



Federal Trade Commission

**Remarks of Lydia B. Parnes
Director, Bureau of Consumer Protection
Federal Trade Commission**

even harm them.

II. Working with FDA

Earlier this morning, you heard from Commissioner Eschenbach about recent FDA initiatives. Relative to the FDA, the Federal Trade Commission is quite small. We are an independent agency with nearly 1100 employees and a budget of just over \$240 million. Our staff consists primarily of lawyers and economists. Although we do not have the scientific and technical expertise of the FDA, our staff has developed a keen understanding of marketplace forces and consumer behavior. Our expertise in the workings of the market is a valuable complement to FDA's oversight of the food and drug industry. That is why we frequently partner with the FDA on health issues. The two agencies share jurisdiction over foods, drugs, devices, dietary supplements and other health-related products pursuant to a longstanding agreement.³ Under this agreement, the FTC has primary responsibility to oversee the advertising of over-the-counter drugs, food, cosmetics, and devices, while the FDA regulates the labeling of these products. It is an arrangement that draws on the strengths of both agencies and has served consumers well for over 35 years.

Both the FDA and FTC are committed to protecting consumer welfare and promoting competition in the food and drug industries. The Commission's legal framework, however, is quite different from that of FDA. We are primarily a law enforcement agency, not a regulatory body. The FTC Act directs the agency to stop unfair and deceptive practices in commerce. Period.⁴ The mandate is broad. It encompasses nearly every product and service sector of the

³Working Agreement Between the FTC and FDA, 3 Trade Reg. Rep. (CCH) ¶ 9,859.01 (1971).

⁴Federal Trade Commission Act, 45 U.S.C. § 45.

economy. It gives the Commission both a clear direction and leaves us with the flexibility to adapt quickly to the emerging marketplace. It is that flexibility that I would like to focus on this morning.

III. The Little Agency That Could

I am proud of the Commission's record of anticipating and responding quickly to new consumer protection challenges. Our uniquely simple legislative framework makes that possible. I think our small size benefits us too. The Commission is "The Little Agency that Could." Our limited numbers mean that our staff must be agile. We must move easily back and forth from high tech issues like spyware and identity theft, to environmental trends like the marketing of carbon offsets, to public health crises like childhood obesity. More importantly, our small size forces us to be creative in how we address problems in the market. We must draw on resources outside our agency. For that reason, we frequently call on private companies and industry groups to apply their technical know-how and creativity to consumer problems. Some may be skeptical, but I have seen industry create strong self-regulatory solutions in a shorter time, with tougher standards, and better enforcement than any federal agency could hope to implement.

We also rely on consumers themselves. The FTC is always finding new ways to reach consumers, alerting them to scams, and teaching them to be more savvy shoppers. Our teaser Web sites promoting the weight loss miracle – "Fat Foe Eggplant Extract" – and the diabetes cure – "Glucobate, Elixir of Muskmelon" – are just two examples.⁵ These teaser sites entice consumers to click to purchase our fictitious products, and then warn the

⁵See Fat Foe teaser site, available at <http://wemarket4u.net/fatfoe/>, and Glucobate teaser site, available at <http://wemarket4u.net/glucobate/index.html>.

Perspectives on Marketing, Self-

⁷“New Food, Beverage Initiative to Focus Kids’ Ads on Healthy Choices; Revised Guidelines Strengthen CARU’s Guidance to Food Advertisers,” (Nov. 14, 2006), *available at* <http://www/bbb.org/Alerts/article.asp?ID=728> .

food marketing to kids. This study will be the first of its kind. It looks beyond measured media, like television and print, to all forms of marketing and promotion. We are looking at how the food industry uses such techniques as product packaging, in-store promotions, character licensing, event sponsorship, and word-of-mouth marketing. No researcher has ever had access to the data we are collecting on many of these marketing techniques. In many cases, even the food companies themselves have never before compiled the data.

It is a massive undertaking for our staff and for the 44 food, beverage, and quick-serve res ,t9

pleased to report that the company and its principals settled with the FTC and agreed to a \$923,000 judgment, which has been suspended based on their inability to pay.⁸

Consumers desperate to lose weight easily and effortlessly were also the chosen target for Kevin Trudeau's latest scam. In 2004, the Commission banned Trudeau, author and infomercial host, from marketing any product or service by infomercial and ordered him to pay \$2 million.⁹ The extraordinarily broad ban resulted from his infomercial marketing Coral Calcium as a cure for cancer and other serious diseases. The ban, however, included a narrow exception allowing Trudeau to market books, provided he did not misrepresent their contents. In 2007 Kevin Trudeau published a 255-page hardback book called The Weight Loss Cure "They" Don't Want You to Know About. He promised in infomercials that his book offered a diet that was the "the easiest method known on planet Earth." People could lose weight while eating "whatever they want."

Those who fell for the hype and bought the book learned that they were facing a multitude of restrictions, including a grueling regimen of extreme calorie restrictions, daily injections of a prescription drug difficult to obtain in the U.S., and rules limiting exposure to fluorescent lighting and air conditioning. This was hardly the simple, easy program the infomercial promised. The FTC filed for contempt and the district court judge agreed.¹⁰ The next step will be a hearing to determine an appropriate remedy.

⁸See FTC Press Release, *Sellers of Hoodia Coffee Settle with FTC for Bogus Weight-Loss Claims* (Jan. 15, 2008) available at <http://www.ftc.gov/opa/2008/01/dietcoffee.shtm>.

⁹See FTC Press Release, *Kevin Trudeau Banned from Infomercials* (Sept. 7, 2004) available at <http://www.ftc.gov/opa/2004/09/trudeaucoral.shtm>.

¹⁰See FTC Press Release, *Federal Court Finds Kevin Trudeau in Civil Contempt* (Nov. 21, 2007) available at <http://www.ftc.gov/opa/2007/11/kt.shtm>.

Weight loss scams are a staple of our enforcement program

¹¹See FTC Press Release *Marketers of 7 Day Miracle Cleanse Program Banned from Infomercials* (Feb. 27, 2008) available at <http://www.ftc.gov/opa/2008/02/7day.shtm>.

sites to foreign authorities. We are now following up with targeted enforcement against sites that did not modify or remove their claims.

V. Evolving Marketing Techniques

Just as we shift our resources to respond to shifting consumer protection needs, we must also anticipate and respond to evolving marketing methods. Companies no longer rely just on traditional print or television advertising, or even Web sites, to reach consumers. If we limit our efforts to these old-school media there will be gaping holes in our enforcement program.

In the last few years we have noticed a fundamental shift in the marketing landscape – away from a model where the company controls the message, into a realm where the consumer actively participates in shaping and disseminating information about a product or service. I’m

against Berkeley Premium Nutraceuticals and its founder Steven Warshak.¹³ The defendants had been selling d

¹³See FTC Press Release, *FTC Charges Sellers of Avlimil, Rogisen, and Other Dietary Supplements* (Feb. 2, 2006) available at <http://www.ftc.gov/opa/2006/02/avlimil.shtm>.

¹⁴See Department of Justice Press Release, *Berkeley Executives Convicted of Conspiracy and Fraud in Connection with Sales of Dietary Supplements* (Feb. 26, 2008) available at <http://www.usdoj.gov/usao/ohs/Press/02-26-08.pdf>.

