

Testimony

of

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Hearing on

Protecting Consumers from False and
Deceptive Advertising of Weight-Loss
Products

Before the

United States Senate Committee on
Commerce, Science, & Transportation

Subcommittee on
Consumer Protection, Product Safety,
and Insurance

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A service of the advertising industry and Council of Better Business Bureaus

I appreciate the opportunity to describe for the Subcommittee the ongoing work of the advertising industry's system of self-regulation, particularly as it applies to weight-loss advertising.

According to a recent Gallup poll,¹ 51 percent of American consumers want to lose weight. Weight-loss products come in all sizes and flavors: pills, creams, patches, diets and devices – to name a few. Weight-loss products and fads have long been ubiquitous and popular with consumers. They are, therefore, a primary subject of advertising self-regulatory review proceedings. Current concerns about the nation's spiraling obesity rates can make unsubstantiated or exaggerated claims of effortless weight loss even more appealing to consumers than in the past. And that means it is even more important to have a process for separating truthful claims about effective products from exaggerated, unsupported or outright false claims about products that don't work.

Advertising Self-Regulatory Council (ASRC)

The advertising industry's self-regulatory system was created in 1971 when three leading advertising trade organizations – the 4A's, American Advertising Federation (AAF) and Association of National Advertisers (ANA) – together with the Council of Better Business Bureaus (CBBB), announced a new alliance to promote truthful and accurate advertising. That alliance, now called the Advertising Self-Regulatory Council or ASRC, sets policies and procedures for advertising industry self-regulation.

In addition to the founding partners, the ASRC Board now includes the chief executives of the Electronic Retailing Association (ERA) and Interactive Advertising Bureau (IAB), giving ASRC significant reach throughout the advertising and marketing community.

Advertising Self-Regulation

ASRC has pioneered a unique form of self-regulation. Our programs, described in Appendix A, are:

- Impartial and administered by a third party – the Council of Better Business Bureaus.
- Comprehensive – they apply to all national advertisers in all media
- Transparent – all decisions are public both for guidance to the industry and to ensure public accountability.
- Effective – although the self-regulatory system is voluntary, there are consequences for non-participation or non-compliance, including public referral to the appropriate government agency, usually the Federal Trade Commission (FTC).

Administration by the Council of Better Business Bureaus (CBBB)

To ensure the impartiality and independence of the self-regulatory process, the system is administered by the CBBB. The CBBB is the network hub for the Better Business Bureau system in the United States and Canada, which works to promote trust in the marketplace.

¹ ***Americans' Desire to Shed Pounds Outweighs Effort***
<http://www.gallup.com/poll/166082/americans-desire-shed-pounds-outweighs-effort.aspx>

Operation of the Self-Regulatory System

All ASRC programs operate on a standard model. While the programs accept challenges and resolve disputes between competing advertisers, they also actively monitor national advertising for questionable claims or practices that may violate industry guidelines² or principles.³

Active monitoring is particularly important in the weight-loss area where consumers are often reluctant to complain and may attribute poor results from the products to themselves, rather than to the product.

Staff monitoring is supplemented by a robust competitor challenge process. As the United States Supreme Court observed last week: "Competitors who manufacture or distribute products have detailed knowledge regarding how consumers rely on certain sales and marketing strategies. Their awareness of unfair competition practices may be far more immediate and accurate than that of agency rulemakers and regulators."⁴

By providing a fast, expert forum to resolve these complaints and a transparent public record of the resolution, ASRC programs harness this expertise to serve the interests of the public.

Self-regulatory cases for weight-loss products may involve a range of issues from technical and easy-to-remedy disclosure questions, to questions about the validity of complex underlying studies. In some cases, we recommend that the advertiser make certain modifications to the advertising. In others, we may recommend discontinuance of the entire ad. If an advertisement is the subject of an FTC order, court order or ongoing litigation we will advise the parties that the complaint is not, or is no longer, appropriate for investigation in this forum.

When a self-regulatory inquiry is opened, the advertiser is asked to provide its support for a questioned claim. The advertiser's support for the claim is reviewed by skilled attorney staff, who then issue a decision that analyzes the claims made in the ad, the advertiser's support (substantiation) for the claims and the fit between the two.

The advertising self-regulatory process is both similar to and different from government enforcement. It applies the same standards for claim substantiation as the FTC, but it does not have subpoena power to compel the production of documents and relies on evidence voluntarily produced by the parties. The self-regulatory process is comparatively short. Both the National Advertising Division (NAD) and Electronic Retailing Self-Regulation Program (ERSP) strive to resolve cases in 60 to 90 days.

Overall, the self-regulatory system issues roughly 200 decisions each year. While there are no sanctions (penalties, redress, etc.) beyond requiring discontinuance or modification of advertising, the relative time-to-decision makes self-regulation a very valuable addition to the existing government regulatory framework for advertising. It helps ensure that industry members comply with strong standards and frees government resources to focus on the most egregious cases. Overall, more than 90%

² ***Self-Regulatory Program for Children's Advertising***
<http://www.asrcreviews.org/wp-content/uploads/2012/04/Guidelines-FINAL-FINAL-REVISED-20142.pdf>

³ ***The DAA Self-Regulatory Principles***
<http://www.aboutads.info/principles>

⁴ ***Pom Wonderful LLC v. Coca-Cola Co.***

Supreme Court of the United States, Slip Opinion at page 11-12, June 12, 2014

of advertisers voluntarily participate in the program and make recommended changes to their advertising.

Funding for Self-Regulation

The advertising-self regulatory system is funded entirely by the advertising industry through the sales of products and services – including dispute resolution services and online access to self-regulatory decisions – national partnerships with the CBBB and direct funding of programs through trade associations.

FTC Support for Self-Regulation

During more than 40 years of practice, the advertising self-regulatory system has received strong support from the FTC.⁵

Although there is no formal relationship between the government and the self-regulatory system, the FTC's ongoing support for self-regulation contributes meaningfully to the success of the process. Referrals to the FTC of advertisers that refused to participate in the self-regulatory process have resulted in FTC lawsuits and significant monetary penalties.⁶

Further, FTC guidance on advertising issues, including the "FTC Guides Concerning the Use of Endorsement and Testimonials in Advertising," "Dietary Supplement Advertising Guidelines" and its recently published "Gut Check: A Reference Guide for Media on Spotting False Weight Loss Claims," provides valuable counsel for advertisers and self-regulatory bodies. The FTC's guidance is further enforced through the decisions of the self-regulatory system, which applies FTC standards to its review of specific ads.

⁵ **"Truth or Consequences: The FTC Approach to Advertising"**

Remarks of Commissioner Jon Leibowitz at The National Advertising Division Annual Conference – September 24, 2007

"All of us at the FTC appreciate the NAD's advertising review work. It is more important today than it has ever been. ... It really helps to have an alternative procedure that is quick, fair, and well-respected."

<http://www.ftc.gov/speeches/leibowitz/070924bbbreremarks.pdf>

The Federal Trade Commission at 100: Into Our Second Century

The Continuing Pursuit of Better Practices: A Report by Federal Trade Commission Chairman William E. Kovacic – January 2009.

"Meaningful self-regulation is an important complement to the Commission's law enforcement efforts – particularly in the area of deceptive marketing practices. For example, the program administered by the National Advertising Division/National Advertising Review Council ("ASRC") arm of the Council of Better Business Bureaus ("CBBB") has worked well to obviate the need for Commission action in some instances." <http://www.ftc.gov/ftc/workshops/ftc100/docs/ftc100rpt.pdf>.

Self-Regulation in the Infomercial Industry:

Deborah Platt Majoras, Chairman, Federal Trade Commission
Before the Electronic Retailing Self-Regulation Program – April 2006
(Footnote No. 3, listing FTC statements in support of self-regulation since 1978.)
<http://www.ftc.gov/speeches/majoras/060503eraspeech.pdf>.

⁶ **Court Orders Spammers to Give Up \$3.7 Million**

<http://www.ftc.gov/opa/2009/07/spear.shtm> ;

Better Business Bureau Advertising Reviews

The work of the national advertising self-regulatory programs complements the role of the Better Business Bureau (BBB) system in protecting consumers. BBBs maintain active advertising monitoring programs in their communities under the BBB Code of Advertising. BBBs handle hundreds of advertising review cases, including pricing claims, inadequate disclosures and qualifications, superiority claims, rebates and warranty and guarantee claims.

BBBs also work to resolve complaints about business practices and are in a unique position to identify potential scams – both locally and nationally – and warn consumers about fraud. BBBs also have excellent access to the media outlets in their communities.

The BBB notes that more than 4,300 complaints about weight-loss supplements were filed nationwide in 2013, including complaints about paying for but not receiving merchandise, refund and exchange issues and potentially misleading claims.

The BBB system, which makes its ratings and business reviews available to all consumers, can provide consumers a resource by allowing them to check a company's complaint history before making a purchase.

Complaint data from the BBB system is shared with both federal and state law enforcement agencies. In fact, complaints from the BBB system makes up more than 20 percent of the data in the FTC Consumer Sentinel fraud detection database and information from complaints filed with BBBs is often used by federal and state law enforcement agencies to build cases, including cases against companies that sell bogus weight-loss products.

Advertising Self-Regulation and Weight-loss Claims

Truthful and substantiated advertising for weight-loss products, diets and exercise devices that work can be of substantial assistance to consumers seeking to achieve and maintain a healthy weight.

Misleading, unsubstantiated or exaggerated advertising claims – often for products promising quick, effortless weight loss – have the opposite effect, causing both health and economic injury to consumers.

In addition to harm done to consumers, these types of claims also injure honest competitors who promote effective products and whose ads acknowledge the difficulty consumers may face in losing weight and sustaining weight loss.

Misleading advertising both misappropriates sales that would otherwise go to legitimate products and services and undermines the credibility of advertising generally, making it more expensive for honest advertisers to reach their audiences. Recognizing these twin harms, two industry trade associations – The Electronic Retailing Association (ERA) and the Council for Responsible Nutrition (CRN) – have stepped forward to fund impartial monitoring and oversight of advertising claims, including a substantial number of weight-loss claims.

In 2004, the ERA funded the development of the ERSP program, which provides independent monitoring of all direct-response advertising for a wide range of products, including weight-loss products.

Since its founding, the ERSP program has issued more than 350 decisions, often requiring modification or discontinuance of the challenged advertising. Almost one-third of all ERSP cases have involved weight-loss claims.

In 2006, CRN provided the National Advertising Division with funding for an attorney who would concentrate on monitoring advertising claims for dietary supplements. Since 2006, NAD, through this initiative, has examined advertising claims made for 164 separate supplements, including 30 weight-loss products.

Although the majority of advertisers comply with the recommendations of the self-regulatory system, those who decline to participate in an ERSP or NAD review or refuse to implement recommended changes are referred to the most appropriate federal regulatory agency, most often the FTC.

Current Issues in Weight-Loss Advertising

While diet fads come and go, certain troublesome claims regularly appear, including claims that a supplement is "clinically proven" to work or is "doctor recommended." Claims that state or imply that products will provide fast, effortless weight loss without any changes to diet or exercise are published over and over again. (Appendix B: Weight-Loss Claims Digest)

It is not uncommon to find that a product has not been tested or that the results of testing on a product's ingredients do not support the advertiser's claims. Although the FTC's 2009 revisions to the "Endorsements and Testimonial Guides" have improved compliance, unsupported testimonials from "real users" and misleading "before" and "after" pictures remain a significant concern.

Some media, like the major national broadcast television networks, and some new media like Google, have relatively sophisticated advertising clearance and screening processes. Others do not, and should be called upon to implement effective screening protocols, particularly for weight-loss products. Such screening is good for consumers, for honest advertisers and for the media in general.

Meanwhile, the volume of media channels available to promote products has exploded, along with the use of "affiliate marketing" in which multiple sellers make – and often elaborate on – claims made for weight-loss products like acai berry and green coffee products. Products promoted by unsubstantiated or exaggerated claims are often marketed through spam emails and all marketers are increasingly using social media – Pinterest, for example – to promote their products.

For example, a recent NAD decision addressed claims made for a product called Garcinia Cambogia Formula, including claims that the product had been clinically proven to promote four times more weight loss than diet and exercise.

Some of the claims were contained in a "Special Report" on how to lose 28 lbs. in one month with products recommended by Dr. Oz.

Other claims included:

- "It's scientifically proven to tear away fat from your body. In studies taken out by renowned health research institution Queens University in Canada, Garcinia Cambogia was proven to ignite your metabolism and therefore fat burning capabilities by around 300% when taken regularly."

The advertiser asserted that the "Special Report" and claims made in that report were posted by an unauthorized third party and immediately took steps to have the report taken off the Internet.

This now deleted "Special Report" appeared to be a "fake" news report similar to advertisements by acai berry supplement manufacturers promising rapid and dramatic weight loss that were the subject of FTC enforcement actions in recent years.

NAD determined that the remaining product performance and ingredient claims promising weight and fat loss should be discontinued based on the lack of reliable scientific evidence demonstrating that the product, or its ingredients, elicit the claimed benefits. The advertiser fully cooperated in the review and agreed to discontinue the claims reviewed by NAD.

Additionally, we have seen – and taken action against – the use of seemingly independent diet product review sites that are in fact controlled by marketers. (For example, one marketer operated a diet-review site that stated: "there are now literally thousands of weight-loss products and diet programs available to choose from ... Our goal is to give you a quick snapshot of what options are available to you.")

Finally, BBB advertising review programs from around the country indicate consumer complaints and ad review issues focusing on weight-loss clinics.

The BBB notes that weight-loss products and programs (like weight-loss clinics) marketed with exaggerated or unsubstantiated claims are often also associated with problematic billing practices, poorly or entirely undisclosed negative option "auto ship" plans and a failure to make refunds for returned products.

While BBB notes that overall complaints about negative-option shipping issues are decreasing and are not limited only to weight-loss supplements, complaints regarding the practice remain significant.

Recommendations

Although there have been significant efforts by federal, state and self-regulatory organizations to control unsubstantiated, exaggerated and misleading claims in the weight-loss marketplace, more can be done.

State and federal enforcement actions are critically important and support the self-regulatory system by underscoring for companies working in the weight-loss marketplace the seriousness of these claims.

Trade associations whose members include representatives of weight-loss industries should follow the example set by ERA and CRN and step up to support self-regulation of the marketplace. Experience shows self-regulation can be an effective tool in producing prompt, voluntary compliance by many advertisers. That is good for honest competitors in the weight-loss industry and it is good for consumers.

The FTC's renewed effort to enlist the consistent support of the media in guarding against the most egregious weight-loss claims is key, as well. Guidance from both the FTC and the self-regulatory system is public and available for review.

Small- and medium-sized media outlets may not be able to conduct the detailed review of weight-loss advertising claims that NAD and ERSP apply, but they can

and should check the advertisements they accept for publication against the very straightforward screening criteria suggested by the FTC, review the ads against self-regulatory decisions already published by the ASRC and check the advertiser's complaint history with the BBB.

These steps aren't foolproof, but collectively they help bleed false and misleading claims from the weight-loss marketplace, level the playing field for honest advertisers and help bolster consumer confidence in advertising.

Appendix A: Advertising Industry Self-Regulation In Brief



Advertising Industry Self-Regulation

Advertising Industry Self-Regulation has pioneered the use of independent, transparent oversight to assure compliance with industry standards. More than 90 percent of advertisers who participate in the advertising industry's system of self-regulation voluntarily comply with its decisions. Failure to participate or to comply with decisions results in public referral to the appropriate government agency.

The Advertising Self-Regulatory Council is the governing body for advertising self-regulation. ASRC's 11-member Board of Directors is comprised of the top leadership of the 4A's, American Advertising Federation (AAF), Association of National Advertisers (ANA), Council of Better Business Bureaus (CBBB), Electronic Retailing Association (ERA) and Interactive Advertising Bureau (IAB).

The Self-Regulatory Programs:

- **NAD** – The National Advertising Division (NAD) monitors national advertising in all media, enforcing high standards of truth and accuracy. NAD examines advertising claims made for goods and services as diverse and critical as telecommunications, infant nutrition, over-the-counter medications and dietary supplements and “green” products. NAD accepts complaints from consumers, competing advertisers and local Better Business Bureaus. NAD's decisions represent the single largest body of advertising decisions in the U.S.

In addition to its own monitoring, NAD provides a fast, expert forum for the resolution of competitors' disputes. NAD handles about 150 cases each year and publicly reports its formal decisions.

- **NAD/CRN** – Created in cooperation with the Council for Responsible Nutrition, the NAD/CRN program has expanded NAD's review of advertising for dietary supplements, a nearly \$35 billion industry.
- **Accountability Program** – Developed in cooperation with the Digital Advertising Alliance (DAA), the Online Interest-Based Advertising Accountability Program is charged with ensuring industry compliance with the Self-Regulatory Principles for Online Behavioral Advertising (Principles). The Principles require third parties to provide consumers with an easy-to-use mechanism that allows the consumer to exercise choice regarding the collection and use of data from their device for online behavioral advertising

(OBA) purposes. The Accountability Program announced its first formal decisions in November 2011.

- CARU – Recognizing the special vulnerability of young children, the Children's Advertising Review Unit (CARU) holds advertisers to a high standard of truth and appropriateness when they direct advertising to young children. Among other things, CARU's guidelines provide that advertisers can not state or imply that their products will make children more popular with their peers, advertise vitamins or other products that carry "keep out of reach of children" labels, or advertise products that are unsafe for young children to use. CARU examines advertising in all media, including electronic media, and monitors Websites to assure that they are compliant with CARU's guidelines.
- The Initiative – The Children's Food and Beverage Advertising Initiative (Initiative) is an ASRC-endorsed program, run by the CBBB. The Initiative responds to concerns regarding food advertising to young children. It is comprised of 17 leading food and beverage companies. It promotes the advertising of healthier products in children's media and publishes regular reports on compliance with its principles.
- ERSP – Developed with the Electronic Retailing Association, the Electronic Retailing Self-Regulation Program (ERSP) examines the truth and accuracy of core claims made in electronic direct-response advertising. ERSP monitors the \$170 billion direct-response marketplace, providing a strong self-regulatory presence on the frontier of electronic commerce.
- NARB – The National Advertising Review Board is the appellate body of the self-regulatory system. It is made up of industry professionals who hear appeals of decisions by NAD and CARU. NARB panel members are nominated by the ASRC Board of Directors.

ASRC programs are funded through a variety of sources, including through the support of industry associations (ERA, CRN, Digital Advertising Alliance), the direct support of children's advertisers and child-directed media and revenue from the sale of products and services. National Partnerships with the CBBB makes up the remainder.

Self-regulation is good for consumers. The self-regulatory system monitors the marketplace, holds advertisers responsible for their claims and practices and tracks emerging issues and trends.

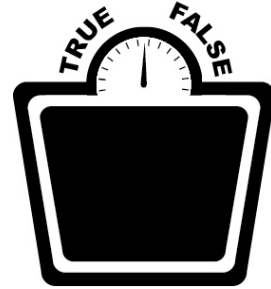
Self-regulation is good for advertisers. Rigorous review serves to encourage consumer trust; the self-regulatory system offers an expert, cost-efficient, meaningful alternative to litigation and provides a framework for the development of a self-regulatory solution to emerging issues.

To learn more about supporting advertising industry self-regulation, please visit us at: www.asrcreviews.org.

Appendix B: Weight-Loss Claims Digest



A service of the advertising industry and Council of Better Business Bureaus



Weight-Loss Claims Digest

The National Advertising Division (NAD) and Electronic Retailing Self-Regulation Program (ERSP) are investigative units of the U.S. advertising industry's system of self-regulation.

NAD seeks to ensure that claims made in national advertising are truthful, accurate and not misleading. NAD requires that objective product performance claims made in advertising be supported by competent and reliable evidence.

NAD cases can be initiated through staff monitoring of advertising claims or through "challenges" to advertising claims filed by competitors, consumers, or public-interest groups. NAD also receives a significant number of dietary supplements cases from the Council for Responsible Nutrition (CRN) initiative. CRN, a trade association representing dietary supplement manufacturers, files challenges with NAD to encourage manufacturers to provide substantiation for their advertising claims to ensure that claims are truthful, not misleading and are substantiated with credible scientific evidence.

Since 2006, NAD and the National Advertising Review Board – the appellate arm of the self-regulatory system – have issued more than 30 decisions that specifically addressed claims made for "weight-loss" supplements.

ERSP is responsible for evaluating the truth and accuracy of core claims made in direct response advertising. ERSP inquires about the evidentiary support that a marketer possesses for claims made in direct-response advertising, and determines whether the marketer has provided a reasonable basis for the representations. Advertising comes to the attention of ERSP through its monitoring program, consumers, and challenges from competitors.

While diet fads come and go, certain claims regularly appear in advertising for weight-loss products, including claims that a product is "clinically proven," "doctor recommended," or works without any changes in diet or exercise.

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It is not uncommon to find that a product has not been tested or that the results of testing on a product's ingredients do not support the claims made. Unsupported testimonials from "real users" and "before" and "after" pictures remain consistent issues in weight-loss advertising.

Safety Claims

Healthy Life Sciences, LLC
Healthe Trim Weight Loss Dietary Supplements
Case #5641 (10.10.13)

Claim at Issue:

- *Healthe Trim is perfectly safe.*

NAD Findings: The advertiser submitted a 12-week study that demonstrated that, for the duration of the study, the supplement was well-tolerated by the participants. However, the advertiser did not have any long-term studies demonstrating the safety of Healthe Trim after twelve weeks. Further, study participants were required to limit their caffeine consumption to one serving a day or less. NAD recommended that the advertiser modify its safety claim that "Healthe Trim is perfectly safe" to include a reference to the length of time that the safety of Healthe Trim was studied and also that the safety study was conducted on participants who limited their caffeine intake to one serving a day or less. Such disclosures should be prominent and appear in close proximity to the safety claim.

Clinically Proven Claims

Zylotrim, LLC
Zylotrim Weight Loss Supplement
Case #207 (3.4.09)

Claims at Issue:

- *"Clinically proven to more than double the activity of fat burning enzymes"*
- *"80% of each pound that was lost was pure body fat"*
- *"Rated #1 weight loss active ingredient!"*

ERSP Findings: ERSP concluded that the marketer's evidence did not adequately support its claim that Zylotrim is "*clinically proven to more than double the activity of fat burning enzymes*" or that "*80% of each pound that was lost was pure body fat*" and recommended that these claims be either modified or discontinued. ERSP also determined that the "*Rated #1 Weight Loss Active Ingredient*" claim is inaccurate and should be either modified or discontinued in the current context in which the claim is presented in the advertising and on the product packaging.

“Before and After” Depictions

Wellnx Life Sciences, Inc. NV Hollywood Weight-Loss Supplements Case # 5629 (9.10.13)

The evidence offered in support of advertising claims must mirror the claims in scope and nature.

Claims at issue:

- *Lose weight fast!*
- *Incredible weight-loss power!*
- Claims accompanied by photograph of model Holly Madison, who had lost two jean sizes.

NAD findings: NAD determined that the two clinical trials offered in support of the advertiser’s weight-loss claims were methodologically sound in that both of the studies were randomized, double-blind, placebo-controlled studies that utilized the same dosage and form of the two active ingredients found in NV Hollywood. The study participants were obese women.

However, there was no evidence in the record that the model in the advertising – who had not been obese when she began taking NV Hollywood – would achieve the same results in the same time frame. Further, the advertisement did not make reference to the diet and exercise changes that the study participants also underwent to achieve their weight-loss goals. Consequently, NAD recommended that advertiser discontinue its claims that NV Hollywood causes “fast” weight loss or has “*incredible weight-loss power.*”

Vital Pharmaceutical, Inc. Meltdown Fat Assault Beverage & Fat Incinerator Capsules NARB Panel #171 (7.18.11)

“Before” and “after” pictures depicting weight and fat loss are advertising claims that must be supported by competent and reliable evidence demonstrating that they are results a consumer could typically expect to achieve.

Claims at Issue:

- *Product packaging shows (a) “before” and “after” pictures of a woman who lost 21 pounds and reduced her body fat from 23.1% to 14.8% and (b) “before” and “after” pictures of a man who lost 28 pounds and reduced his body fat from 12.5% to 5.27%.*

NAD/NARB Findings: The “before” and “after” comparisons reasonably conveyed the message that the depicted weight/fat losses were typical results that consumers could expect to achieve through use of the product.

However, there was nothing in the record to show that the weight/fat losses depicted were what could typically be achieved. Further, there was no evidence to provide a reasonable basis to support a message that use of Meltdown Fat Assault would result in any visible weight or fat loss. NAD/NARB recommended that the advertiser discontinue these "before" and "after" pictures.

Endorsements, Testimonials, Disclosures

Nutrisystem, Inc. (Pinterest) "Real Consumers. Real Success."

Case # 5479 (6.29.12)

NAD, following its review of "Real Consumers. Real Success." – a Pinterest board maintained by Nutrisystem, Inc. – determined that the weight-loss success stories "pinned" to such boards represent consumer testimonials and require the complete disclosure of material information.

Nutrisystem's "Real Consumers" pinboard featured photos of "real" Nutrisystem customers and highlighted their weight-loss successes. The customer's name, total weight loss and a link to the Nutrisystem website appeared below each photo.

Claims at issue in NAD's review included:

- *"Christine B. lost 46lbs on Nutrisystem."*
- *"Michael H. lost 125 lbs. on Nutrisystem."*
- *"Lisa M. lost 115 lbs. on Nutrisystem."*
- *"Christine H. lost 223 lbs. on Nutrisystem."*

Upon receipt of NAD's inquiry, the company asserted that necessary disclosures were inadvertently omitted from Pinterest. The advertiser stated that the testimonials at issue had appeared on Pinterest for less than two months, and said the disclosures were added immediately upon receipt of NAD's opening letter. NAD noted its appreciation that Nutrisystem took immediate steps to provide such disclosures.

Liquid HCG Diet, LLC Liquid HCG Diet

Case #246 (6.16.10)

Claims at Issue:

- *"Lose 30lbs. in a month, it's easy and quick!"*
- *"Burns fat fast"*
- *"Lasting results! Keep it off!"*
- *Becky and husband lost 14lbs in 2 days!"; website claim "Today is my second day on P2 and I lost 5.9lbs. and my husband lost 8lbs.!"*

ERSP Findings: ERSP recommended that the marketer discontinue its weight loss claims in the context in which they are currently communicated and that it modify its use of consumer testimonials in a way that complies with Section 255 of the FTC's revised Guides Concerning the Use of Endorsements and Testimonials in Advertising.

Urban Nutrition, LLC
WeKnowDiets.com (and affiliated websites)
Case #219 (8.11.09)

Claims at Issue:

- "... there are now literally thousands of weight loss products and diet programs available to choose from – that can be a little confusing."; "Our goal is to give you a quick snapshot of what options are available to you."
- "We have compiled the most comprehensive database of information for people who are looking for a trimmer body and healthier lifestyle."; "We have the largest weight loss database in America."

ERSP Findings: ERSP determined that the representations made on WeKnowDiets and affiliated websites constituted an advertising message (i.e., a paid commercial message that has the purpose of inducing a sale or other commercial transaction or persuading the audience of the value or usefulness of a company, product or service) and that certain individuals writing favorable product reviews on the website may be considered endorsers. Because Urban Nutrition owned not only the websites at issue, but several products being reviewed on the websites, ERSP concluded that this relationship constituted a "material connection" that would not be reasonably expected by the audience and one that would have a significant effect on the weight or credibility given to the endorsement by that audience.

Iovate Health Sciences International
Hydroxycut Nutritional Supplement
Case #70 (1.17.06)

Claims at Issue:

- "I've reviewed the research. You can lose weight fast, increase energy, and control appetite with Hydroxycut. In my opinion nothing works better or faster." (Dr. Lydon)
- "With the science of Hydroxycut, you can lose up to 4.5 times the weight than with diet and exercise alone."
- "I lost 29 pounds with Hydroxycut - Hydroxycut can get you in peak shape. With diet and exercise only, you can't really get where you want as quickly. You really need Hydroxycut to speed things up and tighten you up. I quickly lost 29 pounds [in 8 weeks] and 5½ inches off my weight using Hydroxycut.*" (Dr. Marshall)

ERSP Findings: ERSP concluded that Dr. Lydon's claim communicated an unqualified parity claim that was not supported by Iovate. Although Dr. Marshall's testimonial was literally accurate, the fact that two muscle building products supplements were used in addition to Hydroxycut to achieve the results communicated in the advertisement was material information with respect to consumers interpretation of the claims that needed to be more prominently disclosed in the advertising.

Performance Claims

Hollywood Health & Beauty, LTD.

Trimbal-EXP200

Case #5112 (4.07.10)

Claims suggesting that you can lose weight without diet and exercise were not supported by reliable scientific evidence.

Claims at Issue:

- *In a few minutes, this amazing capsule expands to become a 100% natural gastric balloon.*
- *It attracts, surrounds and absorbs some of the fat, carbohydrates and sugars that you've eaten and they are naturally flushed out without having a chance to be absorbed by your body and converted to excess fat.*
- *"This weight loss plan is 100% safe."*
- *The effects were immediate.*
- *I ate everything I liked and as much as I liked.*
- *The first month, I lost exactly 33 pounds without any effort.*
- *The most incredible thing was that my stomach quickly became flat and firm.*
- *I could eat all the foods I like and as much as I wanted.*
- *I lost a total of 48 pounds in 7 weeks.*
- *When you use the Trimball-EXP200 capsule, you are going to eat 2, 3 or even up to 4 times less, as you feel that your stomach is FULL.*
- *You will not experience any feelings of hunger.*
- *You will then automatically lose weight.*
- *These two properties have been confirmed by many clinical studies conducted in the USA by leading dietary researcher, Professor Walsh from the University of Minnesota.*

NAD Findings: The advertiser's supplement contained glucomannan, an ingredient that forms a "bulk" in the stomach by absorbing water and possibly reducing hunger pangs.

The advertiser submitted one small study of 20 obese subjects who took glucomannan fiber and were instructed not to change their eating or exercising habits. Over an 8-week period, the treatment group lost 5.5 pounds.

NAD determined that it was necessary and appropriate for the advertiser to discontinue all of its claims because the study did not support the claims that glucomannan was as effective as gastric bypass surgery, that consumers could eat whatever they liked and still lose weight or that a consumer would typically lose large amounts of weight as claimed.

Further, NAD concluded that this advertising included several claims that have been identified by the FTC "red flags" as bogus weight loss claims, including claims that the product can cause weight loss of more than two pounds a week; works without dieting or exercise; causes substantial weight loss no matter what or how much the consumer eats; blocks the absorption of fat or calories to enable consumers to lose substantial weight; and can safely enable consumers to lose more than three pounds per week for more than four weeks.

**Smart for Life Weight Management Centers
Smart for Life Cookies**

Case #242 (6.1.10)

Claims at Issue:

- *"Eat Cookies. Lose Weight. It's that simple."*
- *"I lost 105 lbs"* [Lost 105 lbs in 12 months]
- *"I lost 115 lbs in 6 months"* [Lost 115 lbs in 6 months]
- *"Lost 25 lbs in 5 weeks"*

ERSP Findings: ERSP determined that it would not be unreasonable for consumers to take away the message that besides eating the Diet Cookies, they need not take any further action in order to lose weight. ERSP found that eating a low calorie dinner was a material condition to obtaining the claimed weight loss and must be prominently, clearly and conspicuously disclosed. ERSP also recommended that the marketer properly qualify the limitations of the applicability of consumer testimonials in future advertising.

**Emson, Inc.
Ab Rocket Twister System**

Case #268 (6.13.11)

Claim at Issue:

- *"Lose up to 2 inches off your waist in just 12 days guaranteed or your money back,"; "...in as little as 5 minutes a day with the Ab Rocket Twister, you're on your way to tighter, sexier abs guaranteed."; "I've lost over 50 pounds and 21 inches."*

ERSP Findings: ERSP determined that when certain versions of the Ab Rocket Twister advertising are viewed in their entirety, it would not be unreasonable for consumers to interpret the advertising as communicating that the stated results were based on use of the Ab Rocket Twister alone.

ERSP recommended that the marketer should modify such advertising to clearly communicate that the weight and inches lost depicted in the advertising were based upon adherence to all components of the Ab Rocket Twister System, not just use of the machine itself.

MZ Direct Response, LL&C
Velform Sauna Belt
Case #75 (2.21.06)

Claims at Issue:

- *Immediately see real results with no effort."*
- *"Lose an in inch in fifty minutes."*
- *"A safe sure way to lose weight."*
- *"We are able to target specific areas such as the abdomen, hips, and thighs."*

ERSP Findings: ERSP concluded that any performance claims characterized in an "instant" or "immediate" context that are inconsistent with results obtained after 50 minutes of product usage should be either adequately qualified or discontinued. ERSP also recommended that the marketer refrain from suggesting that consumers will lose meaningful (i.e., "real results") weight with "no effort." ERSP also determined that the marketer's claims to "Lose an inch in 50 minutes" as well as the on camera demonstrations of people losing more weight and inches in 50 minutes than reported by in the study should be discontinued or modified. Lastly, it was recommended that the marketer should also modify its computer-generated "slim-down" depiction to accurately reflect the evidence and not overstate the amount and areas of weight/inches loss that can be realized by use of the Velform Sauna Belt.

"Dr. Recommended" Claims

iSatori Technologies. LLC
Lean System 7
Case #4324 (4.22.05)

"Doctor Recommended" claims can carry great weight with consumers and, consequently, require strong evidence.

Claim at Issue:

- *Doctor Recommended*

NAD Findings: In addition to making unsupported "clinically proven" claims such as Lean System 7 will burn up to 930 extra calories a day, the advertiser also claimed that its product was "doctor recommended." In support of this claim, the advertiser submitted a testimonial from one doctor. NAD has recognized that "Doctor Recommended" claims can carry great weight with consumers and, consequently, require strong evidence. It is well-established that "doctor recommended" claims must be supported by well-conducted physician surveys based on doctors' actual experience in their daily practice. Here, the advertiser did not produce any evidence regarding its doctor recommended claim other than an unsupported testimonial from one doctor.