

Prepared Statement of the Federal Trade Commission

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enforcement actions over the past decade challenging false or unsubstantiated claims about the efficacy or safety of a wide variety of supplements. The Commission focuses our enforcement

The purpose of the workshop is to explore both the impact of deceptive ads on the public health and new approaches to fighting the proliferation of misleading claims. A wide variety of stakeholders,

passage of the Dietary Supplement Health and Education Act (DSHEA).⁽¹⁷⁾

4. Certain products require pre-market approval prior to sale in the United States. Dietary supplements do not require such pre-market approval. Therefore, the public may experience considerable exposure to an unsafe dietary supplement before any government action ensues. Is the FTC the most appropriate agency to be policing the safety of dietary supplements?

The Food and Drug Administration has both the expertise and the principal statutory authority to oversee the safety of dietary supplements. The Federal Trade Commission also gives enforcement priority to cases involving false or unsubstantiated safety claims in supplement advertising and by engaging in education efforts to alert consumers to potential safety risks. Our efforts are coordinated closely with FDA staff and we rely heavily on FDA and other scientific agencies for advice on the health effects of supplements. We view our activities on supplement safety as playing an important supporting role to FDA's more comprehensive efforts to ensure the safety of dietary supplements.

5. Since passage of the Dietary Supplement Health and Education Act, FTC enforcement against deceptive marketing of products has increased significantly, with FTC law enforcement cases involving weight loss products or services in the nineties equaling those filed in the previous seven decades. Does this indicate that the elimination of the requirement for pre-market approval by the FDA has left consumers only protected by the FTC?

The comparative analysis of magazine advertising from 1992 and 2001 indicates that there has been an increase both in the overall volume of ads for weight loss products and services and in the incidence of deceptive or misleading claims.⁽¹⁸⁾ In response, the FTC has stepped up both its own enforcement efforts and its efforts to coordinate with other law enforcement authorities. The Federal Trade Commission is not the only agency to police the dietary supplement industry. DSHEA requires a manufacturer of a dietary supplement to have substantiation for any structure/function claims so that the claim is truthful and not misleading. We, therefore, coordinate our enforcement efforts closely with the Food and Drug Administration. In addition, we work closely with the state Attorneys General, and other state and local law enforcement authorities. We are also increasing our efforts to combat cross border fraud in the weight loss industry and other health-related industries by coordinating with law enforcement agencies in Canada, Mexico and other countries.

6. Would the FTC agree that it is inefficient to have to screen product marketing once it is on the market rather than before it goes to market? Would the system be more efficient if FDA were allowed to screen the claims made by dietary supplement manufacturers based on current scientific knowledge?

At this time, the Commission is not aware of any systematic analysis of the relative efficiency of preclearance versus post-claim enforcement in the dietary supplement market. The FTC does not pre-screen advertising claims for dietary supplements or any other product or service within its jurisdiction. Instead, the agency addresses deception in the marketplace largely through post-market enforcement actions targeted against specific false or misleading claims. In applying this approach, the agency seeks to balance the risk of allowing commercial speech that might prove to be false or misleading and the risk of banning or delaying commercial speech that might prove to be true. Considerations like the nature of the claims and the risks that may result from deception are important components of this balancing. Claims about health and safety, in particular, require a rigorous substantiation standard as well as a strong and active enforcement program to back up that standard. The Commission's role in reviewing the truthfulness and accuracy of claims presumes that products are legally in the marketplace and do not pose an unacceptable risk of consumer injury.

7. Against what percentage of bad actors does FTC have the resources to take enforcement action? Does this leave a large number of bad actors continuing to market to an unsuspecting

public because the FTC only has the resources to go after the most prominent and egregious actors?

10. See Public Workshop: Advertising of Weight Loss Products, 67 Fed. Reg. 59,289 (Sept. 20, 2002).

11. *R 60d*