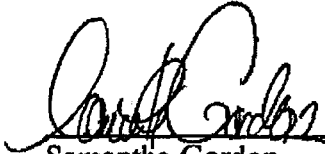
1 and the EFTA, including but not limited to, rescission or reformation of  
2 contracts, restitution, the refund of monies paid, and the disgorgement of ill-  
3 gotten monies; and  
4

5 D. Award Plaintiff the cost of bringing this action, as well as such other and  
6 additional relief as the Court may determine to be just and proper.  
7

8 Dated: June 22, 2018

Respectfully submitted,

9 ALDEN F. ABBOTT  
10 General Counsel

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