

CIVIL MINUTES - GENERAL



/ (Reply I) See generally # (Mot. II) See generally # (Opp. II) See generally # / (Reply II)

GRANTS DENIES See

Opp. I

Mot. I

Undisputed Facts # (PSUF) Plaintiff's Statement of Id.

Travel Ctr., Inc. See # (FT Travel-N.Y., LLC v. Your GRANTS DENIES

See #

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

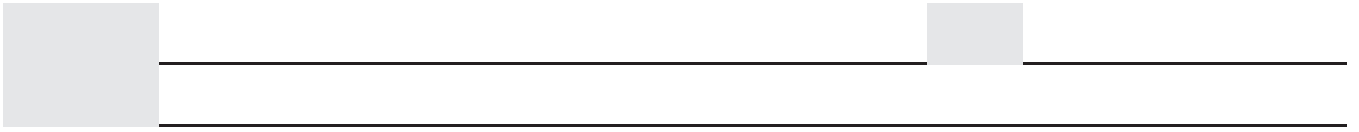
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Case No. SACV 20-1431 PSG (KESx)

Date April 6, 2022

Title FTC v. QYK Brands LLC, et al.

In March 2020, to meet a pandemic-driven swell in demand for disinfectants, Defendants began offering various hand sanitizer products on their Glowwy and Dr. J's Natural websites. ¶¶ 52 53, 55 57. Defendants attracted customers by launching a Google AdWords campaign



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refunds once a shipping label had been generated and instead required customers to wait to receive the package and then reject it before receiving a refund. See Dkt. # 162, Ex. 16, Att. X, at 1 (•We can[•]t cancel because it is already labelled. Your order will be scheduled for shipping within the week or early next week.Ž).

B. Protein Powder as a COVID-19 Preventative

Defendants also sold a product called •Basic Immune IGGŽ that they offered through the Dr. J’s Natural website. See PSUF ¶¶ 280–81. Basic Immune IGG is a protein powder that is supposed to promote healthy digestion and immune function. Id. ¶¶ 286–87. It is not FDA-approved to treat or prevent COVID-19. Id. ¶ 309. During a Vietnamese language broadcast, Dr. J encouraged people to wash their hands regularly and use Basic Immune IGG. As a result, she •guaranteedŽ that people would •stay safe,Ž citing the product’s •FDA[] verification and approval.Ž Dkt. # 144, Ex. 8, Att. A, at 14–15. She went on to explain that the protein powder could increase the user’s total antibody count, giving them a better chance to •cling to and bite that coronavirus, push it out and kill it!Ž. at 15. The broadcast host then said that, since Dr. J had taken the protein powder already, people •d[id not] have to be afraid of [her] anymoreŽ and that people •c[ould] get close to [her]!Ž. Dr. J confirmed: •Yes, you’re right.Ž. Dr. J also posted two English language videos on YouTube that made similar claims but with more muted language. See PSUF ¶¶ 299–308; Dkt. # 137-1, Ex. 1, Att. H, at 11 (explaining that Basic Immune IGG could help users •fight back and destroy all of the coronavirus that is entering into your bodyŽ).

C. Procedural History

In August 2020, the FTC filed a complaint and an ex parte application for a temporary restraining order against Defendants.

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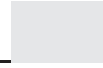
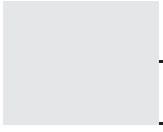
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Count Three Deceptive COVID-19 Prevention Claims: Violation of § 5 of the FTC Act, 15 U.S.C. §§ 45(a), 52AC ¶¶ 80 82.

Count Four False Establishment Claims: Violation of § 5 of the FTC Act, 15 U.S.C. §§ 45(a), 52AC ¶¶ 83 85.

The FTC now moves for summary judgment on each of its four claims, seeking monetary relief for consumers and a permanent injunction. See generally Mot. IDefendants also move for partial summary judgment to bar the FTC from seeking what Defendants classify as a



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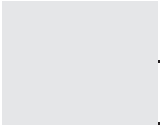
B. Second, Third, and Fourth Causes of Action: FTC Act Violations

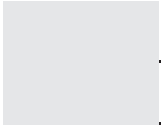
The FTC claims it is entitled to summary judgment on its three FTC Act causes of action. Mot. I 35:14 39:19. The Court agrees.

The FTC Act prohibits, among other things, •unfair or deceptive acts or practices in or affecting commerce. 15 U.S.C. § 45(a)(1). A statement can be •unfair or deceptive if it is likely to mislead reasonable consumers under the circumstances in a way that is •material. FTC v. Gill, 265 F.3d 944, 950 (9th Cir. 2001). Whether a statement is misleading may be based on the •net impression it creates or the •failure to disclose material information. FTC v. Cyberspace.com LLC, 453 F.3d 1196, 1200 (9th Cir. 2006); Sterling Drug, Inc. v. FTC, 741 F.2d 1146, 1154 (9th Cir. 1984). A misleading statement is material if it •involves information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding, a product. Cyberspace.com LLC, 453 F.3d at 1201 (quoting Cliffdale Assocs., Inc., 103 F.T.C. 110, 165 (1984)). Materiality is presumed when statements •significantly involve health, safety, or other issues that would concern reasonable consumers. FTC v. Wellness Support Network, Inc., No. 10-CV-04879-JCS, 2014 WL 644749, at *17 (N.D. Cal. Feb. 19, 2014).

Here, Defendants • shipping speed and •in stock representations were •unfair or deceptive and thus in violation of the FTC Act. Defendants advertised shipping speeds ranging anywhere from one day on Google to as many as ten days on their websites. PSUF ¶¶ 64, 77, 171 77. When Defendants made some of these shipping claims, they had already publicly acknowledged that they lacked ingredients and packaging to keep up with demand and faced obstacles in the supply chain that delayed shipments necessary to restock their inventory. ¶¶ 126 27, 128 30, 331 33, 341 51. Yet Defendants continued to accept orders from customers, representing either implicitly or explicitly that they had hand sanitizer in stock and could ship it. See id. ¶¶ 113 14, 121. Such representations were also material because, as Defendants • former marketing director testified, at least some customers • decisions to order hand sanitizer turned on whether the product was actually in stock. Deposition Transcript of Danielle Paulo, Dkt. # 161, Ex. 16, Att. UPR Paulo Depo, at 88:9 19 (•So I think it really shocked everybody else in the U.S. that we even had them, so [customers] just wanted to confirm first that we had them in stock. And when we did confirm that, they would place their order.Ž).

Defendants • representations that Basic Immune IGG protein powder could protect users from COVID-19 and that it was FDA approved for that purpose were also •unfair or deceptive and thus in violation of the FTC Act. Dr. J represented in both Vietnamese and English





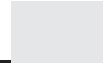
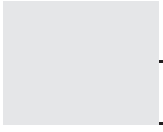
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from or exploit[ing] a sensitive event with significant social, cultural or political impact. ¶¶ 189-94. Defendants' Facebook account suffered a similar fate, but Defendants sought out a freelancer to advertise for them to circumvent the suspension. Id. ¶¶ 436-38. Turning to Basic Immune IGG sales, Dr. J is a licensed pharmacist who had her pharmacy license suspended for Unprofessional Conduct Involving Acts of Dishonesty, Fraud, or Deceit, among other things. Id. ¶¶ 20-23. Undeterred by this punishment, Dr. J nevertheless continued her apparent streak of

