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And Then There Were 11: FTC Shuts Down More Fake News Sites Citing Deceptive Dietary Supplement Claims

Continuing its crackdown on deceptive health claims, the FTC and Connecticut have sued to stop an operation that allegedly used fake news websites to market their products, made deceptive weight-loss claims, and told consumers they could get free trials of acai berry and "colon cleanse" products, and only pay nominal shipping and handling costs. They allege that many consumers ended up paying \$79.99 for the trial and paying for more monthly shipments of products that were hard to cancel. The defendants have allegedly collected more than \$25 million from consumers.

At the request of the FTC and the Connecticut AG, the federal court issued an ex parte temporary restraining order on November 14. The parties then agreed, on November 22, to a preliminary injunction ("PI") halting the allegedly illegal conduct of Boris Mizhen, LeanSpa LLC, Nutraslim LLC, and LeanSpa and Nutraslim entities based in the United Kingdom; continuing an asset freeze; appointing a temporary receiver; and giving the receiver, the FTC and the Connecticut AG immediate access to the business premises.

The complaint alleges that defendants hired affiliate marketers who used fake news websites to promote the defendants' products that were misrepresented as objective reports and endorsements by news organizations; engaged in deceptive and unauthorized billing; made unsupported claims that consumers could lose a significant amount of weight quickly; and falsely stated that the claims were clinically proven. The complaint alleges that defendants' practices violated Sections 5 and 12 of the FTC Act, the Electronic Funds Transfer Act and Reg. E, and the Connecticut Unfair Trade Practices Act.

The stipulated PI halts defendants from selling "negative-option" continuity plans, from making unauthorized sales charges, and from making certain deceptive claims. The order also requires defendants to cease collection efforts and extends an asset freeze over the defendants until final resolution of the case.

This is the FTC's 11th case involving allegedly fake news websites used to promote dietary supplements. In April 2011, the FTC charged 10 companies that operated "fake news" sites promoting acai berry weight-loss

products.

This case is noteworthy for several reasons: it continues a recent trend of vigorous state AG enforcement, with and without the FTC as co-plaintiff; it continues the FTC's recent practice of naming third parties, such as credit card processors, that the FTC claims played a role in furthering the alleged fraud; and it continues a recent FTC trend of obtaining outright bans against specified conduct (such as negative-option marketing here) early on in the case, at the PI stage.

Finally, the PI is noteworthy in that it deviates from FTC staff guidance issued in February 2009, regarding online negative-option marketing. Instead of simply requiring clear and conspicuous disclosure of the beginning and end points of the trial period, the PI flat-out enjoins defendants from starting a trial period before the date the consumer receives, or defendants reasonably expect the consumer to receive, the trial product. Will the FTC bring more alleged fake news website cases? Will the FTC include similar prohibitions in its future cases? Stay tuned!

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