

RECEIVED AND FILED
RECORDED 33-200-1000

CONSENT DECREE & ORDER
AS AGAINST ANDREW R. HOLMAN,
KINETIC MARKETING, INC., and
TANGENT GROUP, LLC

Group, Inc., and Tangent Group, LLC, (“Defendants”), and Robert F. Hanson, Jr., Jana Hanson, Rana Enterprises, Inc., and Concurrence, LLC, who are not parties to this Consent Decree and Order. Without constituting evidence against, or admission by, Defendants as to any issue of fact or law other than as to jurisdiction, the parties have consented to the entry of this Consent Decree and Order for the purpose of resolving the matters pending, without trial of any issue of fact or law. NOW THEREFORE, IT IS HEREBY ORDERED, JUDGED AND DECREED AS FOLLOWS:

I. JURISDICTION

1. This Court has jurisdiction over the Plaintiff and Defendants and the subject matter of this action. The Complaint states a claim for relief under 5 M.R.S.A. § 207 of the Maine Unfair Trade Practices Act (“the UTPA”).

II. DEFINITIONS

2. A statement is “clear and conspicuous” if it is disclosed in such size, color, contrast, location, duration, and/or audibility that it is readily noticeable, readable, and understandable. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies or is necessary to prevent other information from being misleading or deceptive, then the statement must be presented in proximity to that information, in a manner that is readily noticeable, readable, and understandable, and not obscured in any manner. In addition:

- (A) A radio disclosure must be delivered in a volume, cadence and location sufficient for a consumer to hear and comprehend it;
- (B) A television disclosure must (i) appear in video in a type size, shade and location, and remain on the screen for a sufficient duration, for a consumer to read and comprehend it, and/or (ii) be delivered in audio in a volume, cadence and location sufficient for a consumer to hear and comprehend it;
- (C) A print or Internet disclosure must appear in a type size, contrast and location sufficient for a consumer to read and comprehend it.

3. “Free Trial Offer” means offering a consumer a sample, introductory package, or limited supply of a product or service without charge for the sample, introductory package, or limited supply of the product or service. An example of a “Free Trial Offer” might be offering a

consumer a 30 day supply of a product at no charge except for shipping costs, but the consumer would continue to receive and be billed for further 30 day supplies unless or until the consumer affirmatively cancels the order.

4. “Risk Free Trial” means offering a consumer the opportunity to return a product or cancel a service within an express, clearly defined period of time after the consumer has purchased the product or service. An example of a “Risk Free Trial” might be offering a consumer a 30 day supply of a product, billing the consumer’s credit card, shipping the product to the consumer and the consumer has the ability to return the product within 30 days of receipt if the consumer is not satisfied with the product or service.

III. INJUNCTION

5. Pursuant to 5 M.R.S.A. § 209 and M. R. Civ. P. 65, Andrew R. Holman, Kinetic Marketing, Inc., and Tangent Group, LLC, their officers, directors, employees, agents, representatives, successors, and assigns and those in active concert or participation with them who receive actual notice of this injunction are permanently enjoined from engaging in the following acts or practices:

(A) Representing in any manner, directly or indirectly, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of Pure Relief, or any pain relief product that:

- (i) Such products eliminate all types of pain;
- (ii) Such products rebuild and strengthen bones;
- (iii) Such products are new or unique or contain a new or unique ingredient;

(iv) Any endorsement of such products represents the typical or ordinary experience of members of the public who use the product;

(v) Such products are doctor-approved; and that

(vi) Such products or their ingredients are FDA-approved unless the product is FDA approved for that purpose at the specific dosage indicated.

(B) Violating § 207 of the UTPA in connection with the advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of food, drugs, devices, cosmetics or other products, services or programs.

(C) Advertising, packaging, labeling, promoting, offering for sale, selling or distributing food, drugs, devices, cosmetics or other products, services or programs through the use of a "Free Trial Offer" unless:

(i) The consumer is given a free sample of the product or service;

(ii) The consumer is not required to purchase additional products or services or to accept an auto ship plan as a condition for receiving the free trial;

(iii) The consumer is given the option of paying for the shipping of the free trial by check or money order, and is not required to give credit card, debit card or other personal financial information as a condition to receiving the free trial;

(iv) No charges are imposed on consumers during the free trial period;

(v) No charges are imposed on consumers after the free trial period without the consumers' express consent to the amount and date of the charge to their credit or debit card accounts; and

(vi) Defendants comply with 10 M.R.S.A. § 1210.

(D) Advertising, packaging, labeling, promoting, offering for sale, selling or distributing food, drugs, devices, cosmetics or other products, services or programs through the use of a "Risk-Free Trial" unless:

- (i) The terms and conditions of the Risk Free Trial, including but not limited to the refund policy and the date on which the risk free trial ends, are clearly and conspicuously posted in all written advertising materials and clearly explained to consumers responding to media advertising of any product or service offered;
- (ii) The consumer is not required to purchase additional products or services or to accept an auto ship plan as a condition for receiving the Risk Free Trial;
- (iii) No additional charges are imposed on consumers during the Risk Free Trial period; and
- (iv) Defendants comply with 10 M.R.S.A. § 1210.

(E) Charging any consumer's credit card account for purposes that were not knowingly or affirmatively authorized by the consumer.

(F) Representing directly or by implication that consumers can receive a refund, through the use of such terms as "money-back guarantee" or similar terms, unless the business has in place adequate and effective procedures for consumers to obtain a refund within the time stated in the guarantee.

(G) Defendants shall record all consumer express consents and disclosures that are required by this Consent Decree and Order and make the recordings available to the Attorney General upon request in a format specified by the Attorney General.

(H) For any business venture in which Defendants sell products or services to the general public, Defendants shall have in place and maintain adequate and effective

customer service protocols, including but not limited to the following customer services:
assisting consumers with practical or technical questions about the product or service;
assisting consumers with refunds; and handling and recording consumer complaints.

III. RESTITUTION

6. Pursuant to 5 M.R.S.A. § 209, Defendants agree to pay refunds to all consumers who purchased Pure Relief and Fibromicyn from January 1, 2003 to the present and who filed complaints with the Maine Attorney General's Office or the Northern New England Better Business Bureau. In addition, Defendants agree to honor all requests for refunds from consumers who purchased Fibromicyn and Pure Relief for a period of one year from the effective date of this Consent Decree and Order. Defendants will provide the Attorney General with an accounting of all refunds paid pursuant to this paragraph.

IV. CIVIL PENALTIES

7. Pursuant to 5 M.R.S.A. § 209, the Defendants shall pay a civil penalty of \$5,000 upon execution of this Consent Decree and Order.

V. COSTS

8. Pursuant to 5 M.R.S.A. § 209, the Defendants shall pay the Plaintiffs \$2,500 in costs within six (6) months of the execution of this Consent Decree and Order.

VI. RETENTION OF JURISDICTION

9. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Decree and Order to apply to the Court at any time for further orders and directions as may be necessary or appropriate for the modification, construction, enforcement, or execution

of this Consent Decree and Order. Each and every violation of this Consent Decree and Order shall be treated as a separate contempt thereof.

VI. EFFECTIVE DATE

10. This Order shall be effective immediately upon entry. IT IS HEREBY ORDERED

Dated: 12/22/04

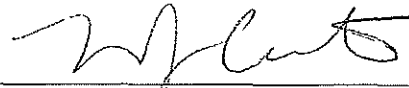


Justice, Maine Superior Court

WE CONSENT:

Dated: 12/16/04


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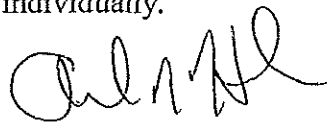


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ATTORNEY FOR ANDREW R. HOLMAN,
KINETIC MARKETING, INC., AND
TANGENT GROUP, LLC

Andrew R. Holman acknowledges that he is a principal in Kinetic Marketing, Inc. and Tangent Group, LLC and by his signature hereon he further acknowledges that the provisions of the Consent Decree and Order bind these entities and him individually.

Dated:



Andrew R. Holman

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-04-

STATE OF MAINE,)
)
Plaintiff)
)
v.)
)
RANA ENTERPRISES, INC.,)
CONCURRENCE, LLC,)
ROBERT F. HANSON, JR.,)
JANA A. HANSON)
ANDREW R. HOLMAN,)
KINETIC MARKETING, INC.,)
and TANGENT GROUP, LLC,)
)
Defendants)

COMPLAINT

INTRODUCTION

1. The State brings this action pursuant to 5 M.R.S.A. §§ 207 and 209 to permanently enjoin the Defendants, Rana Enterprises, Inc., Concurrence, LLC, Robert F. Hanson, Jr., Jana A. Hanson, Kinetic Marketing, Inc., Tangent Group, LLC, and Andrew R. Holman from false advertising, from charging consumers for products that consumers did not agree to purchase, and from failing to pay refunds to consumers in violation of the Maine Unfair Trade Practices Act (“UTPA”), 5 M.R.S.A. § 207 *et seq.* The State also seeks restitution for consumers and civil penalties for intentional violations of the UTPA.

PARTIES

2. Plaintiff, the State of Maine, is a sovereign state that brings this action, by and through its Attorney General, pursuant to 5 M.R.S.A. §§ 191 and 209 and the powers vested in him by common law.

3. Defendant, Rana Enterprises, Inc. (“Rana”), is a Maine corporation located at 78 Land of Nod Road, Windham, Maine 04062. It is the successor of Rana Enterprises, LLC. Rana is an inbound telemarketer.

4. Defendant, Concurrence, LLC (“Concurrence”), is a Utah limited liability company with a business address at 78 Land of Nod Road, Windham, Maine. It is the successor to Rana.

5. Defendant, Jana A. Hanson, is shareholder of Rana Enterprises, Inc. and the chief financial officer of Concurrence, LLC. She resides at 15 Moses Little Drive, Windham, Maine. At all times relevant to this complaint, she was responsible for customer service at Rana.

6. Defendant, Robert F. Hanson, Jr., is the director, officer, and controlling shareholder of Rana, and a managing director of Concurrence. He resides at 15 Moses Little Drive, Windham, Maine. At all times relevant to this complaint, he formulated, directed or controlled the policies, acts or practices of Rana and Concurrence, including the acts or practices alleged in this Complaint. (Rana, Concurrence, Jana A. Hanson and Robert F. Hanson, Jr. shall hereinafter be collectively referred to as “Rana Defendants.”)

7. Defendant, Kinetic Marketing Group, Inc. (“Kinetic”), is a Maine corporation. Kinetic owns various products, including Pure Relief, a purported arthritis cure and Blissium,

a “mood-enhancing” pill, that it sold to the public pursuant to a contract with Rana. Kinetic’s address is 2 Market Street, Portland, Maine 04101.

8. Defendant, Tangent Group, LLC (“Tangent”), is a Maine limited liability company. It is a successor of Kinetic, and is located at 2 Market Street, Portland, Maine 04101.

9. Defendant, Andrew R. Holman, is the sole principal of Kinetic and the managing member of Tangent. He resides at 49 Chestnut Street, Portland, Maine 04102. At all times relevant to this Complaint, he formulated, directed or controlled the policies, acts or practices of Kinetic and Tangent. (Kinetic, Tangent, and Andrew R. Holman shall hereinafter be collectively referred to as “Kinetic Defendants.”)

JURISDICTION

10. This Court has jurisdiction over this action pursuant to 4 M.R.S.A. § 105 and 5 M.R.S.A. § 209.

STATUTORY BACKGROUND

11. Pursuant to 5 M.R.S.A. § 207 of the UTPA, unfair or deceptive acts or practices in the conduct of any trade or business are unlawful.

12. Pursuant to 5 M.R.S.A. § 209, whenever the Attorney General reasonably believes that someone is violating or is about to violate the Act, and that such action is in the public interest, he may bring an action to enjoin the acts and seek injunctive relief, including restitution, to remedy the unfair and deceptive acts, as well as civil penalties for intentional violations and costs of suit.

13. Pursuant to 10 M.R.S.A. § 1210, in a sale agreed to by telephone, a merchant may not charge a consumer for a good or service after a trial period unless, prior to the

charge, the consumer expressly agrees to be charged for the good or service if the consumer does not cancel the sale. At least 15 days prior to any charge, the merchant must send the consumer a clearly written description of the agreement, the good or service being purchased, the amount being charged, and the calendar date on which the consumer will be charged for the good or service if the consumer does not cancel the sale. This notice must also provide the specific steps by which the consumer can cancel the agreement both by mail and telephone. The merchant has the burden of proving that the consumer expressly agreed to this arrangement and that the required written notices were provided within the time limits set forth in this section.

14. Pursuant to 10 M.R.S.A. § 1210-A, a violation of 10 M.R.S.A. § 1210 is a *per se* violation of the UTPA.

FACTS

15. The acts and practices of all Defendants that are alleged in this Complaint are, or affect, trade and commerce as those terms are defined in 5 M.R.S.A. § 206(3).

Rana Defendants

16. Rana Enterprises, LLC was formed by Robert F. Hanson, Jr. and Jana Hanson in 1998.

17. Rana Enterprises, LLC was in the business of inbound telemarketing. It advertised products for sale throughout the United States on radio and in print media. The advertisements typically offered a free trial offer of a product for thirty days, at the end of

which the consumer was charged for the product unless he or she cancelled within the prescribed time limits.

18. Consumers who responded to the advertisements for a “free trial offer” called an 800 number at Rana Enterprises, LLC to order the products.

19. Consumers were also given phone numbers to call to cancel within the free trial period.

20. In 2001, Rana Enterprises, LLC changed its corporate form to Rana Enterprises, Inc. for tax purposes, but its business remained otherwise the same.

21. On or about April 2003, a minority interest in Rana Enterprises, Inc. was sold to two Utah residents. It became Concurrence, LLC.

22. Robert F. Hanson, Jr. owns 51% of Concurrence, and is the manager of operations.

23. The products advertised by Rana Defendants include Megafirm, a diet pill; Latavi, a breast enhancement cream; Opti-cleanse, a colon cleaning system; Proton, a male virility enhancement product; Blissium and Hapizen, mood enhancement pills; and Pure Relief, a purported arthritis cure.

Kinetic Defendants

24. In April of 2002, Kinetic and Rana entered in a contract in which Rana agreed to sell certain products owned by Kinetic.

25. Since the time of the contract, Kinetic changed its name to Tangent. Andrew R. Holman is the sole owner.

26. Kinetic, now Tangent, owned two products that were marketed by Rana/Concurrence: Blissium and Pure Relief.

27. Pursuant to the above-cited agreement, Rana was to be paid 13% of all net sales. "Net sales" was defined as total revenue less shipping and handling, with 20% held in reserve for expected returns. Rana was also to be paid 20% of all net revenue generated by the auto-ship program, with 20% held in reserve for expected returns. Rana was to receive 80% of all shipping and handling revenue.

Pure Relief

28. Beginning in or about April of 2002, Rana Defendants and Kinetic Defendants advertised, offered for sale, sold and distributed nationally Pure Relief to consumers, primarily through print advertisements that directed consumers to call a toll-free number.

29. To induce consumers to purchase Pure Relief, Rana Defendants and Kinetic Defendants widely disseminated, or caused to be widely disseminated, advertisements for Pure Relief including, but not limited to, the attached Exhibits A through D. These advertisements contain, among other things, the following statements and depictions:

- A. **"Finally! No more joint pain, body aches, or sore muscles!"**
- B. **Revolutionary new all-natural breakthrough eliminates all types of pain to make you feel and perform like a youngster**
- C. **Provides immediate, lasting pain-relief**

Unique, drug-free, and incredibly effective, Pure Relief is scientifically formulated to quickly and gently eliminate arthritis pain and the pain and discomfort of severely sore joints muscles, tendons and other soft tissues. The Pure Relief TM formula is so unique and powerful, it not only stops the pain, it helps prevent it from returning. That means that you can enjoy peace of mind as well as consistent, pain-free living, now and long into the future.

D. How will Pure Relief TM benefit you?

- Relieves the joint pain of all forms of arthritis
- Helps eliminate the pain caused by sports injuries, falls or accidents
- Relieves pain and soreness in your muscles (back, neck, legs, etc.)
- Gets rid of body aches and the excruciating pain of pulled tendons
- Helps you regain your youthful performance level
- FDA-approved, all-natural ingredients are incredibly effective
- Doctor-approved formula relieves pain without the high cost, side effects or risk of prescription drugs

E. Risk-Free Trial!

By strengthening and rebuilding your bones and cartilage, Pure Relief allows you to get rid of pain so you can remain active on a daily basis.

I recommend Pure Relief to all my patients who are in pain. (Includes a depiction of a man in a lab coat with a stethoscope.)

30. Consumers purchase Pure Relief by calling a toll-free number. When a consumer calls the toll-free number to inquire about Pure Relief, Rana Defendants' sales representative makes a presentation based upon a script, which contains the following statements:

The only way the product itself will cost you anything is if you love it. Just like it says in the paper, we are going to let you try it risk free for thirty days. . . No matter which package you chose we're going to include the **unconditional** 30-day guarantee.

31. Through the use of the statements and depictions contained in their advertisements including, but not limited to, those set forth in Paragraph 28 above, and in their sales scripts, Defendants represented directly or by implication, that:

- a. Pure Relief's ingredients eliminate all types of pain;
- b. Pure Relief rebuilds and strengthens bones;
- c. Pure Relief is FDA [Food and Drug Administration]-approved;
- d. Pure Relief is doctor-approved;

- e Pure Relief is “revolutionary” and a “new” cure for all types of pain, including arthritis;

32. *In truth and in fact*

- a. The active ingredient in Pure Relief gel (to be rubbed on painful areas) is capsaicin. The active ingredients in Pure Relief tablets are glucosamine and chondroitin. Glucosamine and chondroitin have some efficacy as pain relievers, but not at the dosage recommended to consumers taking Pure Relief. The effective dose for chondroitin is 1,200 milligrams, and the effective dose of glucosamine is 1,500 milligrams. Each tablet of Pure Relief contains only 130 milligrams of glucosamine and 20 milligrams of chondroitin.
- b. Although glucosamine does affect cartilage, none of the ingredients in Pure Relief rebuild or strengthen bones.
- c. Pure Relief has not been approved by the FDA.
- d. Pure Relief has not been approved by a medical doctor. Rana Defendants and Kinetic Defendants rely on a statement of James M. Blum, Ph.D., a statistician in an herbal research clinic, to provide the basis for this claim. Blum’s statement that Pure Relief is effective is anecdotal and generally unsupported from a scientific standpoint as it uses no data, no methodology, and no instruments for measuring pain.
- e. The active ingredients in Pure Relief: capsaicin, glucosamine, and chondroitin, are not new and have been readily available for some time.

Therefore, the representations about Pure Relief including, but not limited to, those contained in Paragraph 28 were, and are, deceptive.

Refund Practices

33. The advertisements and scripts for Pure Relief and other products sold by Rana Defendants guarantee consumers a 30-day free trial of the products. Rana Defendants failed to advise consumers prior to purchase, in a manner that would be noticed and understood, of material information on the limitations of the free-trial guarantee, including time limitations. In many instances consumers tried to return the product after thirty full days only to be told that they had to return it within the 30-day free trial period to obtain a refund.

34. Rana Defendants engaged in practices that hindered returns in many instances, such as failing to respond to consumer inquiries seeking return instructions, placing consumers on hold for long periods of time, hanging up on consumers, and failing to note receipt of returned goods. These practices prevented many consumers from requesting or obtaining a full refund. Many consumers who obtained refunds received them only after complaining to the Better Business Bureau or the Maine Attorney General's Office.

35. Consumers who ordered products from Rana Defendants generally did not understand that they agreed to accept future automatic shipments of the products. The scripts did not disclose, in a manner consumers were likely to notice and understand, that Rana Defendants would charge the consumer's credit card shortly after the free trial membership ended, unless the consumer cancelled, or that Rana Defendants would charge the consumer's credit card every thirty days thereafter, unless the consumer cancelled. Some consumers who

never agreed to receive automatic shipments received them. Consumers had difficulty canceling the automatic shipment of unordered products from Rana Defendants.

36. Consumers were charged shipping and handling fees of up to \$19.95 for each shipment of product ordered from Rana Defendants. These fees were not disclosed to consumers in the advertisements or scripts for “free offers.” Rana Defendants have refused to refund shipping and handling fees.

Upsells

37. When a consumer placed an order for a Rana product, Rana Defendants, through their telemarketing staff, generally asked the consumer to provide billing information, such as a credit card or bank account number, to pay for the products.

38. After obtaining the billing information to process a sales transaction, Rana Defendants’ telemarketing staff attempted to “upsell” the consumer. “Upselling” is a telemarketing technique where one seller sells its products or services through a telemarketing call, and then solicits the purchase of additional goods or services after the consumer has provided his or her payment information.

39. Often Rana Defendants’ telemarketing staff introduced the upsell as a benefit to the consumer. The sales scripts stated that “we’d” like to send you a “free” trial membership in a buying service, that is, a program or plan providing discount priced services, such as telephone, buying, travel or legal services, or coupons for consumer goods. In many instances, the scripts describe the trial membership as “free” or with “no obligation” to the consumer. *The scripts did not disclose that the additional goods or services were offered on behalf of a third party.*

40. Rana Defendants received complaints from consumers who stated that they were signed up for memberships they had not been offered, or that they were charged for memberships by third parties without their authorization. Despite this, Rana Defendants, through their telemarketing staff, continued to send consumers' charging information to third parties without (a) taking adequate steps to ensure that consumers were told that their credit card numbers and other billing information were being turned over to third-party marketers for the purposes of enrolling consumers in, and charging consumers for, the third-party membership services; and (b) taking adequate steps to ensure that consumers expressly agreed to the transfer of this information.

COUNT I

(UTPA § 207 - Misrepresentation by Rana Defendants and Kinetic Defendants of Pure Relief's Efficacy)

41. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

42. Rana Defendants and Kinetic Defendants represented, expressly or by implication, in advertisements and telemarketing scripts that Pure Relief's ingredients eliminate all types of pain.

43. Rana Defendants and Kinetic Defendants did not possess and rely upon a reasonable basis that substantiated the representation at the time that it was made. Therefore, this representation constitutes a deceptive trade practice in violation of § 207 of the UTPA.

44. Defendants' conduct as described herein is intentional.

COUNT II

(UTPA § 207 - Misrepresentation by
Rana Defendants and Kinetic Defendants of Pure Relief's Effects)

45. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

46. Rana Defendants and Kinetic Defendants represented, expressly or by implication, in advertisements and telemarketing scripts that Pure Relief rebuilds and strengthens bones, which is not a true statement.

47. The making of this misrepresentation by Rana Defendants and Kinetic Defendants constitutes a deceptive trade practice in trade or commerce in violation of § 207 of the UTPA.

48. Defendants' conduct as described herein is intentional.

COUNT III

(UTPA § 207 - Misrepresentation by Rana Defendants and Kinetic Defendants
of FDA Approval)

49. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

50. Rana Defendants and Kinetic Defendants represented, expressly or by implication, in advertisements and telemarketing scripts that Pure Relief is FDA-approved, which is not a true statement.

51. The making of this misrepresentation by Defendants is a deceptive practice in trade or commerce in violation of § 207 of the UTPA.

52. Defendants' conduct as described herein is intentional.

COUNT IV

(UTPA § 207 - Misrepresentation by Rana Defendants and Kinetic Defendants of Doctor Approval)

53. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

54. Rana Defendants and Kinetic Defendants represented, expressly or by implication, in advertisements and telemarketing scripts that Pure Relief is doctor-approved.

55. Defendants did not possess and rely upon a reasonable basis that substantiated this representation at the time that it was made. Therefore, this representation constitutes a deceptive trade practice in violation of § 207 of the UTPA.

56. Defendants' conduct is described herein as intentional.

COUNT V

(UTPA § 207 - Misrepresentation by Rana Defendants and Kinetic Defendants of Pure Relief as Revolutionary and New)

57. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

58. Rana Defendants and Kinetic Defendants represented, expressly or by implication, in advertisements and telemarketing scripts that Pure Relief is a "revolutionary" and "new" cure for all types of pain, including that of arthritis, which is not a true statement.

59. The making of this misrepresentation by Defendants is a deceptive practice in trade and commerce in violation of § 207 of the UTPA.

60. Defendants' conduct as described herein is intentional.

COUNT VI

(UTPA § 207 – Misrepresentation by Rana Defendants and Kinetic Defendants Regarding Refunds)

61. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

62. Rana Defendants and Kinetic Defendants represented, expressly or by implication, in advertisements and telemarketing scripts that Pure Relief comes with a guarantee that consumers may readily obtain a full refund of the purchase price if they are dissatisfied with the product.

63. Consumers could not readily obtain full refunds of the purchase price, such that the making of this representation by Defendants constitutes a deceptive practice in trade or commerce in violation of § 207 of the UTPA.

64. Defendants' conduct as described herein is intentional.

COUNT VII

(UTPA § 207 - Failure to Disclose by Rana Defendants and Kinetic Defendants Material Information on Shipping and Handling Costs)

65. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

66. Rana Defendants and Kinetic Defendants represented, expressly or by implication, in advertisements and telemarketing scripts that consumers who agree to try Pure Relief would do so under a free 30-day trial offer, but failed to disclose, or to disclose adequately, that shipping and handling fees of up to \$19.95 were non-refundable.

67. Defendants' failure to disclose, or to disclose adequately, this material information is a deceptive act or practice in violation of § 207 of the UTPA.

68. Defendants' conduct as described herein is intentional.

COUNT VIII

(UTPA § 207 - Failure by Rana Defendants and Kinetic Defendants to Disclose Material Information on Automatic Shipments)

69. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

70. Rana Defendants and Kinetic Defendants represented, expressly or by implication, in advertisements and telemarketing scripts that consumers who agree to try Pure Relief for thirty full days may do so without risk or obligation, but failed to disclose, or to disclose adequately, to consumers that failure to contact Rana to cancel before the end of the trial period results in enrollment in a program in which more products are automatically shipped, and charged to, the consumers every month.

71. Defendants' failure to disclose, or to disclose adequately, this material information is a deceptive practice in violation of § 207 of the UTPA.

72. Defendants' conduct as described herein is intentional.

COUNT IX

(UTPA § 207 - Failure by Rana Defendants to Disclose Material Information on Free Trial Offer)

73. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

74. Rana Defendants represented, expressly or by implication, in advertisements and telemarketing scripts that consumers who agreed to try products marketed by Rana Defendants could do so for thirty full days without risk or obligation without disclosing, or disclosing adequately, to consumers that their credit cards would be charged unless they contacted Rana to cancel the orders before the end of the trial period.

75. Defendants' failed to disclose, or to disclose adequately, this material information is a deceptive act in violation of § 207 of the UTPA.

76. Defendants' conduct as described herein is intentional.

COUNT X

(UTPA § 207 – Rana Defendant's Interference with
Consumers' Attempts to Obtain Refunds)

77. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

78. Rana Defendants represented, expressly or by implication, that after trying products sold by Rana Defendants for a free trial period, the consumer could cancel the order, return the products, and obtain a refund.

79. Defendants engaged in conduct that interfered with and hindered consumers' attempts to obtain promised refunds, a practice that is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves, and that is not outweighed by countervailing benefits to consumers or competition.

80. Defendants' practice of interfering with or hindering consumers' attempts to obtain promised refunds is unfair and in violation of § 207 of the UTPA.

81. Defendants' conduct as described herein is intentional.

COUNT XI

(UTPA § 207 - Failure by Rana Defendants to Disclose Material Information
on Terms of Free Trial Membership)

82. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

83. Rana Defendants represented, expressly or by implication, that consumers who agree to an offer of a trial membership in a third-party membership club do so without risk or obligation without disclosing, or disclosing adequately, to consumers that if they fail to contact the membership club to cancel before the end of the trial period, they are automatically enrolled as members, and their credit cards are charged.

84. Defendants' failure to disclose, or to disclose adequately, this material information is a deceptive act or practice in violation of § 207 of the UTPA.

85. Defendants' conduct as described herein is intentional.

COUNT XII

(UTPA § 207 – Unauthorized Submission by Rana Defendants
of Credit Card Information to Third Parties)

86. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

87. Rana Defendants caused charges on consumers' credit cards to be submitted for payment without the express informed consent of the consumers, in connection with Defendants' advertising, promotions, marketing, sale or distribution of third-party membership clubs.

88. This practice causes, is likely to cause, substantial injury to consumers that is not reasonably avoidable by consumers themselves, and is not outweighed by countervailing benefits to consumers or to competition, and is therefore an unfair practice in violation of § 207 of the UTPA.

89. Defendants' conduct as described herein is intentional.

COUNT XIII

(Violations by Rana Defendants of 10 M.R.S.A. § 1210)

90. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

91. Rana Defendants violated 10 M.R.S.A. § 1210 by failing to send the notice required by 10 M.R.S.A. § 1210 that requires, among other things, that consumers trying products on a “free trial basis” be notified of the date on which their credit cards will be charged for the products, unless they cancel the sales; and by failing to obtain the consumers’ express agreement to be charged for the products if the consumers do not cancel the sales.

92. Pursuant to 10 M.R.S.A. § 1210-A, Rana Defendants’ violation of 10 M.R.S.A. § 1210 is a *per se* violation of § 207 of the UTPA.

93. Defendants’ conduct described herein is unfair, deceptive and is intentional.

INJURY

94. Consumers throughout the United States have suffered, and continue to suffer, substantial monetary loss as a result of Rana Defendants’ and Kinetic Defendants’ unlawful acts or practices. In addition, Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap the rewards of their practices through unjust enrichment, and harm the public interest.

95. Section 209 of the UTPA empowers this Court to grant injunctive relief and such other relief as the Court may deem appropriate to halt and redress violations of the UTPA. The Court, in the exercise of its discretion, may award other ancillary relief, including

consumer redress, disgorgement and restitution, to prevent and remedy injury caused by Defendants' violations of the law.

RELIEF REQUESTED

Wherefore, Plaintiff requests that this Court enter the following relief:

1. Enjoin Defendants Kinetic Marketing, Inc., Tangent Group, LLC and Andrew R. Holman, their officers, agents, assigns, employees and those persons in active concert or participation with them who have actual notice of the injunction, from directly or indirectly advertising for sale or selling Pure Relief or any product that purports to eliminate pain;

2. Enjoin Defendants Kinetic Marketing, Inc., Tangent Group, LLC and Andrew R. Holman, their officers, agents, assigns, employees and those persons in active concert or participation with them who have actual notice of the injunction, from violating § 207 of the UTPA in connection with the advertising or sale of food, drugs, devices, cosmetics or other products, services or programs;

3. Enjoin Defendants Rana Enterprises, Inc., Concurrence, LLC and Robert F. Hanson, Jr., their agents, assigns, employees and those persons in active concert or participation with them who have actual notice of the injunction, from:

- (a) Advertising, promoting, offering for sale or selling any goods through the use of a free trial offer;
- (b) Upselling consumers any services provided by third-party marketers of membership clubs, discount buying clubs, or any other services or products;

- (c) Violating § 207 of the UTPA in connection with the advertising or sale of food, drugs, devices, cosmetics or other products, services or programs; and
- (d) Failing to pay full refunds of the product price, including shipping and handling, to consumers who purchased products from Rana Defendants through a free trial offer.

4. Pursuant to 5 M.R.S.A. § 209 and its own equitable powers, award such equitable relief as the Court finds necessary to redress injury to consumers resulting from Rana Defendants' and Kinetic Defendants' violations of the Maine Unfair Trade Practices Act, including but not limited to restitution.

5. Pursuant to 5 M.R.S.A. § 209, order Rana Defendants and Kinetic Defendants to pay a civil penalty of up to \$10,000 for each intentional violation of the UTPA.


6 Pursuant to 5 M.R.S.A. § 209 and 14 M.R.S.A. § 1522, order Rana Defendants and Kinetic Defendants to pay the Office of the Attorney General its costs of suit, including attorney's fees.

7. Award such other and further relief as the Court may deem necessary to remedy the effects of Rana Defendants and Kinetic Defendants unfair and deceptive trade practices.

Respectfully submitted,

G. STEVEN ROWE
ATTORNEY GENERAL

Dated December 17, 2004



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