

ONeil, Brendan

From: Runsten, Melissa <mrunsten@debevoise.com>
Sent: Wednesday, May 16, 2018 1:14 PM
To: 'DEBrief@ftc.gov'
Cc: 'Prunty, James A.'; ONeil, Brendan; Rubin, Paul D.
Subject: FTC v. Marketing Architects, Inc., FTC Matter No. 1623101, Case No. 2:18-cv-00050-NT
Attachments: Marketing Architects Inc. - Compliance Report - 5.16.18.pdf

Please find attached Marketing Architect's Compliance Report related to *FTC v. Marketing Architects, Inc.*, FTC Matter No. 1623101. We are sending the Compliance Report to this e-mail address pursuant to Sections XIV.A. and XIV.E. of the Order.

Please confirm receipt at your convenience.

Thank you,
Melissa Runsten

**Debevoise
& Plimpton**

Debevoise & Plimpton LLP
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Associate

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COMPLIANCE REPORT OF MARKETING ARCHITECTS, INC.
SUBMITTED ON MAY 16, 2018

FEDERAL TRADE COMMISSION AND STATE OF MAINE
V. MARKETING ARCHITECTS, INC.

U.S. DISTRICT COURT FOR THE DISTRICT OF MAINE
CASE NO. 2:18-CV-00050-NT

FTC MATTER FILE NUMBER: 1623101

Marketing Architects, Inc. ("MAI"), submits this report in compliance with the Decision and Order of the Federal Trade Commission in this matter, Federal Trade Commission and State of Maine v. Marketing Architects, Inc. Case No. 2:18-cv-00050 (the "Order" of the "Commission"). The United States District Court for the District of Maine entered the order on February 16, 2018, and the Order went into effect on that date. A copy of the Order is attached as Exhibit 1 hereto. Section XIV of the Order requires MAI to report in writing within 90 days on the manner and form of its compliance with the Order.

Set forth below is the full text of each decretal provision of the order, followed by a description of compliance measures to date.

Provision of the Order:

Section I – Banned Weight-Loss Claims

IT IS ORDERED that Defendant, Defendant's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Dietary Supplement, OTC drug, patch, cream, wrap, or other product worn on the body or rubbed into the skin, are permanently restrained and enjoined from making, or assisting others in making, in any manner, expressly or by implication, including through the use of a product or program name, endorsement, depiction, or illustration, any representation that such product:

- A. Causes weight loss of two pounds or more a week for a month or more without dieting or exercise;*
- B. Causes substantial weight loss no matter what or how much the consumer eats;*
- C. Causes permanent weight loss;*
- D. Blocks the absorption of fat or calories to enable consumers to lose substantial weight;*
- E. Safely enables consumers to lose more than three pounds per week for more than four weeks;*
- F. Causes substantial weight loss for all users; or*
- G. Causes substantial weight loss by wearing a product on the body or rubbing it into the skin.*

MAI Response:

Since the date of the Order, MAI has not made, or assisted others in making, any of the above representations in connection with the manufacturing, labeling, advertising, promotion, offering

creating advertising or brokering ad placements for a Covered Product, and does not: (1) have an ownership interest in such Covered Product; (2) own or license the right to advertise such Covered Product; or (3) derive royalties or payments generated from the sale of such Covered Product, it shall be a defense hereunder if it can establish, after reasonable inquiry, Defendant neither knew nor had reason to know that any representation covered by this Section was not supported by competent and reliable scientific evidence as required under this Section.

MAI Response:

Since the date of the Order, MAI has not made, or assisted others in making, any of the above representations in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product.

Provision of the Order:

Section IV – Prohibited Representations Regarding Tests, Studies or Ingredients

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product are permanently restrained and enjoined from misrepresenting, in any manner, expressly or by implication, including through the use of any product or program name, endorsement, depiction, or illustration:

- A. That any Covered Product is clinically proven to cause weight loss;*
- B. That the performance or benefits of any Covered Product are scientifically or clinically proven or otherwise established; or*
- C. The existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.*

MAI Response:

Since the date of the Order, MAI has not made, or assisted others in making, any of the above representations in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product.

Provision of the Order:

Section V – FDA-Approved Claims

IT IS FURTHER ORDERED that nothing in this Order prohibits Defendant, Defendant's officers, agents, employees, and attorneys, or all other persons in active concert or participation with any of them from:

- A. For any drug, making a representation that is approved in labeling for such drug under any tentative final or final monograph promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration; and*
- B. For any product, making a representation that is specifically authorized for use in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990 or permitted under Sections 303-304 of the Food and Drug Administration Modernization Act of 1997.*

MAI Response:

Although such claims are permissible pursuant to the Order, since the date of the Order, MAI has not made, or assisted others in making, any of the representations covered by this section of the Order.

Provision of the Order:

Section VI – Prohibited Misrepresentations

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, offering for sale, or sale of any good or service, are permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, in any manner, expressly or by implication, including through the use of any product or program name, endorsement, depiction, or illustration, any material fact, including:

- A. That purported users of the goods or services who appear in advertising Defendant creates or disseminates obtained a reported result through the use of those goods or services; and*
- B. That paid commercial advertising is independent programming, including independent, educational programming; an objective news report; an effort to recruit subjects for a study or trial; or is sponsored by the government.*

Provided, however, that for the purposes of Subsection A of this Section entitled "Prohibited Misrepresentations," in instances where any Defendant, on behalf of a client, creates or develops advertising, or participates or assists in the creation or development of advertising for

Provision of the Order:

Section VIII – Required Disclosures

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with promoting or offering for sale any good or service, are permanently restrained and enjoined from:

A. Representing directly or indirectly, expressly or by implication, in connection with the advertising of any good or service, that such good or service is being offered on a free, risk-free, no-risk, or no-obligation basis, without disclosing Clearly and Conspicuously, and in Close Proximity to, any such representation:

1. The extent to which the consumer must take affirmative action(s) to avoid any Charges: (a) for the offered good or service; (b) of an increased amount after the trial or promotional period ends; or (c) on a recurring basis;
2. The total cost (or range of costs) the consumer will be Charged, including all shipping, handling, and processing fees and Charges, and, if applicable, the frequency of such Charges unless the consumer timely takes affirmative steps to prevent or stop such Charges; and
3. The date or timeframe by which the consumer must affirmatively act in order to stop all recurring Charges; and

B. Obtaining Billing Information from a consumer for any transaction involving a good or service that includes a Negative Option Feature, or that is promoted as being offered as or made available on a "free," "risk-free," "no risk," "no obligation," "trial," "sample," "bonus," or "gift" basis, without first disclosing, Clearly and Conspicuously, and in Close Proximity to where a consumer provides Billing Information:

1. The extent to which the consumer must take affirmative action(s) to avoid any Charges: (a) for the offered good or service; (b) of an increased amount after the trial or promotional period ends; and (c) on a recurring basis;
2. The total cost (or range of costs) the consumer will be Charged, including all shipping, handling, and processing fees and Charges, the date the initial Charge will be submitted for payment, and, if applicable, the frequency of such Charges unless the consumer timely takes affirmative steps to prevent or stop such Charges;
3. The deadline(s) (by date or frequency) by which the consumer must affirmatively act in order to stop all recurring Charges, whether such recurring charges are refundable, and the terms and conditions of any refund, cancellation, exchange, or repurchase policy;
4. The name of the seller or provider of the good or service;
5. A description of the good or service;

6. Any Charge or cost for which the consumer is responsible in connection with the cancellation of an order or the return of a good; and
7. A cancellation mechanism to stop any recurring Charges.

MAI Response:

MAI has not since the date of the Order made any representations requiring the disclosures in Section VIII.A or VIII.B.

Provision of the Order:

Section IX – Obtaining Express Informed Consent

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with promoting or offering for sale any good or service with a Negative Option Feature, are permanently restrained and enjoined from using or assisting others in using Billing Information to obtain payment from a consumer obtained through inbound Telemarketing, unless Defendant first obtains the express informed consent of the consumer to do so. To obtain express informed consent, Defendant must, prior to obtaining any Billing Information from the consumer:

- A. Clearly and Conspicuously disclose the information contained in the Subsection entitled Required Disclosures, VIII.B.; and
- B. Obtain affirmative unambiguous express oral confirmation that the consumer: (a) consents to being Charged for any good or service; (b) understands that the transaction includes a Negative Option Feature; and (c) understands the specific affirmative steps the consumer must take to prevent or stop further Charges.

For transactions conducted through Telemarketing, Defendant must maintain for 3 years from the date of each transaction an unedited voice recording of the entire transaction (not including portions of the recording containing Billing Information), including the prescribed statements set out in this Section. Each recording must be retrievable by date and by the consumer's name, or telephone number, and must be provided upon request to the consumer, the consumer's bank, or any law enforcement entity.

MAI Response:

Since the date of this Order, MAI has not used or assisted others in using Billing Information⁵ to obtain payment from a customer obtained through inbound Telemarketing⁶ for any good or service with a Negative Option Feature.

⁵ As defined in the Order.

IT IS FURTHER ORDERED that Defendant must fully cooperate with representatives of the Commission, the Maine AG, and any of their representatives in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. Defendant must provide truthful and complete information, evidence, and testimony and must cause its officers, employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and any other proceedings that a representative of the Commission or the Maine AG may reasonably request upon 5 days' written notice, or other reasonable notice, at such places and times as a Commission or Maine AG representative may designate, without the service of a subpoena.

MAI Response:

MAI remains committed to fully cooperating with the Commission and the Maine Attorney General pursuant to Section XII.

Provision of the Order:

Section XIII – Order Acknowledgments

IT IS FURTHER ORDERED that Defendant obtain acknowledgments of receipt of this Order:

- A. Defendant, within 7 days of entry of this Order, must submit to the Commission and the State of Maine an acknowledgment of receipt of this Order sworn under penalty of perjury.*
- B. For 20 years after entry of this Order, Defendant must deliver a copy of this Order to:*
 - 1. All principals, officers, directors, and LLC managers and members;*
 - 2. All employees, agents, and representatives who participate in the advertising, marketing, distribution, or sale of any Dietary Supplement, Food or Drug; and*
 - 3. Any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting.*

Delivery must occur within 7 days of entry of this Order for current personnel.
For all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which Defendant delivered a copy of this Order, Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.*

MAI Response:

On February 23, 2018, within seven (7) days of entry of the Order, MAI submitted acknowledgment of receipt of the Order to the Commission and Maine Attorney General.

Copies of these acknowledgments are attached as Exhibit 2. MAI received confirmation of receipt of the acknowledgments from both the Commission and Maine Attorney General.

On February 22, 2018, within seven (7) days of entry of the Order, MAI delivered a copy of the Order to all persons subject to notice under Section XIII.B. of the Order. MAI received a signed and dated acknowledgment from each of these individuals within thirty (30) days of entry of the Order. Copies of these acknowledgments are attached as Exhibit 3.

MAI will provide this Order to all persons newly subject to notice under Section XIII.B. of the Order before they assume their responsibilities.

Provision of the Order:

Section XIV – Compliance Reporting

Paragraph A: Ninety days after entry of this Order, Defendant must submit a compliance report, sworn under penalty of perjury. Defendant must: (a) identify the primary physical, postal, and email address and telephone number as designated points of contact, which Plaintiffs' representatives may use to communicate with Defendant; (b) identify all of Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered and the means of advertising, marketing, and sales; (d) describe in detail whether and how Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to Plaintiffs.

MAI Response:

(a) Designated points of contact:

Charles Hengel
Chief Executive Officer
110 Cheshire Lane Suite 200
Minneapolis, MN 55305
chengel@markarch.com
952-449-2510

J. Brent Longval
Chief Financial Officer
110 Cheshire Lane Suite 200

Section XV – Recordkeeping

IT IS FURTHER ORDERED that in connection with the sale of any Dietary Supplement, Food, or Drug, Defendant must create certain records for 10 years after entry of the Order, and retain each such record for 5 years. Specifically, Defendant must create and retain the following records:

- A. Accounting records showing Defendant's revenues from all Dietary Supplements, Foods, or Drugs sold, all costs incurred in generating those revenues, and the resulting net profit or loss;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; address; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. Complaints and full or partial refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission and the Maine AG; and
- E. A copy of each unique advertisement, Telemarketing script, or other marketing material.

MAI Response:

MAI will ensure that applicable records are created and retained pursuant to Section XV.

Provision of the Order:

Section XVI – Compliance Monitoring

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant's compliance with this Order:

- A. Within 14 days of receipt of a written request from a representative of the Commission or the Maine AG, Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. Plaintiffs are also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.
- B. For matters concerning this Order, Plaintiffs are authorized to communicate directly with Defendant. Defendant must permit Plaintiffs' representatives to interview any employee or other person affiliated with Defendant who has agreed to such an interview. The person interviewed may have counsel present. Plaintiffs may use all other lawful means, including posing, through their representatives, as consumers, suppliers, or other individuals or entities, to Defendant or any individual

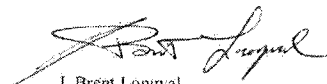
or entity affiliated with Defendant, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1. Nothing in this Order limits the Maine AG's lawful use of compulsory process, pursuant to section 211 of the Maine UTPA, 5 M.R.S.A. § 211. Defendant hereby consents to the disclosure by the Maine AG to any law enforcement agency, and any representative of the State of Maine, of any material or information produced by Defendant pursuant to section 211 of the Maine UTPA, whether produced before or after the date of this Order.

MAI Response:

MAI remains committed to fully cooperating with the Commission and the Maine Attorney General pursuant to Section XVI.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 16, 2018



J. Brent Longval
Chief Financial Officer
Marketing Architects, Inc.

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendant participated in unfair and deceptive acts or practices in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, and in violation of Section 207 of the Maine UTPA, 5 M.R.S.A. § 207, in connection with the advertising, marketing, distribution, and sale of purported weight-loss products.
3. Defendant neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendant admits the facts necessary to establish jurisdiction.
4. Defendant waives any claim that it may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agrees to bear its own costs and attorney fees.
5. Defendant and Plaintiffs waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

1. **“Billing Information”** means any data that enables any person to access a customer’s account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.
2. **“Charge,” “charged,” or “charging”** means any attempt to collect money or other consideration from a consumer, including but not limited to causing Billing Information to be submitted for payment, including against the consumer’s credit card, debit card, bank account, telephone bill, or other account.

3. **“Clear(ly) and Conspicuous(ly)”** means that a required disclosure is difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
 - A. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means;
 - B. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood;
 - C. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it;
 - D. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable;
 - E. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears;

B. Chewing gum; and

C. Any article used for components of any such article.

11. “**Including**” means including but not limited to.

12. “**Negative Option Feature**” means, in an offer or agreement to sell or provide any good or service, a provision under which the consumer’s silence or failure to take affirmative action to reject a good or service or to cancel the agreement is interpreted by the seller or provider as acceptance or continuing acceptance of the offer.

13. “**Person**” means a natural person, an organization, or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

14. “**Telemarketing**” means any plan, program, or campaign which is conducted to induce the purchase of any product, service, plan, or program by use of one or more telephones, and which involves a telephone call, whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310.

I.

BANNED WEIGHT-LOSS CLAIMS

IT IS ORDERED that Defendant, Defendant’s officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Dietary Supplement, OTC drug, patch, cream, wrap, or other product worn on the body or rubbed into the skin, are permanently restrained and enjoined from making, or assisting others in

making, in any manner, expressly or by implication, including through the use of a product or program name, endorsement, depiction, or illustration, any representation that such product:

A. Causes weight loss of two pounds or more a week for a month or more without dieting or exercise;

B. Causes substantial weight loss no matter what or how much the consumer eats;

C. Causes permanent weight loss;

D. Blocks the absorption of fat or calories to enable consumers to lose substantial weight;

E. Safely enables consumers to lose more than three pounds per week for more than four weeks;

F. Causes substantial weight loss for all users; or

G. Causes substantial weight loss by wearing a product on the body or rubbing it into the skin.

II.

PROHIBITED REPRESENTATIONS: OTHER WEIGHT-LOSS CLAIMS

IT IS FURTHER ORDERED that Defendant, Defendant’s officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promoting, offering for sale, sale, or distribution of any Covered Product are permanently restrained and enjoined from making, or assisting others in making, expressly or by implication, including through the use of a product or program name, endorsement, depiction, or illustration, other than representations covered under the Section of this Order entitled Banned Weight-Loss Claims, that, in humans, such Covered Product:

receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, offering for sale, or sale of any good or service, are permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, in any manner, expressly or by implication, including through the use of any product or program name, endorsement, depiction, or illustration, any material fact, including:

- A. That purported users of the goods or services who appear in advertising Defendant creates or disseminates obtained a reported result through the use of those goods or services; and
- B. That paid commercial advertising is independent programming, including independent, educational programming; an objective news report; an effort to recruit subjects for a study or trial; or is sponsored by the government.

Provided, however, that for the purposes of Subsection A of this Section entitled “Prohibited Misrepresentations,” in instances where Defendant, on behalf of a client, creates or develops advertising, or participates or assists in the creation or development of advertising for a good or service, including but not limited to drafting all or part of a radio or television script or producing a radio or television commercial, and does not have an ownership interest in such good or service or own or license the right to advertise such good or service, Defendant will have complied with its obligations under this Section if it can establish that, after reasonable inquiry, it neither knew nor had reason to know that any representation covered under Subsection A was false or misleading.

VII.

OTHER PROHIBITED MISREPRESENTATIONS

IT IS FURTHER ORDERED that Defendant, Defendant’s officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with promoting or offering for sale any good or service, are permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly or by implication:

- A. Any cost to the consumer to purchase, receive, use, or return the initial good or service;
- B. That the consumer will not be Charged for any good or service;
- C. That a good or service is offered on a free, risk-free, no-risk, or no-obligation basis;
- D. That a good or service is offered on a trial, sample, bonus, or gift basis, or words of similar import, denoting or implying that the recipient of the offer has no obligation to affirmatively act in order to avoid Charges, including where a Charge will be assessed pursuant to the offer unless the consumer takes affirmative steps to prevent or stop such a Charge; and

In connection with promoting or offering for sale any good or service with a Negative Option Feature:

- E. That the consumer can obtain a good or service for a processing, service, shipping, handling, or administrative fee with no further obligation;
- F. The purpose(s) for which the consumer’s Billing Information will be used; and
- G. The date or timeframe within which the consumer must act to avoid incurring any

obligation or be Charged unless the consumer takes an affirmative action on the Negative Option Feature.

Compliance with this Section is separate from, and in addition to, the disclosures required by the Sections entitled, "Required Disclosures" and "Obtaining Express Informed Consent."

Provided, however, that for the purposes of this Section entitled "Other Prohibited Misrepresentations," in instances where Defendant, on behalf of a client, creates or develops advertising, or participates or assists in the creation or development of advertising for a good or service, including but not limited to drafting all or part of a radio or television script or producing a radio or television commercial, and does not have an ownership interest in such good or service or own or license the right to advertise such good or service, Defendant will have complied with its obligations under this Section if it can establish that, after reasonable inquiry, it neither knew nor had reason to know that any representation covered under this Section was false or misleading.

VIII.

REQUIRED DISCLOSURES

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with promoting or offering for sale any good or service, are permanently restrained and enjoined from:

- A. Representing directly or indirectly, expressly or by implication, in connection with the advertising of any good or service, that such good or service is being offered on a free, risk-free, no-risk, or no-obligation basis, without disclosing

Clearly and Conspicuously, and in Close Proximity to, any such representation:

1. The extent to which the consumer must take affirmative action(s) to avoid any Charges: (a) for the offered good or service; (b) of an increased amount after the trial or promotional period ends; or (c) on a recurring basis;
 2. The total cost (or range of costs) the consumer will be Charged, including all shipping, handling, and processing fees and Charges, and, if applicable, the frequency of such Charges unless the consumer timely takes affirmative steps to prevent or stop such Charges; and
 3. The date or timeframe by which the consumer must affirmatively act in order to stop all recurring Charges; and
- B. Obtaining Billing Information from a consumer for any transaction involving a good or service that includes a Negative Option Feature, or that is promoted as being offered as or made available on a "free," "risk-free," "no risk," "no obligation," "trial," "sample," "bonus," or "gift" basis, without first disclosing, Clearly and Conspicuously, and in Close Proximity to where a consumer provides Billing Information:
1. The extent to which the consumer must take affirmative action(s) to avoid any Charges: (a) for the offered good or service; (b) of an increased amount after the trial or promotional period ends; and (c) on a recurring basis;
 2. The total cost (or range of costs) the consumer will be Charged, including all shipping, handling, and processing fees and Charges, the date the initial

amount of \$2,000,000 as equitable monetary relief;

- B. Defendant is ordered to pay to the Commission the entire judgment amount, which, as Defendant stipulates, its undersigned counsel holds in escrow for no purpose other than payment to the Commission and the State of Maine. Such payment must be made within 7 days of entry of this Order by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission;
- C. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendant's practices alleged in the Complaint. Any money not used for such equitable relief is to be divided equally by Plaintiffs. The Commission's portion of any money not used for equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defendant has no right to challenge any actions Plaintiffs or their representatives may take pursuant to this Subsection;
- D. All money paid to the State of Maine pursuant to this Order must be deposited into the Attorney General's other special revenue account and used for consumer

education, consumer protection, antitrust enforcement, or for any other lawful purpose at the sole discretion of the Attorney General;

- E. Defendant relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets;
- F. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of either of Plaintiffs, including in a proceeding to enforce their rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.
- G. The facts alleged in the Complaint establish all elements necessary to sustain an action by either of Plaintiffs pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes; and
- H. Defendant acknowledges that its Taxpayer Identification Numbers (Employer Identification Number), which Defendant previously submitted to Plaintiffs, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

XI.

CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, are permanently restrained and enjoined from directly or indirectly:

XIV.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendant make timely submissions to the

Commission and to the Maine AG:

- A. Ninety days after entry of this Order, Defendant must submit a compliance report, sworn under penalty of perjury. Defendant must: (a) identify the primary physical, postal, and email address and telephone number as designated points of contact, which Plaintiffs' representatives may use to communicate with Defendant; (b) identify all of Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered and the means of advertising, marketing, and sales; (d) describe in detail whether and how Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to Plaintiffs.
- B. For 10 years after entry of this Order, Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following. Defendant must report any change in: (a) any designated point of contact; and (b) its structure or the structure of any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

- C. For a period of 10 years, Defendant must submit to the Commission and the Maine AG notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Defendant within 14 days of its filing.
- D. Any submission to the Commission or the Maine AG required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEBrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The subject line must begin: *FTC v. Marketing Architects, Inc.* and the number X____.
- F. Unless otherwise directed by a Maine AG representative in writing, all submissions to the Maine AG pursuant to this Order must be sent by overnight courier (not the U.S. Postal Service) to: Office of the Attorney General of Maine, Consumer Protection Division, 111 Sewall Street, 6th Floor, Augusta, ME 04330. The subject line must begin: *Order in re State of Maine v. Marketing Architects, Inc.* and must identify the Court and docket number of this Order as assigned by the Court.

XVII.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

IT IS SO ORDERED this 16th day of February, 2018.

/s/ Nancy Torresen
United States Chief District Judge

IT IS SO STIPULATED this 31st day of January, 2018.

DAVID C. SHONKA
Acting General Counsel

/s/ James A. Prunty
James A. Prunty
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580
Telephone: 202-326-2438
Facsimile: 202-326-3259
Email: jprunty@ftc.gov

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

JANET T. MILLS
Attorney General, State of Maine

/s/ Brendan F.X. O'Neil
Brendan F.X. O'Neil
Linda J. Conti
Assistant Attorney General

Office of the Attorney General of Maine
6 State House Station
Augusta, Maine 04333-0006
Telephone: 207-626-8842, 8591
Facsimile: 207-624-7730
Email: brendan.oneil@maine.gov



110 Cheshire Ln. Ste 200
Minneapolis, MN 55305
tel (952) 449-2500
fax (952) 449-2501
MarketingArchitects.com

February 22, 2018

BY E-MAIL & OVERNIGHT COURIER

Associate Director for Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580
DEBrief@ftc.gov

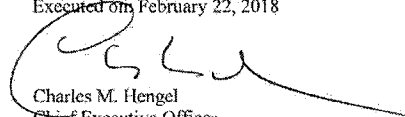
Re: *FTC v. Marketing Architects, Inc.*, Case No. 2:18-cv-00050-NT, FTC Matter No. 1623101

Dear Sir or Madam:

Pursuant to Section XIII.A. of the Stipulated Order for Permanent Injunction and Monetary Judgment in Case No. 2:18-cv-00050-NT, entered by the U.S. District Court for the District of Maine on February 16, 2018, Marketing Architects, Inc., hereby confirms receipt of the Order.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 22, 2018



Charles M. Hengel
Chief Executive Officer
Marketing Architects, Inc.

CC: James A. Prunty, Federal Trade Commission, Division of Advertising Practices



110 Cheshire Ln. Ste 200
Minneapolis, MN 55305
tel (952) 449-2500
fax (952) 449-2501
MarketingArchitects.com

February 22, 2018

BY OVERNIGHT COURIER & E-MAIL TO BRENDAN F.X. O'NEIL

Office of the Attorney General of Maine
Consumer Protection Division
111 Sewall Street, 6th Floor
Augusta, ME 04330

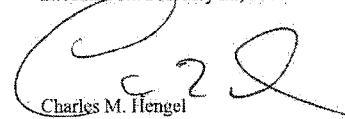
Re: *Order in re State of Maine v. Marketing Architects, Inc.*, Case No. 2:18-cv-00050-NT, U.S. District Court for the District of Maine

Dear Sir or Madam:

Pursuant to Section XIII.A. of the Stipulated Order for Permanent Injunction and Monetary Judgment in Case No. 2:18-cv-00050-NT, entered by the U.S. District Court for the District of Maine on February 16, 2018, Marketing Architects, Inc., hereby confirms receipt of the Order.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 22, 2018



Charles M. Hengel
Chief Executive Officer
Marketing Architects, Inc.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

FEDERAL TRADE COMMISSION and)	
STATE OF MAINE,)	
)	
Plaintiffs,	)	Case No. 2:18-cv-00050-NT
)	
v.	)	Statement Acknowledging
	)	Receipt of Order
)	
MARKETING ARCHITECTS, INC.,)	
)	
Defendant.)	

I, Robert DeMars, hold the position of Chief Creative Officer for Marketing Architects, Inc. I hereby acknowledge that I received a copy of the Stipulated Order for Permanent Injunction and Monetary Judgment, which was entered by the Court in the above-captioned case.

Dated: February 27, 2018

Signature 

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

FEDERAL TRADE COMMISSION and)	
STATE OF MAINE,)	
)	
Plaintiffs,	)	Case No. 2:18-cv-00050-NT
)	
v.	)	Statement Acknowledging
	)	Receipt of Order
)	
MARKETING ARCHITECTS, INC.,)	
)	
Defendant.)	

I, Paul Jackson, hold the position of Chief Media Officer for Marketing Architects, Inc. I hereby acknowledge that I received a copy of the Stipulated Order for Permanent Injunction and Monetary Judgment, which was entered by the Court in the above-captioned case.

Dated: March 06, 2018

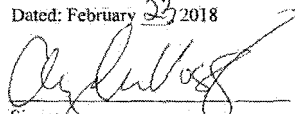
Signature 

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

FEDERAL TRADE COMMISSION and)	
STATE OF MAINE,)	
	)	Case No. 2:18-cv-00050-NT
Plaintiffs,)	
	)	Statement Acknowledging
v.	)	Receipt of Order
)	
MARKETING ARCHITECTS, INC.,)	
)	
Defendant.)	

I, Angela Voss, hold the position of Chief Client Officer for Marketing Architects, Inc. I hereby acknowledge that I received a copy of the Stipulated Order for Permanent Injunction and Monetary Judgment, which was entered by the Court in the above-captioned case.

Dated: February 23, 2018


Signature

ONeil, Brendan

From: ONeil, Brendan
Sent: Monday, February 26, 2018 9:53 AM
To: 'Runsten, Melissa'
Cc: Rubin, Paul D.
Subject: RE: MAI - Acknowledgment of receipt of Order

Confirmed, thank you.

Brendan

Brendan O'Neil
Assistant Attorney General
Office of the Attorney General of Maine
6 State House Station
Augusta, Maine 04333-0006
207-626-8842
207-624-7730 fax
1-888-577-6690 TTY
<http://www.maine.gov/ag/index.shtml>

From: Runsten, Melissa [<mailto:mrunden@debevoise.com>]
Sent: Friday, February 23, 2018 3:59 PM
To: ONeil, Brendan
Cc: Rubin, Paul D.
Subject: MAI - Acknowledgment of receipt of Order

Hi Brendan,

We sent the attached acknowledgment from MAI of receipt of the order via overnight courier as instructed. If you could please confirm receipt of this email, we would appreciate it.

Thanks and have a great weekend,
Melissa

**Debevoise
& Plimpton**

Debevoise & Plimpton LLP
Melissa B. Runsten
Associate

mrunden@debevoise.com
+1 202 383 8073 (Tel)
www.debevoise.com

This e-mail message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure. If you are not the intended recipient, please do not disseminate, distribute or copy this communication, by e-



CONSUMER PROTECTION DIVISION
RECEIVED

FEB 23 2018

Office of the Attorney General

110 Cheshire Ln, Ste 200
Minneapolis, MN 55305

tel (952) 449-2500
fax (952) 449-2501

MarketingArchitects.com

February 22, 2018

BY OVERNIGHT COURIER & E-MAIL TO BRENDAN F.X. O'NEIL

Office of the Attorney General of Maine
Consumer Protection Division
111 Sewall Street, 6th Floor
Augusta, ME 04330

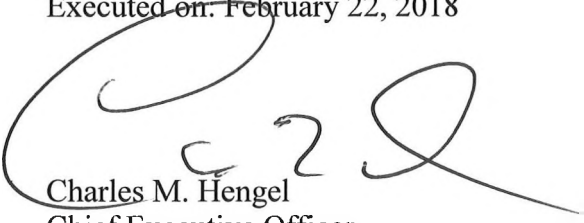
**Re: *Order in re State of Maine v. Marketing Architects, Inc.*, Case No. 2:18-cv-00050-NT,
U.S. District Court for the District of Maine**

Dear Sir or Madam:

Pursuant to Section XIII.A. of the Stipulated Order for Permanent Injunction and Monetary Judgment in Case No. 2:18-cv-00050-NT, entered by the U.S. District Court for the District of Maine on February 16, 2018, Marketing Architects, Inc., hereby confirms receipt of the Order.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: February 22, 2018



Charles M. Hengel
Chief Executive Officer
Marketing Architects, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

_____)	
FEDERAL TRADE COMMISSION and)	
STATE OF MAINE,)	
	)	Case No. 2:18-cv-00050-NT
Plaintiffs,)	
	)	STIPULATED ORDER FOR
v.	)	PERMANENT INJUNCTION AND
	)	MONETARY JUDGMENT
MARKETING ARCHITECTS, INC.,)	
)	
Defendant.)	
_____)	

Plaintiffs, the Federal Trade Commission (“Commission” or “FTC”) and the State of Maine, as represented in this matter by the Office of the Attorney General of Maine (“Maine AG”) (hereafter “Plaintiffs”), filed a Complaint for Permanent Injunction and Other Equitable Relief against Defendant pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and pursuant to Section 209 of the Maine Unfair Trade Practices Act (“Maine UTPA”), 5 M.R.S.A. § 209, 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 Defendant’s acts or practices in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, and in violation of Section 207 of the Maine UTPA, 5 M.R.S.A. § 207, in connection with the advertising, marketing, distribution, and sale of purported weight-loss products.

The Commission, the State of Maine, and Defendant stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment (“Order”) to resolve all matters in dispute in this action between them.

3. “**Clear(ly) and Conspicuous(ly)**” means that a required disclosure is difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

- A. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means;
- B. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood;
- C. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it;
- D. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable;
- E. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears;

ingredient described above, that is intended to be ingested, and is not represented to be used as a conventional food or as a sole item of a meal or the diet.

8. **“Drug”** means:

- A. Articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;
- B. Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;
- C. Articles (other than food) intended to affect the structure or any function of the body of humans or other animals; or
- D. Articles intended for use as a component of any article specified in (A), (B), or (C);

but does not include devices or their components, parts, or accessories.

9. **“Essentially Equivalent Product”** means a product that contains the identical ingredients, except for inactive ingredients (*e.g.*, binders, colors, fillers, excipients), in the same form and dosage, and with the same route of administration (*e.g.*, orally, sublingually), as the Covered Product; *provided that* the Covered Product may contain additional ingredients if reliable scientific evidence generally accepted by experts in the field indicates that the amount and combination of additional ingredients is unlikely to impede or inhibit the effectiveness of the ingredients in the Essentially Equivalent Product.

10. **“Food”** means:

- A. Any article used for food or drink for humans or other animals;

making, in any manner, expressly or by implication, including through the use of a product or program name, endorsement, depiction, or illustration, any representation that such product:

- A. Causes weight loss of two pounds or more a week for a month or more without dieting or exercise;
- B. Causes substantial weight loss no matter what or how much the consumer eats;
- C. Causes permanent weight loss;
- D. Blocks the absorption of fat or calories to enable consumers to lose substantial weight;
- E. Safely enables consumers to lose more than three pounds per week for more than four weeks;
- F. Causes substantial weight loss for all users; or
- G. Causes substantial weight loss by wearing a product on the body or rubbing it into the skin.

II.

PROHIBITED REPRESENTATIONS: OTHER WEIGHT-LOSS CLAIMS

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promoting, offering for sale, sale, or distribution of any Covered Product are permanently restrained and enjoined from making, or assisting others in making, expressly or by implication, including through the use of a product or program name, endorsement, depiction, or illustration, other than representations covered under the Section of this Order entitled Banned Weight-Loss Claims, that, in humans, such Covered Product:

neither knew nor had reason to know that any representation covered by this Section was not supported by competent and reliable scientific evidence as required under this Section.

III.

PROHIBITED REPRESENTATIONS: OTHER HEALTH-RELATED CLAIMS

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, are permanently restrained and enjoined from making, or assisting others in making, expressly or by implication, including through the use of a product or program name, endorsement, depiction, or illustration, any representation about the health benefits, safety, performance or efficacy of any Covered Product, other than representations covered under the Sections of this Order entitled Banned Weight-Loss Claims and Prohibited Representations: Other Weight-Loss Claims, unless the representation is non-misleading, and, at the time of making such representation, they possess and rely upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted by experts in the relevant disease, condition, or function to which the representation relates, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true.

For purposes of this Section, competent and reliable scientific evidence means tests, analyses, research, or studies (1) that have been conducted and evaluated in an objective manner by experts in the relevant disease, condition, or function to which the representation relates;

- A. That any Covered Product is clinically proven to cause weight loss;
- B. That the performance or benefits of any Covered Product are scientifically or clinically proven or otherwise established; or
- C. The existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

V.

FDA-APPROVED CLAIMS

IT IS FURTHER ORDERED that nothing in this Order prohibits Defendant, Defendant's officers, agents, employees, and attorneys, or all other persons in active concert or participation with any of them from:

- A. For any drug, making a representation that is approved in labeling for such drug under any tentative final or final monograph promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration; and
- B. For any product, making a representation that is specifically authorized for use in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990 or permitted under Sections 303-304 of the Food and Drug Administration Modernization Act of 1997.

VI.

PROHIBITED MISREPRESENTATIONS

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who

VII.

OTHER PROHIBITED MISREPRESENTATIONS

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with promoting or offering for sale any good or service, are permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly or by implication:

- A. Any cost to the consumer to purchase, receive, use, or return the initial good or service;
- B. That the consumer will not be Charged for any good or service;
- C. That a good or service is offered on a free, risk-free, no-risk, or no-obligation basis;
- D. That a good or service is offered on a trial, sample, bonus, or gift basis, or words of similar import, denoting or implying that the recipient of the offer has no obligation to affirmatively act in order to avoid Charges, including where a Charge will be assessed pursuant to the offer unless the consumer takes affirmative steps to prevent or stop such a Charge; and

In connection with promoting or offering for sale any good or service with a Negative Option Feature:

- E. That the consumer can obtain a good or service for a processing, service, shipping, handling, or administrative fee with no further obligation;
- F. The purpose(s) for which the consumer's Billing Information will be used; and
- G. The date or timeframe within which the consumer must act to avoid incurring any

Clearly and Conspicuously, and in Close Proximity to, any such representation:

1. The extent to which the consumer must take affirmative action(s) to avoid any Charges: (a) for the offered good or service; (b) of an increased amount after the trial or promotional period ends; or (c) on a recurring basis;
2. The total cost (or range of costs) the consumer will be Charged, including all shipping, handling, and processing fees and Charges, and, if applicable, the frequency of such Charges unless the consumer timely takes affirmative steps to prevent or stop such Charges; and
3. The date or timeframe by which the consumer must affirmatively act in order to stop all recurring Charges; and

B. Obtaining Billing Information from a consumer for any transaction involving a good or service that includes a Negative Option Feature, or that is promoted as being offered as or made available on a “free,” “risk-free,” “no risk,” “no obligation,” “trial,” “sample,” “bonus,” or “gift” basis, without first disclosing, Clearly and Conspicuously, and in Close Proximity to where a consumer provides Billing Information:

1. The extent to which the consumer must take affirmative action(s) to avoid any Charges: (a) for the offered good or service; (b) of an increased amount after the trial or promotional period ends; and (c) on a recurring basis;
2. The total cost (or range of costs) the consumer will be Charged, including all shipping, handling, and processing fees and Charges, the date the initial

and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with promoting or offering for sale any good or service with a Negative Option Feature, are permanently restrained and enjoined from using or assisting others in using Billing Information to obtain payment from a consumer obtained through inbound Telemarketing, unless Defendant first obtains the express informed consent of the consumer to do so. To obtain express informed consent, Defendant must, prior to obtaining any Billing Information from the consumer:

- A. Clearly and Conspicuously disclose the information contained in the Subsection entitled Required Disclosures, VIII.B.; and
- B. Obtain affirmative unambiguous express oral confirmation that the consumer:
 - (a) consents to being Charged for any good or service; (b) understands that the transaction includes a Negative Option Feature; and (c) understands the specific affirmative steps the consumer must take to prevent or stop further Charges.

For transactions conducted through Telemarketing, Defendant must maintain for 3 years from the date of each transaction an unedited voice recording of the entire transaction (not including portions of the recording containing Billing Information), including the prescribed statements set out in this Section. Each recording must be retrievable by date and by the consumer's name, or telephone number, and must be provided upon request to the consumer, the consumer's bank, or any law enforcement entity.

X.

MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

- A. Judgment is hereby entered in favor of Plaintiffs and against Defendant in the

education, consumer protection, antitrust enforcement, or for any other lawful purpose at the sole discretion of the Attorney General;

- E. Defendant relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets;
- F. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of either of Plaintiffs, including in a proceeding to enforce their rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.
- G. The facts alleged in the Complaint establish all elements necessary to sustain an action by either of Plaintiffs pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes; and
- H. Defendant acknowledges that its Taxpayer Identification Numbers (Employer Identification Number), which Defendant previously submitted to Plaintiffs, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

XI.

CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, are permanently restrained and enjoined from directly or indirectly:

places and times as a Commission or Maine AG representative may designate, without the service of a subpoena.

XIII.

ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendant obtain acknowledgments of receipt of this Order:

- A. Defendant, within 7 days of entry of this Order, must submit to the Commission and the State of Maine an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 20 years after entry of this Order, Defendant must deliver a copy of this Order to:
 - 1. All principals, officers, directors, and LLC managers and members;
 - 2. All employees, agents, and representatives who participate in the advertising, marketing, distribution, or sale of any Dietary Supplement, Food or Drug; and
 - 3. Any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting.

Delivery must occur within 7 days of entry of this Order for current personnel.

For all others, delivery must occur before they assume their responsibilities.

- C. From each individual or entity to which Defendant delivered a copy of this Order, Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

- C. For a period of 10 years, Defendant must submit to the Commission and the Maine AG notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Defendant within 14 days of its filing.
- D. Any submission to the Commission or the Maine AG required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEBrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The subject line must begin: *FTC v. Marketing Architects, Inc.* and the number X_____.
- F. Unless otherwise directed by a Maine AG representative in writing, all submissions to the Maine AG pursuant to this Order must be sent by overnight courier (not the U.S. Postal Service) to: Office of the Attorney General of Maine, Consumer Protection Division, 111 Sewall Street, 6th Floor, Augusta, ME 04330. The subject line must begin: *Order in re State of Maine v. Marketing Architects, Inc.* and must identify the Court and docket number of this Order as assigned by the Court.

Commission or the Maine AG, Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. Plaintiffs are also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

- B. For matters concerning this Order, Plaintiffs are authorized to communicate directly with Defendant. Defendant must permit Plaintiffs' representatives to interview any employee or other person affiliated with Defendant who has agreed to such an interview. The person interviewed may have counsel present.
- C. Plaintiffs may use all other lawful means, including posing, through their representatives, as consumers, suppliers, or other individuals or entities, to Defendant or any individual or entity affiliated with Defendant, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1. Nothing in this Order limits the Maine AG's lawful use of compulsory process, pursuant to section 211 of the Maine UTPA, 5 M.R.S.A. § 211. Defendant hereby consents to the disclosure by the Maine AG to any law enforcement agency, and any representative of the State of Maine, of any material or information produced by Defendant pursuant to section 211 of the Maine UTPA, whether produced before or after the date of this Order.

IT IS SO STIPULATED this 31st day of January, 2018.

DAVID C. SHONKA
Acting General Counsel

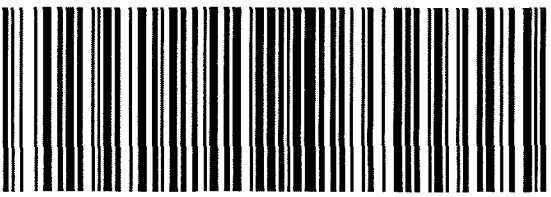

/s/ James A. Prunty
James A. Prunty
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580
Telephone: 202-326-2438
Facsimile: 202-326-3259
Email: jprunty@ftc.gov

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

JANET T. MILLS
Attorney General, State of Maine

/s/ Brendan F.X. O'Neil
Brendan F.X. O'Neil
Linda J. Conti
Assistant Attorney General

Office of the Attorney General of Maine
6 State House Station
Augusta, Maine 04333-0006
Telephone: 207-626-8842, 8591
Facsimile: 207-624-7730
Email: brendan.oneil@maine.gov

COURTNEY HOEFENER 9524492500 MARKETING ARCHITECTS 110 CHESHIRE LANE MINNETONKA MN 55305		1.0 LBS LTR	1 OF 1
SHIP TO: CONSUMER PROTECTION DIVISION (207) 626-8800 OFFICE OF THE ATTORNEY GEN OF MAINE 6TH FLOOR 111 SEWALL STREET AUGUSTA ME 04330-6830			
		ME 049 0-01 	
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BILLING: P/P			
UIS 20.0.32. WVINV50 97.0A 01/2018			

ONeil, Brendan

From: O'Neal, Melissa
Sent: Tuesday, February 6, 2018 11:11 AM
To: O'Neal, Melissa
Subject: FOR IMMEDIATE RELEASE: Attorney General Janet Mills and FTC take joint enforcement action against advertiser and telemarketer of supplements
Attachments: FTC et al v MAI - complaint exhibits.pdf; FTC et al v MAI - doc 1 complaint.pdf; FTC et al v MAI - doc 3-1 Order.pdf; Marketing Architects.final.3.pdf
Importance: High



OFFICE OF THE ATTORNEY GENERAL

**FOR
RELEASE**
February 6,
2018
8599 or (207) 649-7252

**IMMEDIATE
CONTACT:** Melissa O'Neal
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**Attorney General Mills and Federal Trade Commission take joint enforcement action
against advertiser and telemarketer of supplements**

*Agency provided deceptive radio ads and telemarketing to Southern Maine-based
'Direct Alternatives' to promote weight-loss products.*

AUGUSTA – Maine Attorney General Janet T. Mills today announced that the Federal Trade Commission and the Maine Attorney General's Office have agreed to settle their case against Minnesota-based Marketing Architects, Inc., ("MAI") for its role in promoting weight loss supplements "AF Plus" and "Final Trim." Attorney General Mills and the FTC previously sued and obtained a judgment against Direct Alternatives, of Portland, Maine, for marketing these products. Marketing Architects created radio ads for these products and provided automated telemarketing services to Direct Alternatives to take orders from consumers responding to the ads.

Attorney General Mills and the FTC allege in a federal court complaint that the ads and Marketing Architects' telemarketing system made false, misleading, or deceptive claims and that the company failed to fully disclose critical terms to consumers. The proposed settlement bars the company from making weight-loss claims about dietary



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FOR RELEASE: 2/6/2018

Advertising Firm Barred from Assisting in the Marketing and Sale of Weight-Loss Supplements Deceptively Pitched to Consumers

\$2 million judgment is among largest-ever obtained by the FTC against an ad agency

Marketing Architects, Inc. (MAI), an advertising agency that created and disseminated allegedly deceptive radio ads for weight-loss products marketed by its client, Direct Alternatives, has agreed to pay \$2 million to the Federal Trade Commission and State of Maine Attorney General's Office to settle their complaint. The complaint cites a history of creating similar claims for other weight-loss marketers.

Minneapolis-based MAI created advertising for a number of Direct Alternatives' products, including Puranol, Pur-Hoodia Plus, PH Plus, Acai Fresh, AF Plus, and Final Trim, between 2006 through February 2015. [In 2016, the FTC and Maine settled allegations against Direct Alternatives](#) that the company made false or unsubstantiated weight-loss claims and that it deceptively marketed risk-free offers for AF Plus and Final Trim.

In the action announced today, the joint complaint alleges that MAI created and disseminated radio ads with false or unsubstantiated weight-loss claims for AF Plus and Final Trim. MAI previously created weight-loss ads for Sensa Products, LLC between March 2009 and May 2011 similar to the ads challenged in the Direct Alternatives complaint. Sensa was the subject of an FTC complaint [filed in 2014](#) and [agreed to refund \\$26.5 to defrauded consumers](#).

Today's complaint alleges that, in addition to receiving FTC's Sensa order, MAI was previously made aware of the need to have competent and reliable scientific evidence to back up health claims. Among other things, the complaint alleges that Direct Alternatives provided MAI with documents indicating that some of the weight-loss claims later challenged by the FTC needed to be supported by scientific evidence.

The complaint further charges that MAI developed and disseminated fictitious weight-loss testimonials and created radio ads for weight-loss products falsely disguised as news stories. Finally, the complaint charges MAI with creating inbound call scripts that failed to adequately disclose that consumers would be automatically enrolled in negative-option (auto-ship) continuity plans.



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Advertising Firm Barred from Assisting in the Marketing and Sale of Weight-Loss Supplements Deceptively Pitched to Consumers

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February 6, 2018

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Marketing Architects, Inc. (MAI), an advertising agency that created and disseminated allegedly deceptive radio ads for weight-loss products marketed by its client, Direct Alternatives, has agreed to pay \$2 million to the Federal Trade Commission and State of Maine Attorney General's Office to settle their complaint. The complaint cites a history of creating similar claims for other weight-loss marketers.

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EVENTS CALENDAR

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

_____)	
FEDERAL TRADE COMMISSION and)	
STATE OF MAINE,)	
	)	Case No.
Plaintiffs,)	
)	
v.	)	COMPLAINT FOR PERMANENT
	)	INJUNCTION AND OTHER
MARKETING ARCHITECTS, INC.,	)	EQUITABLE RELIEF
)	
Defendant.)	
_____)	

Plaintiffs, the Federal Trade Commission ("FTC") and the State of Maine, for their
Complaint allege:

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 Defendant's 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 advertising, marketing, distribution, and sale of purported weight-loss products.

2. The State of Maine brings this action under the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 205-A through 214 ("Maine UTPA"), to permanently enjoin and restrain Defendant from engaging in certain unlawful unfair and deceptive acts or practices in the conduct of trade or commerce, and to obtain relief for Defendant's acts or practices in violation of the Maine UTPA in connection with the advertising, marketing, distribution, and sale of

8. This Court has supplemental jurisdiction over Plaintiff State of Maine's claims under 28 U.S.C. § 1367.

DEFENDANT

9. Defendant Marketing Architects, Inc. ("Defendant" or "MAI") is a Minnesota corporation with its principal place of business at 110 Cheshire Lane, Suite 200, Minneapolis, Minnesota 55305. Defendant transacts or has transacted business in this district. At times material to this Complaint, acting in concert with others, Defendant has advertised, marketed, distributed, or sold various weight-loss products to consumers in this district and throughout the United States and Canada.

COMMERCE

10. 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 and as "trade and commerce" are defined in Section 206(3) of the Maine UTPA, 5 M.R.S.A. § 206(3).

DEFENDANT'S BUSINESS ACTIVITIES

11. In January 2016, Plaintiffs filed a complaint in the United States District Court for the District of Maine against Direct Alternatives ("DA"), Anthony Dill, and Staci Dill. *FTC v. Dill*, No. 2:16-cv-00023-GZS (D. Me. filed Jan. 19, 2016) (the "DA case"). MAI was not a defendant in the DA case. The DA case concerned the advertising, marketing, distribution, and sale of purported weight-loss products, AF Plus and Final Trim. Some of the allegations in this Complaint are similar to allegations in the DA case complaint. The DA case was resolved with respect to all parties thereto through a stipulated final order entered by Judge Singal on February 5, 2016. The DA case stipulated final order contained a final judgment in the amount of

provided supporting IVR telemarketing services were dietary supplements purported to cause weight loss, including Puranol, Pur-Hoodia Plus, PH Plus, Acai Fresh, AF Plus, and Final Trim (collectively “DA’s Weight-Loss Products”). Radio ads for DA’s Weight-Loss Products were disseminated at different times from approximately January 2006 to approximately February 2015.

14. Beginning in or about January 2006 and continuing to early 2015, Defendant and its client, DA, employed unfair or deceptive marketing tactics in the advertising, marketing, and sale of the dietary supplements described above. Defendant and DA offered these products directly to consumers, through radio advertising nationwide and in Canada, generating more than \$16 million in gross sales for DA minus refunds and chargebacks attributable to AF Plus and Final Trim alone during the period of January 1, 2012 through early 2015.

15. Defendant also created and disseminated weight-loss advertising for other clients. Beginning in or about March 2009 and continuing until about May 2011, Defendant created and disseminated radio ads for Sensa, a weight-loss product sold by Sensa Products, LLC. Beginning in or about July 2014 and continuing until at least April 2015, Defendant created and disseminated radio ads and IVR scripts for Neu Garcinia Cambogia, a weight-loss product sold by MI6 Holding, LLC (“MI6”).

MAI’S ADVERTISING FOR AF PLUS

16. One bottle of AF Plus sold for approximately \$39.95 and contained 30 capsules. It was usually sold as part of a minimum order of two bottles for \$79.90, plus shipping and processing. The recommended serving size was one capsule per day. AF Plus contained a proprietary blend that included 750 mg of:

- Acai fruit extract (*Euterpe oleracea*)

21. Many Defendant-created and -disseminated radio advertisements scripts for AF Plus claimed that users lose pounds in days and 30 pounds or more. Exhibit 1, pp. 1-4.

22. An IVR script that Defendant created and used to take customer orders claimed:

- a. “[AF Plus is] so powerful, it even works while you sleep!”
- b. “With the metabolism-boosting benefits of AF Plus, you can keep eating your favorite foods and STILL lose pounds and inches – in fact, we guarantee it!”
- c. “Try [AF Plus] just once a day for thirty days and if you’re not on your way to being thirty pounds thinner, just send it back and risk nothing.”

Exhibit 2.

23. Another of the Defendant-created and -disseminated radio advertisements for AF Plus claimed, “Mayo Clinic research proves that carrying fat in your midsection raises your risk of heart disease, stroke, high blood pressure, even cancer. If you need to lose weight, you absolutely must call now.” Exhibit 1, p. 4. When consumers called to order they were then told: “Best of all, one capsule lasts an entire day. That’s 24 hours of fat burning power.” That IVR recording also claimed that users lose “pounds and inches.” Exhibit 2.

MAI’S ADVERTISING FOR FINAL TRIM

24. One bottle of Final Trim sold for approximately \$39.95 and contained 30 capsules. It was usually sold as part of a minimum order of two bottles for \$79.90, plus shipping and processing. The recommended serving size was two capsules per day. Final Trim contained the following ingredients:

- Thiamin (as thiamin mononitrate), 1mg
- Riboflavin, 1.13mg
- Konjac root (glucomannan), 1,000mg
- HyperLoss blend 380mg*

28. Many of the Defendant-created and -disseminated radio advertisements scripts for Final Trim similarly claimed that users lose pounds in days and 30 pounds or more. Exhibit 3.

29. An IVR script that Defendant created and used for Final Trim claimed:

- a. “[Final Trim is] so powerful, it even works while you sleep!”
- b. “Because Final Trim helps you shed body fat more quickly, [y]ou can keep eating your favorite foods and STILL lose pounds and inches – in fact, we guarantee it!”
- c. “Try it just once a day for thirty days and if you’re not on your way to being thirty pounds thinner, just send it back and risk nothing.” Exhibit 4.

**MAI’S COMMON THEMES AND CLAIMS IN RADIO ADVERTISING
FOR OTHER WEIGHT-LOSS PRODUCTS**

30. Defendant created and disseminated radio ads for other DA Weight-Loss Products, for Sensa, and for Neu Garcinia Cambogia that employed themes and claims similar to those Defendant created and disseminated for AF Plus and Final Trim. These ads reflect Defendant’s pattern or practice of creating and disseminating clearly deceptive weight-loss and marketing claims proven to generate high consumer response for AF Plus and Final Trim. Higher consumer responses resulted in greater revenues for Defendant’s clients and, through the purchase of additional advertising by its clients, for Defendant.

Sensa

31. In January 2014, the FTC filed a complaint in the United States District Court for the Northern District of Illinois against Sensa Products, LLC and others. *FTC v. Sensa Prods., LLC*, No. 1:14-cv-00072 (N.D. Ill. filed Jan. 7, 2014) (the “Sensa case”). The *Sensa* case concerned the advertising, marketing, distribution, and sale of a powdered substance sprinkled

that substantiates that the representation is true. For purposes of Section I of the *Sensa* order, competent and reliable scientific evidence was specified to consist of at least two adequate and well-controlled human clinical studies of the Covered Product or of an Essentially Equivalent Product, or of the Covered Weight-Loss Program or of an Essentially Equivalent Weight-Loss Program, conducted by different researchers, independently of each other, that conform to acceptable designs and protocols and whose results, when considered in light of the entire body of relevant and reliable scientific evidence, are sufficient to substantiate that the representation is true.

34. Section X of the *Sensa* order required the *Sensa* defendants to send copies of the order to all agents who participated in conduct related to the subject matter of the order and to obtain from those agents a signed and dated acknowledgement of receipt of the order.

35. On or about January 27, 2014, Defendant MAI's Chief Financial Officer signed an acknowledgement of receipt of the *Sensa* order, thus making Defendant aware of FTC scrutiny of weight-loss claims and the need for marketers to have substantiation for those claims.

**MAI'S KNOWLEDGE OF THE SUBSTANTIATION REQUIREMENT FOR
ADVERTISING CLAIMS REGARDING WEIGHT LOSS**

36. In addition to receipt of the *Sensa* order in January 2014, Defendant had previously been made aware of advertisers' obligations to have competent and reliable scientific evidence substantiating weight-loss claims disseminated in advertising. In January 2006, DA forwarded to Defendant's account manager advice DA received from DA's attorney regarding advertising claims that Defendant created for DA. DA's attorney wrote that "there are still serious questions regarding your [DA's] ability to substantiate certain claims, such as: 'the average American has up to 10 pounds of compacted waste and toxic poisons built up inside

40. In a Defendant-created and -disseminated radio advertisement for Pur-Hoodia Plus, an unidentified woman stated, “I went from a 14 to a size 10 . . . without feeling hungry!” Exhibit 6, p. 23. This character was invented by Defendant and was fictitious, as were her reported experiences.

41. In a Defendant-created and -disseminated radio advertisement for PH Plus, a woman identified as “Paula” claimed “I couldn’t believe how fast I lost ten pounds!” In that same ad, a woman identified as “Vickie” claimed, “My first bottle I lost ten pounds.” Also in that same ad, a woman identified as “Darlene” claimed, “I have been taking PH Plus and I have already lost ten pounds!” Finally, in that same ad, a woman identified as “Maggie” claimed, “I dropped from a dress size 6 to a size 4.” Exhibit 7, p. 24. These four characters were invented by Defendant and were fictitious, as were their reported experiences.

42. In a Defendant-created and -disseminated radio advertisement for Acai Fresh directed at consumers “trying to lose thirty pounds or more,” an unidentified woman claimed “One capsule a day helped me lose the weight.” In that same ad, another unidentified woman claimed, “One capsule a day, and I’m back into my skinny jeans.” Also in that same ad, an unidentified man claimed, “One capsule a day, and I’m burning fat . . . just like that.” Exhibit 8, p. 26. These three characters were invented by Defendant and were fictitious, as were their reported experiences.

FALSE FORMATS

43. Defendant created and disseminated falsely-formatted radio advertising for various weight-loss products, including for clients other than DA. For example:

“Offer Details.” The AF Plus IVR scripts created by Defendant failed to adequately disclose in those Offer Details that consumers ordering an “absolutely risk-free” trial were actually signing up for a continuity program. The following excerpt is typical of the IVR scripts written by Defendant for AF Plus:

OFFER DETAILS

Here’s how your risk-free trial works. Today we’re sending you 2 bottles of AF Plus to try risk-free for 30 days. Try it just once a day for thirty days and if you’re not on your way to being thirty pounds thinner, just send it back and risk nothing. If you like it and decide you want to continue losing weight, you don’t have to do anything else. After 30 days, we’ll simply bill you \$39.95 per bottle for your initial supply. And we’ll continue to ship you a fresh 2-month supply every 2 months for the low rate of just \$39.95 per month plus shipping and processing for as long as you want to lose the weight. And you’ll always have the option to cancel, skip, or delay any future shipments by calling the customer service number in your package. That number is 1-800-605-1231.

PROMPT

So, do you agree to start your risk-free trial? [Exhibit 2.]

45. The Final Trim IVR scripts created by Defendant failed to adequately disclose that consumers ordering an “absolutely risk-free” trial were actually signing up for a continuity program. The following excerpt is typical of the IVR scripts written by Defendant for Final Trim:

OFFER DETAILS

Here’s how your risk-free trial works. Today we’re sending you 2 bottles of FinalTrim *[sic]* to try risk-free for 30 days. Try it just once a day for thirty days and if you’re not on your way to being thirty pounds thinner, just send it back and risk nothing. If you like it and decide you want to continue losing weight, you don’t have to do anything else. After 30 days, we’ll simply bill you \$39.95 per bottle for your initial supply. And we’ll continue to ship you a fresh 2-month supply every 2 months for the low rate of just \$39.95 per month plus shipping and processing for as long as you want to lose weight. And you’ll always have the option to cancel, skip, or delay any future shipments by calling the customer service number in your package. That number is 1-800-605-1231.

PROMPT

So, do you agree to start your risk-free trial? [Exhibit 4.]

49. The prompted question at the conclusion of the offer details section of the IVR scripts did not seek authorization from the consumer either to spend a specified amount or to enter into a continuity program. Rather, the question posed was whether the consumer agreed to start his or her “risk-free” or “free” trial. Nor did the offer details section of the scripts for AF Plus and Final Trim provide consumers with the total cost of the two-month supply that would be shipped via the continuity program. Further, Defendant’s scripts for AF Plus, Final Trim, and Neu Garcinia Cambogia provided the cost of shipping and processing or handling in a different part of the scripts, omitting that information from the subsequent summary of the offer details set forth in Paragraphs 45-47 above. Consequently, consumers did not receive the total cost of their “risk-free” or “free” trials before agreeing to participate in the trials.

50. Defendant designed the confusing and ambiguous offer language for AF Plus, Final Trim, and Neu Garcinia Cambogia to maximize the rate by which consumers would say “yes” to risk-free or free trials and thereby be enrolled in continuity programs. This proven marketing strategy was designed by Defendant to generate high consumer response and increase Defendant’s revenues through ad purchases.

51. Defendant captured consumers’ credit card information and supplied this information to DA and MI6, which in turn submitted charges to merchant credit and debit card processors for payment.

VIOLATIONS OF THE FTC ACT

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

scripts attached as Exhibits 1 through 4, Defendant has represented, directly or indirectly, expressly or by implication, that:

- a. AF Plus will cause users to lose weight, including 30 pounds or more;
- b. AF Plus will cause users to lose pounds in days;
- c. AF Plus burns fat;
- d. AF Plus boosts users' metabolism, thereby allowing users to keep eating their favorite foods and still lose pounds and inches;
- e. Final Trim will cause users to lose weight, including 30 pounds or more;
- f. Final Trim will cause users to lose pounds in days; and
- g. Final Trim will cause users to shed body fat, thereby allowing users to keep eating their favorite foods and still lose pounds and inches.

58. The representations set forth in Paragraph 57 are false or misleading, or were not substantiated at the time the representations were made. Therefore, the making of the representations set forth in Paragraph 57 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 CLAIMS THAT AF PLUS AND FINAL TRIM ARE PROVEN TO CAUSE USERS TO LOSE SUBSTANTIAL WEIGHT

59. Through the means described in Paragraph 20, including, but not limited to, the statements and depictions contained in the advertisement attached as Exhibit 1, pp. 2-4 and 6, Defendant has represented, directly or indirectly, expressly or by implication, that AF Plus is proven to cause users to lose substantial weight, including 30 pounds or more.

COUNT IV

DECEPTIVE FORMAT OF RADIO ADVERTISING

64. Through the means described in Paragraph 43, Defendant has represented, directly or indirectly, expressly or by implication, that radio advertisements for Puranol, PH Plus, AF Plus, Final Trim, and Sensa were objective news reports or public service announcements.

65. In truth and in fact, these radio advertisements were not objective news reports or public service announcements.

66. Therefore, the making of the representations as set forth in Paragraph 64 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 V

FAILURE TO ADEQUATELY DISCLOSE

AUTOMATIC ENROLLMENTS IN CONTINUITY PLANS

67. Through the means described in Paragraphs 44-51, in connection with the advertising, marketing, promotion, offering for sale, or sale of AF Plus, Final Trim, and Neu Garcinia Cambogia, Defendant has represented, directly or indirectly, expressly or by implication, that consumers who provide their billing information will receive a free trial.

68. In numerous instances in which Defendant made the representations set forth in Paragraph 67, Defendant failed to disclose, or disclose adequately, that consumers who agree to the free trial offer would be enrolled automatically in a continuity plan for future auto-shipments of AF Plus, Final Trim, or Neu Garcinia Cambogia that would be charged to their credit or debit cards.

COUNT VI

FALSE OR UNSUBSTANTIATED CLAIMS FOR AF PLUS AND FINAL TRIM

76. Plaintiff State of Maine incorporates herein by reference all of the allegations contained in Paragraph 57 of this Complaint.

77. The representations set forth in Paragraph 57 are false or misleading, or were not substantiated at the time the representations were made. Therefore, the making of the representations described in Paragraph 57 constitutes a deceptive act or practice in the conduct of trade or commerce, in violation of 5 M.R.S.A. § 207.

78. Defendant's conduct as described herein has been intentional.

COUNT VII

**FALSE CLAIMS THAT AF PLUS AND FINAL TRIM ARE PROVEN
TO CAUSE USERS TO LOSE SUBSTANTIAL WEIGHT**

79. Plaintiff State of Maine incorporates herein by reference all of the allegations contained in Paragraphs 59 and 60 of this Complaint.

80. The representations set forth in Paragraphs 59 and 60 are false or misleading. Therefore, the making of the representations set forth in Paragraphs 59 and 60, constitutes a deceptive act or practice in the conduct of trade or commerce, in violation of 5 M.R.S.A. § 207.

81. Defendant's conduct, as described herein, has been intentional.

COUNT VIII

FALSE ADVERTISING CLAIMS THROUGH CONSUMER TESTIMONIALS

82. Plaintiff State of Maine incorporates herein by reference all of the allegations contained in Paragraph 62 of this Complaint.

deceptive act or practice in the conduct of trade or commerce, in violation of 5 M.R.S.A. § 207 and 10 M.R.S.A. § 1210.

90. Defendant's conduct as described herein has been intentional.

CONSUMER INJURY

91. Consumers have suffered and will continue to suffer substantial injury as a result of Defendant's violations of the FTC Act and the Maine UTPA. 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.

THE COURT'S POWER TO GRANT RELIEF

92. 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.

93. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction to enable Plaintiff State of Maine to enforce its state law claims under the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 205-a through 214, against Defendant in this Court. Section 209 of the Maine UTPA empowers this Court to grant injunctive and such other relief, including civil penalties for intentional violations, as the Court may deem appropriate to halt and redress violations of any provision of the Maine UTPA enforced by the Maine Attorney General. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including

- C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendant's violations of the Maine UTPA, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies;
- D. Adjudge civil penalties of not more than ten thousand dollars (\$10,000) for each intentional violation of the Maine UTPA pursuant to 5 M.R.S.A. § 209; and
- E. Award Plaintiff State of Maine the costs of bringing this action, prejudgment interest pursuant to 14 M.R.S.A. § 1602-B, and such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

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