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12 ATTORNEYS FOR PLAINTIFF

13  
14 **UNITED STATES DISTRICT COURT**  
15 **SOUTHERN DISTRICT OF CALIFORNIA**  
16

17 FEDERAL TRADE COMMISSION,  
18  
19 Plaintiff,

20 v.

21 TRIANGLE MEDIA CORPORATION, a  
22 Delaware corporation, also doing business  
23 as Triangle CRM, Phenom Health, Beauty  
24 and Truth, and E-Cigs;

25 JASPER RAIN MARKETING LLC, a  
26 California limited liability company, also  
27 doing business as Cranium Power and  
28 Phenom Health;

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

GLOBAL NORTHERN TRADING  
LIMITED, a Canadian corporation;

Case No.: 18-cv-1388-LAB (LL)  
FIRST AMENDED COMPLAINT

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

Judge: Hon. Larry Alan Burns

Courtroom: 14A – Carter/Keep

1 BRIAN PHILLIPS, individually and as an  
2 officer of Triangle Media Corporation;

3  
4 and

5 DEVIN KEER, individually and as an  
6 officer of Triangle Media Corporation and  
7 Hardwire Interactive,

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Defendants.

10 Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), for its  
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12 Complaint alleges:

13 1. The FTC brings this action under Section 13(b) of the Federal Trade  
14 Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b), Section 5 of the Restore Online  
15 Shoppers’ Confidence Act (“ROSCA”), 15 U.S.C. § 8404, and Section 918(c) of the  
16 Electronic Fund Transfer Act (“EFTA”), 15 U.S.C. § 1693o(c), to obtain temporary,  
17 preliminary, and permanent injunctive relief, rescission or reformation of contracts,  
18 restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other  
19 equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC  
20 Act, 15 U.S.C. § 45(a), Section 4 of ROSCA, 15 U.S.C. § 8403, Section 907(a) of the  
21 EFTA, 15 U.S.C. § 1693e(a), and Section 1005.10(b) of Regulation E, 12 C.F.R.  
22 § 1005.10(b).

**JURISDICTION AND VENUE**

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2           2.     This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331,  
3 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b); and Section 5(a) of ROSCA, 15  
4 U.S.C. § 8404(a).

5  
6           3.     Venue is proper in this district under 28 U.S.C. §§ 1391(b)(1), (b)(2), (c)(1),  
7 (c)(2), (c)(3), and (d), and 15 U.S.C. § 53(b).

8  
9                                 **PLAINTIFF**

10           4.     The FTC is an independent agency of the United States Government created  
11 by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15  
12 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting  
13 commerce. Additionally, the FTC enforces ROSCA, 15 U.S.C. §§ 8401-05, which  
14 prohibits certain methods of negative option marketing on the Internet, as well as the  
15 EFTA, 15 U.S.C. § 1693 *et seq.*, which regulates the rights, liabilities, and  
16 responsibilities of participants in electronic fund transfer systems.

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

1  
2           6.     Defendant **Triangle Media Corporation** (“Triangle Media”), also doing  
3  
4 business as Triangle CRM, Phenom Health, Beauty and Truth, and E-Cigs, is a Delaware  
5 corporation registered at 108 West 13th Street, Wilmington, Delaware 19801. Its  
6 principal place of business was 1350 Columbia Street, San Diego, California 92101 until  
7  
8 May 17, 2018, when it filed paperwork with the California Secretary of State changing its  
9 principal place of business to 4519 George Road, Tampa, Florida 33634. At all times  
10 material to this complaint, acting alone or in concert with others, Triangle Media  
11  
12 Corporation has advertised, marketed, distributed, or sold skincare products, electronic  
13 cigarettes, and dietary supplements to consumers throughout the United States. Triangle  
14 Media transacts or has transacted business in this district and throughout the United  
15  
16 States.

17           7.     Defendant **Jasper Rain Marketing LLC** (“Jasper Rain”), also doing  
18  
19 business as Cranium Power and Phenom Health, is a California limited liability company  
20 registered and with its principal place of business at 4370 La Jolla Village Drive, Suite  
21 400, San Diego, California 92122. At all times material to this complaint, acting alone or  
22  
23 in concert with others, Jasper Rain has advertised, marketed, distributed or sold dietary  
24 supplements to consumers throughout the United States. Jasper Rain transacts or has  
25 transacted business in this district and throughout the United States.

26           8.     Defendant **Hardwire Interactive Inc.** (“Hardwire Interactive”), also doing  
27  
28 business as Phenom Health, Beauty and Truth, and E-Cigs, is a British Virgin Islands

1 corporation with its principal place of business at R.G. Hodge Plaza 3/Floor, Upper Main  
2 Street, Wickham's Cay 1, Road Town, Tortola, British Virgin Islands. At all times  
3 material to this complaint, acting alone or in concert with others, Hardwire Interactive  
4 has advertised, marketed, distributed or sold skincare products, electronic cigarettes, and  
5 dietary supplements to consumers throughout the United States. Hardwire Interactive  
6 transacts or has transacted business in this district and throughout the United States.  
7

8  
9 9. Defendant **Global Northern Trading Limited** ("Global Northern"), is a  
10 Canadian corporation with its principal place of business at 205-2964 Trethewey St.,  
11 Abbotsford, British Columbia, V2T 6PA, Canada. At all times material to this complaint,  
12 acting alone or in concert with others, Global Northern has advertised, marketed,  
13 distributed or sold skin care products, electronic cigarettes, and dietary supplements to  
14 consumers throughout the United States. Global Northern transacts or has transacted  
15 business in this district and throughout the United States.  
16  
17

18 10. Defendant **Brian Phillips** is an owner and officer of Triangle Media. At all  
19 times material to this complaint, acting alone or in concert with others, he has formulated,  
20 directed, controlled, had the authority to control, or participated in the acts and practices  
21 of **Triangle Media, Jasper Rain, Hardwire Interactive, and Global Northern,**  
22 including the acts and practices set forth in this Complaint. Defendant Phillips resides in  
23 this district and, in connection with the matters alleged herein, transacts or has transacted  
24 business in this district and throughout the United States. Among other things, Defendant  
25 Phillips has had the authority to control the advertising and marketing of Defendants'  
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1 products, including by registering websites used to track Defendants’ online advertising  
2 and marketing activities; the processing of payments from consumers victimized by  
3 Defendants’ practices, including by having signatory authority over bank accounts used  
4 to receive and process consumer payments; and Defendants’ customer service operations,  
5 including Defendants’ restrictive cancellation and refund policies.  
6

7  
8 11. Defendant **Devin Keer** has been an owner and officer of Triangle Media  
9 Corporation and Hardwire Interactive. At all times relevant to this complaint, acting  
10 alone or in concert with others, he has formulated, directed, controlled, had the authority  
11 to control, or participated in the acts and practices of **Triangle Media, Jasper Rain,**  
12 **Hardwire Interactive,** and **Global Northern,** including the acts and practices set forth  
13 in this Complaint. Defendant Keer, in connection with the matters alleged herein,  
14 transacts or has transacted business in this district and throughout the United States.  
15  
16 Among other things, Defendant Keer has had the authority to control the advertising and  
17 marketing of Defendants’ products, including overseeing the Corporate Defendants’  
18 overall business strategy and operations, paying for registration of the deceptive websites,  
19 entering into contracts with advertisers, and managing distribution and fulfillment of  
20 Defendants’ products.  
21  
22

23  
24 12. Defendants **Triangle Media, Jasper Rain, Hardwire Interactive,** and  
25 **Global Northern** (collectively, “Corporate Defendants”) have operated as a common  
26 enterprise while engaging in the deceptive and unfair acts and practices and other  
27 violations of the law alleged below. Defendants have conducted the business practices  
28

1 described below through an interrelated network of companies that have common  
2 ownership, officers, managers, business functions, employees, and office locations and  
3 that use common business names and commingle funds. Because these Corporate  
4 Defendants have operated as a common enterprise, each of them is jointly and severally  
5 liable for the acts and practices alleged below. Defendants Phillips and Keer have  
6 formulated, directed, controlled, had the authority to control, or participated in the acts  
7 and practices of the Corporate Defendants that constitute the common enterprise.  
8  
9

10 **COMMERCE**

11  
12 13. At all times material to this complaint, Defendants have maintained a  
13 substantial course of trade in or affecting commerce, as “commerce” is defined in Section  
14 4 of the FTC Act, 15 U.S.C. § 44.  
15

16 **DEFENDANTS’ BUSINESS PRACTICES**

17 14. Defendants advertise, market, promote, distribute, and sell skincare  
18 products, electronic cigarettes, and dietary supplements online. Defendants claim to offer  
19 trials of these products for just the cost of shipping and handling, typically \$4.95 or less.  
20 Instead, Defendants charge consumers who accept the trial offers as much as \$98.71 for a  
21 single shipment and enroll them in a continuity program costing the same amount on a  
22 monthly basis. Additionally, Defendants frequently also charge consumers for additional  
23 products and enroll consumers in continuity programs related to these additional  
24 products, all without the consumers’ knowledge or consent. Consumers who discover  
25 Defendants’ charges and seek a refund often find that they are unable to get their money  
26  
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28

1 back because of Defendants’ undisclosed refund restrictions. Defendants have brought in  
2 tens of millions of dollars through their deceptive trial offers.

3  
4 *Defendants’ Deceptive Trial Offers*

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

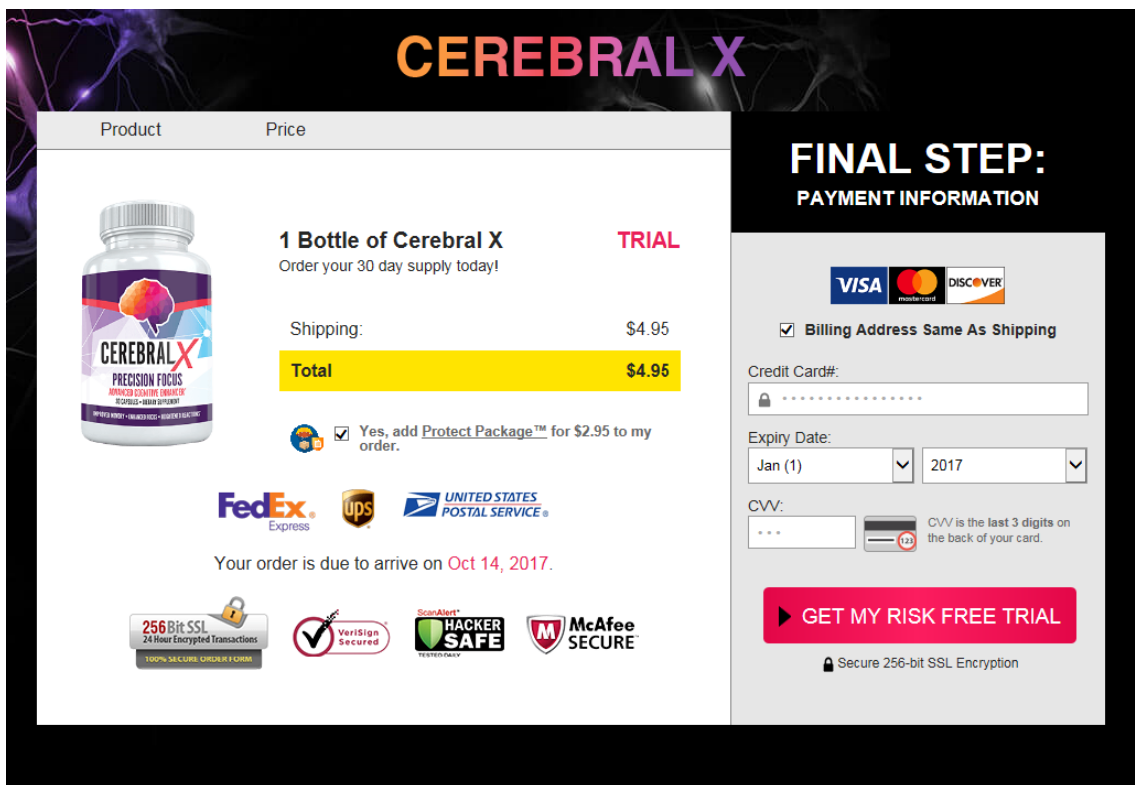
14 16. Defendants’ websites offer consumers a “RISK FREE” trial of one of  
15 Defendants’ products. The websites create a sense of urgency by telling consumers there  
16 is a limited supply of the trial product and that they need to act quickly. Representative  
17 statements include:  
18

- 19
- 20 • Warning: Due to extremely high media demand, there is limited supply  
21 of [PRODUCT] in stock as of [today’s date]. HURRY!
  - 22 • ONLY [X] NUMBER OF TRIALS AVAILABLE NOW!
  - 23 • ATTENTION: Due to high demand from recent media coverage we can  
24 no longer guarantee supply. As of [TODAY’S DATE] we currently  
25 have product in-stock and will ship within 24 hours of purchase.  
26  
27  
28



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 17. 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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[Terms & Conditions](#) | [Privacy Policy](#) | [Contact Us](#)

2017 © Cerebral X US

By placing an order you will be enrolled in our membership program. This program will charge \$ 4.95 today and \$ 84.71 for your trial full-size product on the 15th day if you do not call to cancel the membership. You will receive a full-size bottle of the product for \$ 84.71 (S&H included) every 30 days thereafter until you cancel. You can cancel or modify your membership anytime by calling +1-888-963-8400. Open 24 hours a day, 7 days a week. Product ships in 1-3 business days.

Figure 1

18. 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:

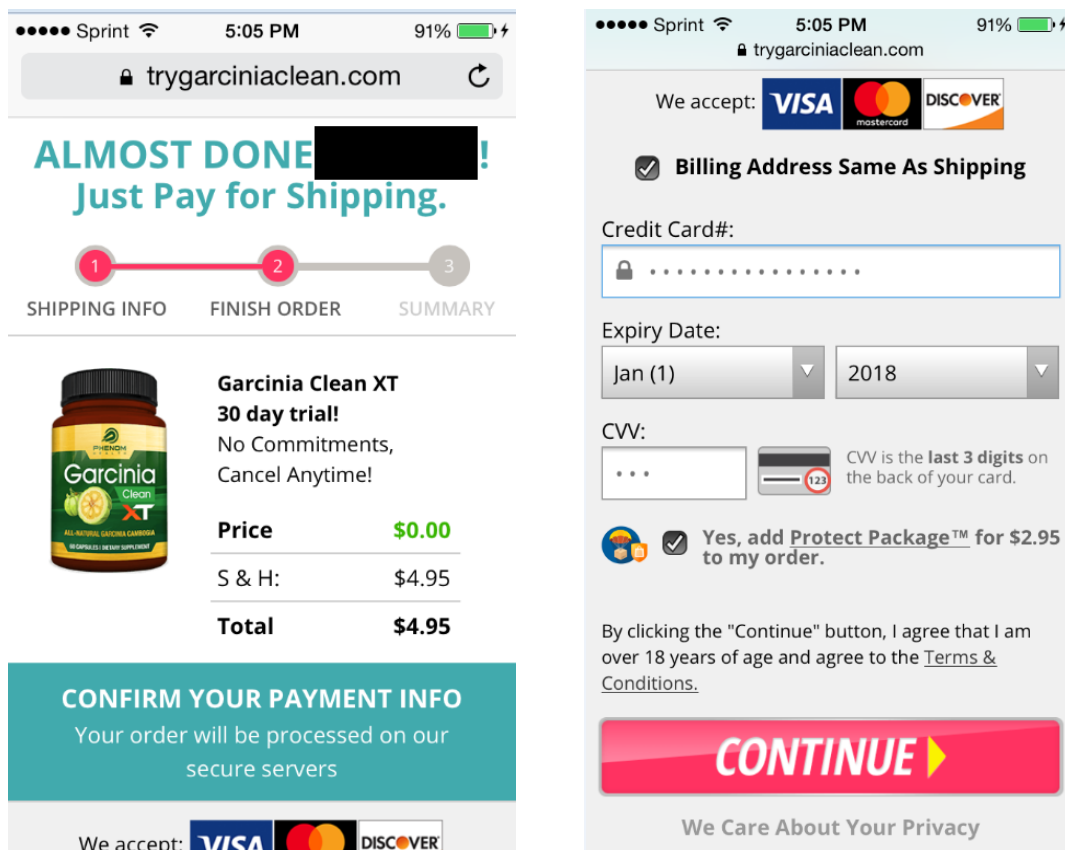


Figure 2

19. 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.”

20. 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.

21. Defendants also enroll consumers who accept the trial offer into a continuity program. Under the continuity program, Defendants send consumers additional shipments of the product each month and charge consumers’ credit or debit cards the full price of each product shipped.

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

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

14           24. On the desktop page depicted in Fig. 1, consumers would not encounter  
15 these terms unless they were to look closely at the small, faint type far below where they  
16 enter their payment information and click “GET MY RISK FREE TRIAL.” On the  
17 mobile pages depicted in Fig. 2, to see the terms, consumers would need to click on the  
18 separate “terms and conditions” hyperlink or scroll past the large, brightly colored  
19 “CONTINUE” button. But there is nothing on the billing screen in Fig. 2 to indicate that  
20 consumers should look beyond the “CONTINUE” button to find additional content  
21 below.  
22  
23  
24

25           25. As a result of these inadequate disclosures, Defendants’ websites  
26 misrepresent the total cost of Defendants’ trial products, and fail to adequately apprise  
27 consumers that they are being enrolled in a continuity program.  
28

*Defendants’ Deceptive Order Completion Page*

1  
2           26. After clicking “GET MY RISK FREE TRIAL” or “CONTINUE” to order a  
3 trial of one of Defendants’ products, consumers are then directed to a webpage that  
4 indicates that their order is not complete. For example, consumers who think they  
5 already have ordered a trial of Defendants’ brain supplement Cerebral X are taken to a  
6 page on the same website that has a “Cerebral X” banner at the top but that indicates in  
7 large, red type directly beneath the banner, “Wait! Your Order is Not Complete!” That  
8 page then offers a “FREE” trial of the product VitaMood+, which, the ad indicates,  
9 should be “paired together” with Cerebral X.  
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**CEREBRAL X**  
Advanced Cognitive Enhancer

Internet Exclusive Offer   
Available to USA Residents Only

### 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.



**SPECIAL**


 *Hurry Limited Supplies Available*

## BOOST YOUR MOOD!

# VITAMOOD+

- + INCREASES FEELINGS OF POSITIVITY & OPTIMISM
- + SUPPORTS EMOTIONAL HEALTH
- + ENCOURAGES BALANCED BRAIN CHEMISTRY

Add your **FREE TRIAL** bottle  
*Free Shipping Included!*

 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.



 Shop Online with Confidence

[Terms & Conditions](#) | [Privacy Policy](#) | [Contact Us](#)

2017 © Vita Mood Plus

By placing an order you will be enrolled in our membership program. This program will charge \$3.00 today and \$7.95 for your trial full-size product on the 12th day if you do not call to cancel the membership. You will receive a full-size bottle of the product for \$79.21 (\$84.95 including shipping) every 30 days thereafter until you cancel. You can cancel or modify your membership anytime by calling +1-888-980-0333. Open 24 hours a day, 7 days a week. Product ships in 1-3 business days.

Figure 3

1           27. 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           28. 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           29. 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.  
15  
16

17           30. 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.  
23  
24

25           31. 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  
27 second offer. For example, the order page for the VitaMood+ offer, depicted in Fig. 3  
28



1 above, includes a faint hyperlink that says “No, I don’t want to improve my mood.”  
2 Consumers who click on this hyperlink are then redirected to a series of web pages that  
3 make similar deceptive offers.  
4

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

11 ***Defendants’ Restrictive Cancellation and Refund Practices***  
12

13 33. In numerous instances, consumers who ordered Defendants’ trial products  
14 report that Defendants subsequently charge them without their knowledge or consent for  
15 the full price of these products and sign them up for one or more continuity programs.  
16 Many consumers subsequently attempt to cancel their enrollment in the continuity  
17 program and to obtain a refund of Defendants’ unauthorized charges, but they often have  
18 difficulty cancelling and obtaining a refund.  
19  
20

21 34. Consumers who call Defendants to cancel the trial and continuity program  
22 often have difficulty reaching Defendants’ customer service representatives, despite  
23 calling numerous times. Even if they are able to reach a customer service representative  
24 to request cancellation, consumers report that they often continue to receive and be  
25 charged for shipments of Defendants products even after cancelling. The same is  
26 sometimes true when consumers use Defendants’ “easy” online cancellation.  
27  
28



1           35. Consumers who request a refund are often told that they cannot get one  
2 because, according to Defendants, their “terms and conditions” require that refund  
3 requests be made within 30 days. Where the refund period has not lapsed, consumers are  
4 told they can only get a refund if the trial product is returned unopened and at the  
5 consumer’s expense. Often, consumers who send back the trial product unopened and  
6 within the refund period are nevertheless refused a refund, with Defendants’ customer  
7 service representative telling them that Defendants never received the return shipment.  
8

9  
10           36. In many instances, consumers attempt to get their money back by initiating  
11 chargebacks with their credit card companies. In other instances, consumers receive  
12 refunds directly from Defendants only after they complain to the Better Business Bureau  
13 or a state regulatory agency. Even in those instances, however, Defendants have not  
14 always issued full refunds, but have refunded only the monthly continuity program  
15 charges.  
16  
17

18  
**VIOLATIONS OF THE FTC ACT**  
19

20           37. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or  
21 deceptive acts or practices in or affecting commerce.”

22           38. Misrepresentations or deceptive omissions of material fact constitute  
23 deceptive acts or practices prohibited by Section 5(a) of the FTC Act.  
24

25           39. Acts or practices are unfair under Section 5 of the FTC Act if they cause  
26 substantial injury to consumers that consumers cannot reasonably avoid themselves and  
27  
28

1 that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C.  
2 § 45(n).

3  
4 **COUNT I**

5 ***Misrepresentations of the Price of the Trial Offers***

6 40. In numerous instances, in connection with the advertising, marketing,  
7 promotion, offering for sale, or sale of skin care products, electronic cigarettes, and  
8 dietary supplements, Defendants have represented, directly or indirectly, expressly or by  
9 implication, that Defendants will charge consumers at most only a shipping and handling  
10 fee for a one-time shipment of Defendants' product.  
11

12  
13 41. In truth and in fact, in numerous instances in which Defendants have made  
14 the representation set forth in paragraph 40 of this Complaint, Defendants have charged  
15 consumers more than a shipping and handling fee for one or more shipments of  
16 Defendants' product.  
17

18 42. Therefore, Defendants' representation described in paragraph 40 of this  
19 Complaint, is false and misleading, and constitutes a deceptive act or practice in violation  
20 of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).  
21

22 **COUNT II**

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

24 43. In numerous instances, in connection with the advertising, marketing,  
25 promotion, offering for sale, or sale of skin care products, electronic cigarettes, and  
26 dietary supplements to consumers who have already ordered a trial of one of Defendants'  
27  
28

1 products, Defendants have represented, directly or indirectly, expressly or by implication,  
2 that consumers' initial orders are not complete and that clicking the "COMPLETE  
3 CHECKOUT" button will merely complete their initial orders.  
4

5 44. In truth and in fact, in numerous instances in which Defendants have made  
6 the representation set forth in paragraph 43 of this Complaint, consumers' initial orders  
7 were complete, and clicking the "COMPLETE CHECKOUT" button ordered an  
8 additional product and enrolled consumers in a continuity plan for that product.  
9

10 45. Therefore, Defendants' representation described in paragraph 43 of this  
11 Complaint is false and misleading, and constitutes a deceptive act or practice in violation  
12 of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).  
13

### 14 **COUNT III**

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

16 46. In numerous instances, in connection with the advertising, marketing,  
17 promotion, offering for sale, or sale of skin care products, electronic cigarettes, and  
18 dietary supplements, Defendants have represented, directly or indirectly, expressly or by  
19 implication, that consumers can obtain a trial of Defendants' product for the cost of  
20 shipping and handling, or for free.  
21  
22

23 47. In numerous instances in which Defendants have made the representation set  
24 forth in Paragraph 46 of this Complaint, Defendants have failed to disclose, or disclose  
25 adequately to consumers, material terms and conditions of their offer, including:  
26  
27

28 (a) The total cost of the product;

- 1 (b) That Defendants will charge consumers the total cost of the trial  
2 product upon the expiration of the trial period, typically 15 days;  
3  
4 (c) That Defendants will automatically enroll consumers in a continuity  
5 plan with additional charges; and  
6  
7 (d) The cost of the continuity plan, and the frequency and duration of the  
8 recurring charges.

9 48. Defendants' failure to disclose, or disclose adequately, the material  
10 information described in Paragraph 47, above, in light of the representation described in  
11 Paragraph 46, above, constitutes a deceptive act or practice in violation of Section 5(a) of  
12 the FTC Act, 15 U.S.C. § 45(a).  
13

14 **COUNT IV**

15 ***Unfairly Charging Consumers Without Authorization***

16  
17 49. In numerous instances, Defendants have charged consumers without their  
18 express informed consent.

19  
20 50. Defendants' actions cause or are likely to cause substantial injury to  
21 consumers that consumers cannot reasonably avoid themselves and that is not  
22 outweighed by countervailing benefits to consumers or competition.  
23

24 51. Therefore, Defendants' practices as described in Paragraph 49, above,  
25 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C.  
26 §§ 45(a) and 45(n).  
27  
28

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

1  
2 52. In 2010, Congress passed the Restore Online Shoppers' Confidence Act, 15  
3 U.S.C. §§ 8401-05, which became effective on December 29, 2010. Congress passed  
4 ROSCA because “[c]onsumer confidence is essential to the growth of online commerce.  
5 To continue its development as a marketplace, the Internet must provide consumers with  
6 clear, accurate information and give sellers an opportunity to fairly compete with one  
7 another for consumers' business.” Section 2 of ROSCA, 15 U.S.C. § 8401.  
8  
9

10 53. Section 4 of ROSCA, 15 U.S.C. § 8403, generally prohibits charging  
11 consumers for goods or services sold in transactions effected on the Internet through a  
12 negative option feature, as that term is defined in the Commission's Telemarketing Sales  
13 Rule (“TSR”), 16 C.F.R. § 310.2(w), unless the seller: (a) clearly and conspicuously  
14 discloses all material terms of the transaction before obtaining the consumer's billing  
15 information; (b) obtains the consumer's express informed consent before making the  
16 charge; and (c) provides a simple mechanism to stop recurring charges. *See* 15 U.S.C.  
17 § 8403.  
18  
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21 54. The TSR defines a negative option feature as: “in an offer or agreement to  
22 sell or provide any goods or services, a provision under which the consumer's silence or  
23 failure to take an affirmative action to reject goods or services or to cancel the agreement  
24 is interpreted by the seller as acceptance of the offer.” 16 C.F.R. § 310.2(w).  
25  
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1 55. As described above, Defendants advertise and sell Defendants’ skincare,  
2 electronic cigarette, and dietary supplement products to consumers through a negative  
3 option feature as defined by the TSR. *See* 16 C.F.R. § 310.2(w).  
4

5 56. Under Section 5 of ROSCA, 15 U.S.C. § 8404, a violation of ROSCA is a  
6 violation of a rule promulgated under Section 18 of the FTC Act, 15 U.S.C. § 57a, and  
7 therefore constitutes an unfair or deceptive act or practice in or affecting commerce in  
8 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).  
9

10 **COUNT V**

11 ***Violation of ROSCA – Auto-Renewal Continuity Plan***

12  
13 57. In numerous instances, in connection with the selling of their products on the  
14 Internet through a negative option feature, Defendants have failed to:

- 15 (a) clearly and conspicuously disclose all material terms of the negative  
16 option feature of the product transaction before obtaining the  
17 consumer’s billing information;  
18  
19 (b) obtain the consumer’s express informed consent to the negative option  
20 feature before charging the consumer’s credit card, debit card, bank  
21 account, or other financial account for the transaction; and/or  
22  
23 (c) provide simple mechanisms for a consumer to stop recurring charges  
24 for products to the consumer’s credit card, debit card, bank account,  
25 or other financial account.  
26  
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1 58. Defendants’ practices as set forth in Paragraph 57 are a violation of Section  
2 4 of ROSCA, 15 U.S.C. § 8403, and are therefore a violation of a rule promulgated under  
3 Section 18 of the FTC Act, 15 U.S.C. § 57a, 15 U.S.C. § 8404(a), and therefore constitute  
4 an unfair or deceptive act or practice in or affecting commerce in violation of Section  
5 5(a) of the FTC Act, 15 U.S.C. § 45(a).  
6

7  
8 **VIOLATIONS OF THE ELECTRONIC FUND TRANSFER ACT AND REGULATION E**

9 59. Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), provides that a  
10 “preauthorized” electronic fund transfer from a consumer’s account may be “authorized  
11 by the consumer only in writing, and a copy of such authorization shall be provided to the  
12 consumer when made.”  
13

14 60. Section 903(10) of the EFTA, 15 U.S.C. § 1693a(10), provides that the term  
15 “preauthorized electronic fund transfer” means “an electronic fund transfer authorized in  
16 advance to recur at substantially regular intervals.”  
17

18 61. Section 1005.10(b) of Regulation E, 12 C.F.R. § 1005.10(b), provides that  
19 “[p]reauthorized electronic fund transfers from a consumer’s account may be authorized  
20 only by a writing signed or similarly authenticated by the consumer. The person that  
21 obtains the authorization shall provide a copy to the consumer.”  
22

23 62. Section 1005.10 of the Consumer Financial Protection Bureau’s Official  
24 Staff Commentary to Regulation E, 12 C.F.R. § 1005.10(b), cmt. 5, Supp. I, provides that  
25 “[t]he authorization process should evidence the consumer’s identity and assent to the  
26 authorization.” The Official Staff Commentary to Regulation E further provides that  
27  
28

1 “[a]n authorization is valid if it is readily identifiable as such and the terms of the  
2 preauthorized transfer are clear and readily understandable.” 12 C.F.R. § 1005.10(b),  
3 cmt. 6, Supp. I.  
4

## 5 **COUNT VI**

### 6 *Unauthorized Debiting from Consumers’ Accounts*

7  
8 63. In numerous instances, Defendants debit consumers’ bank accounts on a  
9 recurring basis without obtaining a written authorization signed or similarly authenticated  
10 from consumers for preauthorized electronic fund transfers from their accounts, thereby  
11 violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 1005.10(b) of  
12 Regulation E, 12 C.F.R. § 1005.10(b).  
13

14 64. Further, in numerous instances, Defendants debit consumers’ bank accounts  
15 on a recurring basis without providing a copy of written authorization signed or similarly  
16 authenticated by the consumer for preauthorized electronic fund transfers from the  
17 consumer’s account, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a),  
18 and Section 1005.10(b) of Regulation E, 12 C.F.R. § 1005.10(b).  
19  
20

21 65. Under Section 918(c) of the EFTA, 15 U.S.C. § 1693o(c), a violation of the  
22 EFTA and Regulation E constitutes a violation of the FTC Act.  
23

24 66. Accordingly, by engaging in violations of the EFTA and Regulation E as  
25 alleged in Paragraphs 63 and 64 of this Complaint, Defendants have engaged in  
26 violations of the FTC Act. 15 U.S.C. § 1693o(c).  
27  
28



**CONSUMER INJURY**

1  
2 67. Consumers have suffered and will continue to suffer substantial injury as a  
3 result of Defendants' violations of the FTC Act, ROSCA, and the EFTA. In addition,  
4 Defendants have been unjustly enriched as a result of their unlawful acts or practices.  
5 Absent injunctive relief by this Court, Defendants are likely to continue to injure  
6 consumers, reap unjust enrichment, and harm the public interest.  
7  
8

**THIS COURT'S POWER TO GRANT RELIEF**

9  
10 68. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to  
11 grant injunctive and such other relief as the Court may deem appropriate to halt and  
12 redress violations of any provision of law enforced by the FTC. The Court, in the  
13 exercise of its equitable jurisdiction, may award ancillary relief, including rescission or  
14 reformation of contracts, restitution, the refund of monies paid, and the disgorgement of  
15 ill-gotten monies, to prevent and remedy any violation of any provision of law enforced  
16 by the FTC.  
17  
18

19  
20 69. Section 5 of ROSCA, 15 U.S.C. § 8404, and Section 917(c) of the EFTA, 15  
21 U.S.C. § 1693o(c), authorize this Court to grant such relief as the Court finds necessary  
22 to redress injury to consumers resulting from Defendants' violations of the FTC Act,  
23 ROSCA, and the EFTA, including the rescission or reformation of contracts and the  
24 refund of money.  
25  
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**PRAYER FOR RELIEF**

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

- A. Award Plaintiff such temporary and 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, an order freezing assets, immediate access, and appointment of a receiver;
- B. Enter a permanent injunction to prevent future violations of the FTC Act, ROSCA, and the EFTA by Defendants;
- C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, ROSCA, and the EFTA, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and
- D. Award Plaintiff the cost of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

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Dated: December 11, 2018

Respectfully submitted,

ALDEN F. ABBOTT  
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