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8  
9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE DISTRICT OF ARIZONA**

11 Federal Trade Commission,  
12  
13 Plaintiff,  
14 v.  
15 Vemma Nutrition Company, *et al.*  
16 Defendants.

Case No. CV-15-01578-PHX-JJT

**DEFENDANT BENSON K.  
BOREYKO'S ANSWER TO  
PLAINTIFF FEDERAL TRADE  
COMMISSION'S COMPLAINT  
FOR PERMANENT  
INJUNCTION AND OTHER  
EQUITABLE RELIEF**

17 Defendant Benson K. Boreyko ("Defendant Boreyko"), by and through  
18 undersigned counsel, hereby answers the Plaintiff Federal Trade Commission's  
19 Complaint for Injunctive and other Equitable Relief dated August 17, 2015 (the  
20 "Complaint");

21 1. Paragraph 1 contains no allegations that require a response. Defendant  
22 Boreyko denies any allegation in Paragraph 1 regarding violation of Section 5(a) of the  
23 FTC Act, 15 U.S.C. § 45(a), and further denies that the FTC is entitled to the relief it  
24 seeks.

25 **JURISDICTION AND VENUE**

- 26 2. Defendant Boreyko admits the allegations in Paragraph 2.  
27 3. Defendant Boreyko admits the allegations in Paragraph 3.  
28

**PLAINTIFF**

4. Responding to the allegations in Paragraph 4, Defendant Boreyko admits that the FTC is an independent agency of the United States Government created by statute. Defendant Boreyko further admits that the FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. Defendant Boreyko denies any allegation in Paragraph 4 regarding violation of Section 5(a) of the FTC Act.

5. The allegations in Paragraph 5 set forth conclusions of law as to which no response is required. However, if deemed to contain allegations of fact, Defendant Boreyko denies the allegations.

**DEFENDANTS**

6. The allegations in Paragraph 6 are not directed at Defendant Boreyko, and therefore require no response in this answer. However, if deemed to contain allegations against Defendant Boreyko, Defendant Boreyko denies the allegations. Defendant Boreyko affirmatively alleges that Vemma Nutrition Company's advertisement, marketing, distribution, or sale of "business opportunities" do not constitute a violation of Section 5(a) of the FTC Act.

7. The allegations in Paragraph 7 are not directed at Defendant Boreyko, and therefore require no response in this answer. However, if deemed to contain allegations against Defendant Boreyko, Defendant Boreyko denies the allegations. Defendant Boreyko affirmatively alleges that Vemma International Holdings, Inc.'s advertisement, marketing, distribution, or sale of "business opportunities" do not constitute a violation of Section 5(a) of the FTC Act.

8. Defendant Boreyko admits that he is the Chief Executive Officer, Secretary, and a director of Vemma Nutrition Company, that he is the President, Secretary, and a director of Vemma International Holdings, Inc., and that he resides in this District. Defendant Boreyko denies the remaining allegations in Paragraph 8.

9. The allegations in Paragraph 9 are not directed at Defendant Boreyko,

1 and therefore require no response. However, if deemed to contain allegations against  
2 Defendant Boreyko, Defendant Boreyko denies the allegations.

3 10. The allegations in Paragraph 10 are not directed at Defendant Boreyko,  
4 and therefore require no response. However, if deemed to contain allegations against  
5 Defendant Boreyko, Defendant Boreyko denies the allegations.

6 **COMMON ENTERPRISE**

7 11. The allegations in Paragraph 11 are not directed at Defendant Boreyko,  
8 and therefore require no response. However, if deemed to contain allegations against  
9 Defendant Boreyko, Defendant Boreyko denies the allegations.

10 **COMMERCE**

11 12. The allegations in Paragraph 12 are not directed at Defendant Boreyko,  
12 and therefore require no response. However, if deemed to contain allegations against  
13 Defendant Boreyko, Defendant Boreyko denies the allegations.

14 **DEFENDANTS' BUSINESS PRACTICES**

15 13. Responding to the allegations in Paragraph 13, Defendant Boreyko  
16 admits that Vemma Nutrition Company was founded in 2004, that Vemma Nutrition  
17 Company is a multilevel marketing company that promotes health and wellness drinks  
18 through independent distributors called "Affiliates," that the products promoted  
19 include health, energy and weight loss products, and that Vemma International is the  
20 sole or partial owner of certain entities operating in various international markets.  
21 Defendant Boreyko denies the remaining allegations in Paragraph 13.

22 14. Responding to the allegations in Paragraph 14, Defendant Boreyko  
23 admits that Affiliates can earn financial and other rewards for building two "teams" or  
24 "downlines" of individuals who also enroll with the company, either as an Affiliate, if  
25 the individual is interested in the business opportunity, or as a customer, if the  
26 individual is primarily interested in purchasing Vemma products for his or her own  
27 consumption. Defendant Boreyko denies the remaining allegations in Paragraph 14.

28 15. Defendant Boreyko denies the allegations in Paragraph 15.

1           16. Responding to the allegations in Paragraph 16, Defendant Boreyko  
2 admits only that Vemma Nutrition Company earned more than \$200 million in annual  
3 revenues in 2013 and 2014. Defendant Boreyko denies the allegation that Vemma  
4 Nutrition Company earned this money using a business model that “depends upon  
5 recruiting individuals to participate in Vemma as Affiliates and encouraging them to  
6 purchase Vemma Products in connection with such participation, rather than selling  
7 products to ultimate-user consumers.” Defendant Boreyko affirmatively alleges that  
8 virtually all revenues came from the sale of Vemma products to “ultimate users” –  
9 both Customers and Affiliates who purchased product for their personal consumption  
10 or resale.

11                           **Defendants’ Sales and Marketing Activities**

12           17. Responding to the allegations in Paragraph 17, Defendant Boreyko  
13 admits only that the companies promote the Vemma program through a variety of  
14 channels and that Defendant Boreyko has spoken at events promoting Vemma’s  
15 products and opportunities. Defendant Boreyko denies the allegation that  
16 “[o]ppportunity events are meetings designed to motivate and train Affiliates and to  
17 recruit new Affiliates,” and affirmatively alleges that opportunity events are also  
18 designed to promote the sale of Vemma’s products. The allegations regarding  
19 Defendant Alkazin are not directed at Defendant Boreyko, and therefore require no  
20 response. However, if deemed to contain allegations against Defendant Boreyko,  
21 Defendant Boreyko denies the remaining allegations.

22           18. Defendant Boreyko denies the allegations in Paragraph 18.

23           19. Responding to the allegations in Paragraph 19, Defendant Boreyko  
24 admits only that there was a campaign known as “YPR.” Defendant Boreyko denies  
25 the remaining allegations in Paragraph 19.

26           20. Defendant Boreyko denies the allegations in Paragraph 20.

27           21. Defendant Boreyko denies the allegations in Paragraph 21.

28           22. Defendant Boreyko denies the allegations in Paragraph 22.

1           23. Defendant Boreyko denies the allegations in Paragraph 23.

2           24. Defendant Boreyko denies the allegations in Paragraph 24, and  
3 affirmatively alleges that the quote in Paragraph 24 is taken out of context.

4           25. Defendant Boreyko denies the allegations in Paragraph 25, and  
5 affirmatively alleges that the quote in Paragraph 25 is incomplete and is taken out of  
6 context.

7           26. Defendant Boreyko denies the allegations in Paragraph 26.

8           27. Defendant Boreyko denies the allegations in Paragraph 27.

9           28. Defendant Boreyko denies the allegations in Paragraph 28, and  
10 affirmatively alleges that the quote in Paragraph 28 is incomplete and is taken out of  
11 context.

12          29. Defendant Boreyko denies the allegations in Paragraph 29.

13          30. Defendant Boreyko admits that there are training materials on the  
14 Vemma web site. Defendant Boreyko denies the rest of the allegations in Paragraph  
15 30.

16          31. Defendant Boreyko admits that Vemma provides web site support for its  
17 Affiliates. Defendant Boryeko denies the rest of the allegations in Paragraph 31.

18          32. The allegations in Paragraph 32 are not directed at Defendant Boreyko,  
19 and therefore require no response. However, if deemed to contain allegations against  
20 Defendant Boreyko, Defendant Boreyko denies the allegations.

21                                   **Defendants' Income Claims**

22          33. Defendant Boreyko denies the prefatory allegations in Paragraph 33, and  
23 affirmatively alleges that the quotes in Paragraph 33 are incomplete and are taken out  
24 of context.

25          34. Defendant Boreyko denies the prefatory allegations in Paragraph 34, and  
26 affirmatively alleges that the quotes in Paragraph 34 are incomplete and are taken out  
27 of context.

28          35. The allegations in Paragraph 35 are not directed at Defendant Boreyko,

1 and therefore require no response. However, if deemed to contain allegations against  
2 Defendant Boreyko, Defendant Boreyko denies the allegations.

3 36. The allegations in Paragraph 36 are not directed at Defendant Boreyko,  
4 and therefore require no response. However, if deemed to contain allegations against  
5 Defendant Boreyko, Defendant Boreyko denies the allegations.

6 37. Defendant Boreyko denies the prefatory allegations in Paragraph 37, and  
7 affirmatively alleges that the quotes in Paragraph 37 are incomplete and are taken out  
8 of context.

9 38. Defendant Boreyko denies the allegations in Paragraph 38.

10 39. Defendant Boreyko denies the allegations in Paragraph 39.

11 40. Defendant Boreyko denies the prefatory allegations in Paragraph 40, and  
12 affirmatively alleges that the quotes in Paragraph 40 are incomplete and are taken out  
13 of context.

14 41. Defendant Boreyko denies the prefatory allegations in Paragraph 41, and  
15 affirmatively alleges that the quotes in Paragraph 41 are incomplete and are taken out  
16 of context.

17 42. The allegations in Paragraph 42 are not directed at Defendant Boreyko,  
18 and therefore require no response. However, if deemed to contain allegations against  
19 Defendant Boreyko, Defendant Boreyko admits that Vemma publishes income  
20 disclosures, and Defendant Boreyko denies the rest of the allegations in Paragraph 42.

21 43. The allegations in Paragraph 43 are not directed at Defendant Boreyko,  
22 and therefore require no response. However, if deemed to contain allegations against  
23 Defendant Boreyko, Defendant Boreyko denies the allegations.

24 44. The allegations in Paragraph 44 are not directed at Defendant Boreyko,  
25 and therefore require no response. However, if deemed to contain allegations against  
26 Defendant Boreyko, Defendant Boreyko denies the allegations.

27 **Vemma's Compensation Plan**

28 45. Defendant Boreyko admits the allegations in Paragraph 45.

1           46. Defendant Boreyko admits the allegations in Paragraph 46.

2           47. Defendant Boreyko denies the allegations in Paragraph 47.

3           48. Responding to the allegations in Paragraph 48, Defendant Boreyko  
4 admits that in order to be eligible for financial compensation under the compensation  
5 plan an Affiliate must be “qualified.” Defendant Boreyko further admits that under the  
6 compensation plan in effect prior to the filing of the Complaint, to be qualified an  
7 Affiliate must have (1) a minimum of 120 points in “personal volume” each month,  
8 and (2) at least one “active” customer or affiliate on each of the Affiliate’s left and  
9 right teams. Defendant Boreyko denies the remaining allegations contained in  
10 Paragraph 48.

11           49. Responding to the allegations in Paragraph 49, Defendant Boreyko  
12 admits that under the compensation plan in effect prior to the filing of the Complaint,  
13 Affiliates could achieve 120 personal volume points in a month by personally  
14 purchasing products worth that same number in “qualifying volume” points or “QV”  
15 for personal consumption or resale, or by having double that amount (i.e., 240 QV)  
16 purchased by their personally enrolled customers, or some combination of both.  
17 Defendant Boreyko denies the remaining allegations contained in Paragraph 49.

18           50. Responding to the allegations in Paragraph 50, Defendant Boreyko  
19 admits that under the compensation plan in effect prior to the filing of the Complaint,  
20 to be “active” customers or affiliates must have 60 personal volume points in a month  
21 by personally purchasing products worth 60 QV that month for personal consumption  
22 or resale, having double that purchased by their personally enrolled customers, or some  
23 combination of both. Defendant Boreyko denies the remaining allegations contained  
24 in Paragraph 50.

25           51. Defendant Boreyko denies the allegations in Paragraph 51.

26           52. Defendant Boreyko denies the allegations in Paragraph 52.

27           53. Responding to the allegations in Paragraph 53, Defendant Boreyko  
28 alleges that Plaintiff has not accurately and completely summarized the compensation



1 plan. Defendant Boreyko denies all remaining allegations in Paragraph 53.

2 54. Defendant Boreyko denies the allegations in Paragraph 54.

3 55. Defendant Boreyko denies the allegations in Paragraph 55.

4 56. Defendant Boreyko denies the allegations in Paragraph 56.

5 57. Defendant Boreyko denies the allegations in Paragraph 57.

6 58. Responding to the allegations in Paragraph 58, Defendant Boreyko  
7 admits only that Rank Advancement Awards exist. Defendant Boreyko denies the  
8 remaining allegations in Paragraph 58.

9 59. Responding to the allegations in Paragraph 59, Defendant Boreyko refers  
10 to Vemma's compensation plan for its true and complete contents and denies that  
11 Plaintiff has accurately and completely summarized them. Defendant Boreyko denies  
12 all remaining allegations in Paragraph 59.

13 60. Responding to the allegations in Paragraph 60, Defendant Boreyko refers  
14 to Vemma's compensation plan for its true and complete contents and denies that  
15 Plaintiff has accurately and completely summarized them. Defendant Boreyko denies  
16 all remaining allegations in Paragraph 60.

17 61. Defendant Boreyko denies the allegations in Paragraph 61.

18 62. Defendant Boreyko admits that Vemma restricts the sale of Vemma  
19 Products on eBay and Craigslist, but Defendant Boreyko denies the remaining  
20 allegations in Paragraph 62.

21 63. Defendant Boreyko denies the allegations in Paragraph 63.

22 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

23 64. The allegations in Paragraph 64 set forth conclusions of law as to which  
24 no response is required. However, if deemed to contain allegations of fact, Defendant  
25 Boreyko denies the allegations.

26 65. The allegations in Paragraph 65 set forth conclusions of law as to which  
27 no response is required. However, if deemed to contain allegations of fact, Defendant  
28 Boreyko denies the allegations.



**COUNT I**

**Illegal Pyramid**

66. Defendant Boreyko denies the allegations in Paragraph 66.

67. The allegations in Paragraph 67 set forth conclusions of law as to which no response is required. However, if deemed to contain allegations of fact, Defendant Boreyko denies the allegations.

**COUNT II**

**Income Claims**

68. Defendant Boreyko denies the allegations in Paragraph 68.

69. Defendant Boreyko denies the allegations in Paragraph 69.

70. The allegations in Paragraph 70 set forth conclusions of law as to which no response is required. However, if deemed to contain allegations of fact, Defendant Boreyko denies the allegations.

**COUNT III**

**Failure to Disclose**

71. Defendant Boreyko denies the allegations in Paragraph 71.

72. Defendant Boreyko denies the allegations in Paragraph 72.

73. The allegations in Paragraph 73 set forth conclusions of law as to which no response is required. However, if deemed to contain allegations of fact, Defendant Boreyko denies the allegations.

74. The allegations in Paragraph 74 set forth conclusions of law as to which no response is required. However, if deemed to contain allegations of fact, Defendant Boreyko denies the allegations.

**COUNT IV**

**Means and Instrumentalities**

75. Defendant Boreyko denies the allegations in Paragraph 75.

76. The allegations in Paragraph 76 set forth conclusions of law as to which no response is required. However, if deemed to contain allegations of fact, Defendant

1 Boreyko denies the allegations.

2 **COUNT V**

3 **Relief Defendant**

4 77. The allegations in Paragraph 77 are not directed at Defendant Boreyko,  
5 and therefore require no response. However, if deemed to contain allegations against  
6 Defendant Boreyko, Defendant Boreyko denies the allegations.

7 78. The allegations in Paragraph 78 are not directed at Defendant Boreyko,  
8 and therefore require no response. However, if deemed to contain allegations against  
9 Defendant Boreyko, Defendant Boreyko denies the allegations.

10 79. The allegations in Paragraph 79 are not directed at Defendant Boreyko,  
11 and therefore require no response. However, if deemed to contain allegations against  
12 Defendant Boreyko, Defendant Boreyko denies the allegations.

13 **CONSUMER INJURY**

14 80. Defendant Boreyko denies the allegations in Paragraph 80.

15 **THIS COURT'S POWER TO GRANT RELIEF**

16 81. The allegations in Paragraph 81 set forth conclusions of law as to which  
17 no response is required. However, if deemed to contain allegations of fact, Defendant  
18 Boreyko denies the allegations.

19 82. Defendant Boreyko denies all allegations of the Complaint, either  
20 express or implied, not specifically admitted to or otherwise pled to herein.

21 **AFFIRMATIVE DEFENSES**

22 A. The Complaint fails to state a claim upon which relief can be granted.

23 B. The FTC's claims for injunctive relief are not authorized or available at  
24 law or equity.

25 C. The FTC's claims for injunctive relief, as sought here, were and are  
26 unconstitutional.

27 D. Defendant Boreyko acted reasonably, in good faith, and in accordance  
28 with any applicable standards and duties.

1 E. The FTC and/or the consumers it purports to represent have failed to  
2 mitigate their losses, if any.

3 F. Any losses sustained by the FTC and/or the consumers it purports to  
4 represent were caused by the acts or omissions of third parties over whom Defendant  
5 Boreyko had no control or right to control.

6 G. Consumers purportedly represented by the FTC knowingly and  
7 voluntarily, and possibly unreasonably, exposed themselves to any claimed losses with  
8 knowledge or appreciation of the risk involved.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, having fully responded to the Complaint, Defendant Boreyko  
11 respectfully requests that the FTC's requests for a permanent injunction and other  
12 equitable relief be denied in their entirety, and that the Court award Defendant  
13 Boreyko any further relief the Court deems appropriate.

14 Respectfully submitted this 30th day of September 2015.

15 GALLAGHER & KENNEDY, P.A.

16 By /s/ John R. Clemency  
17 John R. Clemency  
18 Lindsy M. Weber  
19 2575 East Camelback Road  
20 Phoenix, Arizona 85016-9225  
21 *Attorneys for Benson K. Boreyko a/k/a*  
22 *B.K. Boreyko*

23 **CERTIFICATE OF SERVICE**

24 I hereby certify that on this 30<sup>th</sup> day of September, 2015, I electronically  
25 transmitted a PDF version of this document to the Clerk of the Court, using the  
26 CM/ECF System for filing and for transmittal of a Notice of Electronic Filing to all  
27 CM/ECF registrants and non-registered parties.

28 /s/ Gloria Kannberg