UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ROCA LABS, INC., a corporation; **ROCA LABS NUTRACEUTICAL USA, INC.**, a corporation; **DON JURAVIN**, individually and as an officer of Roca Labs, Inc. and Roca Labs Nutraceutical USA, Inc.; and **GEORGE WHITING**, individually and as an officer of Roca Labs, Inc. and Roca Labs Nutraceutical USA, Inc.

Defendants.

Civ. No. 8:15-cv-02231-MSS-TBM

DEFENDANT ROCA LABS NUTRACEUTICAL USA, INC. ANSWER AND AFFIRMATIVE DEFENSES

Defendant, Roca Labs Nutraceutical USA, Inc. ("Roca USA"), by and through the undersigned counsel, hereby files its Answer and Affirmative Defenses to Plaintiff's, Federal Trade Commission ("FTC") Complaint and states as follows:

1. Admitted that this is an action for alleged violations of Section 13(b) of the Federal Trade Commission Act ("FTC Act") and that the FTC is seeking a variety of remedies. Otherwise denied.

2. Admitted.

3. Admitted.

4. The allegations in paragraph 4 are legal conclusions to which no response is required. Otherwise denied.

5. The allegations in paragraph 5 are legal conclusions to which no response is required. Otherwise denied.

6. Without knowledge; therefore denied.

7. Roca USA admits that it is a corporation having the addresses referenced in paragraph 7. Otherwise denied.

8. Roca USA admits that Don Juravin ("Juravin") carried out the marketing activities of Roca Labs since 2009, substantially assumed control of its day-to-day activities in 2013; controlled the business activities of Roca USA since 2014 and that such activities were conducted in this judicial district. Admitted that Juravin owns and controls Juravin, Inc. Otherwise denied.

9. Roca USA admits that George Whiting is its nominative president, secretary, treasurer and director. Otherwise denied.

10. The allegations in paragraph 10 are legal conclusions to which no response is required. Otherwise denied.

11. The allegations in paragraph 11 are legal conclusions to which no response is required. Otherwise denied.

12. Roca USA admits that it marketed and sold the Roca Labs Formula and Anti-Cravings, which are dietary supplements marketed as weight loss products. Otherwise, denied.

13. Roca USA admits that it lists the Roca Labs Formula ingredients, displays the product label and that the formula is a proprietary combination of various ingredients on RocaLabs.com. Roca USA denies the remainder of the allegations in paragraph 13 and states that the information displayed on RocaLabs.com speaks for itself. Otherwise denied.

14. Roca USA admits that the ingredients for Anti-Cravings includes Beta Glucan and Fibersol®-2. Roca Labs denies the remainder of the allegations in paragraph 14 and states that the information displayed on RocaLabs.com speaks for itself. Otherwise denied.

15. Roca USA admits that it sells Roca Labs products at various price points. Otherwise denied.

16. Roca USA admits that it has advertised, marketed and promoted its products through a variety of methods under the trademarks GASTRIC BYPASS NO SURGERY® and GASTRIC BYPASS ALTERNATIVE®. Otherwise denied.

17. Roca USA admits that the substantial majority of its sales are generated through Roca Labs' websites.

18. Roca USA admits that it has used a variety of core messages when it advertised and marketed the products. Otherwise denied.

19. Roca USA admits that it has used online advertising, such as Google Ads. Otherwise denied.

20. Roca USA is without knowledge as to the truth of the allegations in paragraph 20; therefore denied.

21. Roca USA admits that it utilizes banner and text advertisements, and that it uses news releases. Otherwise denied.

22. Roca USA is without knowledge as to the truth of the allegations in paragraph 22; therefore denied.

23. Roca USA admits that it has used the illustration in paragraph 23. Roca Labs states that the referenced URLs speak for themselves. Roca Labs is without knowledge as to the truth of the remainder of the allegations in paragraph 23 and therefore denies same.

24. Roca USA and states that the referenced URLs speak for themselves. Otherwise denied.

25. Roca USA states that the referenced URLs speak for themselves. Otherwise denied.

26. Roca USA admits using the advertisement reproduced in paragraph 26. Roca Labs and states that the referenced URLs speak for themselves. Otherwise denied.

27. Roca USA admits using certain documents describing the benefits of its products on its websites. Otherwise denied.

28. Roca USA states that Exhibit B and the information on the RocaLabs.com speak for themselves. Otherwise denied.

29. Roca USA states that Exhibit B, the information on the RocaLabs.com the Terms and Conditions speak for themselves. Otherwise denied.

30. Roca USA states that the content of its websites speaks for itself. Otherwise denied.

31. Roca USA admits that it uses testimonials. Roca Labs states that the content of its websites speaks for itself. Otherwise denied.

32. Roca USA admits that it provides financial incentives to its customers and rewards them from documenting their weight loss using Roca Labs products. Otherwise denied.

33. Roca USA admits the allegations contained in paragraph 33.

34. Roca USA denies the allegations in paragraph 34.

35. Roca USA denies the allegations in paragraph 35.

36. Roca USA states that the content of gastricbypass.me and Exhibit C speak for themselves. Otherwise denied.

37. Roca USA states that gastricbypass.me and Exhibit C speak for themselves. Otherwise denied.

38. Roca USA states that the content of the quoted websites speaks for themselves. Roca USA admits that it sells the Formula and Anti-Cravings at a variety of price points. Otherwise denied.

39. Roca USA admits that customers must complete a qualification process to order products. Exhibit A speaks for itself. Otherwise denied.

40. Roca USA admits that customers must complete a qualification process that includes a health application before they are permitted to order products. The health application, the website and the video speak for themselves. Otherwise denied.

41. Roca USA admits that the customer must check a box acknowledging that they have read and agreed to Roca Labs' terms, privacy and return policies. Otherwise denied.

42. Roca USA admits that when shipping products to customers, it encloses written documentation. Roca USA states that such written documentation speaks for itself. Otherwise denied.

43. Roca USA states that the Roca Labs Procedure Rules & Diet document speaks for itself. Otherwise denied.

44. Roca USA states that package inserts, contracts and other written documentation speaks for themselves. Roca USA admits that to purchase Roca Labs' products at a discount, customers were required to agree not to publicly disparage Roca Labs. Roca USA denies using any sort of clause that prohibits or restrains customers from selecting the product of their choice or that harms the public in any way. Roca USA admits that it has in the past filed lawsuits against customers who have breached their contracts with Roca Labs, and against third parties for tortiously interfering with Roca Labs' contracts with its customers. Otherwise denied.

45. Roca USA admits that the Terms are generally accessible on its websites. Exhibits D-G speak for themselves. Otherwise denied.

46. Roca USA admits that it has required its customers to agree not to publicly disparage Roca Labs. Exhibit D speaks for itself. Otherwise denied.

47. Roca USA admits that it has required its customers to agree not to publicly disparage Roca Labs. Exhibits E-G speak for themselves. Otherwise denied.

48. Roca USA admits that it has required its customers to agree not to publicly disparage Roca Labs. Exhibits D, E-G speak for themselves. The referenced "August 2014 court filing . . . verified by Juravin" speaks for itself. Otherwise denied.

49. Roca USA admits that it has required its customers to agree not to publicly disparage Roca Labs. Exhibits E-G speak for themselves. Otherwise denied.

50. Roca USA admits providing customers with a two-page, large print "Summary" document with each order. Roca USA states that Exhibit H speaks for itself. Otherwise denied.

51. Roca USA admits that it has enforced its contracts and taken action to preserve and enforce its legal rights. Otherwise denied.

52. Roca USA admits that it has taken actions to enforce its contracts and protect its legal rights.

53. Roca USA denied publishing or disclosing any protected health information. Roca Labs states that information disclosed in credit card disputes speaks for itself. Otherwise denied.

54. The allegations in paragraph 54 are legal conclusions to which no response is required. Otherwise denied.

55. The allegations in paragraph 55 are legal conclusions to which no response is required. Otherwise denied.

56. The allegations in paragraph 56 are legal conclusions to which no response is required. Otherwise denied.

57. The allegations in paragraph 57 are legal conclusions to which no response is required. Otherwise denied.

Count I
Deceptive Weight-Loss Claims

58. Roca USA restates and re-alleges its responses to paragraphs 12-40 as if set forth fully herein and denies the remaining allegations in paragraph 58.

59. Denied.

60. Denied.

Count II
False Establishment Claim

61. Roca USA restates and re-alleges its responses to paragraphs 12-40 as if set forth fully herein and denies the remaining allegations in paragraph 61.

62. Denied.

63. Denied.

Count III
Unfair Use of Non-Disparagement Provisions

64. Roca USA restates and re-alleges its responses to paragraphs 12-42 and 44-52 as if set forth fully herein. Otherwise denied.

65. Denied.

66. Denied.

Count IV
Misrepresentations About Gastric Bypass.me

67. Roca USA restates and re-alleges its responses to paragraphs 36-37 as if set forth fully herein. Otherwise denied.

68. Roca USA without knowledge and therefore denied the allegations in paragraph 68.

69. Denied.

Count V

Failure to Disclose Material Connections

70. Roca USA restates and re-alleges its responses to paragraphs 31-37 as if set forth fully herein. Otherwise denied.

71. Roca USA without knowledge and therefore denies the allegations in paragraph 71.

72. Denied.

Count VI
Deceptive Privacy Claim

73. Roca USA restates and re-alleges its responses to paragraphs 38-42 as if set forth fully herein. Otherwise denied.

74. Roca USA without knowledge and therefore denied the allegations in paragraph 74. Otherwise denied.

75. Denied.

Count VII
Deceptive Discount Claim

76. Roca USA restates and re-alleges its responses to paragraphs 44-53 as if set forth fully herein. Otherwise denied.

77. Denied.

78. Denied.

Consumer Injury

79. Denied.

This Court's Power To Grant Relief

80. The allegations in paragraph 80 are legal conclusions to which no response is required. Otherwise denied.

Prayer for Relief

81. Roca USA denies that the FTC is entitled to any relief and requests that this Court deny all relief requested in this paragraph 81, including subparts A, B and C.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The FTC has failed to state a claim upon which relief may be granted.

Second Affirmative Defense

The FTC failed to take any action for nearly five years, and therefore its claims are barred by laches.

Third Affirmative Defense

Damages, if any, were caused by the Plaintiff's failure to act.

Fourth Affirmative Defense

Plaintiff's claim for Unfair Use of Non-Disparagement Provisions fails because it is unsupported by existing law.

Fifth Affirmative Defense

Plaintiff's claim for Failure to Disclose Material Connections fails because there is no legal requirement to disclose that customers are rewarded for providing testimonials showing successful use of the Roca Labs products.

Sixth Affirmative Defense

Plaintiff's claims are barred because it has not and cannot show that consumers sustained any injury or harm.

Seventh Affirmative Defense

Plaintiff's claims fail because Roca Labs actions did not cause injury to consumers.

Eighth Affirmative Defense

Plaintiff's claims are barred by 15 U.S.C. § 57b(d).

Ninth Affirmative Defenses

Plaintiff's claim for Unfair Use of Non-Disparagement Provisions fails because consumers are able to make an informed decision to purchase Roca Labs products at a discount and thereby give up the right to disparage Roca Labs.

Reservation of Right To Add Affirmative Defenses

Roca USA reserves the right to amend to add additional affirmative defenses as they become apparent.

WHEREFORE, Roca Labs Nutraceutical USA, Inc. denies that the FTC is entitled to any relief and respectfully requests that this Court find in favor or Roca Labs Nutraceutical USA, Inc. and against the Federal Trade Commission, deny the FTC's prayer for relief, dismiss this action with prejudice and award Roca Labs Nutraceutical USA, Inc. any additional relief as this Court may deem just and proper.

DATED: October 19, 2015.

Respectfully submitted,

s/Suzette Marteny
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CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will electronically serve copies on all counsel of record. I further certify that I e-mailed the foregoing to counsel for Plaintiff, Carl H. Settlemyer csettlemyer@ftc.gov and Paul Bryan Spelman pspelman@ftc.gov.

s/Suzette Marteny
Attorney