

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CURE ENCAPSULATIONS, INC., a New York
corporation, and

NAFTULA JACOBOWITZ, a/k/a Nat Jacobs and
Nate Jacobs, individually and as an officer of
CURE ENCAPSULATIONS, INC.,

Defendants.

Case No. 19-cv-982

**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 for Defendants’ acts or practices in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, in connection with the labeling, advertising, marketing, distribution, and sale of Quality Encapsulations Garcinia Cambogia Extract with HCA (“Quality Encapsulations Garcinia Cambogia”), a product that purportedly causes weight loss.

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).

3. Venue is proper in this district under 28 U.S.C. § 1391(b)(1), (b)(2), (c)(1), (c)(2), and (d), 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 rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b) and 56(a)(2)(A).

DEFENDANTS

6. Defendant Cure Encapsulations, Inc. (“Cure Encapsulations”) is a New York corporation with its principal place of business at 485 Bedford Avenue, Brooklyn, NY 11211. Cure Encapsulations 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, Cure Encapsulations has advertised, marketed, distributed, or sold Quality Encapsulations Garcinia Cambogia to consumers throughout the United States.

7. Defendant Naftula Jacobowitz (“Jacobowitz”), also known as Nat Jacobs and Nate Jacobs, is the Chief Executive Officer and the sole officer, director, and owner of Cure Encapsulations. At all times material to this Complaint, acting alone or in concert with others,

he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Cure Encapsulations, including the acts and practices set forth in this Complaint. Defendant Jacobowitz resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

COMMERCE

8. 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.

DEFENDANTS’ BUSINESS ACTIVITIES

9. Defendants have advertised, offered for sale, sold, and distributed Quality Encapsulations Garcinia Cambogia Extract with HCA capsules (“Quality Encapsulations Garcinia Cambogia”), a product that Defendants market for weight-loss. Quality Encapsulations Garcinia Cambogia capsules are “food” and/or “drugs,” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

10. The recommended daily dose of Quality Encapsulations Garcinia Cambogia is one two-capsule serving. A serving contains 1,000 mg of garcinia cambogia extract standardized to 60% hydroxycitric acid (“HCA”). In other words, one serving contains 600 mg of HCA.

11. Defendants have sold their Quality Encapsulations Garcinia Cambogia product on www.amazon.com (“Amazon”). All of Defendants’ sales of their garcinia cambogia product have been through Amazon.

12. Defendants have disseminated or have caused to be disseminated advertisements for their Quality Encapsulations Garcinia Cambogia product, including but not necessarily limited to the attached Exhibit A. These materials contain the following statements and depictions:

Garcinia Cambogia 100% Pure Garcinia Cambogia Extract with HCA, Extra Strength, 180 Capsules, All Natural Appetite Suppressant, carb blocker, Weight Loss Supplement

...



About the Product

- “Garcinia Cambogia Premium Extract 100% Pure” The only brand that is 60% HCA GUARANTEED...;
- Block fat cells; Block the formation of new fat cells; Block carbs from turning into unhealthy fat; weight loss pill; weight loss supplement;
- Powerful appetite suppressant; Reduces cravings; Diet pill; Diet Supplement

...

Product Description

Wouldn't it be great if you could keep fat from forming in the first place? You can, thanks to Quality Encapsulations. No weight loss product on the market is like the completely NATURAL, EFFECTIVE and SAFE Quality Encapsulations' 100% Pure Garcinia Cambogia Extract with HCA. Used for Generations in India. Garcinia Cambogia Extract IS derived from a fruit that has been consumed for generations in India. Studies have shown that this TIME-TESTED fruit has a myriad of amazing properties. Literally BLOCKS FAT From Forming! Impressively enough, Garcinia Cambogia Extract not only BURNS fat, but also keeps fat from forming in the first place! Combine this fact with Garcinia Cambogia's ability to suppress appetite, blocks carbs, and the end result is a remarkably effective weight loss product!

...

(Exhibit A, www.amazon.com/Garcinia-Cambogia-Suppressant_Supplement-Pharmaceutical/)

[dp/B00FV58KB0](#); the Quality Encapsulations Garcinia Cambogia product page on the Amazon website; captured on February 8, 2017).

13. Amazon provides purchasers of products sold on its website the opportunity to leave customer reviews. Reviews provide a forum for sharing authentic feedback about products.

14. Defendants paid a website, www.amazonverifiedreviews.com, for Amazon reviews of their Quality Encapsulations Garcinia Cambogia product. That website offered Amazon sellers the ability to “Push your product towards the top!” using “verified” product reviews that will “help your product rank better in the internal search engine.”

15. On October 8, 2014, Jacobowitz wrote to the operator of the Amazon Verified Reviews website:

As I told you yesterday, I need 30 reviews 3 per day.

Because of my upcoming holiday, I will not be able to watch my reviews not to get sabotaged by competition.

The goal of my competition is to bring me down to a 4.2 overall rating, and I need to be at 4.3 overall in order to have the sales.

I am sending you now another \$200 and will pay you total of \$1000 additional to the cost of the reviews if you stand on the product, and make sure the next 12 days if someone post a negative review you add real positive reviews from real aged accounts (no proxy vpn vps) to make it back to a 4.3 overall.

He then wrote a few minutes later, “Please make sure my product should stay a five star.”

16. The operator of the Amazon Verified Reviews website provided Defendants with links to or screen shots of some of the resulting Amazon reviews of Defendants’ Quality Encapsulations Garcinia Cambogia product. These reviews included the following:

- a. “Wow. I’m actually still amazed that it worked way faster than I expected. I have lost 20 pounds by using these amazing capsules. The pills help you with your intake of food, cleans all toxins from your body and does not allow fat or sugar to stick. Highly recommended! <3” (Amazon five-star review posted October 23, 2014).
- b. “Works brilliantly. I’ve tried other aids, and this one is amount [sic] the best I’ve tried. I saw results in my workout within weeks.” (Amazon five-star review posted October 24, 2014).
- c. “This is a great product to help with weight loss. Please know that this isn’t a miracle product and it requires to be taken in conjunction with a good exercise and diet plan. I love this product and have been taking it for 5 weeks now. Recommend.” (Amazon five-star review posted October 24, 2014).
- d. “This product really cuts your appetite! I didn’t eat much and i was already feeling full. I used this product for 3 month’s and I am very glad I did. It helps with weight loss. I really love it.” (Amazon five-star review posted October 27, 2014).
- e. “As a dietary supplement, you need time to feel the change. Read the reviews and dont say no in the first week, give it some time. I started using it several month ago and I do feel healthier in general.” (Amazon five-star review posted October 27, 2014).
- f. “lost 10 pounds in the past 2 months, while not a single pound from boobs, lol.” (Amazon five-star review posted October 27, 2014).

- g. “Very effective product. I used it 2 months ago and lost 5 lbs and then stopped using it. I am still keeping the same weight today.” (Amazon five-star review posted October 27, 2014).
- h. “made in the USA. safety ensured. 110lb to 100lb in 40 days, its beyond 5 star.” (Amazon five-star review posted October 27, 2014).
- i. “Lost 7 pounds in one month. What more can I say? I was originally 140 pounds and 5’6. Now I felt like a model. lol.” (Amazon five-star review posted October 27, 2014).
- j. “didnt try hard, but I did feel less like to eat and lost several pounds in the last month without pain. Whats more can I expect.” (Amazon five-star review posted October 27, 2014).
- k. “I am in-love with this product. It is amazingly simple to use but extremely effective. I lost around 8 pounds in roughly weeks of use and best part of it is i don’t get hungry. I have also noticed that i have been feeling amazing everyday since i began using the pill. Best of all, i have noticed no negative side effects and have had great weight loss results.” (Amazon five-star review posted October 28, 2014).
- l. “I used Garcinia Cambogia for few weeks. Feeling great now ! Lost about 10 pounds! Amazing and safety product. A very good product ! 5 Star !!!” (Amazon five-star review posted October 28, 2014).
- m. “I started to using this product 2 months ago and I have lost 15 pounds already. Don’t get me wrong, I was originally 150 pounds and 5’6. I haven’t felt dizzy or

anything as these 1-star reviews said, which I was worried at the beginning. Will definitely keep buying!” (Amazon five-star review posted October 28, 2014).

- n. “At first I was skeptical about purchasing these since they aren’t exactly cheap supplements but I can tell you that these supplements really do work and I based my purchase off of findings and research. I have lost 10 pounds in the first week of using these. I will definitely be recommending this to my family and friends.” (Amazon five-star review posted April 19, 2015).
- o. “I needed something that was going to make me have less of an appetite and I’m glad that I found the right product! After 3 weeks, I already lost 10 pounds for not eating a lot. I’m able to eat less but feel really full! Highly recommended!” (Amazon five-star review posted April 20, 2015).
- p. “I have been taking this for about two weeks now. I notice I do have more energy and my appetite is definitely less. After taking this for two weeks, I have lost 5 pounds. This product is very good for weight loss.” (Amazon five-star review posted June 1, 2015).

These reviews were fabricated.

VIOLATIONS OF THE FTC ACT

17. 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 deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act. Section 12 of the FTC Act, 15 U.S.C. § 52, 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, Quality Encapsulations Garcinia Cambogia is either a “food” or “drug” as defined in Sections 15(b) and (c) of the FTC Act, 15 U.S.C. §§ 55(b), (c).

COUNT I

FALSE OR UNSUBSTANTIATED EFFICACY CLAIMS

18. Through the means described in Paragraphs 12 and 14 through 16, Defendants have represented, directly or indirectly, expressly or by implication, that:

- A. Quality Encapsulations Garcinia Cambogia Extract with HCA is a powerful appetite suppressant;
- B. Quality Encapsulations Garcinia Cambogia Extract with HCA causes significant weight loss, including as much as twenty pounds;
- C. Quality Encapsulations Garcinia Cambogia Extract with HCA causes rapid and substantial weight loss, including as much as two or more pounds per week; and
- D. Quality Encapsulations Garcinia Cambogia Extract with HCA blocks the formation of new fat cells.

19. The representations set forth in Paragraph 18 are false or misleading, or were not substantiated at the time the representations were made.

20. Therefore, the making of the representations as set forth in Paragraph 18 of this Complaint constitutes a deceptive act or 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

FALSE ENDORSEMENT CLAIMS

21. Through the means described in Paragraphs 14 through 16, Defendants have represented, directly or indirectly, expressly or by implication, that certain Amazon reviews of the Quality Encapsulations Garcinia Cambogia product were truthful reviews by actual purchasers of the product.

22. In truth and in fact, in numerous instances in which Defendants have made the representation set forth in Paragraph 21 of this Complaint, the Amazon reviews of the Quality Encapsulations Garcinia Cambogia product were not truthful reviews by actual purchasers of the product, but instead were fabricated by one or more third parties who were paid to generate reviews.

23. Therefore, the making of the representation as set forth in Paragraph 21 of this Complaint constitutes a deceptive act or 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.

CONSUMER INJURY

24. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive 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

25. 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 any provision of law enforced by the FTC. 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 Defendants;
- B. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' 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
- 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.

Dated: 2/19/19

ALDEN F. ABBOTT
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Respectfully submitted,



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