

IN THE UNI) STATE OF MAINE,)

Plaintiffs,)

v.)

) Case No.

) **COMPLAINT FOR PERMANEN**
) **INJUNCTION AND OTHER**
) **EQUITABLE RELIEF**

XXL IMPRESSIONS LLC, a limited liability)
company, also d/b/a BETTER HEALTH)
NUTRITIONALS,)

JEFFREY R. POWLOWSKY, individually)
and as an owner and officer of XXL)
IMPRESSIONS LLC,)

J2 RESPONSE L.L.P., a limited liability)
partnership, also d/b/a J2 RESPONSE,)

JUSTIN BUMANN, individually)
and as a partner of J2 RESPONSE L.L.P.,)

JUSTIN STEINLE, individually and as a)
partner of J2 RESPONSE L.L.P.,)

SYNERGIXX, LLC, a limited liability)
company, also d/b/a CTF MEDIA,)

CHARLIE R. FUSCO, individually)
and as an owner and officer of SYNERGIXX,)
LLC,)

RONALD JAHNER, and)

BRAZOS MINSHEW a/k/a SAMUEL BRANT,)

Defendants.)

)

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), and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, and the Electronic Fund Transfer Act (“EFTA”), 15 U.S.C. §§ 1693-1693r, 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 Defendants’ acts or practices in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, the FTC’s Trade Regulation Rule entitled “Telemarketing Sales Rule” (“TSR”), 16 C.F.R. Part 310, and the EFTA and its implementing Regulation E, 12 C.F.R. § 1005.10 (“Reg. E”), in connection with the labeling, advertising, marketing, distribution, and sale of products purported to provide joint pain relief and to prevent or mitigate cognitive decline.

2. The State of Maine brings this action pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108, and the Maine Unfair Trade Practices Act, ME. REV. STAT. tit. 5, §§ 205-A through 214 (“Maine UTPA”), to permanently enjoin and restrain Defendants from engaging in certain unlawful unfair and deceptive acts or practices in the conduct of trade or commerce, and to obtain relief for Defendants’ acts or practices in violation of the TSR and the Maine UTPA in connection with the labeling, advertising, marketing, distribution, and sale of products purported to provide joint pain relief and to prevent or mitigate cognitive decline, such relief to include rescission or reformation of contracts, the refund of monies paid, disgorgement, restitution, civil penalties, other relief as provided in the Maine UTPA, and other equitable relief.

12. Defendant Jeffrey R. Powlowsky (“Powlowsky”) is the sole manager and member of XXL Impressions and is its sole owner. At all times material to this Complaint, he has identified his principal place of business to consumers, businesses, and the general public as 165 Pleasant Avenue, South Portland, Maine. At all times material to this Complaint, acting alone or in concert with others, Powlowsky has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of XXL Impressions, including the acts and practices set forth in this Complaint. In connection with the matters alleged herein, he transacts or has transacted business in this District and throughout the United States and Canada.

13. Defendant J2 Response L.L.P., also doing business as J2 Response (“J2 Response”), is a North Dakota limited liability partnership. At all times material to this Complaint, J2 Response’s principal place of business has been 547 S. 7th Street, #305, Bismarck, ND 58504, where it has marketed a variety of products, including FlexiPrin and CogniPrin. At all times material to this Complaint, acting alone or in concert with others, J2 Response has advertised, marketed, distributed, sold, or offered for sale these products in this District and throughout the United States and Canada.

14. Defendant Justin Bumann (“Bumann”) is a 50 percent owner of J2 Response. At all times material to this Complaint, Bumann’s principal place of business has been 547 S. 7th Street, #305, Bismarck, ND 58504. Acting alone, or in concert with others, Bumann has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of J2 Response, including the acts and practices set forth in this Complaint. In

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15. Defendant Justin Steinle (“Steinle”) is a 50 percent owner of J2 Response. At all times material to this Complaint, Steinle’s principal place of business has been 547 S. 7th Street, #305, Bismarck, ND 58504. Acting alone, or in concert with others, Steinle has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of J2 Response, including the acts and practices set forth in this Complaint. In connection with the matters alleged herein, he transacts or has transacted business in this District and throughout the United States and Canada. Hereafter, Defendants Powlowsky, XXL Impressions, J2 Response, Bumann, and Steinle shall be referred to collectively as “the Powlowsky Defendants.”

16. Defendant Synergixx, LLC, also doing business as CTF Media (“Synergixx”), is a Massachusetts limited liability company. At all times material to this Complaint, Synergixx’s principal places of business have been 589 Mantua Boulevard, Sewell, NJ 08080 and 433 Woodbury Glassboro Road, Sewell, NJ 08080. Synergixx has advertised and marketed a variety of products, including FlexiPrin and CogniPrin. At all times material to this Complaint, acting alone or in concert with others, Synergixx has advertised, marketed, sold, and offered for sale these products in this District and throughout the United States and Canada.

17. Defendant Charlie R. Fusco (“Fusco”) is the Chief Executive Officer, President, and 100 percent owner of Synergixx. At all times material to this Complaint, Fusco’s principal places of business have been 589 Mantua Boulevard, Sewell, NJ 08080, and 433 Woodbury Glassboro Road, Sewell, NJ 08080. At all times material to this Complaint, acting alone or in concert with others, Fusco has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Synergixx. In connection with the matters alleged herein, she transacts or has transacted business in this District and throughout the United States

and Canada. Hereafter Defendants

DEFENDANTS' BUSINESS ACTIVITIES

21. Beginning on or before December 1, 2010 and continuing to the present, all of the Defendants have employed unfair or deceptive acts or practices in the advertising, marketing, distribution, and sale of FlexiPrin and CogniPrin. Defendants sell these products directly to consumers, primarily through radio and print advertising nationwide and in Canada, which has garnered in excess of \$6.5 million in gross sales from January 1, 2012 through April 30, 2015.

FLEXIPRIN ADVERTISING

22. One bottle of FlexiPrin sells for approximately \$32 to \$65 and contains 60 capsules. It is usually sold as a bundle of either three bottles for \$129.90 or six bottles for \$194.85. According to the FlexiPrin website, the recommended serving size is four capsules per day for the first month, then two capsules per day thereafter. FlexiPrin purportedly contains 1,052 mg of a proprietary blend comprised of the following ingredients:

- Perlucan® Proprietary Hops Extract (*Humulus lupulus* L.) (30% Alpha Acids)
- FruiteX-B® Calcium Fructoborate
- Cynatine FLX® (Solubilized Keratin)
- BosPure® Boswellia Serrata Powdered Extract (standardized to 10% AKBA)
- Hyal-Joint® (natural rooster comb extract, min. 60% hyaluronic acid, min. 10% hydrolyzed collagen, min. 10% other glucosaminoglycans)
- Ginger Powdered Extract
- Turmeric Powdered Extract
- Black Pepper Extract

23. Radio advertisements for FlexiPrin created by Defendants Synergixx, Fusco, J2 Response, Bumann, and Steinle, and reviewed and approved by Defendants XXL Impressions and Powlowsky promote FlexiPrin through 30-minute “cutting edge health and wellness news” programs featuring a radio host, Defendant Fusco, interviewing a purported pain relief expert, Defendant Jahner. Exh. A-1

29. A FlexiPrin print ad created by Defendants Synergixx, Fusco, J2 Response, Bumann, and Steinle, and reviewed and approved by Defendants XXL Impressions and Powlowsky, begins with the headline “**Thousands Combat Back Pain in 2 Hours Without Side Effects ...**” The print ad goes on to claim that FlexiPrin’s “*Natural ‘fire extinguishing’ nutrients quell inflammation that causes lower, middle and upper back pain as well as improves stiffness in joints and revives flexibility.*” Defendant Jahner then claims:

By reducing inflammation you reduce pain and you encourage healing. This allows the other proprietary ingredients in Flexiprin™ to start repairing and rebuilding the cartilage within your joints – which gives you amazing freedom and allows you to start living your life again – PAIN FREE!

Exh. B (FlexiPrin print ad)

“FlexiPrin™ has been extinguishing inflammation by flooding dry joints with rejuvenating lubrication and rebuilding damaged cartilage.”

Exh. C (FlexiPrin website), at 2-3.

32. That same FlexiPrin website featured the following claims:

**REDUCE JOINT PAIN,
INFLAMMATION AND STIFFNESS
IN AS LITTLE AS TWO HOURS!**

* * *

How does Flexiprin™ help with Arthritis?

FlexiPrin’s ingredients have been proven effective in multiple clinical studies. The proprietary blend of ingredients is the only product on the market that specifically targets the cause of your joint pain AND provides the nutrients necessary to rebuild cartilage and connective tissues.

First it triggers a deactivation of the inflammatory process in the joints. By taking FlexiPrin™[,] it turns off the killer t-cells and tells them to stop attacking our joints.

* * *

Are the ingredients in Flexiprin™ Clinically Studied?

The ingredients in FlexiPrin™ have been clinically studied to:

Improves [*sic*] joint comfort and flexibility in as little as 2 hours...not months like other products

After 4 Weeks:

80% reported using less medication or stopped taking them all together [*sic*]

100% had improved function for daily tasks (getting out of bed, taking off shoes and socks...)

100% had either less stiffness in the morning or no stiffness

After 8 Weeks:

88% found improvement in the pain experienced during walking

78% experienced better joint movement

83% had less pain while climbing stairs

Exh. C (FlexiPrin website), at 7-8.

33. On this website the Powlowsky Defendants also claim that FlexiPrin is “a breakthrough joint supplement that includes the TOP 5 CLINICALLY TESTED ingredients for stopping inflammation and pain,” and that these ingredients “work together to reduce the painful

inflammation while they rebuild joint cartilage.” Exh. C (FlexiPrin website), at 2. The website claims that “FlexiPrinTM also provides clinically proven nutrients to help rebuild . . . cartilage . . . that has been . . . damaged.” Exh. C (FlexiPrin website), at 2.

34. A print ad created by Defendants Synergixx, Fusco, J2 Response, Bumann, and Steinle and reviewed and approved by Defendants XXL Impressions and Powlowsky features testimonials from product endorsers who claim that FlexiPrin provides immediate pain relief more effectively than prescription drugs. “R. Kelly” claims that “[a]fter one dose of FlexiPrinTM I knew that I could be pain free again.” In that same print ad, “Scott P” claims, “I had major back surgery. I was told it would be months before I could move around easily and even longer before i [sic] could ween [sic] off the pain medications. FlexiPrinTM had me moving around in under 30-days.” Exh. B (FlexiPrin print ad). The Powlowsky Defendants and the Fusco Defendants have no basis for determining the existence or truthfulness of these endorsers, and they do not know how these endorsers, if they exist, may be identified or contacted.

35. The Powlowsky Defendants paid Defendant Jahner to train their call center representatives to repeat advertising claims to customers that the product works as advertised and has been clinically proven to work. Inbound sales scripts created by Defendants Synergixx, Fusco, J2 Response, Bumann, and Steinle, and reviewed and approved by Defendants XXL Impressions and Powlowsky, claim that FlexiPrin is clinically proven to reduce inflammation and rebuild cartilage.

COGNIPRIN ADVERTISING

36. One bottle of CogniPrin sells for approximately \$32 to \$65 and contains 60 capsules. It is usually sold as part of a minimum order of three bottles for \$99.90. The

recommended serving size is four capsules per day for the first month, then two capsules per day thereafter. CogniPrin purportedly contains the following ingredients:

- Vitamin B12 (as methylcobalamin), 1,000 mcg
- Proprietary Blend, 238 mg, comprised of:
 - Sharp PS® GOLD Conjugated PS DHA (Phosphatidylserine Docosahexanoic Acid)
 - d-Alpha Lipoic Acid
 - Nicotinamide Adenine Dinucleotide (NADH)
 - Bioperine®
 - Vinpocetine®
 - Huperzine-A

37. Radio advertisements for CogniPrin created by Defendants Synergixx, Fusco, J2 Response, Bumann, and Steinle, and reviewed and approved by Defendants XXL Impressions and Powlowsky, are presented as 30-minute news programs, featuring a radio host, Defendant Fusco, identified as “Natalie Day,” interviewing a purported medical expert, Defendant Minshew, identified only as “Samuel Brant.” Exh. D-1 (CogniPrin/Minshew radio audio file) at 00:05-01:05; Exh. D-2 (CogniPrin/Minshew radio transcript excerpt) at 3:4-4:1. Natalie Day and Samuel Brant are stage names.

38. Defendant Fusco introduces the radio program as one directed to those who “have been dealing with memory issues, forgetfulness, [and] brain fog” and introduces Defendant Minshew, appearing as Samuel Brant, as a “brain scientist” and “past director of the Neurological Treatment Center for Tiena Health.” Exh. D-1 (CogniPrin/Minshew radio audio file) at 00:05-01:19; Exh. D-2 (CogniPrin/Minshew radio transcript excerpt) at 3:5-4:6. Defendant Minshew does not possess expertise in neurology, brain science, or cognitive decline.

39. In this radio advertisement the Powlowsky Defendants, the Fusco Defendants, and Defendant Minshew claim that CogniPrin:

fight[s] off this brain erosion and increase[s] our memory by up to 44 percent.
Just imagine, being 44 percent sharper than you are today or remembering 44

percent more than you do today, or . . . getting back the memory you had up to 12 years ago.

Exh. D-1 (CogniPrin/Minshew radio audio file) at 15:00>BDC

* * *

[CogniPrin] sharpens focus, clears away brain fog and erases 12 years of lost Memory power.

* * *

The ingredients in CogniPrin have been thoroughly researched and are proven to improve mental function in almost everyone who takes it.

Exh. E-1 (CogniPrin/Jahner radio audio file) at 00:42-00:55, 05:09-05:14, 04:42-04:50; Exh. E-2 (CogniPrin/Jahner radio transcript excerpt) at 3:17-21, 5:12-13, 5:3-6.

44. In this radio ad Defendant Jahner claims that “In fact, the studies say the ingredient[s] in CogniPrin can improve your memory by up to 44 percent.” Exh. E-1 (CogniPrin/Jahner radio audio file) at 11:39-11:44; Exh. E-2 (CogniPrin/Jahner radio transcript excerpt) at 6:19-20. Similarly, Defendant Jahner claims:

* * *

[B]ased on research done at Stanford University, they tested some of the key ingredients in CogniPrin and they actually were able to show significant improvement in all aspects of cognitive function. That includes learning, memory, recalling numbers, names, faces. And the results were so dramatic that they actually felt that the average person in the study had reversed their cognitive decline by 10 to 12 years.

Exh. E-1 (CogniPrin/Jahner radio audio file) at 16:32-16:56; Exh. E-2 (CogniPrin/Jahner radio transcript excerpt) at 8:8-15.

45. In the same radio ad, Defendant Fusco states:

[T]he makers of CogniPrin are making a guarantee to everyone in my listening audience today. What they’re saying is try CogniPrin just even for three weeks and you’re going to improve your memory and reduce mental decline or it’s free, you won’t pay for it.

Exh. E-1 (CogniPrin/Jahner radio audio file) at 12:07-12:20; Exh. E-2 (CogniPrin/Jahner radio transcript excerpt) at 7:6-10.

46. A print ad created by Defendants J2 Response, Bumann, and Steinle, and reviewed and approved by Defendants XXL Impressions and Powlowsky, claims that CogniPrin is clinically proven.

This powerful formula helps sluggish, tired, forgetful brains to snap alert
In a peer-reviewed research study, participants not only saw improvement in their memory, mood and concentration, but they also regained lost brain power [so that] their brains were equal to that of someone 15 years younger . . . in just 30 days!

Exh. F. (CogniPrin Print Ad)

47. The same print ad features testimonials from purported product endorsers such as “Jeff S.,” who claims that he “feels so much more focused and more energized now that [he is] no longer fearful of forgetting things,” and “Jessica T.,” who claims:

I was about ready to see a neurologist when I came across this product. In about a month, it was like a light switch. My memories just flooded back to me. And I have my clarity and focus back as well.

Exh. F (CogniPrin print ad). The Powlowsky Defendants have no information concerning the existence or truthfulness of these endorsers, and they do not know how these endorsers, if they exist, can be identified or contacted.

48. The Powlowsky Defendants paid Defendant Jahner to train the Fusco Defendants’ inbound sales representatives to repeat the Powlowsky Defendants’ advertising claims to customers. Also, the inbound sales scripts written by Defendants Synergixx, Fusco, J2 Response, Bumann, and Steinle, and reviewed and approved by Defendants XXL Impressions and Powlowsky instruct inbound sales representatives to tell customers that CogniPrin users “will recover as much as 12 years of mental sharpness,” “improve your memory by 44 percent,” and that “you can actually start to feel that difference in as little as three weeks.”

49. On a website, www.cogniprin.com, created by or at the direction of Defendants J2 Response, Bumann, and Steinle, and reviewed and approved by Defendants XXL Impressions

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*

. . . By replacing this key resource, Cogniprin helps rejuvenate brain

1 (FlexiPrin radio audio file) at 07:55-08:12; Exh. A-2 (FlexiPrin radio transcript excerpt), at 9:1-8.

54. In the case of CogniPrin, the radio and print ads claim that “every new customer will automatically receive a free 30-day supply,” and that CogniPrin will “improve your memory and reduce mental decline or it’s free, you won’t pay for it.” Exh. E-1 (CogniPrin/Jahner radio audio file) at 12:53-12:57, 12:18-12:21; Exh. E-2 (CogniPrin/Jahner radio transcript excerpt) at 7:19-20, 7:9-10.

55. Consumers who call to order FlexiPrin and CogniPrin are told that there is an unconditional, 90 Day MONEY BACK GUARANTEE on their orders. However, in order to receive these products consumers must pay for a 90-day supply, accept a 90-day continuity plan, and pay an initial shipping charge of \$9.95.

56. Typically, consumers receive their products between 7 and 10 days after placing the order. Many consumers believe that the 90-day money-back guarantee starts when they receive the product, giving them 90 days to try it. The Powlowsky Defendants and the Fusco Defendants do not disclose, either before or after the initial offer, that the Powlowsky Defendants compute the 90-day money-back guarantee to begin on the date of the initial sales call, nor do they disclose that the continuity shipment is sent on or before 90 days after the date of the initial sales call.

57. When consumers call customer service toward the end of their 90-day trial periods to cancel their FlexiPrin and CogniPrin orders and get their money back, they discover that the time for cancellation has expired because the Powlowsky Defendants use the initial order date — not the date of receipt — as the beginning of the 90-day trial period. Also, the Powlowsky Defendants ship continuity orders of FlexiPrin and CogniPrin on or before 90 days

following the initial order date, subsequently denying refunds to consumers for initial purchases because of a previously undisclosed condition that disallows refunds for initial purchases after a continuity order has shipped. The application of this undisclosed condition significantly shortens the risk-free 90-day money back guarantee.

58. Even when consumers attempt to cancel their FlexiPrin and CogniPrin orders within the initial 90-day money-back guarantee period, they are required to meet a number of conditions not disclosed by the Powlowsky Defendants and the Fusco Defendants in the initial offer. In order to take advantage of the 90-day money-back guarantee, consumers must:

- a. Call customer service to obtain a Return Merchandise Authorization number;
- b. Return, at their own expense, all products, including empty bottles, to the company; and
- c. Pay for and track return shipments.

In numerous instances, the Powlowsky Defendants deny refunds to consumers who fail to comply with these undisclosed conditions.

59. Once the continuity shipment has been sent, the Powlowsky Defendants offer consumers only store credit for their first purchase in the form of exchanges for other merchandise. Obtaining store credit is difficult or impossible because it requires consumers to pay for the return of unopened products, which in most cases have already been opened and used during the free-trial period.

60. If consumers calling to order CogniPrin decline to purchase a 90-day supply, the Powlowsky Defendants and the Fusco Defendants disclose, for the first time, that in order to take advantage of the advertised 30-day free trial offer for CogniPrin, consumers must agree to a 60-

period. At the end of the free or low-cost trial period, these charges are billed to the same credit and debit cards used by consumers to place initial orders for FlexiPrin and CogniPrin. All of these services are automatically billed to consumers by these third parties every month after the expiration of the trial period (*i.e.*, a negative option); however, in numerous instances, the

false advertisement in or affecting commerce for the purpose of inducing, or which is likely to induce, the purchase of food, drugs, devices, services, or cosmetics. For the purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, FlexiPrin and CogniPrin are “drugs,” as defined in Section 15(c) of the FTC Act, 15 U.S.C. § 55(c). The term “false advertisement” means an advertisement, other than labeling, which is misleading in a material respect. 15 U.S.C. § 55(a)(1).

COUNT I

THE POWLOWSKY DEFENDANTS’ AND THE FUSCO DEFENDANTS’ FALSE OR UNSUBSTANTIATED CLAIMS ABOUT FLEXIPRIN

68. Through the means described in Paragraphs 24 through 29 and 31 through 32, including, but not limited to, the statements and representations contained in advertising and telemarketing scripts attached as Exhibits A-1 through C, the Powlowsky Defendants and the Fusco Defendants have represented, directly or indirectly, expressly or by implication, that:

- a. FlexiPrin reduces joint and back pain, inflammation, and stiffness in as little as two hours;
- b. FlexiPrin rebuilds damaged joints and cartilage; and
- c. FlexiPrin has been clinically proven to:
 - i. Reduce the need for medication in 80% of users;
 - ii. Reduce joint stiffness in the morning in 100% of users;
 - iii. Relieve joint pain in two hours;
 - iv. Provide better joint flexibility; and
 - v. Rebuild damaged joints and cartilage.

69. The representations set forth in Paragraph 68 are false or misleading, or, with respect to the representations set forth in Paragraph 68 a and b, were not substantiated at the time

the representations were made.

COUNT III

EXPERT ENDORSERS' FALSE OR UNSUBSTANTIATED CLAIMS ABOUT FLEXIPRIN AND COGNIPRIN

72. Through the means described in Paragraphs 24 through 27, 43 through 44, 49 through 50, and 52, Defendant Jahner, appearing as a medical or expert endorser, has represented, directly or indirectly, expressly or by implication, that:

- a. FlexiPrin reduces joint pain, inflammation, and stiffness in as little as two hours;
- b. FlexiPrin rebuilds damaged joints and cartilage;
- c. FlexiPrin has been clinically proven to:
 - i. Reduce the need for medication in 80% of users;
 - ii. Reduce joint stiffness in the morning in 100% of users; and
 - iii. Relieve joint pain in two hours;
- d. CogniPrin reverses mental decline by twelve years;
- e. CogniPrin improves memory by 44 percent;
- f. CogniPrin increases memory in as little as three weeks; and Prias; and

74. The representations set forth in Paragraphs 72 and 73 are false or misleading, or, with respect to the representations set forth in Paragraph 72 a, b, and d through f, and Paragraph 73 a through c, were not substantiated at the time the representations were made. Moreover, Defendants Jahner and Minshew did not exercise their purported expertise in the form of an examination or testing of the products. Their purported scientific proof for the representations set forth in Paragraphs 72 and 73 was not the result of an examination or testing at least as extensive as an expert in the represented field of expertise would normally conduct in order to support the conclusions presented in their endorsements.

75. Therefore, the making of the representations as set forth in Paragraphs 72 and 73 of this Complaint constitutes a deceptive act or practice and the making of false advertisements in or affecting commerce, J 0 Tc 06p4, J 0 c 0m2stor81(t)2(t)tor81(t)2(-2(i)3(ng c)-1(om))-2(ep4)-1(J th)2(e)

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

DECEPTIVE FORMAT OF RADIO ADVERTISING

79. Through the means described in Paragraphs 23, 37, 38, and 42, the Powlowsky Defendants and the Fusco Defendants have represented, directly or indirectly, expressly or by implication, that the FlexiPrin and CogniPrin radio shows referenced in Exhibits A-1, A-2, D-1, D-2, E-1, and E-2 were objective news or informational programming.

80. In fact, the referenced radio programs were not objective news or informational programming. They were paid commercial advertising. Therefore, the making of the representation set forth in Paragraph 79 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 VI

**FALSE ADVERTISING IN CONNECTION WITH
DEFENDANT JAHNER AS AN ENDORSER**

81. Through the means described in Paragraphs 23 through 28, 42 through 44, and 50 through 52, including, but not limited to the statements and representations contained in radio advertising and an internet blog, attached as Exhibits A-1, A-2, E-1, E-2, and H, the Powlowsky Defendants, the Fusco Defendants, and Defendant Jahner have represented, directly or indirectly, expressly or by implication, that Defendant Jahner was presenting his objective, independent expert opinions regarding the efficacy of FlexiPrin and CogniPrin.

82. The representations set forth in Paragraph 81 are false. In fact, the Powlowsky Defendants made royalty payments to Defendant Jahner to appear as an expert endorser for FlexiPrin and CogniPrin.

83. Therefore, the making of the representation set forth in Paragraph 81 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 VII

MISREPRESENTATION OF DEFENDANT MINSHEW'S EXPERTISE

84. Through the means described in Paragraphs 37 and 38, including, but not limited to, the statements and representations contained in the radio advertising attached as Exhibits D-1 and D-2, the Powlowsky Defendants, the Fusco Defendants, and Defendant Minshew have represented, directly or indirectly, expressly or by implication, that Defendant Minshew, a/k/a Samuel Brant, is an expert in neurology, brain science, or cognitive decline.

85. The representation set forth in Paragraph 84 is false. In fact, Defendant Minshew, a/k/a Samuel Brant, is not an expert in neurology, brain science, or cognitive decline.

86. Therefore, the making of the representation set forth in Paragraph 84 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 VIII

FALSE RISK-FREE, UNCONDITIONAL MONEY-BACK GUARANTEE OFFER

87. Through the means described in Paragraphs 53 through 55, the Powlowsky Defendants and the Fusco Defendants have represented to consumers, directly or indirectly,

customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s). 16 C.F.R. § 310.3(a)(1)(i), (iii), and (vii).

96. “Upselling” is defined by the TSR as “soliciting of the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction.” 16 C.F.R. § 310.2(ee).

97. Additionally, the TSR requires sellers or telemarketers in an internal or external upsell to disclose truthfully, promptly, and in a clear and conspicuous manner the following information:

- a. The identity of the seller;
- b. That the purpose of the call is to sell goods or services; and
- c. The nature of the goods or services.

16 C.F.R. § 310.4(d)(1), (2), and (3).

98. The TSR prohibits sellers and telemarketers from “[c]ausing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer” 16 C.F.R. § 310.4(a)(7).

Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

feature, including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s).

102. The Powlowsky Defendants' and the Fusco Defendants' acts or practices, as described in Paragraph 101, are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(1)(vii).

COUNT XII

FAILURE TO MAKE REQUIRED ORAL DISCLOSURES

(By Both Plaintiffs)

103. In numerous instances, in connection with the Powlowsky Defendants' and the Fusco Defendants' efforts to externally "upsell" discount buying clubs and a supplemental health savings plan, as described in Paragraphs 62 and 63, they fail to disclose promptly and in a clear and conspicuous manner to consumers the identity of the third-party seller.

104. The Powlowsky Defendants' and the Fusco Defendants' acts or practices, as described in Paragraph 103, are abusive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.4(d)(1).

COUNT XIII

FAILURE TO OBTAIN EXPRESS INFORMED CONSENT

(By Both Plaintiffs)

105. In numerous instances, in connection with the Powlowsky Defendants' and the Fusco Defendants' efforts to "upsell" discount buying clubs and a supplemental health savings plan, as described in Paragraphs 62 and 63, the Powlowsky Defendants cause billing information to be submitted for payment without the express informed consent of the consumer.

106. The Powlowsky Defendants' and the Fusco Defendants' acts or practices, as described in Paragraph 105,

COUNT XIV

EFTA AND REGULATION E

(By Plaintiff FTC)

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

112. In numerous instances, the Powlowsky Defendants debit consumers' bank accounts on a recurring basis without providing to the consumer a copy of a written authorization signed or similarly authenticated by the consumer for preauthorized electronic fund transfers from the consumer's account, thereby violating Section 907(a) of EFTA, 15 U.S.C. § 1693e(a), and Section 1005.10(b) of Regulation E, 12 C.F.R. § 1005.10(b).

113. By engaging in violations of EFTA and Regulation E as set forth in Paragraphs 112 and 113 the Powlowsky Defendants have engaged in violations of 15 U.S.C. § 1693o(c) and the FTC Act, 15 U.S.C. §§ 41 et seq.

VIOLATIONS OF MAINE LAW

114. Section 207 of the Maine UTPA, ME. REV. STAT. tit. 5, § 207, declares unlawful "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce."

115. Material misrepresentations or omissions of material fact constitute deceptive acts or practices prohibited by Section 207 of the UTPA.

116. Section 206 of the UTPA defines “trade” and “commerce” as including “the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State.” ME. REV. STAT. tit. 5, § 206.

117. Chapter 205-A, “Required Disclosures to Consumers,” of Title 10 of Maine’s statutes prohibits certain practices related to free trial offers. ME. REV. STAT. tit. 10, §§ 1210 through 1210-B.

118. Section 1210(2) prohibits making free offers unless, at the time of the offer, “the seller provides the consumer with clear and conspicuous information regarding the terms of the free offer, including any additional financial obligations that may be incurred as a result of accepting the free offer.” ME. REV. STAT. tit. 10, § 1210.

119. Section 1210-A provides that a violation of Title 10, Chapter 205-A is a violation of the Maine UTPA.

COUNT XV

THE POWLOWSKY DEFENDANTS’ AND THE FUSCO DEFENDANTS’ FALSE OR UNSUBSTANTIATED CLAIMS ABOUT FLEXIPRIN

120. Plaintiff State of Maine incorporates herein by reference all of the allegations contained in Paragraph 68 of this Complaint.

121. The representations set forth in Paragraph 68 are false or misleading, or, with respect to the representations set forth in Paragraph 68 a and b, were not substantiated at the time the representations were made. Therefore, the making of the representations set forth in Paragraph 68 constitutes a deceptive act or practice and the making of false advertisements, in or affecting trade or commerce, in violation of ME. REV. STAT. tit. 5, § 207.

122. The Powlowsky Defendants' and the Fusco Defendants' conduct, as described herein, is intentional.

COUNT XVI

**THE POWLOWSKY DEFENDANTS' AND THE FUSCO DEFENDANTS'
FALSE OR UNSUBSTANTIATED CLAIMS ABOUT COGNIPRIN**

false advertisements, in or affecting trade or commerce, in violation of ME. REV. STAT. tit. 5, § 207.

135. The conduct of the Powlowsky Defendants and the Fusco Defendants, as described herein, is intentional.

COUNT XX

FALSE ADVERTISING IN CONNECTION WITH DEFENDANT JAHNER AS AN ENDORSER

136. Plaintiff State of Maine incorporates herein by reference all of the allegations contained in Paragraph 81.

137. The representations set forth in Paragraph 81 are false. In fact, the Powlowsky Defendants made royalty payments to Defendant Jahner to appear as an expert endorser for FlexiPrin and CogniPrin.

138. Therefore, the making of the representations set forth in Paragraph 81 constitutes a deceptive act or practice and the making of false advertisements, in or affecting trade or commerce, in violation of ME. REV. STAT. tit. 5, § 207.

139. The conduct of the Powlowsky Defendants, the Fusco Defendants, and Defendant Jahner, as described herein, is intentional.

COUNT XXI

MISREPRESENTATION OF DEFENDANT MINSHEW'S EXPERTISE

140. Plaintiff State of Maine incorporates herein by reference all of the allegations contained in Paragraph 84 of this Complaint.

141. The representation set forth in Paragraph 84 is false. In fact, Defendant Minshew, a/k/a Samuel Brant, is not an expert in neurology, brain science, or cognitive decline

142. Therefore, the making of the representation set forth in Paragraph 84 constitutes a

deceptive act or practice and the making of false advertisements, in or affecting trade or commerce, in violation of ME. REV. STAT. tit. 5, § 207.

143. The conduct of the Powlowsky Defendants, the Fusco Defendants, and Defendant Minsheew, as described herein, is intentional.

COUNT XXII

FALSE RISK-FREE UNCONDITIONAL MONEY-BACK GUARANTEE OFFER

144. Plaintiff State of Maine incorporates herein by reference all of the allegations contained in Paragraph 87 of this Complaint.

145. The representations in Paragraph 87 are false because Defendants charged consumers: the cost of the initial shipment, which was not refundable; the cost of returning both full and empty bottles of the product; the full cost of FlexiPrin and CogniPrin if consumers did not follow the undisclosed or inadequately disclosed return and refund policies described in Paragraphs 57 through 59 and, additional charges for inadequately disclosed continuity shipments of FlexiPrin and CogniPrin.

146. Therefore, the making of the representations set forth in Paragraph 87 constitutes a deceptive practice in or affecting trade or commerce, in violation of ME. REV. STAT. tit. 5, § 207 and ME. REV. STAT. tit. 10, § 1210.

147. The conduct of the Powlowsky Defendants and the Fusco Defendants, as described herein, is intentional.

COUNT XXIII

MISREPRESENTATIONS ABOUT THE COGNIPRIN 30-DAY FREE TRIAL OFFER

148. Plaintiff State of Maine incorporates herein by reference all of the allegations contained in Paragraph 90 of this Complaint.

149. The representation in Paragraph 90 is false because the Powlowsky Defendants failed to disclose, or did not adequately disclose, that: (a) in order to qualify for the 30-day free trial, consumers had to accept a 60-day continuity plan that would begin 21 days after placing the order; and (b) consumers would not receive their products until 7 to 10 days after placing their orders, thereby giving them 14 days or less to try the product, as described in Paragraph 61.

150. Therefore, the making of the representation set forth in Paragraph 90

154. Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt violations of the TSR and to redress injury to consumers, including the award of damages, restitution, or other compensation in an action brought by a state.

155. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction to allow Plaintiff State of Maine to enforce its state law claims under the Maine Unfair Trade Practices Act, ME. REV. STAT. tit. 5, §§ 205-a through 214, against Defendants 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 UTPA enforced by the Maine Attorney General. 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 the UTPA enforced by the Maine Attorney General.

FTC PRAYER FOR RELIEF

Wherefore, Plaintiff Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), Section 917(c) of the EFTA, 15 U.S.C. § 1693o(c), and the Court's own equitable powers, requests that the Court:

not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

- C. Award Plaintiff FTC the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

MAINE PRAYER FOR RELIEF

Wherefore, Plaintiff State of Maine, pursuant to Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), Section 209 of the Maine UTPA, ME. REV. STAT. tit. 5, § 209, and the Court's own equitable powers, requests that the Court:

- A. Enter an order declaring Defendants' above-described conduct to be in violation of the TSR and the Maine UTPA, § 207, and to be intentional violations pursuant to the Maine UTPA, § 209;
- B. Enter a permanent injunction to prevent future violations of the TSR and the Maine UTPA by Defendants;
- C. Award such relief as the Court finds necessary to redress injury to consumers

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- E. Award Plaintiff State of Maine the costs of bringing this action, prejudgment interest pursuant to MREV. STAT. tit. 14, § 1602-B, and such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

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