

**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**

**Washington, D.C.**

**June 17, 2014**

**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

Last year, Americans were expected to spend \$2.4 billion on weight-loss services,<sup>5</sup> and this figure is predicted to rise to \$2.7 billion by 2018.<sup>6</sup> 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.<sup>7</sup>

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

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<sup>5</sup> “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>.



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.<sup>11</sup> While we might

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.<sup>14</sup> 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

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.<sup>16</sup> 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.<sup>17</sup>

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

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

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

<sup>17</sup> 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\\_metsjlt/fileo.vr.20 Tc 0 Twfc](http://www.ftc.gov/sites/default/files/documents/public_metsjlt/fileo.vr.20 Tc 0 Twfc)

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.<sup>19</sup> 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.<sup>20</sup> 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

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<sup>19</sup> The staff's ability to obtain raw data may be hampered when such research has been conducted in a foreign jurisdiction.

<sup>20</sup> 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).









#### **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 continually look

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.<sup>29</sup>

## **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.

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