

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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In the Matter of)	
)	DOCKET NO. C-3983
WEIDER NUTRITION INTERNATIONAL, INC.,)	
a corporation.)	
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)	

COMPLAINT

The Federal Trade Commission, having reason to believe that Weider Nutrition International, Inc. ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Weider Nutrition International, Inc. is a Delaware corporation with its principal office or place of business at 2002 South 5070 West, Salt Lake City, Utah 84104.
2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed products to the public, including PhenCal and PhenCal 106, both of which contain DL-Phenylalanine, L-Tyrosine, L-Glutamine, L-5-Hydroxytryptophan, L-Carnitine, Chromium Picolinate, and Vitamin B6. PhenCal and PhenCal 106 are "foods" and/or "drugs," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act. Advertisements for PhenCal 106 and PhenCal have appeared in numerous publications, including but not limited to, USA Today, the Washington Post, and the New York Times newspapers.
3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.
4. Respondent has disseminated or has caused to be disseminated advertisements and promotional materials for PhenCal and PhenCal 106, including but not necessarily limited to the attached Exhibits A through C. These advertisements and promotional materials contain the following statements:

A. A newspaper advertisement (Exhibit A):

Proven: Effective As Prescription Treatments In a 90 day clinical trial, overweight subjects using PhenCal 106 and on a controlled diet and exercise regimen lost an average of 27 pounds. These results are comparable to results of similar studies performed on prescription weight loss treatments.

Proven: To Decrease Food Cravings In a separate study, PhenCal 106 patients on a low calorie diet and exercise regimen reduced the average number of binges by 73%. . . .

Proven: Safe Without a Prescription PhenCal 106 was shown to work effectively and without any significant side effects during a two-year open controlled study.

B. A brochure mailed to consumers who request information about PhenCal 106 (Exhibit B):

In a 90-day trial, participants using PhenCal 106 reduced carbohydrate binging and craving and lost an average of 27 pounds. When compared to similar studies of prescription treatments (Phen-Fen) PhenCal 106 was shown to be as effective.

In addition, a two-year clinical study showed that the PhenCal 106 user was 292% less likely to regain the lost weight than someone who had not used PhenCal 106. In fact, PhenCal 106 has been proven to help prevent weight regain after 2 years of use.

C. A newspaper advertisement (Exhibit C):

Proven Safe Without a Prescription Unlike diet pills or prescription drug treatments, PHENCAL does not contain any stimulants or diuretics. It is not designed for you to skip meals or 'burn fat'. Instead, it allows you to maintain a healthy diet and exercise regimen by warding off cravings and impulses to binge.*

Proven to Decrease Food Cravings Feelings of hunger are controlled by regulating the neurotransmitters in the brain. If there is an imbalance of these brain chemicals, cravings and feelings of distress can occur. PHENCAL actually helps normalize the amount of these chemicals and helps you resist the urge to splurge and regain, or yo-yo back and forth.*

Proven Safe & Effective in Clinical Trials In a human trial, PHENCAL promoted weight loss at levels comparable to those shown in other clinical trials for prescription drug treatments for weight loss. PHENCAL subjects had reduced carbohydrate binging and craving and lost an average of 27 pounds in 90 days.*

Fine print disclosure at bottom of page: "*These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat or prevent any disease."

5. Through the means described in Paragraph 4, respondents have represented, expressly or by implication, that PhenCal 106 and PhenCal:

- A. Cause significant weight loss.
- B. Significantly increase a person's ability to maintain a reduced calorie diet and exercise regimen.
- C. Significantly reduce food cravings and eating binges.
- D. Prevent the regaining of lost weight.
- E. Are as effective as the prescription weight loss treatment commonly known as "Phen-Fen."
- F. Are safe when used to promote or maintain weight loss.

6. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 5, at the time the representations were made.

7. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 5, at the time the representations were made. Therefore, the representation set forth in Paragraph 6 was, and is, false or misleading.

8. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that clinical studies prove that PhenCal 106 and PhenCal:

- A. Cause significant weight loss.

D. Are as effective as the prescription weight loss treatment commonly known as "Phen-Fen."

E. Are safe.

9. In truth and in fact, the clinical studies referred to in respondent's advertisements do not prove that PhenCal 106 and PhenCal:

A. Cause significant weight loss.

B. Prevent the regaining of lost weight.

C. Reduce food cravings and eating binges.

D. Are as effective as the prescription weight loss treatment commonly known as "Phen-Fen."

E. Are safe.

10. Therefore, the representations set forth in Paragraph 8 were, and are, false or misleading.

11. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this fifteenth day of November, 2000, has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: