

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

OFFICE OF THE ATTORNEY GENERAL,
DEPARTMENT OF LEGAL AFFAIRS,
STATE OF FLORIDA,

09051002

Plaintiff,

Case No.

18

v.

ADVANCED WELLNESS RESEARCH, INC., a
Florida corporation, NETALAB CORP.,
a Florida corporation, TRANSACT PLUS,
a Florida Limited Liability Corporation,
NICOLAS MOLINA, an individual,
MICHAEL TRIMARCO, an individual,
KELLY O'SHEA, an individual,

SEP 16 2009



Defendants

**COMPLAINT FOR INJUNCTIVE RELIEF, RESTITUTION,
CIVIL PENALTIES, AND OTHER EQUITABLE RELIEF**

Plaintiff OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS, STATE OF FLORIDA, (hereinafter referred to as the "Attorney General") sues Defendants, ADVANCED WELLNESS RESEARCH, INC., a Florida corporation, NETALAB CORP., a Florida corporation, TRANSACT PLUS, LLC, a Florida Limited Liability Corporation, NICOLAS MOLINA, an individual, MICHAEL TRIMARCO, an individual, and KELLY O'SHEA, an individual, and states as follows:

JURISDICTION AND VENUE

1. This is an action for Injunctive Relief, Restitution, Civil Penalties and Other Relief against Defendants, ADVANCED WELLNESS RESEARCH, INC., a Florida corporation, NETALAB CORP., a Florida corporation, TRANSACT PLUS, LLC, a Florida

Limited Liability Corporation, NICOLAS MOLINA, an individual, MICHAEL TRIMARCO, an individual, and KELLY O'SHEA, an individual, pursuant to the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Chapter 501, Part II, Fla. Stat. (2008).

2. This Court has jurisdiction over the subject matter of this action pursuant to the provisions of Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Chapter 501, Part II(2008).

3. The award of injunctive and other equitable relief is within the jurisdiction of the Circuit Court and the amounts in controversy meet the jurisdictional threshold of the Circuit Court. Fla. Stat. §26.012(c) and §26.012(3)

4. Plaintiff ATTORNEY GENERAL, is the enforcing authority entitled to bring this action pursuant to Florida Statute §501, Part II(2008) as the violations alleged occurred in, or affected, more than one judicial circuit in the State of Florida.

5. Venue is proper in Broward County, Florida as the cause of action has accrued in numerous counties in Florida, including Broward County, as well as other states in the United States. In all of those locations, consumers were exposed to unfair and deceptive trade practices by one, or more, of the Defendants, and suffered actual damages as a result. Fla. Stat. §47.011, §47.021.

6. Pursuant to Section 501.207(2), Fla. Stat. (2008), the Attorney General has conducted an investigation and has determined that this enforcement action serves the public interest. A true and accurate copy of that determination is attached and incorporated herein, as Exhibit "A".

THE PARTIES

7. Plaintiff Attorney General is the enforcing authority of FDUTPA, and is authorized to seek injunctive and other statutory and civil relief pursuant to the provisions of § 501.207 & §501.2075, Fla. Stat. (2008).

8. Defendant ADVANCED WELLNESS RESEARCH, INC. is a Florida corporation, created on November 6, 2008. The President of ADVANCED WELLNESS RESEARCH, INC. is Defendant NICOLAS MOLINA and the Vice President is MICHAEL TRIMARCO. ADVANCED WELLNESS RESEARCH, INC. does business throughout the State of Florida, as well as in other states and foreign countries.

9. Defendant NETALAB, INC. is a Florida corporation created on May 4, 2009 to effectuate the sale of assets and debts of Defendant ADVANCED WELLNESS RESEARCH, INC. to Defendant NETALAB, INC. The president of NETALAB, INC. was initially Defendant KELLY O'SHEA, but changed to Kerry Investments at the same address as KELLY O'SHEA on June 7, 2009.

10. Defendant TRANSACT PLUS, LLC is a Florida limited liability corporation created on May 5, 2009 to permit the principals of Defendant ADVANCED WELLNESS RESEARCH, INC. to continue to benefit from the unfair and deceptive trade practices of ADVANCED WELLNESS RESEARCH, INC. following the sale of all assets and debts of ADVANCED WELLNESS RESEARCH, INC. to Defendant NETALAB CORP. The managers of TRANSACT PLUS, LLC are The Nicolas Molina 2006 Revocable Trust, located in New York, New York and O'Cato, LLC of Hauppauge, New York 11788 the address of Defendant MICHAEL TRIMARCO.

11. Defendant NICOLAS MOLINA, an individual, (hereinafter, "MOLINA") currently resides in Dade County, Florida, at 1000 South Pointe Drive, #1901, Miami Beach, FL 33129. Defendant MOLINA is President of Defendant ADVANCED WELLNESS RESEARCH, INC. During all dates material hereto Defendant MOLINA has been doing business through the corporations listed as parties in this action and acted as an officer, director, owner or agent and managed or controlled all of the corporate Defendants, through which he conducts business on a daily basis, directly participating in the unfair and deceptive practices of these businesses. He has had, or should have had, knowledge of the unfair and deceptive advertising and other trade practices of the corporate Defendants.

12. Defendant MICHAEL TRIMARCO (hereafter "TRIMARCO") is an individual, residing in the State of New York at 5 Gull Drive, Hauppauge, New York 11788. Defendant TRIMARCO is Vice President of Defendant ADVANCED WELLNESS RESEARCH, INC. During all dates material hereto Defendant TRIMARCO has been doing business through the corporations listed as parties in this action and acted as an officer, director, owner or agent and actively participated in the management or control of all of the corporate Defendants, through which he conducts business on a daily basis, directly participating in the unfair and deceptive practices of these businesses. He has had, or should have had, knowledge of the unfair and deceptive advertising and other trade practices of the corporate Defendants.

13. Defendant KELLY O'SHEA (hereafter "O'SHEA") is a resident of Dade County, Florida, currently residing at 19516 East Country Club Drive, Aventura, FL 33180, Defendant O'SHEA is a former employee of Defendant, ADVANCED WELLNESS RESEARCH, INC. and the initial president of NETALAB CORP. until the President was changed to Kerry

Investments listed at the same address where O'SHEA lives. During all dates material hereto, Defendant O'SHEA has been doing business through the corporations listed as parties in this action and directly participating in the unfair and deceptive practices of these businesses. He has had, or should have had, knowledge of the unfair and deceptive advertising and other trade practices of the corporate Defendants.

GENERAL ALLEGATIONS

14. This case concerns allegations of unfair and deceptive trade practices by all Defendants, during the pertinent period beginning on a date unknown but at least as recently as November 1, 2008, and through the date of the filing of this complaint.

15. Defendants' business was, at all pertinent dates, the internet sale of various personal care and health products, including sales of acai berry, weight reduction products, anti-aging products and teeth whiteners, the products changing regularly depending on consumer demand.

16. Defendants, beginning on a date unknown, but at least subsequent to November 1, 2008 through the date of this complaint, routinely advertised on the Internet, through a multitude of websites seeking customers for their products, offering advertising claiming "Free Samples" "Free 30 day Supply" or "Free 15 day Trial" with only payment of shipping costs of approximately \$4.95 to be charged to the consumer's credit card.

17. The Defendants' websites failed to adequately notify the consumers that signing up for the "free" trial would subject them to continuous and ongoing charges to their credit card for future unwanted purchases. Said websites failed to provide a mechanism through which a consumer could cancel these ongoing charges and purchases. Furthermore, the Defendants charged additional undisclosed fees, such as an "international transaction fee" to consumers' credit

cards.

18. The information contained on the Defendants' websites misled consumers to believe they would receive a specific, limited supply/sample of a given product. In truth and fact, consumers who signed up for the free trial were subjected to continuous unwanted charges and orders on a monthly basis until the order or account was affirmatively cancelled by the consumer. The sites did not adequately inform the consumer that this cancellation needed to take place within fifteen days of the initial acceptance of the "free" trial.

19. When consumers realized they had unknowingly signed up for a continuation program with ADVANCED WELLNESS RESEARCH, INC. or NETALAB, INC., they were frequently unable to cancel during the cancellation period, or cancel the continuation program, while Defendants continued to charge their credit card monthly approximately \$80.00, plus additional charges for international transaction fees.

20. Plaintiff has received more than 700 consumer complaints from all over the United States regarding the unfair and deceptive advertising described in paragraphs 16-19 above, on the websites of the corporate Defendants, which led to unauthorized charges to the consumers credit cards, which the consumer was then unable to reverse, or cancel.

21. From approximately November 6, 2008 until approximately May 22, 2009 only Defendant ADVANCED WELLNESS RESEARCH, Inc. was the source of the complaints by consumers for the unfair and deceptive advertising of its products, as well as the unauthorized charges by on the credit cards of consumers and the inability to cancel the charges or the continuation program.

22. Beginning on or about May 22, 2009 Defendant ADVANCED WELLNESS

RESEARCH, INC. posted notices on its websites that the business was being taken over by Defendant, NETALAB, INC. and the subsequent consumer complaints were directed toward either ADVANCED WELLNESS RESEARCH, INC. or NETALAB, INC.

23. The terms of the sale of the assets and debts of ADVANCED WELLNESS RESEARCH, INC. to NETALAB, INC. on or about May 22, 2009 included provisions that NETALAB, INC. would pay the principals of ADVANCED WELLNESS RESEARCH, INC. a fee per credit card transaction, through a newly created entity, Defendant TRANSACT PLUS, LLC. The terms of the sale also provided that NETALAB, INC. would pay any and all legal expenses which ADVANCED WELLNESS RESEARCH, INC. might incur as a result of any investigations or law suits regarding the business, as well as cooperating and assisting in the defense of any such lawsuits or investigations.

24. The sale of the assets and debts of Defendant, ADVANCED WELLNESS RESEARCH, INC. to Defendant, NETALAB, INC. took place while the principals of those corporate defendants were aware of the pending investigation of the Plaintiff into the alleged unfair and deceptive activities of ADVANCED WELLNESS RESEARCH, INC.

25. Defendant ADVANCED WELLNESS RESEARCH, INC. did not modify its advertising prior to the sale of its assets and debts to NETALAB, INC., despite the knowledge of its principals of the pendency of the investigation by Plaintiff into its unfair and deceptive advertising. The only changes made by the principals of ADVANCED WELLNESS RESEARCH, INC. were to attempt to insulate themselves from individual liability by creating a vendor (TRANSACT PLUS, LLC) to be paid by NETALAB, INC. The underlying principal owners of this vendor, TRANSACT PLUS, LLC are Defendants, MOLINA and TRIMARCO.

26. Although Defendant, NETALAB, INC., has recently made some minor modifications to its website, it has continued to advertise in a manner which is unfair and deceptive to consumers which visit its site and purchase products, causing the consumers who made purchases on the web sites to suffer damages as a result of the unauthorized charges to their credit cards.

27. Since at least November 2008 through the filing of this complaint, consumers from numerous counties in Florida, as well as many other states, purchased products from one, or more, of the corporate defendants, based on the misrepresentations contained on the Defendants' websites. More than 700 consumers have made complaints to the Plaintiff regarding the unfair and deceptive trade practices of the Defendants ADVANCED WELLNESS RESEARCH, INC. or NETALAB, INC.

28. In addition to the creation of Defendant, ADVANCED WELLNESS RESEARCH, INC. on November 6, 2008, Defendants, NICHOLAS MOLINA and MICHAEL TRIMARCO also formed other business entities within 15 days following the creation of Defendant, ADVANCED WELLNESS RESEARCH, INC. including:

a. Wellness Advanced Enterprises, LLC, formed November 18, 2008, Mr. Trimarco at a New York address and a registered agent as Pinnacle Computation, Inc. at an address different than that listed with the secretary of state for that corporation;

b. US Advancing Wellness Research, LLC, formed November 18, 2008, listing Mr. Trimarco at a New York address and a registered agent as Pinnacle Computation, Inc., at an address different than that listed with the secretary of state for

that corporation;

c. Advanced Wellness Labs, LLC, formed November 19, 2009, listing Mr. Trimarco at a New York address and registered agent as Pinnacle Computation, Inc., at an address different than that listed with the secretary of state for that corporation;

d. The Advanced Wellbeing, LLC, formed November 18, 2008, listing Michael Trimarco as the Manager at his address in Hauppauge, New York.

29. The Defendants at no time prior to the beginning of the investigation of their practices by the Plaintiff made legitimate efforts to notify consumers that their "free" trial sample would turn into a paid sample 15 days after the order for the sample, or to notify consumers that they were signing up for a continuation program at the same time they were signing up for the "free" trial sample.

30. The entire business plan of the internet advertisements for "free" trial samples described here was created by Defendants, MOLINA and TRIMARCO. Initially, Defendant, O'SHEA was an employee of ADVANCED WELLNESS RESEARCH, INC. and was well aware of the business and the unfair and deceptive practices which continued following his purchase of the business which then operated as Defendant, NETALAB, INC. The individual Defendants have controlled every portion of both of these businesses, including the contents of the websites, as well as payment to third parties vendors who drive customers to the Defendants' websites.

31. The primary focus of the Defendants' business efforts has been to obtain the ability to continually charge consumer's credit cards on multiple occasions without the consumer's knowledge, or permission, as well as making it extremely difficult for the consumer to cancel the unauthorized charges.

32. The Defendant businesses are run for the purpose of obtaining credit card information, not to legitimately provide "free" trial samples to establish the quality of the product. Each individual Defendant has knowingly participated, and assisted, in perpetrating the unfair and deceptive practices on the unwary consumers who submitted credit card information for the purpose of paying the shipping costs of their "free" trial sample.

33. Defendants, until aware of the investigation being conducted by Plaintiff did not make an effort to refund the money paid to them by consumers without their authorization. Only the occasional, persistently demanding consumer managed to obtain a refund from ADVANCED WELLNESS RESEARCH, INC. prior to the investigation begun by Plaintiff.

34. Most of the consumers who have complained about the unfair and deceptive advertising by the defendants paid at least \$80.00 to one of the corporate defendants as a result of charges to their credit card accounts over and above the shipping charges of \$4.95 for the "FREE" sample.

WHEREFORE, the Plaintiff prays for the entry of the final judgment jointly and severally against the Defendants, as well as the following orders:

A. Temporary and permanent injunctions, with notice, prohibiting NICHOLAS MOLINA, MICHAEL TRIMARCO and KELLY O'SHEA, ADVANCED WELLNESS RESEARCH, INC., NETALAB CORP., TRANSACT PLUS, LLC, and their officers, agents, servants, and employees, and those persons in active concert or participation with them who receive actual notice of the Court's orders, from any further violations of 501, Part II, of the Florida Statutes (2008) regarding consumers in, or outside, the State of Florida, as well as from engaging in any activity within the State of Florida, or, from outside the State of Florida where

the customer is a Florida business or resident, to the extent that those activities involve:

(i) participation in any manner in any business advertising on the internet, or by any other means, for "FREE" or "TRIAL" products which require the consumer to provide a credit card number for any reason without a clear and conspicuous disclosure of any potential charges to be made to the card.

(ii) participation in any manner in any business which involves acceptance of funds, or credit card information disclosure prior to the completion of the service, or delivery of the product, with the permission to charge acknowledged by the consumer in writing.

(iii) divestment within 30 days of any ownership interest, or employer/employee relationship with any entity which participates in any of the above activities, as well as permanent prohibition from ever doing so;

(iv) divestment of any ownership interest in any website involving sale of products to consumers which offers a "free" or "trial" purchase of products;

(v) participation in any business activity with any business which uses unfair and deceptive trade practices to encourage consumers to purchase products, including "free" or "sample" or "trial" product;

(vi) participation, or ownership interest, in any facet of any business which pays third parties to drive consumers to the business web sites unless the business exercises direct control over the advertising methods the third parties use to drive the consumer to the business website and assures that the third parties do not use unfair and deceptive advertising to drive consumers to the business web sites.

B. Alternatively, temporary and permanent injunctions prohibiting all Defendants from

any involvement in any business which involves internet advertising or websites which seek to obtain credit card information from consumers.

C. Alternatively, prohibiting the individual DEFENDANTS from holding an ownership interest, or position as an officer or director in any legal entity in the State of Florida and directing each of them to divest themselves, within 30 days of the date of the entry of this court's final judgment, of any ownership interest in any legal entity in the State of Florida or any foreign legal entity registered to do business in the State of Florida.

D. Cancellation by the individual Defendants of any fictitious name registrations in the State of Florida, or of any fictitious name registration outside the State of Florida for a company which does business in Florida within 30 days of the court's [mal order];

E. Full restitution for all affected consumers, and any injunctive relief associated therewith;

F. In the case of affected consumers who are not "senior citizens," the award of penalties in the amount of \$10,000 per violation, as provided by Section 501.2075, Florida Statutes.;

G. In the case of affected consumers who are "senior citizens," the award of penalties in the amount of \$15,000 per violation, as provided by Section 501.2077, Fla. Stat.

H. The award of reasonable attorney's fees, as provided by Section 501.2105, Florida Statutes;

I. Costs; and

J. Such other and further relief as may be just and equitable, waiving the posting of any bond by PLAINTIFF in this action;

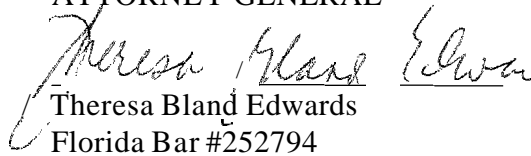
K. Relinquishment of any and all ownership or control of any websites or domain names

listed in this action, other names discovered, or disclosed, during the pendency of this action, or held in the name of any of the Defendants and the permanent relinquishment of all websites and domain names currently owned, or controlled by any of the Defendants, as well as the prohibition from having any further ownership interest in, or control of, any domain names or websites.

L. Completion by the Defendants of Fla. R. Civ. Pro. Form 1.977(a) and (b).

Respectfully submitted,

BILL McCOLLUM
ATTORNEY GENERAL



Theresa Bland Edwards
Florida Bar #252794

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Plaintiff,

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ADVANCED RESEARCH, INC., a Florida corporation, NETALAB CORP., corporation, TRANSACT PLUS, LLC, Liability Corporation, NICOLAS MOLINA, an individual, MICHAEL TRIMARCO, an individual, KELLY O'SHEA, an individual,

Defendants

COMES NOW, BILL McCOLLUM, ATTORNEY GENERAL, STATE OF FLORIDA,

and states:

1. Pursuant to Section 20.11: Florida Statutes (2008), I am the head of the Department of of to the Department).

2. In the Department seeks actual damages on behalf of one or more consmners caused by an act or performed in violation of Chapter 501, Part II, Florida.a (2008).

3_ I have reviewed this and I have determined that an the public

Dated: 9/15/09

BILL McCOLLUM ATTORNEY GENERAL STATE OF FLORIDA

