## HCG Diet Direct, LLC 11/28/11

UNITED STATES OF AMERICA

DEPARTMENT OF HEALTH AND HUMAN SERVICES FOOD AND DRUG ADMINISTRATION SILVER SPRING, MD 20993

HCG Diet Direct, LLC 7850 N Silverbell Road, #114-287 Tuscon, AZ 85743-5223

Dear Mr. Ethington:

This letter is to advise you that the United States Food and Drug Administration (FDA) and the United States Federal Trade Commission (FTC) have reviewed your Based on our

sections 301 and 505 of the Federal Food, Drug, and Cosmetic Act (the Act) [21 U.S.C. §§ 331 and 355] and is misbranded in violation of sections 503 and 301 of the Act [21 U.S.C. §§ 353 and 331].

In addition, it is unlawful under the FTC Act, 15 U.S.C. § 41 *et seq.*, to advertise that a product can prevent, treat, or cure human disease unless you possess competent and reliable scientific evidence, including, when appropriate, well-controlled human clinical studies, substantiating that the claims are true at the time they are made. *See FTC v. Direct Mktg. Concepts*, 569 F. Supp. 2d 285, 300, 303 (D. Mass. 2008), *aff'd*, 624 F.3d 1 (1st Cir. 2010);

*Natural Solution, Inc.*, No. CV 06-6112-JFW, 2007-2 Trade Cas. (CCH) P75,866, 2007 U.S. Dist. LEXIS 60783, at \*11-12 (C.D. Cal. Aug. 7, 2007). More generally, to make or exaggerate such claims, whether directly or indirectly, through the use of a product name, website name, metatags, or other means, without rigorous scientific evidence sufficient to substantiate the claims, violates the FTC Act. *See In re Daniel Chapter One*, No. 9239, slip op. 18-20, 2009 WL 516000 (F.T.C.), 17-19 (Dec. 24, 2009) <u>http://www.ftc.gov/os/adjpro/d9329/091224commissionopinion.pdf</u>, *pet. for review den.*, 2010 WL 5108600 (D.C. Cir. Dec. 10, 2010).

Statements on the immediate container label that document the intended uses of your product include, but are not limited to, the following:

In addition to the above, your website documents the intended uses of your products including, but not limited to, the following:

low calorie developed diet, is formulated to encourage extra fat to be mobilized

application on file for the above product.

provisions of the Act.

We recognize that labeling identifies this product as a homeopathic drug with active ingredients measured in homeopathic strengths.[1] The defin 201(g)(1) of the Act [21 U.S.C. § 321(g)(1)] includes articles recognized in the official Homeopathic Pharmacopeia of the United States (HPUS), or any supplement to it. Homeopathic drugs are subject to the same regulatory requirements as other drugs; nothing in the Act exempts homeopathic drugs from any of the requirements related to adulteration, labeling, misbranding, or approval. We acknowledge that many homeopathic drugs are manufactured and distributed without FDA approval un

(the CPG). As its title suggests, the CPG identifies specific conditions under which homeopathic drugs may ordinarily be marketed; thus, in order to fall under the enforcement policies set forth in the CPG, a homeopathic product must meet the conditions set forth in the CPG.

labeled as being homeopathic which is listed in the Homeopathic Pharmacopeia of the The CPG additionally

non-homeopathic active ingredients are

Arginine 3x,12x,30x, L-Carnitine 3x,12x,30x and Ornithine 3x,12x,30x, Foeniculim vulgare 2x, Antimonium crudum 8x, Gallium [*sic*] aparine 6x, Rubus idaeus 6x, Calcarea carbonica 6x, Lac defloratum 6x, Manganum metallicum 6x and Phosphorus

Although, Foeniculim vulgare, Antimonium crudum, Gallium [*sic*] aparine, Calcarea carbonica, Lac defloratum, Manganum metallicum, and Phosphorus are established homeopathic ingredients listed in the HPUS, HCG, Arginine, and L-Carnitine are not established homeopathic active ingredients included in the HPUS or any of the addenda or supplements. Furthermore, to our knowledge, HCG, Arginine, and L-Carnitine are not listed in any recognized materia medica containing information on the preparation of homeopathic medicines. Therefore, HCG, Arginine, and L-

opathic drug product under the CPG. Accordingly, the policies set forth in the CPG for the marketing of

Act [21 U.S.C. § 353(b)(1)]. Section 503(b)(1) of the Act [21 U.S.C. § 353(b)(1)]

of the

effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to

by law to administer such drug. Your labeling provides that your product should be taken in conjunction with a very low calorie diet (VLCD). A VLCD should only be used under proper medical supervision. Because it is subject to section 503(b)(1) of

the Act [21 U.S.C. § 353(b)(4)] in that its label fails to bear the symbol, "Rx only. [2] Your marketing of this misbranded product violates sections 301(a) and (k) of the Act [21 U.S.C. §§ 331(a) and (k)].

The issues and violations cited in this letter are not intended to be an all-inclusive statement of violations that exist in connection with your products. You are responsible for investigating and determining the causes of the violations identified above and for preventing their recurrence or the occurrence of other violations. It is your responsibility to assure that your firm complies with all requirements of federal law and FDA regulations.

You should take prompt action to correct the violations cited in this letter. Failure to promptly correct these violations may result in legal action without further notice, including, without limitation, seizure and injunction. Other federal agencies may take this Warning Letter into account when considering the award of contracts.

We note that under section 201(ff)(3)(B) of the Act [21 U.S.C. § 321 (ff)(3)(B)], dietary supplements cannot contain an article that is approved as a new drug under section 505, which was not marketed as a dietary supplement or food prior to FDA approval of such drug. FDA approved Pregnyl, which contains HCG as the active ingredient, as a new drug on October 20, 1976. To FDA's knowledge there is no evidence that HCG was marketed as a dietary supplement or food prior to FDA approval of Pregnyl. As such, a product containing HCG could not be a dietary supplement.

In addition, we have the following comment:

www.hcgdietdirect.com, makes use of the FDA logo. The FDA logo is for the official use of FDA and not for the use of the private sector. To the public, such use would send a message that FDA favors or endorses an organization, its activities, its products, its services, and/or its personnel which it does not and cannot do. Misuse of the FDA logo may violate federal law and subject those responsible to civil and/or criminal liability.

Within fifteen working days of receipt of this letter, please notify this office in writing of the specific steps that you have taken to correct violations. Include an explanation of each step being taken to prevent the recurrence of violations, as well as copies of related documentation. If you cannot complete corrective action within fifteen working days, state the reason for the delay and the time within which you will complete the corrections. Furthermore, please advise this office of what actions you will take to address product that you have already distributed.

Your reply should be directed to the attention of John J. Stamp, Compliance Officer, 19701 Fairchild, Irvine, CA 92612-2506. If you have questions regarding any issue in this letter, please contact Mr. Stamp at 949-608-4464.

FTC strongly urges you to review all claims for your products and ensure that those claims are supported by competent and reliable scientific evidence. Violations of the FTC Act may result in legal action seeking a Federal District Court injunction or an Administrative Cease and Desist Order. An order also may require that you pay back money to consumers. Please notify FTC via electronic mail at healthproducts@ftc.gov, within fifteen working days of receipt of this letter, of the specific actions you have taken to address FTC's concerns. If you have any questions regarding compliance with the FTC Act, please contact Richard Cleland at 202-326-3088.

Sincerely,

/S/

cc: Robert J. St. Clair, Esq. 215 North Court Avenue, 2nd Floor Tucson, AZ 85701

Mr. Clint Ethington 5880 N. Tucson Mountain Dr. Tucson, AZ 85743

Mr. Clint Ethington 2753 East Broadway Suite 101-205 Mesa, AZ 85204

[1] 3x,12x,30x, L-Carnitine 3x,12x,30x and Ornithine 3x,12x,30x, Foeniculim vulgare 2x, Antimonium crudum 8x,