

Prepared Statement of the Federal Trade Commission

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**PROTECTING CONSUMERS FROM FALSE AND DECEPTIVE
ADVERTISING OF WEIGHT-LOSS PRODUCTS**

**Before the
Senate Committee on Commerce, Science, and Transportation
Subcommittee on Consumer Protection, Product Safety, and Insurance
United States Senate**

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I. Introduction

Madame Chair and members of the Committee, I am Mary Engle, Associate Director for Advertising Practices at the Federal Trade Commission (“FTC” or “Commission”). I am pleased to have this opportunity to provide information concerning the Commission’s efforts to combat fraudulent and deceptive claims for weight-loss products.¹

As has been reported for years, the United States is facing an obesity epidemic. More than one-third of U.S. adults (34.9%) are obese.² Combined with those who are overweight, the percentage skyrockets to nearly 70%.³ Excess weight and obesity are major contributors to chronic diseases and present a serious public health challenge – the medical costs of obesity reached a staggering \$147 billion in 2008, and the estimated annual medical costs of obese persons are nearly \$1,500 higher than for those of normal weight.⁴

¹ The written statement presents the views of the Federal Trade Commission. Oral testimony and responses to questions reflect my views and do not necessarily reflect the views of the Commission or any Commissioner.

² Cynthia Ogden, Margaret Carroll, “Prevalence of Childhood and Adult Obesity in the United States, 2011-2012,” *Journal of American Medicine*, 311(8):806-814 (2014).

³ “Weight Loss Services in the US Industry Market Research Report from IBISWorld Has Been Updated,” IBISWorld (Jan. 14, 2014), *available at* <http://www.prweb.com/releases/2014/01/prweb11486414.htm>; Cynthia Ogden, Margaret Carroll, “Prevalence of Overweight, Obesity, and Extreme Obesity Among Adults: United States, Trends 1960–1962 Through 2007–2008” (2010).

⁴ Eric Finkelstein *et al.*, “Annual Medical Spending Attributable To Obesity: Payer-And Service-Specific Estimates,” *Health Affairs*, 28, no. 5 (2009):w822-w831 (Jul. 27, 2009), *available at* <http://content.healthaffairs.org/content/28/5/w822.full.pdf+html>.

Last year, Americans were expected to spend \$2.4 billion on weight-loss services,⁵ and this figure is predicted to rise to \$2.7 billion by 2018.⁶ Where there is strong consumer interest, unfortunately fraud often follows. In our 2011 survey of consumer fraud, the FTC reported that more consumers were victims of fraudulent weight-loss products than of any of the other specific frauds covered by the survey.⁷

Scientists agree that the foundation of healthy, successful weight loss is to eat a healthful, calorie-controlled diet and to increase physical activity.⁸ They also agree that even proven medications for weight loss should only be prescribed as an adjunct to lifestyle changes in order

⁵ “Weight Loss Services in the US Industry Market Research Report From IBISWorld Has Been Updated,” IBISWorld (July 22, 2013), *available at* <http://www.prweb.com/releases/2013/7/prweb10948232.htm>.

⁶ *Id.*

⁷ FED. TRADE COMM’N STAFF REPORT, CONSUMER FRAUD IN THE UNITED STATES, 2011: THE THIRD FTC SURVEY (2013), at 17, *available at* http://www.ftc.gov/sites/default/files/documents/reports/consumer-fraud-united-states-2011-third-ftc-survey/130419fraudsurvey_0.pdf.

⁸ See Mayo Clinic Staff, “Weight Loss: Strategies for Success (Make your weight-loss goals a reality. Follow these proven strategies)” (Feb. 26, 2014), *available at* <http://www.mayoclinic.org/healthy-living/weight-loss/in-depth/weight-loss/art-20047752> (“Hundreds of fad diets, weight-loss programs and outright scams promise quick and easy weight loss. However, the foundation of successful weight loss remains a healthy, calorie-controlled diet combined with exercise. For successful, long-term weight loss, you must make permanent changes in your lifestyle and health habits”); see also 2013 AHA/ACC/TOS Guideline for the Management of Overweight and Obesity in Adults: A Report of the American College of Cardiology/American Heart Association Task Force on Practice Guidelines and The Obesity Society (Nov. 12, 2013) (Accepted Article), at 20, Box 9, *available at* <http://onlinelibrary.wiley.com/doi/10.1002/oby.20660/pdf> (“Recommended methods for weight loss: Weight loss requires creating an energy deficit through caloric restriction, physical activity, or both. An energy deficit of ≥ 500 kcal/day typically may be achieved with dietary intake of 1,200 to 1,500 kcal/day for women and 1,500 to 1,800 kcal/day for men”).

help certain patients adhere more consistently to a lower calorie diet.⁹ Despite the continuing boom in the weight-loss industry, there exists very little scientific evidence that pills or supplements alone will cause sustained, meaningful weight loss. Moreover, the promise of fast or easy weight loss without changes to diet and lifestyle is especially pernicious because it may deter consumers from making the tough but necessary changes that are known to work.

Today I will provide an overview of the Commission's multi-faceted program aimed at combating fraud and deception in the weight-loss industry. I will first speak about the Commission's law enforcement program, then will explain our media outreach efforts, and finally, will talk about the importance of consumer education.

You might be surprised to learn that the Commission filed its first weight-loss case back in 1927; since then, we have filed hundreds of cases challenging false and unproven weight-loss claims. As the Commission staff stated in its 2002 Weight Loss Report, there exists "a never-ending quest for easy solutions."¹⁰ The endless flood of unfounded claims being made in the weight-loss industry vividly illustrates the challenges we, and consumers, are up against.

Why, then, with such a long history of enforcement in this area, does weight-loss fraud persist? Unfortunately, there is no perfect answer. What we do know is that this is an area where consumers looking for a solution are particularly vulnerable to fraud; that there is an

⁹ See 2013 AHA/ACC/TOS Guideline for the Management of Overweight and Obesity in Adults, *supra* note 8, at 21, Boxes 10-12.

¹⁰ FED. TRADE COMM'N STAFF REPORT, WEIGHT-LOSS ADVERTISING: AN ANALYSIS OF CURRENT TRENDS (2002), available at <http://www.ftc.gov/news-events/press-releases/2002/09/ftc-releases-report-weight-loss-advertising>.

enormous amount of money to be made in the diet industry; and that people intent on committing fraud will gravitate toward where the money is.¹¹ While we might never eliminate weight-loss fraud, we will continue our efforts to pursue the perpetrators, to work with the media to help prevent fraudulent ads from airing, and to educate consumers on avoiding weight-loss scams.

II. The FTC’s Weight-Loss Fraud Prevention Program

In the past ten years, the Commission has brought 82 law enforcement actions challenging false or unsubstantiated claims about the efficacy of a wide variety of weight-loss products and services. Since 2010 alone, the Commission has collected nearly \$107 million in consumer restitution for deceptive weight-loss claims, and one weight-loss company paid a civil penalty of \$3.7 million for violations of a prior Commission order.¹²

Our recent cases highlight how the agency has focused its enforcement priorities on large national advertising campaigns for a range of weight-loss products with unproven benefits. “Operation Failed Resolution,” announced in January, targeted the newest weight-loss fads with popular ingredients – food additives, human hormones, skin creams, and acai berries.¹³

¹¹ See Frank Bruni, “Diet Lures and Diet Lies” *The New York Times* (May 26, 2014), available at http://www.nytimes.com/2014/05/27/opinion/bruni-diet-lures-and-diet-lies.html?_r=0. (“Enhanced education and growing sophistication haven’t done away with fads. There’s still too much favor to be curried and money to be made by trumpeting them.”).

¹² *U.S. v. Jason Pharmaceuticals*, No. 12-1476 (D.D.C., filed Sept. 7, 2012).

¹³ See Fed. Trade Comm’n Press Release, *Sensa and Three Other Marketers of Fad Weight-Loss Products Settle FTC Charges in Crackdown on Deceptive Advertising: Sensa to Pay \$26.5 Million for Consumer Refunds* (Jan. 7, 2014), <http://www.ftc.gov/news-events/press-releases/2014/01/sensa-three-other-marketers-fad-weight-loss-products-settle-ftc>.

In our case against Sensa Products, consumers were catchily urged to “shake their Sensa” and lose 30, 40, 90 pounds or more without dieting or exercise.¹⁴ We alleged that the defendants’ powdered food additive, available in twelve flavors, was deceptively advertised to enhance food’s smell and taste, making users feel full faster so they eat less and lose weight. Our consent order required Sensa to pay \$26.5 million in redress; this money will be returned to consumers. The settlement also bars the defendants from making weight-loss claims about dietary supplements, foods, or drugs unless they have well-controlled human clinical studies supporting the claims, and it requires them to disclose any material connections with product endorsers or anyone participating in or conducting a study of such products.

The FTC’s case against L’Occitane arose from that company’s marketing of the Almond Beautiful Shape and Almond Shaping Delight creams, which it touted as having body slimming capabilities that could trim inches in weeks.¹⁵ The Commission’s settlement with L’Occitane bars the company from claiming that any product applied to the skin causes substantial weight or fat loss or a substantial reduction in body size, and also requires well-controlled human clinical studies for claims that drugs or cosmetics cause such results. L’Occitane paid \$450,000 in consumer redress as part of its settlement with the FTC.

¹⁴ *FTC v. Sensa Products LLC*, No. 14-cv-72 (N.D. Ill., filed Jan. 7, 2014).

¹⁵ *L’Occitane, Inc.*, FTC Dkt. No. C-4445 (Mar. 27, 2014), available at <http://www.ftc.gov/system/files/documents/cases/140408loccitanedo.pdf>.

The Commission also filed a case against HCG Diet Direct in connection with its sale of liquid homeopathic drops, which contain a diluted form of hCG, a hormone produced by the human placenta.¹⁶ Users were told they could lose up to one pound a day by placing the drops under their tongues before meals and adhering to a very low calorie diet. The Commission's consent order with HCG Diet Direct requires well-controlled human clinical studies; bars the defendants from representing that a product is FDA-approved when it is not, and from failing to disclose any material connections endorsers might have to the defendants; and imposes a \$3.2 million judgment.¹⁷

The Commission currently remains in active litigation against a number of other defendants hawking miracle weight-loss products.¹⁸

The Commission has noted several disturbing developments with respect to weight-loss advertising. First is the reliance on proprietary studies using erroneous or fabricated data. In

¹⁶ *FTC v. HCG Diet Direct LLC*, No. 14-cv-00015-NVW (D. Ariz., filed Jan. 6, 2014).

¹⁷ The FTC's case against HCG Diet Direct followed on a set of warning letters the agency staff co-issued in 2011 with staff of the Food and Drug Administration ("FDA") to marketers of homeopathic hCG weight loss products. The letters warned that the marketers were making unapproved new drug claims in violation of the Federal Food, Drug, and Cosmetic Act, and unsubstantiated claims in violation of the FTC Act. They also stated that the hCG products are misbranded prescription drugs. *See* sample warning letter from Mary K. Engle, Associate Director for Advertising Practices (FTC), and Ilisa B.G. Bernstein, Acting Director, Office of Compliance, Center for Drug Evaluation and Research (FDA) (Nov. 28, 2011), *available at* http://www.ftc.gov/sites/default/files/documents/public_statements/joint-fda/ftc-warning-letter-concerning-product-labeling-human-chorionic-gonadotropin-hcg-drugs/ucm281528.pdf.

¹⁸ *FTC v. HCG Platinum*, No. 13-cv-02215-HRH (D. Ariz., filed Oct. 30, 2013); *FTC v. LeanSpa LLC*, 3:11-cv-01715-JCH (D. Conn., filed Nov. 7, 2011).

response to our requests for scientific substantiation, companies usually will submit write-ups of human clinical studies, sometimes published in peer-reviewed journals. While these studies may appear facially plausible, in a number of cases, we have discovered serious flaws, or worse, outright fabrications once we obtain the underlying data.¹⁹ In the Sensa case for example, the Commission alleged, among other irregularities, that Sensa’s purportedly randomized control trial was not, in fact, randomized; that it included duplicate subjects; and that, on multiple occasions, the research firm Sensa hired sent results to the corporate defendants before the test subjects weighed-in. These flaws are not isolated to Sensa. In other cases, our examination of the underlying data has revealed altered, incomplete, or falsely-reported data.²⁰ It goes without saying that these kinds of practices add a layer of complexity to the FTC’s weight-loss investigations.

Another distressing trend is marketers taking advantage of weight-loss fad ingredients that are propelled to popularity through exposure in mainstream media supported by trusted spokespeople. For instance, within weeks of an April 2012 *Dr. Oz Show* touting green coffee bean extract as a miracle fat burning pill that works for everyone, the marketers of the Pure Green Coffee dietary supplement took to the Internet making overblown claims – like “lose

¹⁹ The staff’s ability to obtain raw data may be hampered when such research has been conducted in a foreign jurisdiction.

²⁰ See, e.g., *FTC v. Skechers U.S.A.*, No. 1:12-cv-01214 (N.D. Ohio, filed May 16, 2012) (FTC complaint alleging that two of the four studies of the defendant’s toning footwear were conducted by a chiropractor who was married to a senior vice president of marketing at Skechers; that one of the studies included spouses and parents of its co-authors as test subjects; and that some subjects who gained weight or increased their body fat percentage were reported as having lost weight or reduced their body fat percentage).

twenty pounds in four weeks” and “lose twenty pounds and two to four inches of belly fat in two to three months” – for their dietary supplement. The FTC investigated, and last month, filed suit.²¹ The complaint alleges that the defendants deceptively promoted Pure Green Coffee through their website featuring footage from *The Dr. Oz Show*, supposed consumer endorsements, and purported clinical proof that dieters could lose weight rapidly without changing their diet or exercise regimens. We also allege that the defendants made deceptive claims on websites they set up to look like legitimate news sites and blogs, and on other “fake news” sites run by affiliate marketers whom they paid to advertise the Pure Green Coffee product. In all, the defendants are alleged to have sold more than 536,000 bottles of Pure Green Coffee since May 2012.

III. The Commission’s Media Screening Guidance on Weight-Loss Claims

When consumers see products and ingredients marketed in sophisticated ways on respected media outlets and praised by people they trust, it can be difficult for them to listen to their internal voices telling them to beware. That is why we have long sought the partnership of the media to screen deceptive diet ads before they run. The FTC’s recently-issued “Gut Check” reference guide advises media outlets on seven weight-loss claims that experts say simply cannot

²¹ *FTC v. NPB Advertising, Inc.*, No. 14-cv-01155-SDM-TGW (M.D. Fla., filed May 15, 2014).

be true and that media outlets should think twice about running.²² FTC staff sent this guidance document to major publishers, media outlets, trade associations, and broadcasters asking them for their help in protecting consumers (and their own reputation for accuracy) by serving as a front-line defense, halting false claims before they are published or aired – and before consumers risk their money and perhaps even their health on a worthless product.²³ This is not the first time

²² The Gut Check guidance identifies the following seven false claims for dietary supplements, herbal remedies, over-the-counter drugs, patches, creams, wraps, and similar products:

- (1) causes weight loss of two pounds or more a week for a month or more without dieting or exercise;
- (2) causes substantial weight loss no matter what or how much the consumer eats;
- (3) causes permanent weight loss even after the consumer stops using the product;
- (4) blocks the absorption of fat or calories to enable consumers to lose substantial weight;
- (5) safely enables consumers to lose more than three pounds per week for more than four weeks;
- (6) causes substantial weight loss for all users; or
- (7) causes substantial weight loss by wearing a product on the body or rubbing it into the skin.

The guidance is not intended to apply to prescription drugs, meal replacement products, low-calorie foods, surgery, hypnosis, special diets, or exercise equipment. *See Gut Check: A Reference Guide for Media on Spotting False Weight Loss Claims* (Jan. 7, 2014), available at <http://www.business.ftc.gov/documents/0492-gut-check-reference-guide-media-spotting-false-weight-loss-claims>.

²³ See model letter from Jessica Rich, Director, Bureau of Consumer Protection, to media outlets, available at <http://www.ftc.gov/sites/default/files/attachments/press-releases/ftc->

the FTC has issued such media advice,²⁴ and it likely will not be the last. Media response to our past initiatives has been positive and based on our experience, we expect that this effort will be successful in keeping many facially false weight-loss claims out of mainstream media.²⁵ As we have in the past,²⁶ we will follow up with media outlets (including television, print, and satellite radio) engaged in a pattern of running problematic weight-loss ads.

[has-updated-guidance-media-outlets-spotting-false-weight-loss-claims-advertising/140107gutcheckletter.pdf](http://www.ftc.gov/sites/default/files/documents/closing_letters/news-america-marketing-fsi-llc/081003newsamericaclosing.pdf).

²⁴ See Fed. Trade Comm'n, *Screening Advertisements: A Guide for The Media* (Dec. 2006), available at <http://www.business.ftc.gov/documents/bus36-screening-advertisements-guide-media>; Fed. Trade Comm'n, *Red Flag: Bogus Weight Loss Claims* (Dec. 9, 2003), available at <http://www.ftc.gov/news-events/press-releases/2003/12/ftc-releases-guidance-media-false-weight-loss-claims>.

²⁵ The Commission's earlier media screening initiative effort resulted in the number of obviously false weight-loss claims in television, radio, and print advertisements for dietary supplements, topical creams, and diet patches dropping from almost 50 percent in 2001 to 15 percent in 2004. See Fed. Trade Comm'n Press Release, *FTC Releases Result of Weight-Loss Advertising Survey* (Apr. 11, 2005), <http://www.ftc.gov/news-events/press-releases/2005/04/ftc-releases-result-weight-loss-advertising-survey>. Recent monitoring suggests that this trend is continuing. It should be noted, however, that even though an advertisement does not contain an obviously false claim, it still may be deceptive for other reasons, such as for lack of substantiation for the core efficacy claim.

²⁶ See letter from Mary K. Engle, Associate Director for Advertising Practices (FTC), to Stacey Anne Mahoney (counsel for News America Marketing FSI, LLC) (Oct. 3, 2008), available at http://www.ftc.gov/sites/default/files/documents/closing_letters/news-america-marketing-fsi-llc/081003newsamericaclosing.pdf; letter from Mary K. Engle, Associate Director for Advertising Practices (FTC), to Nicholas R. Koberstein (counsel for Valassis Communications, Inc.) (Nov. 14, 2006), available at http://www.ftc.gov/sites/default/files/documents/closing_letters/valassis-communications-inc./061114valassisclosingletter.pdf.

IV. Consumer Education Initiatives

The FTC seeks to educate consumers as well. The best protection against weight-loss fraud is a savvy consumer, so the Commission continually looks for new ways to reach consumers with messages about how to avoid falling victim to a diet scam. We have issued a number of consumer education brochures, articles, and blog posts that hammer home the message that the only thing consumers will lose is money if they fall for ads promising dramatic weight loss without diet or exercise.²⁷ The Commission also has created teaser websites designed to reach people who are surfing online for weight-loss products.²⁸ And today, we are launching a new consumer quiz – the FTC Weight Loss Challenge – to help consumers identify weight-loss fraud. This interactive quiz is designed to help consumers think critically about

²⁷ See, e.g., “Putting the Squeeze on Bogus Weight Loss Products” (Jan. 7, 2014), available at <http://www.consumer.ftc.gov/blog/putting-squeeze-bogus-weight-loss-products>; “What’s a Healthy Weight Loss Plan?” (Nov. 5, 2013), available at <http://www.consumer.ftc.gov/blog/whats-healthy-weight-loss-plan>; “New Year’s Resolution: Don’t Buy Into Diet Ads” (Jan. 8, 2013), available at <http://www.consumer.ftc.gov/blog/new-years-resolution-dont-buy-diet-ads>; “Weighing the Claims in Diet Ads” (Jul. 2012), available at <http://www.consumer.ftc.gov/articles/0061-weighing-claims-diet-ads>; “Weight Loss Promises: Health Information for Older People” (Oct. 2008), available at <http://www.consumer.ftc.gov/articles/0317-weight-loss-promises-health-information-older-people>.

²⁸ At first glance, the Commission’s “FatFoe” teaser site appears to advertise a new product, “FatFoe,” that falsely guarantees fast, easy weight loss for all users, with no diet or exercise necessary to lose up to 10 pounds per week permanently. See <http://www.wemarket4u.net/fatfoe/index.html>. However, when consumers try to order FatFoe, they learn the ad is a warning from the FTC about diet scams. See <http://www.wemarket4u.net/fatfoe/results.htm>.

weight-loss products and claims. Available in English and Spanish, the quiz separates fact from fiction in ads for products touting fast weight loss without the need for diet and exercise.²⁹

V. Conclusion

I want to thank this Committee for focusing attention on weight-loss scams and for giving the Federal Trade Commission an opportunity to describe its role. The Commission is committed to continuing to use all the tools at its disposal to limit consumer injury from deceptive weight-loss advertising. I would be happy to respond to any questions about our weight-loss fraud prevention program.

²⁹ See <http://www.consumer.ftc.gov/sites/all/libraries/games/weightlosschallenge/>.