

STATEMENT OF COMMISSIONER PAMELA JONES HARBOUR

In the Matter of KFC Corporation
File No. 042-3033, Docket No. C-4118

The Commission has accorded final approval to a consent agreement with KFC Corp. (“KFCC”) to settle allegations that the company deceptively advertised its fried chicken as being compatible with low-carbohydrate weight loss programs, among other claims. I concur with the Commission’s admirable results in obtaining strong injunctive relief, and I applaud staff for bringing a national advertising case. I believe, however, that an even stronger remedy is warranted. KFCC is fully aware of our nation’s struggle with obesity, yet has cynically attempted to exploit a massive health problem through deceptive advertising. Companies should not be allowed to benefit monetarily from this kind of deception, especially where the health and safety of consumers are compromised. Therefore, I encourage the Commission to find ways to seek monetary relief in future cases like this one.

Our nation’s obesity rate has “reached epidemic proportions, afflicting 6 out of every 10 Americans.”¹ Being overweight or obese is “the second leading cause of preventable death, after smoking, resulting in an estimated 300,000 deaths per year. The costs, direct and indirect, associated with [being] overweight and obes[e] are estimated to exceed \$100 billion a year.”² Obesity has been described as both an “epidemic” and a “crisis.”³ Many consumers are interested in controlling their weight, and they rely heavily on the nutritional information in food advertisements to help them make choices about which foods to eat.

In the fall of 2003, KFCC apparently was suffering from decreased fried chicken sales,
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¹ *Weight-Loss Advertising: An Analysis of Current Trends, A Report of the Staff of the Federal Trade Commission* (Sept. 2002), at vii (“Executive Summary”), available at <http://www.ftc.gov/bcp/reports/weightloss.pdf>.

² *Id.*

³ See *The Time/ABC News Summit on Obesity* (Preliminary Agenda for June 2-4, 2004), available at <http://www.time.com/time/2004/obesity>; *America’s Obesity Crisis*, TIME (June 7, 2004).

⁴ See *20/20: Fast Not Fat: Fast Food Chains Will Go to Any Lengths to Keep People Eating Their Food* (ABC News television broadcast, Oct. 31, 2003); *Editorial, KFC blunders in “health” ads*, ADVERTISING AGE (Nov. 3, 2003), at 22; Bob Garfield, *Garfield’s AdReview: KFC serves big, fat bucket of nonsense in “healthy” spots*, ADVERTISING AGE (Nov. 3, 2003), at 61.

⁵ *In the Matter of KFC Corporation*, File No. 042-3033, Complaint at ¶¶ 5, 8-9 (June 2, 2004).

⁶ *Id.* at ¶ 7 (“While compared to Burger King's Whopper, two KFC Original Recipe fried chicken breasts have slightly less total fat (38 g. v. 43 g.) and saturated fat (12 g. v. 13 g.), they have more trans fat (3.5 g. vs. 1 g.), more cholesterol (290 mg. v. 85 mg.), more sodium (2300 mg. vs. 980 mg.), and more calories (760 v. 710).”).

⁷ *See, e.g., World News Tonight with Peter Jennings: Good for You? KFC Adverts* (ABC television broadcast, Nov. 19, 2003); *NBC Nightly News with Tom Brokaw: Federal Trade Commission Wanting Proof That KFC's Chicken Can Be Called a Health Food in TV Commercials* (NBC television broadcast, Nov. 18, 2003); *KFC Corporation*, Complaint at ¶ 5 (setting forth voiceovers).

⁸ Garfield, *supra* note 4.

⁹ *Day To Day: Jonah Bloom Discusses Advertising Age Magazine's Editorial*

¹¹ *In the Matter of KFC Corporation*, File No. 042-3033, Analysis of Proposed Consent Order to Aid Public Comment (June 2, 2004).

¹² FTC Press Release,