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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MAY 27 2003

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

QT, INC., Q-RAY, COMPANY,
BIO-METAL, INC., QUE TE PARK,
a.k.a. ANDREW Q. PARK,
and JUNG JOO PARK,

Defendants.

Case No. **03C 3578**

JUDGE AMY ST. EVE

MAGISTRATE JUDGE LEVIN

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), through its undersigned attorneys, alleges as follows:

1. The FTC brings this action pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure temporary, preliminary and injunctive relief and other equitable relief against QT, Inc., Q-Ray, Company, Bio-Metal, Inc., and their officers, Que Te Park (a.k.a. Andrew Q. Park) and Jung Joo Park, for engaging in deceptive acts or practices and false advertising in connection with the advertising, marketing, and sale of a purported pain-relief product called the Q-Ray Ionized Bracelet ("Q-Ray Bracelet") in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a), 52,

and 53(b) and 28 U.S.C. §§ 1331, 1337(a) and 1345.

3. Venue in the United States District Court for the Northern District of Illinois is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

PARTIES

4. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, which prohibit, respectively, unfair or deceptive acts or practices, and false advertisements for food, drugs, devices, services, or cosmetics in or affecting commerce. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including consumer redress. 15 U.S.C. § 53(b).

5. Defendant QT, Inc. ("QT"), which sometimes does business as Bio-Ray America, Inc., is an Illinois corporation with its principal office or place of business at 680 Fargo Avenue, Elk Grove Village, Illinois, 60007. It transacts or has transacted business in this District, and throughout the United States, through the advertising, marketing, and sale of the Q-Ray Bracelet via U.S. media outlets and identical Internet sites, www.qray.com, www.q-ray.com, and www.bio-ray.com.

6. Defendant Q-Ray, Company ("QRC"), is an Illinois corporation with its principal office or place of business at 680 Fargo Avenue, Elk Grove Village, Illinois, 60007. It transacts or has transacted business in this District, and throughout the United States, through the dissemination of a television infomercial for the Q-Ray Bracelet aired on U.S. media outlets and through the distribution of the product.

7. Defendant Bio-Metal, Inc. ("Bio-Metal"), which was formerly known as Bio-Ray International, Inc., is an Illinois corporation with its principal office or place of business at 680 Fargo Avenue, Elk Grove Village, Illinois, 60007. It transacts or has transacted business in this District, and throughout the United States, through the marketing and distribution of the Q-Ray Bracelet.

8. Defendant Que Te Park, also known as Andrew Q. Park, is the President of QT, QRC, and Bio-Metal. At all times material to this Complaint, acting alone or in conjunction with others, Mr. Park has formulated, directed, controlled or participated in the acts and practices set forth in this Complaint. Mr. Park resides and/or transacts business in this District.

9. Defendant Jung Joo Park is the Secretary of QT, QRC and Bio-Metal. At all times material to this Complaint, acting alone or in conjunction with others, Ms. Park has formulated, directed, controlled or participated in the acts and practices set forth in this Complaint. Ms. Park resides and/or transacts business in this District.

10. Collectively, the Defendants QT, QRC, Bio-Metal, Que Te Park and Jung Joo Park have operated a common business enterprise while engaging in the deceptive acts and practices alleged below and are therefore jointly and severally liable for said acts and practices.

COMMERCE

11. The acts and practices of the Defendants, as alleged herein, are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' COURSE OF BUSINESS

12. Since at least September 2000, and continuing thereafter, Defendants have advertised, promoted, offered for sale, sold, and distributed the purported pain-relieving Q-Ray

Bracelet to the public, using advertisements in print media and the Internet and on cable television stations such as the Golf Channel, the Learning Channel, USA Network, and the Discovery Channel. The retail price of the Q-Ray Bracelet ranges from \$49.95 to \$249.95.

13. To induce consumers to purchase the Q-Ray Bracelet, Defendants have disseminated or have caused to be disseminated three different television infomercials, including a currently airing 30-minute program, Internet advertisements disseminated on www.qray.com, www.q-ray.com, and www.bio-ray.com, and a product brochure. These advertisements include but are not limited to the attached Exhibits A through D, and contain, among other things, the following statements or depictions:

A. [EXCERPTS FROM INFOMERCIAL TRANSCRIPT]

ON SCREEN: Allen Brown; Had back pain for 5 years. . .

UNIDENTIFIED MALE: My back has been bothering me probably for the last. . .
four or five years. . .

ON SCREEN: "within seconds the pain was gone."

ALLEN BROWN: And when he put this on me, it was almost – within 10 or 15
seconds, the pain was gone.

* * *

SHEILA THOMPSON: I wore it last night and in 24 hours all my pain's
disappeared from my arm, my hip and my shoulder.

ALLEN BROWN: It was amazing to me that it worked that quickly.

SANDRA KOHLER: It's just been over an hour and I don't have any pain.

UNIDENTIFIED FEMALE: The pain is gone.

UNIDENTIFIED MALE: The pain is gone?

UNIDENTIFIED FEMALE: Yes.

UNIDENTIFIED MALE: Right away?

UNIDENTIFIED FEMALE: Yeah, immediately.

* * *

ON SCREEN: www.QRay.com; Q-RAY

INFOMERCIAL HOST: Time and time again people are telling us their Q-Ray bracelet works wonders to relieve the aches and pains they live with every day. Not just from persistent headaches, but joint stiffness, injuries, even back pain.

* * *

AUDRA WALLACE: The worst thing is the pain in my legs, the soreness, it feels like needles going through my body. He put the bracelet on me and right away I felt the – like almost a clear sensation in my stomach and then it went to my knees and then it just worked its way up my body –

ON SCREEN [small print at bottom of screen]: Individual Results May Vary.

AUDRA WALLACE: – and it was like really the first time I felt good. . .

ON SCREEN: You don't have to live with pain!

INFOMERCIAL HOST: If you're fed up with living with pain and discomfort every day, if you've become convinced you'll live with pain for the rest of your life, don't believe it.

ON SCREEN: RISK FREE OFFER; Your Q-Ray comes with our money back guarantee!

INFOMERCIAL HOST: Try your Q-Ray ionized bracelet risk-free for a full 30 days and start getting immediate relief the very first time you try it on, or simply return it for a full refund of your purchase price.

* * *

MALE ANNOUNCER: If you are one of millions of people suffering from back pain, sciatic pain, persistent headaches, sinus problems, tendinitis, joint dysfunction or injuries, if you've become convinced you will live with pain and discomfort for the rest of your life, don't believe it – because now there is an incredible non-medical device that is helping to change the lives of people everywhere.

ON SCREEN: Q-Ray Ionized

* * *

ON SCREEN: People who wear a Q-Ray Ionized Bracelet tell us they are free from aches and pains!

* * *

ON SCREEN: Your Q-Ray Ionized Bracelet is backed by our 30 Day Money Back Guarantee. Less Shipping & Handling. . .

MALE ANNOUNCER: And remember, your Q-Ray ionized bracelet is backed by our ironclad money back guarantee. If you're not absolutely 100 percent satisfied, just send your Q-Ray back for a full refund of your purchase price.

* * *

DR. TERMANINI: I had sustained an injury to my back approximately three years

ago and I was lucky enough to meet a chiropractor who introduced me to the Q-Ray bracelet.

ON SCREEN: Dr. Termanini; Orthopedic Surgeon

DR. TERMANINI: After two and a half – almost two years of wearing the Q-Ray bracelet, I am pain-free.

ON SCREEN: “I am pain free!”

INFOMERCIAL HOST: Recently, doctors put a Q-Ray to the test to try to determine what effect the Q-Ray ionized bracelet has on the human body.

ON SCREEN: Dr. James Christiansen; Ph.D., F.A.B.C.T., D.A.A.P.M.; This test was performed by licensed medical professionals.

DR. JAMES CHRISTIANSEN: We’re using an infrared imager to look at the surface temperature of [the patient’s] back. You can see that the image shows some areas of pink and red.

ON SCREEN: Computer monitor showing back and areas of pain; BEFORE wearing Q-Ray Ionized Bracelet

DR. JAMES CHRISTIANSEN: Those are increased temperature, indicating an increased blood flow. The increased blood flow typically is associated with inflammation and pain. . . Now, we’re going to take a Q-Ray bracelet, we’re going to put it on the patient’s wrist to see if there’s any change in the thermal profile that goes along with the application of the bracelet.

ON SCREEN: AFTER wearing Q-Ray Ionized Bracelet

DR. JAMES CHRISTIANSEN: After five minutes with the Q-Ray bracelet on his

wrist, you can see that the temperature has declined dramatically --

ON SCREEN: Test reveals much less inflammation; Patient reports much less pain.

* * *

ON SCREEN: This test was performed by licensed medical professionals.

UNIDENTIFIED MALE: Doctor, are these infrared imaging machines reliable?

DR. JAMES CHRISTIANSEN: Very true, very accurate, very reliable.

* * *

ON SCREEN: Don't accept pain for the rest of your life!

INFOMERCIAL HOST: Nobody wants to live with pain and discomfort for the rest of their life. . .

ON SCREEN: Try your Q-Ray Ionized Bracelet risk-free for 30 days! . . .

INFOMERCIAL HOST: Try your Q-Ray ionized bracelet and experience how much better you can feel starting the very first day, the very first minute you try it on, absolutely risk-free.

* * *

PAUL SEERY: I've had total knee replacements in both my knees. I had a total of seven major operations. I was experiencing a great deal of difficulty walking. I was on a cane all the time. I put the bracelet on and everything changed. It was as though a miracle of sorts happened.

ON SCREEN: Wearing the Q-Ray Ionized Bracelet "The pain went away. . ."

PAUL SEERY: The pain went away. . .

INFOMERCIAL HOST: Imagine what it must feel like to be able to throw away your cane forever. Folks, if you're suffering from nagging pain or maybe your body just doesn't work the way it used to, pick up the phone right now, right now, and start wearing the Q-Ray ionized bracelet for 30 days absolutely risk-free.

ON SCREEN: RISK FREE OFFER; Try Q-Ray for 30 days!

* * *

INFOMERCIAL HOST: If you don't begin to feel relief from your aches and pains immediately and if you don't continue to improve, to feel healthier and stronger with each new day, just send your Q-Ray back to us for a full refund of your purchase price.

– Exhibit A (videotape of infomercial); Exhibit B (excerpts from transcript of infomercial) at pp. B-6, B-7, B-9, B-11, B-13 to B-18, B-20, B-21 to B-23, B-38, B-39, B-42, and B-47.

B. [EXCERPTS FROM INTERNET SITE]

Imagine a life without pain. . .

* * *

Don't live with pain and discomfort another day!

– Exhibit C (printouts from www.qray.com Internet site).

C. [EXCERPTS FROM PRODUCT BROCHURE]

Improve your health and well-being with a high-performance Q-Ray® Ionized Bracelet®. It is believed that the Q-Ray® Ionized Bracelet® works under the same principles as the ancient Chinese practice of acupuncture.

* * *

Q-Ray® is an exclusive Ionized Bracelet® which we believe helps balance your body's Yin-Yang (Negative & Positive Ions). When your body is balanced, "Chi (qi)" (the vital life energy) is generated, facilitating natural relief. Q-Ray applies cutting-edge exclusive Ionization technology in each Q-Ray for 24 hours of non-stop performance.

* * *

Thermographic Technology. . . "I was surprised and pleased at the results obtained with Mr. Oaks. His "hot" lumbar area correlating with his pain, and the dissipation of the heat and pain almost instantaneously upon wearing the Q-Ray Bracelet was a convincing piece of evidence for it's [sic] effectiveness."

Dr. James Christiansen, Ph. D.

– Exhibit D (product brochure) at pp. D-2 and D-4.

14. The television infomercial provides ordering information, a telephone number, and also directs customers to the Defendants' website, www.qray.com, to order. To further induce consumers to purchase the Q-Ray Bracelet, Defendants' infomercial advertised a 30-day "risk-free" guarantee ("Q-Ray 30-Day Satisfaction Guarantee") that allows customers to return the Q-Ray Bracelet within 30 days for a full refund of the purchase price, if they are not satisfied.

15. Many consumers who purchased the Q-Ray Bracelet via Defendants' website, however, did not receive the same Q-Ray 30-Day Satisfaction Guarantee that was advertised in the television infomercial. These online purchasers instead received only a 30-day "limited warranty" covering defects in material and/or workmanship and, in some instances, a 10-day satisfaction guarantee. No prominent distinction was made between the online refund policy and the advertised Q-Ray 30-Day Satisfaction Guarantee in the infomercial, by telephone operators, or on the website. The online purchasers learned that the Q-Ray 30-Day Satisfaction Guarantee advertised in the infomercial did not apply to them when they tried but failed to obtain refunds. Defendants have only recently revised their policies so that online purchasers receive the same Q-Ray 30-Day Satisfaction Guarantee as telephone purchasers.

16. Additionally, many consumers are not able to actually obtain a full refund when they return the Q-Ray Bracelet within 30 days. Consumers seeking to contact the company to inquire about refunds have, in many instances, been unable to get through to customer service representatives, and instead obtained refunds only after they complained to the Better Business Bureau.

DEFENDANTS' VIOLATIONS OF THE FTC ACT

17. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a), prohibits the dissemination of any 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 purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, the Q-Ray Bracelet is a "device" as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.

18. As set forth below, Defendants have violated Sections 5(a) and 12(a) of the FTC Act in connection with the marketing and sale of the Q-Ray Bracelet.

COUNT ONE

(Unlawful Claims for the Q-Ray Bracelet)

19. Through the means described in Paragraph 13, Defendants have represented, expressly or by implication, that the Q-Ray Bracelet provides immediate significant or complete relief from various types of pain, including, but not limited to, musculoskeletal pain, sciatic pain, persistent headaches, sinus problems, tendinitis, or injuries.

20. The representation set forth in Paragraph 19, above, is false or was not substantiated at the time the representation was made. Clinical testing shows that the Q-Ray Bracelet is no better than a placebo product at relieving musculoskeletal pain. Therefore, the making of the representation set forth in Paragraph 19 constitutes a deceptive practice, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 52.

COUNT TWO

(False Establishment Claim for the Q-Ray Bracelet)

21. Through the means described in Paragraph 13, Defendants have represented, expressly or by implication, that tests prove that the Q-Ray Bracelet relieves pain.

22. In truth and in fact, tests do not prove that the Q-Ray Bracelet relieves pain. Indeed, clinical testing shows that the Q-Ray Bracelet is no better than a placebo product at relieving musculoskeletal pain. Therefore, the making of the representation set forth in Paragraph 21 constitutes a deceptive 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 THREE

(Unlawful Claims regarding Refunds)

23. Through the means described in Paragraphs 14 - 16, Defendants have represented, expressly or by implication, that the Q-Ray 30-Day Satisfaction Guarantee permits consumers to readily obtain a full refund of the purchase price if they return the Q-Ray Bracelet within 30 days.

24. In truth and in fact, the Q-Ray 30-Day Satisfaction Guarantee does not permit consumers to readily obtain a full refund of the purchase price if they return the Q-Ray Bracelet within 30 days. For example, in many instances, the Q-Ray 30-Day Satisfaction Guarantee advertised on television was not honored for orders placed online from Defendants' website and no prominent distinction for online orders was disclosed prior to purchase. In addition, many consumers seeking to contact the company to inquire about refunds are unable to get through to customer service representatives. Also, many consumers are unable to obtain refunds until they complain to the Better Business Bureau. Therefore, the making of the representation set forth in Paragraph 23, above, constitutes a deceptive 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.

CONSUMER INJURY

25. Defendants' law violations have injured consumers and will continue to injure consumers throughout the United States. 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 unjust enrichment, and harm the public interest.

26. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other relief as the Court may deem appropriate to prevent and remedy any violations of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award other ancillary relief, including consumer redress, disgorgement, and restitution, to prevent and remedy injury caused by Defendants' law violations.

PRAYER FOR RELIEF

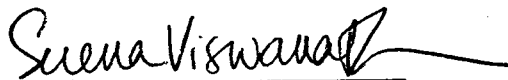
WHEREFORE, Plaintiff FTC requests that this Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

- (1) Enjoin Defendants preliminarily and permanently from violating Sections 5(a) and 12 of the FTC Act, as alleged herein, in connection with the offer, sale, advertising, or other promotion or distribution of pain-relief products, or any food, drugs, devices, cosmetics, or services;
- (2) Award Plaintiff all temporary and preliminary injunctive and ancillary relief that may be necessary to avert the likelihood of consumer injury during the pendency of this action, and to preserve the possibility of effective and final relief, including but not limited to temporary and preliminary injunctions and an asset freeze;
- (3) Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of Sections 5(a) and 12 of the FTC Act, including but not limited to rescission of contracts and restitution, other forms of redress, and the disgorgement of ill-gotten gains by the Defendants; and
- (4) Award the Plaintiff the costs of bringing this action, as well as such additional

equitable relief as the Court may determine just and proper.

Respectfully submitted,

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