Statement of Commissioner Joshua D. Wright
In the Matter of GeneLink, Inc. and foru International Corporation
Federal Trade Commission v. Sensa Products, LLC
Federal Trade Commission v. HCG Diet Direct, LLC
In the Matter of L'Occitane, Inc.
Federal Trade Commission and State of Connecticut v. LeanSpa, LLC
January 7, 2014

Today the Commission announces five settlements involving the deceptive marketing of a variety of nutritional and dietary supplements, skincare products, and weight-loss remedies. While the course of business conduct, type of product and particular advertising claim at issue in each case differs, all share one common characteristic – the Commission has alleged that, in the course of advertising their products, each of these defendants has made false or unsubstantiated claims about the treatment of certain medical or health conditions.

Cases that challenge false or unsubstantiated claims – especially those involving serious medical conditions – are an important component of our agency's mission to protect consumers from economic injury. Indeed, the aggregate consumer injury in these particular matters is estimated to be $420 million and these settlement agreements will return approximately $33 million to consumers. I fully support the Commission's efforts to deter deceptive advertising and voted in favor of authorizing these particular settlements.

In crafting remedial relief in these cases, the Commission inevitably faces a tradeoff between deterring deceptive advertising and preserving the benefits to competition and consumers from truthful claims. Tailoring remedial relief – including the level of substantiation required – to the specific claims at issue is in the best interests of consumers.[1] I write today to express some of my views on this issue.

Each of the consent agreements announced today includes injunctive relief provisions requiring the settling parties to satisfy a standard of "competent and reliable scientific evidence" before again making the claims at issue. Each consent agreement further defines "competent and reliable scientific evidence" as requiring, among other things, two adequate and well-controlled human clinical studies (randomized controlled trials or RCTs) of the product. I encourage the Commission to explore more fully whether the articulation and scope of injunctive relief in these and similar settlements strikes the right balance between deterring deceptive advertising and preserving for consumers the benefits of truthful claims. The optimal amount and type of evidence to substantiate a future claim will vary from case to case. Similarly, a fact-specific inquiry may justify specially crafted injunctive relief in certain cases, such as bans, performance

[1] The Commission's determination of whether an advertiser has adequate substantiation in the first instance depends upon "a number of factors relevant to the benefits and costs of substantiating a particular claim. These factors include: the type of claim, the product, the consequences of a false claim, the benefits of a truthful claim, the cost of developing substantiation for the claim, and the amount of substantiation experts in the field believe is reasonable." FTC Policy Statement Regarding Advertising Substantiation, appended to *Thompson Medical Co*., 104 F.T.C. 648, 839 (1984), *aff'd*

bonds or document retention requirements for underlying study data. I look forward to working with my fellow Commissioners to continue to examine and evaluate our formulation of the competent and reliable scientific evidence standard, as well as the ancillary injunctive provisions in consent agreements, in order to best protect consumers from the costs imposed upon them by deceptive advertising while encouraging competition and truthful advertising that benefits consumers.