



LOSE WEIGHT

LOSE INCHES OFF

HEALTHIER YOU

EAT WHAT YOU WANT

WEIGHT-LOSS ADVERTISING: An Analysis of Current Trends

A FEDERAL TRADE COMMISSION
STAFF REPORT



September 2002

**WEIGHT-LOSS ADVERTISING:
An Analysis of Current Trends**

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A REPORT OF THE STAFF OF THE FEDERAL TRADE COMMISSION

September 2002

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This report is a project of the staff of the Federal Trade Commission with the assistance of the Partnership for Healthy Weight Management, a coalition of representatives from science, academia, the health care profession, government, commercial enterprises, and organizations whose mission is to promote sound guidance on strategies for achieving and maintaining a healthy weight. The principal authors of this report are attorneys with the Bureau of Consumer Protection, Federal Trade Commission. The views expressed in this report are those of the authors and do not necessarily represent the views of the Federal Trade Commission or any individual Commissioner. Special thanks are given to members of the Partnership, for their contributions to this report and to Michelle Rusk, an attorney with the Federal Trade Commission, for her assistance in editing this report, and Devenette Cox, who managed the data base for the report. The authors wish to acknowledge the contributions of Elizabeth Nichols, Eva Tayrose, Steve Sawchuk, Trisa Wilkens and Michelle Reeve for their assistance in the collection and coding of the advertisements reviewed in this report.



PREFACE

The Surgeon General's Call to Action to Prevent and Decrease Overweight and Obesity, released in December 2001, described the challenge of dealing with overweight and obesity as a community responsibility, as well as a personal one. Among the members of the community with important roles in implementing the Call to Action were the media, which the *Call To Action* charged with "encouraging truthful and reasonable consumer goals for weight loss programs and weight management products.

The staff of the Federal Trade Commission, with assistance from the Partnership for Healthy Weight Management, has conducted a critical analysis of the state of weight loss advertising at the beginning of the 21st century. This report identifies the kinds of messages marketers use to induce consumers to purchase their products and services and the frequency with which they occur. As such, the report provides a baseline from which the public can measure the progress of the media in one important aspect of their role under the *Call to Action*: promoting positive, reliable messages about weight loss through advertising. Advertising can play an important role in providing consumers with the information they need to make healthy weight loss choices. As conduits through which advertising reaches the public, publishers and broadcasters can exert a positive influence over marketing of weight loss products by assuring that the advertising they accept for dissemination is truthful and responsible.

The FTC report concludes that there is considerable room for improvement in the extent to which marketers and advertising agencies disseminate promises of miraculous, fast, and effortless weight loss. Efforts to address these problems are consistent with a key message of the *Call to Action* – that we develop "national actions to promote healthy eating habits and adequate physical activity."

I join the FTC staff in urging all who play a role in ensuring accurate and healthful information about weight loss interventions, to read this report. By becoming aware of the extent of the problem, we can begin to address it effectively. All involved have a responsibility:

Media can use their ability to persuade by promoting positive messages that emphasize the health benefits of modest weight loss achieved through healthy eating and increased physical activity.

Advertisers can rely on results rather than empty promises and sensationalism to describe weight loss products and services.

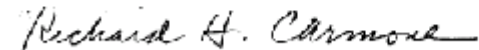
Publishers and broadcasters can adopt reasonable screening measures to assure that the weight loss ads they carry are based on science, and not on wishful thinking.

Law enforcement agencies such as the FTC must remain vigilant, and act to prohibit advertising that is misleading.

The public must adopt a healthy skepticism about advertising that promises miracles and "scientific breakthroughs," and face the reality that there are no fast and easy fixes for overweight or obesity. As has been said so many times before about so many different outlandish claims, "If it sounds too good to be true, it probably is."

Finally, all of us must react against dubious advertising claims by protesting to the marketers and the media that disseminate them and reminding them of their obligation to the public.

I congratulate the FTC staff and the Partnership for Healthy Weight Management for their valuable contribution to the *Call to Action*, by promoting responsible communication of weight loss information to consumers.


Richard H. Carmona, M.D., M.P.H., F.A.C.S.
United States Surgeon General

Introduction

George L. Blackburn, M.D., Ph.D.

As health care professionals, we are concerned about the epidemic of obesity: the relations between excess body weight and such medical conditions as cardiovascular disease, hypertension, type 2 diabetes, osteoarthritis, sleep apnea, and certain cancers (such as breast, ovarian, prostate and colon) are well established. We are equally concerned about false and misleading claims in the advertising of weight loss products and services. Many promise immediate success without the need to reduce caloric intake or increase physical activity. The use of deceptive, false, or misleading claims in weight loss advertising is rampant and potentially dangerous. Many supplements, in particular, are of unproven value or have been linked to serious health risks.

A majority of adults in the United States are overweight or obese. All told, they invest over \$30 billion a year in weight loss products and services. These consumers are entitled to accurate, reliable, and clearly-stated information on methods for weight management. They have a right to know if the weight loss products they're buying are helpful, useless, or even dangerous.

For this reason, the staff of the Bureau of Consumer Protection, Federal Trade Commission (FTC), joined with the Partnership for Healthy Weight Management—a coalition of representatives from science, academia, the health care professions, government agencies, commercial enterprises, and public interest organizations—to collect and analyze weight loss advertising. The Partnership's purpose is to promote sound guidance to the general public on strategies for achieving and maintaining a healthy weight. This report by the FTC staff is a major advance in that direction.

Evidence-based guidelines issued by the National Institutes of Health call for weight loss by simultaneously restricting caloric intake and increasing physical activity. Many studies demonstrate that obese adults can lose about 1 lb. per week and achieve a 5% to 15% weight loss by consuming 500 to 1,000 calories a day less than the caloric intake required for the maintenance of their current weight. Very low calorie diets result in faster weight loss, but lower rates of long-term success.

While exercise added to caloric restriction can help overweight and obese people achieve minimally faster weight loss early on, physical activity appears to be a very important treatment component for long-term maintenance of a reduced body weight. To lose weight and not regain it, ongoing changes in thinking, eating, and exercise are essential. Behavioral treatments that motivate therapeutic lifestyle changes can promote long-term success by helping obese individuals make necessary cognitive and lifestyle changes.

The public often perceives weight losses of 5% to 15% as small and insufficient even though they suffice to prevent and improve many of the medical problems associated with weight gain,

overeating, and a sedentary lifestyle. Many in the weight loss industry promise effortless, fast weight loss, then support this misperception by bombarding Americans with spurious advertising messages touting physiologically impossible weight loss outcomes from the use of unproven products and services. All advertisers, whatever their choice of media--cable television, infomercials, radio, magazines, newspapers, supermarket tabloids, direct mail, or commercial e-mail and Internet websites--know that only those products and services that help people adopt lifestyles that balance caloric intake with caloric output will prevent and treat the disease of obesity.

For certain businesses (weight loss franchises, pharmaceutical firms, food companies, the diet-book industry, makers of exercise equipment, suppliers of dietary supplements, to name a few) these deceptive and misleading advertisements prevent the public from hearing their messages, words that promote therapeutic lifestyle changes as advocated by professional societies and the U.S. Department of Health and Human Services. Data indicate that at any given time, almost 70 million Americans are trying to lose weight or prevent weight gain. In 2000 they spent approximately \$35 billion on products they were told would help them achieve those objectives--videos, tapes, books, medications, foods for special dietary purpose, dietary supplements, medical treatments, and other related goods and services.

As with cigarette smoking and alcohol abuse, false or deceptive advertising of weight loss products and services puts people at risk. Many of the products and programs most heavily advertised are at best unproven and at worst unsafe. By promoting unrealistic expectations and false hopes, they doom current weight loss efforts to failure, and make future attempts less likely to succeed. In the absence of laws and regulations to protect the public against dangerous or misleading products, a priority exists for the media to willingly ascribe to the highest advertising standards, *i.e.*, those that reject the creation and acceptance of advertisements that contain false or misleading weight loss claims.

The public would be well served by becoming more knowledgeable about the evidence-based guidelines, the scientifically-proven and medically-safe standards that underlie national public health policy. When more people know what's important and realistic in achieving and maintaining a healthy body weight, fewer will be inclined to waste their money, time, and effort on dangerous fads or miracle cures. The staff of the FTC's Bureau of Consumer Protection has provided an analysis of current trends in weight loss advertising. It is now up to the consumer and media to act in the best interest of the public health.

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Executive Summary

This report attempts to take a comprehensive look at weight loss advertising. The need to do so is compelling. In the last decade, the number of FTC law enforcement cases involving weight loss products or services equaled those filed in the previous seven decades. Consumers spend billions of dollars a year on weight loss products and services, money wasted if spent on worthless remedies. This report highlights the scope of the problem facing consumers as they consider the thousands of purported remedies on the market, as well as the serious challenge facing law enforcement agencies attempting to prevent deceptive advertising.

According to the U.S. Surgeon General, overweight and obesity have reached epidemic proportions, afflicting 6 out of every 10 Americans. Overweight and obesity constitute the second leading cause of preventable death, after smoking, resulting in an estimated 300,000 deaths per year. The costs, direct and indirect, associated with overweight and obesity are estimated to exceed \$100 billion a year.

At the same time, survey data suggest that millions of Americans are trying to lose weight. The marketplace has responded with a proliferating array of products and services, many promising miraculous, quick-fix remedies. Tens of millions of consumers have turned to over-the-counter remedies, spending billions of dollars on products and services that purport to promote weight loss. In the end, these quick-fixes do nothing to address the nation's or the individual's weight problem, and, if anything, may contribute to an already serious health crisis.

Once the province of supermarket tabloids and the back sections of certain magazines, over-the-top weight loss advertisements promising quick, easy weight loss are now pervasive in almost all media forms. At least that is the impression. But are the obviously deceptive advertisements really as widespread as they might appear watching late night television or leafing through magazines at the local newsstand? To answer this and other questions, we collected and analyzed a nonrandom sample of 300 advertisements, mostly disseminated during the first half of 2001, from broadcast and cable television, infomercials, radio, magazines, newspapers, supermarket tabloids, direct mail, commercial e-mail (spam), and Internet websites. In addition, to evaluate how weight-loss advertising has changed over the past decade, we collected ads disseminated in 1992 in eight national magazines to compare with ads appearing in 2001 in the same publications.

We conclude that false or misleading claims are common in weight-loss advertising, and, based on our comparison of 1992 magazine ads with magazines ads for 2001, the number of products and the amount of advertising, much of it deceptive, appears to have increased dramatically over the last decade.

Of particular concern in ads in 2001 are grossly exaggerated or clearly unsubstantiated

performance claims. Although we did not evaluate the substantiation for specific products and advertising claims as part of this report, many of the claims we reviewed are so contrary to existing scientific evidence, or so clearly unsupported by the available evidence, that there is little doubt that they are false or deceptive. In addition to the obviously false claims, many other advertisements contain claims that appear likely to be misleading or unsubstantiated.

Falling into the too-good-to-be-true category are claims that: the user can lose a pound a day or more over extended periods of time; that substantial weight loss (without surgery) can be achieved without diet or exercise; and that users can lose weight regardless of how much they eat. Also falling into this category are claims that a diet pill can cause weight loss in selective parts of the body or block absorption of all fat in the diet. These types of claims are simply inconsistent with existing scientific knowledge.

This report catalogues the most common marketing techniques used in 300 weight loss advertisements. Nearly all of the ads reviewed used at least one and sometimes several of the following techniques, many of which should raise red flags about the veracity of the claims.

Consumer Testimonials; Before/After Photos. The headline proclaimed: “I lost 46 lbs in 30 days.” Another blared, “How I lost 54 pounds without dieting or medication in less than 6 weeks!” The use of consumer testimonials is pervasive in weight-loss advertising. One hundred and ninety-five (65%) of the advertisements in the sample used consumer testimonials and 42% contained before-and-after pictures. These testimonials and photos rarely portrayed realistic weight loss. The average for the largest amount of weight loss reported in each of the 195 advertisements was 71 pounds. Fifty-seven ads reported weight loss exceeding 70 pounds, and 38 ads reported weight loss exceeding 100 pounds. The advertised weight loss ranges are, in all likelihood, simply not achievable for the products being promoted. Thirty-six ads used 71 different testimonials claiming weight loss of nearly a pound a day for time periods of 13 days or more.

Rapid Weight-loss Claims. Rapid weight-loss claims were made in 57% of the advertisements in the sample. In some cases, the falsity of such claims is obvious, as in the ad that claimed that users could lose up to 8 to 10 pounds per week while using the advertised product.

No Diet or Exercise Required. Despite the well-accepted prescription of diet and exercise for successful weight management, 42% of all of the ads reviewed promote an array of quick-fix pills, patches, potions, and programs for effortless weight loss and 64% of those ads also promised fast results. The ads claim that results can be achieved without reducing caloric intake or increasing physical activity. Some even go so far as to tell consumers “you can eat as much as you want and still lose weight.”

Long-term/Permanent Weight-loss Claims. “Take it off and keep it off” (long-term/permanent weight loss) claims were used in 41% of the ads in the sample. In fact, the publicly

available scientific research contains very little that would substantiate long-term or permanent weight-loss claims for most of today's popular diet products. Accordingly, long-term or permanent weight-loss claims are inherently suspect.

Clinically Proven/Doctor Approved Claims. Clinically proven and doctor approved claims are also fairly common in weight-loss advertisements, the former occurring in 40% and the latter in 25% of the ads in the sample. Some of the specific claims are virtually meaningless. For example, a representation such as, "Clinical studies show people lost 300% more weight even without dieting," may cause consumers to conclude mistakenly that the clinically proven benefits are substantial, whereas, in fact, the difference between use of the product and dieting alone could be quite small (1.5 lbs. vs. .5 lbs.). These claims do little to inform consumers and most ads fail to provide consumers with sufficient information to allow them to verify the advertisers' representations. Moreover, the Federal Trade Commission, in past law enforcement actions, has evaluated the available scientific evidence for many of the *ingredients* expressly advertised as clinically proven, and challenged the weight-loss efficacy claims for these ingredients.

Natural/Safe Weight-loss Claims. Safety claims are also prevalent in weight-loss advertising. Nearly half of all the ads in the sample (42%) contained specific claims that the advertised products or services are safe and 71% of those ads also claimed that the products were "all natural."

Safety claims can be difficult to evaluate, especially when so many ads fail to disclose the active ingredients in the product. On the other hand, some advertisements disclose ingredients, *e.g.*, ephedra alkaloids, that make unqualified safety claims misleading. Nevertheless, marketers in almost half (48%) of the ads that identified ephedra as a product ingredient made safety claims. Only 30% of the ads that identified ephedra as an ingredient included a specific health warning about its potential adverse effects.

Historical Comparison. To develop a perspective on how weight-loss advertising has changed over time, this report also compares advertisements appearing in a sample of magazines published in 2001 with ads in the same magazines in 1992. Compared to 1992, readers in 2001 saw more diet ads, more often, and for more products. Specifically,

- The frequency of weight-loss advertisements in these magazines more than doubled, and
- The number of separate and distinct advertisements tripled.

Moreover, the type of weight-loss products and services advertised dramatically shifted from "meal replacements" (57%), in 1992 to dietary supplements (66%), in 2001. Meal replacement products typically facilitate the reduction of caloric intake by replacing high-calorie foods with lower-calorie

substitutes, whereas dietary supplements are commonly marketed (55%) with claims that reducing caloric intake or increasing physical activity is unnecessary.

The considerable changes in the methods used to promote weight-loss products are the most revealing indication of the downward spiral to deception in weight-loss advertising. The 2001 advertisements were much more likely than the 1992 ads to use dramatic consumer testimonials and before-and-after photos, promise permanent weight loss, guarantee weight-loss success, claim that weight loss can be achieved without diet or exercise, claim that results can be achieved quickly, claim that the product is all natural, and make express or implied claims that the product is safe. Finally, although both the 1992 and 2001 examples include unobjectionable representations, as well as almost certainly false claims, the 2001 advertisements appear much more likely to make specific performance promises that are misleading.

Conclusion. The use of false or misleading claims in weight-loss advertising is rampant. Nearly 40% of the ads in our sample made at least one representation that almost certainly is false and 55% of the ads made at least one representation that is very likely to be false or, at the very least, lacks adequate substantiation. The proliferation of such ads has proceeded in the face of, and in spite of, an unprecedented level of FTC enforcement activity, including the filing of more than 80 cases during the last decade. The need for critical evaluation seems readily apparent. Government agencies with oversight over weight-loss advertising must continually reassess the effectiveness of enforcement and consumer and business education strategies. Trade associations and self-regulatory groups must do a better job of educating their members about standards for truthful advertising and enforcing those standards. The media must be encouraged to adopt meaningful clearance standards that weed out facially deceptive or misleading weight-loss claims. The past efforts of the FTC and the others to encourage the adoption of media screening standards have been largely unsuccessful. Nevertheless, as this report demonstrates, the adoption and enforcement of standards would reduce the amount of blatantly deceptive advertising disseminated to consumers and efforts to encourage the adoption of such standards should continue. Finally, individual consumers must become more knowledgeable about the importance of achieving and maintaining healthy weight, more informed about how to shop for weight-loss products and services, and more skeptical of ads promising quick-fixes.

I. An Overview

A. A Never-Ending Quest for Easy Solutions

Since at least 1900, American consumers have been searching for a safe and effective way to lose weight. As a nation, it has been a losing battle. Overweight and obesity have reached epidemic proportions.¹ An estimated 61 percent of U.S. adults are overweight or obese, and the trend is in the wrong direction.² Overweight and obesity constitute the second leading cause of preventable death, after smoking, resulting in an estimated 300,000 deaths per year at a cost (direct and indirect) that exceeds \$100 billion a year.³

The struggle to shed unwanted pounds usually resolves itself into choosing between responsible products or programs that offer methods for achieving moderate weight loss over time and “miracle” products or services that promise fast and easy weight loss without sacrifice. Over the course of the last century, popular weight-loss methods have included: prescription and over-the-counter drugs and dietary supplements; surgical procedures such as gastro-intestinal bypass surgery, gastroplasty (stomach stapling), and jaw wiring; the television shows of motivational weight-loss gurus; commercial weight-loss centers; commercial diet drinks; doctor-supervised very-low-calorie diets, complete with their own vitamin shots, fiber cookies, and drinks; the development of fat-free, low-fat, fake-fat, and sugar-free foods; weight-loss support groups; exercise trends such as aerobics and body building; and cellulite creams.

Almost all weight-loss experts agree that the key to long-term weight management lies in permanent lifestyle changes that include, among other things, a nutritious diet at a moderate caloric level and regular physical exercise. Nevertheless, advertisements for weight-loss products and services saturate the marketplace, with many promising instantaneous success without the need to reduce caloric intake or increase physical activity.

This is not a new phenomenon. In the last 100 years, various types of weight loss products and programs have gained and lost popularity, ranging from the ludicrous – diet bath powders, soaps, and shoe inserts – to the dangerous, such as the fen/phén diet pill combination.⁴ Around the 1900s, popular weight-loss drugs included animal-derived thyroid, laxatives, and the poisons arsenic and strychnine; eventually each was shown to cause weight loss only temporarily, and usually to be unsafe to use. In the 1930s, doctors prescribed dinitrophenol, a synthetic insecticide and herbicide that increases human metabolism so drastically that organs fail, causing blindness and other health problems. The hormone human chorionic gonadotropin (HCG) became popular in the 1950s for weight loss, and resurfaced recently, even though the FDA exposed it decades ago as effective only to treat Fröhlich’s Syndrome, a particular genetic imbalance occurring only in boys.⁵

The 1990s saw an explosion in dietary supplement marketing, many of which are of unproven value and/or have been linked to serious health risks.⁶ As discussed in this report, the

Federal Trade Commission has brought numerous cases against the advertisers of weight-loss supplements for making false or misleading advertising claims. Other products may raise serious safety concerns. For example, experts, including the American Medical Association, have raised concerns about the safety of ephedra, a popular diet pill ingredient,⁷ and Health Canada recently warned Canadian citizens against using ephedra for dieting because of its dangerous propensities.⁸

B. The Role of Advertising for Weight-loss Products and Services

As noted above, consumers may choose from a myriad of weight-loss products and services. Consumers make their selections based, in part, on advertising. Advertising that presents false or misleading information may distort consumer decision making. Even more troubling, if the entire field of weight-loss advertising is subject to wide-spread deception, then advertising loses its important role in the efficient allocation of resources in a free-market economy. If the purveyors of the “fast and easy fixes” drive the marketplace, then others may feel compelled to follow suit or risk losing market share to the hucksters who promise the impossible. Public health suffers as well. The deceptive promotion of quick and easy weight-loss solutions potentially fuels unrealistic expectations on the part of consumers. Consumers who believe that it is really possible to lose a pound a day may quickly lose interest in losing a pound or less a week.

C. Weight Loss: A Multi-Billion Dollar Industry

More than two thirds of American adults are trying either to lose weight or to forestall weight gain, according to a 1996 survey of 107,000 people by the Centers for Disease Control and Prevention (“CDC”).⁹ The nearly 29 percent of men and 44 percent of women who are trying to lose weight¹⁰ (an estimated 68 million American adults) comprise a huge potential market for sellers of weight-loss products and services. No wonder overall sales in the weight-loss/weight-control industry are burgeoning. According to an article in the *Atlanta Business Chronicle*, consumers spent an estimated \$34.7 billion in 2000 on weight-loss products and programs.¹¹ This figure includes sales of books, videos, and tapes, low-calorie foods and drinks, sugar substitutes, meal replacements, prescription drugs, over-the-counter drugs, dietary supplements, medical treatments, commercial weight-loss chains, and other products or services related to weight-loss or weight-maintenance.

Although total sales information is not available, the figures that are available are impressively large. For example, year 2000 sales for the eight largest weight-loss chains totaled \$788 million, and sales for dietary supplements that purport to promote weight loss accounted for \$279 million in retail outlets alone.¹² In a report from the Business Communications Company based on 1999 figures, total sales for weight-loss supplements were estimated at \$4.6 billion.¹³ This corresponds with estimates from the CDC, based on a five-state random-digit telephone survey, that 7% of the adult population used one or more non-prescription weight-loss products during 1996 through 1998.¹⁴ The authors extrapolate from this survey that an estimated 17.2 million Americans used

nonprescription weight-loss products during this time period.¹⁵

The amount of total sales for unproven or worthless products is not known, but it is substantial. Infomercials, direct mail advertising, and free-standing inserts can generate tens of millions of dollars in sales within a short period of time for a single product, and, as this report demonstrates, there are hundreds, perhaps even thousands, of weight-loss products on the market. These forms of saturation advertising do not require high response rates to be highly profitable. As an example of the prevalence of hard-sell marketing for non-prescription weight-loss products, spending on infomercials (usually 30-minute to an hour programs pitching products for direct sale via telephone call-ins) for weight-loss and nutrition products exceeded \$107 million in 1999.¹⁶ The alarming increase in overweight and obesity combined with marketers' easy access to mass media outlets makes the business of weight loss a booming enterprise.

II. Collection Methodology and Coding

This report looks at weight-loss advertising disseminated through broadcast and cable television, infomercials, radio, magazines, newspapers (including free-standing inserts in Sunday newspapers), supermarket tabloids, direct mail, commercial e-mail (spam), and Internet websites. We collected a total of 300 advertisements from a variety of sources. Except as noted with regard to Internet sites, we did not attempt to select a scientifically random sample.¹⁷ At the same time, no effort was made to collect just "bad" ads. In general, these advertisements appeared between February and May 2001.

Television and radio advertisements: Members of the Partnership for Healthy Weight Management¹⁸ (the Partnership) monitored television and radio advertisements and sent identifying information to the FTC staff, who ordered copies of the ads from Video Monitoring Service. Twenty radio and television ads were included in our sample.

Infomercials: The FTC staff obtained a list of twenty-eight infomercials appearing between January 1, 2001 and May 7, 2001 from Infomercial Monitoring Service, Inc. and ordered six infomercials, based on the product description and the date the infomercial initially aired. We gave preference to infomercials that appeared to involve relatively new products and excluded infomercials marketing exercise equipment and electronic devices. When there were two infomercials for the same product, we selected the infomercial with the most recent initial appearance date.¹⁹

Magazines and supermarket tabloids: The FTC staff selected the following magazines and supermarket tabloids for monitoring: *Cosmopolitan*, *Family Circle*, *Fitness*, *First for women*, *Glamour*, *Globe*, *Ladies Home Journal*, *Let's Live*, *Marie Claire*, *McCalls*, *National Enquirer*, *National Examiner*, *Redbook*, *Rosie*, *Self*, *Soap Opera Digest*, *Star*, *Sun*, *Weekly World News*, *Woman's Day*, *Women's Fitness*, and *Women's Own*. We selected some of the publications

because of their past history of running questionable weight loss advertisements. With regard to magazines published on a monthly basis, we reviewed each issue from February through May for weight-loss advertisements. We reviewed only selected editions of weekly publications.

Newspapers: The FTC staff obtained a sample of U.S. newspaper advertisements from Burrelle's Information Services, a newspaper clipping service. The ads appeared during April and the first week of May 2001. We included newspaper ads in our sample if they contained references to specific amounts of weight loss, *e.g.*, lose 30 pounds by summer, or John Doe lost 30 pounds.

Direct Mail and Unsolicited Commercial e-mail (spam): We collected direct mail and spam ads from the FTC staff, members of the Partnership, and consumers.

Internet Ads: The Partnership and two Northern Illinois University researchers organized a "surf day" project to identify relevant websites. In December 2000, a student-team collected data, using 14 popular search engines and 139 keyword search terms, about Internet websites containing weight-loss related information.²⁰ Through this process, participants located thousands of Internet websites. Researchers compiled URL and other information about the websites in a database. The FTC staff randomly selected every 50th still-active site in the database until it had accumulated a representative sample of 44 commercial sites that promoted weight-loss products and/or services.

The FTC staff collected and coded the following information from each advertisement: company name; product name; product type, *e.g.*, meal replacement; publication and publication dates; method of dissemination (broadcast TV, cable TV, infomercial, radio, magazine, newspaper, tabloid, direct mail, free standing insert, unsolicited commercial e-mail (spam), and Internet website); and purchase options (retail outlet, website, direct mail, telephone, other).

The FTC staff also coded the use of the following specific types of claims or advertising techniques: consumer testimonials; before-and-after photos; rapid weight-loss claims; lose weight without diet or exercise claims; long-term or permanent weight-loss claims; representations that the user will not fail no matter how many times he or she has failed before; clinically or scientifically proven claims; endorsements by medical professionals; money-back guarantees; and all-natural and/or safe claims. The FTC staff also recorded the specific text of the headline and representative claims for analysis.

We collected additional information from ads using consumer testimonials, including: the number of testimonials used; the high and low range of weight loss claimed, *e.g.*, 10 lbs. in two weeks/30 lbs. in 30 days; whether there was a disclaimer associated with the use of the testimonials, what the disclaimer said, and whether the disclaimer was conspicuous.

With regard to safety, we collected information on whether potential side effects were disclosed. Where there was a safety warning, we recorded the text of the warning. The FTC staff

collected information concerning the active ingredients in the product if the advertisement provided that information.

III. Analysis of Weight-loss Advertisements

A. General Observations

An ad for a product made from ground-up shells of shrimps, crabs, and lobsters claims, “Scientists dedicated years of research to come up with a high powered diet ingredient with no side effects” and asks, “Have you ever seen an overweight fish? Or an oyster with a few pounds too many? Everyone knows that sea animals never get fat.” A testimonial in this ad alludes to the product’s ability to select only unwanted fat deposits: “The best thing about [the product] is that my waist size is 3 inches smaller, now only 26 inches. And it has taken off quite some inches from my butts [sic] (5 inches) and thighs (4 inches), my hips now measure only 35 inches. I still wear the same bra size though. The fat has disappeared from exactly the right places.” In fact, there is no convincing evidence that the shells of shrimps, crabs, or lobsters cause weight loss or that weight loss can be selectively targeted to specific parts of the body.

An ad for a second product whose active ingredient is apple pectin is headlined, “LOSE UP TO 2 POUNDS DAILY... WITHOUT DIET OR EXERCISE! I LOST 44 POUNDS IN 30 DAYS!” The ad further claims that “Apple pectin is an energized enzyme that can ingest up to 900 times its own weight in fat. That’s why it’s a fantastic fat blocker.” The ad claims that the product can “eliminate fat for effortless weight loss” and that it produces the “same results as jogging 10 miles per week, an hour of aerobics per day, 15 hours of cycling or swimming per week.” In fact, there is no known pill that will cause up to two pounds of weight loss daily (with or without diet and exercise), and the claim of 44 pounds of weight loss in 30 days is not credible.

In an infomercial for yet another weight-loss product, a beaming spokesperson and a purported scientific expert standing in front of a colorful pastry display assure viewers that to lose weight while using the product, “you don’t really need any willpower. You don’t have to diet or deprive yourself of foods in any way.” As the endorsers make these claims, the words “Call Now” and “Risk Free,” with the telephone number to order, appear in large, yellow text on one part of the screen on a blue background. At the same time, dim and indistinct white letters on a moving, mottled background advise, “A healthy diet and exercise are required to lose weight.”

The world of weight-loss advertising is a virtual fantasy land where pounds “melt away” while “you continue to eat your favorite foods”; “amazing pills . . . seek and destroy enemy fat”; researchers at a German university discover the “amazing weight loss properties” of asparagus; and the weight-loss efficacy of another product is comparable to “running a 20 mile marathon while you sleep.” It’s a world where, in spite of prevailing scientific opinion, no sacrifice is required to lose

weight (“You don’t change your eating habits and still lose weight”). Quick results are the (promised) norm (“The diet works three times faster than FASTING itself!”). You can learn how to lose weight with “No exercise. No drugs. No pills. And eat as much as you want – the more you eat, the more you lose.” There is no need to worry because the products are “safe,” “risk free,” and/or “natural,” and some marketers are so concerned for your safety that they warn you to cut back if you lose too much weight (“If you begin to lose weight too quickly, take a few days off!!!”). You can always get your money back because so many of these “amazing” products are “guaranteed” (“. . . we’ll give you your money back. Straight away. No questions asked”).

And for those who remain skeptical, there is an answer. The products are backed by “clinical studies” or are “clinically tested” (“Clinical and laboratory tests at leading universities and hospitals, have proven that this product is effective”). Even if they do not purport to be clinically proven, many claim to be the product of years of scientific research (“Scientists dedicated years of research to come up with a high powered diet ingredient with no side effects”) or are “doctor recommended.”

Moreover, according to many of the ads, you can “stay slim forever” because the weight loss is “permanent” (“I can still eat whatever I want without any danger of gaining the weight back.”). Finally, you can say good-bye to the failure syndrome because no matter how many times you’ve tried to lose weight in the past, the product will give you the “secret to lasting weight loss success.”

B. Media and Product Types

Three hundred advertisements for 218 different products or services were collected and reviewed. A list of the products is included in Appendix A. Table 1 identifies the number of ads for each type of medium.²¹

The advertisements covered virtually every kind of product or service imaginable. Categories with 10 or more advertisements included: dietary supplements (157), meal replacements (*e.g.*, diet shakes) (33), hypnosis (27), food (15), diet plans/programs/diet centers (21), transdermal products (patches and creams) (11), and wraps (10). Some ads promoted multiple products, and in some instances, it was not possible to determine the product category based solely on the advertisement. Only about half (49%) of the advertisements for dietary supplement or transdermal products disclosed the product’s active ingredients in the

Table 1: Number of Ads by Media Type

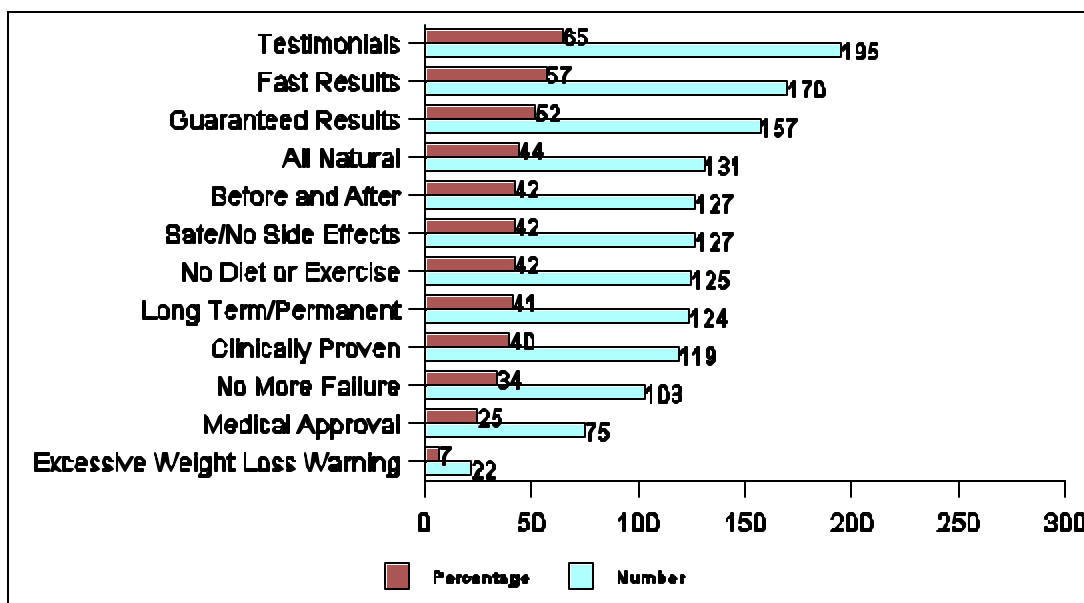
Medium	Number of Ads
Newspaper/FSI	85
Magazine	68
Tabloids	19
Internet	44
Commercial email	41
Direct Mail	27
Radio	13
Broadcast	7
Infomercial	5

advertisement. Of those that identified ingredients, the most common were ephedra, chitosan, and chromium.²²

C. Claims by Category

A clear pattern of claims and techniques emerged from our analysis. Nearly all of the ads reviewed used at least one and sometimes several of these techniques. Figure 1 shows the frequency of common advertising claims and techniques and what percentage of the 300 ads used the claim or technique. A composite ad showing the frequency of each claim or technique appears on page 8 of this report. Table 2 shows the percentage of ads by product category that contains the claims. The following sections discuss specific claims and techniques in detail.

Figure 1: Prevalence of Claims – All Media



WEIGHT LOSS ADVERTISING: WASTE LINES?

Depicted in this "weightloss advertisement" are the results (in percentages) of what the FTC found in common trends in the language used in today's weightloss ads.

LOSE WEIGHT **SAFELY** & EASILY

42%



If you are like most people, you've **tried dieting before & failed** or lost weight only to gain it all back.

34%

42%

BEFORE... →
...AFTER ↓

* results are never typical
of actual product results.



57%

With NordicaLite
you see results
in just 2 short days!!!

65%

Jayne Doe of Erie, PA
lost **43 lbs. in 6 weeks**
on Nordical Lite...

41%

...you **lose weight permanently!**
Jayne has kept her
weight off for over
10 years!



The miracle ingredients in NordicaLite
have been **tested and proven effective**
in a major university-based study in
Goteberg, Sweden.

40%



NordicaLite is approved and
endorsed by **physicians**
for use by their patients

25%



The **all natural ingredients**
in NordicaLite make
it possible...

44%



...to lose weight **WITHOUT** diet
or exercise and still **eat all your**
favorite foods!

42%

52%

NordicaLite

WEIGHTLOSS ASSISTANCE
www.wemarket4u.net/nordicalite

RESULTS GUARANTEED!

Please rush me my order A.S.A.P. I understand that if I am not completely satisfied, I can return the shipment for a **Full Money-Back Guarantee** (no questions asked).

Name: _____

Address: _____

City: _____

State: _____

Zip: _____

Charge my: ☐ Visa ☐ Mastercard

Card #: _____

Exp Date: _____

Signature: _____

Tel. #: _____

CAUTION:

If you start losing too much weight on this program, slow down.

7%



Table 2: Frequency of Claims by Product Category

	Dietary Supplement s (157)	Hypnosis (27)	Meal Replace- ment (33)	Food (15)	Plans/ Programs / Diet Centers (21)	Wraps (10)	Trans- dermal Products (11)	Other (24)
Testimonial s	59%	96%	70%	80%	76%	50%	45%	63%
Fast Results	60%	59%	58%	33%	43%	90%	73%	42%
Guaranteed results	59%	93%	36%	7%	24%	60%	55%	42%
Natural	56%	11%	42%	47%	14%	50%	27%	33%
No Diet or Exercise	55%	56%	12%	20%	14%	20%	27%	33%
Long- Term/Perma nent	38%	100%	18%	27%	33%	60%	18%	50%
Safe/No Side Effects	55%	30%	27%	20%	24%	50%	36%	25%
Before-and- After	33%	85%	36%	60%	76%	40%	36%	25%
Clinically Proven	53%	0	36%	7%	10%	40%	82%	33%
No More Failure	32%	89%	27%	20%	24%	20%	9%	38%
Medical Approval	34%	7%	12%	7%	10%	0	36%	38%
Excessive Wt. Loss Warning	12%	4%	0	0	5%	0	9%	0

1. Consumer Testimonials

Consumer testimonials are pervasive in weight-loss advertising. Of the advertisements in the sample, 195 (65%) used consumer testimonials as a mechanism to promote the weight-loss product or service. The ads that used this technique contained about five testimonials on average, with some containing as many as 50 or more. Testimonials were most often used in ads promoting hypnosis.

Testimonials rarely described modest or realistic successes, instead touting extraordinary and rapid weight loss. Nearly 90% of ads using consumer testimonials claimed specific amounts of weight loss and more than half (56%) included a specific time period for the largest amount of weight loss reported in the ad, *e.g.*, “I lost 30 pounds in 30 days.” The average for the largest amount of weight loss reported in each of the 195 advertisements was about 71 pounds. Fifty-seven (57) ads (30%) reported weight loss exceeding 70 pounds, and 38 ads (20%) reported weight loss exceeding 100 pounds.

In many instances ads used testimonials reporting weight loss in ranges that are, in all likelihood, simply not achievable for the products being promoted. Thirty-six ads used 71 different testimonials claiming weight loss of nearly a pound a day for time periods of 13 days or more. These ranged from claims of 22 pounds in 13 days to 120 pounds in seven weeks. All but three of these ads were for dietary supplement products.

There are many examples of implausible testimonials but perhaps the most remarkable is this one from a woman who claimed:

7 weeks ago I weighed 268 lbs, now I am down to just 148 lbs! During this time I didn't change my eating habits at all: the pounds must have disappeared only due to the new slimming capsule. My appearance is so different that my friends actually believe that I had liposuction.

The product featured in this advertisement claims to work by preventing the absorption of fat in the digestive system. In fact, weight loss of this magnitude would require a net calorie deficit of 8,571 calories per day over the course of seven weeks. Even complete fasting would not produce this kind of result. Nevertheless, this testimonial was disseminated to millions of Americans through *Cosmopolitan*, *Soap Opera Digest*, *National Enquirer*, *Women's Day*, *Let's Live*, *Women's Own*, *McCall's*, *Star*, and *First for women*.

Testimonials in weight-loss advertisements appear to serve at least two functions. First, they convey an efficacy claim, *i.e.*, the product works; and second, they attempt to minimize consumer skepticism. Many potential purchasers of weight-loss products have purchased other weight-loss products that failed. The challenge for the advertiser is to convince the purchaser that its product will work when all the others have not. One way to do that is to present the purchaser with examples of “real people” just like themselves who have used the product successfully. Indeed, in some instances, particularly infomercials, the endorser directly addresses viewers to reassure them that the product really worked when all other products and programs failed.

Weight-loss testimonials convey more than a limited message about one person's experience. They also convey a very convincing claim to consumers that the product is effective and, in some instances, that the product will enable the user to experience similarly dramatic results. Thus, testimonials can be deceptive in at least three distinct ways. First, the testimonialist may not have experienced the reported result. Testimonials that claim that users lost more than 30 pounds in

as little as 30 days likely fall into this category. Second, the reported weight loss may not be attributable to the product, but to other diet, exercise, or lifestyle changes. Third, an advertisement presenting testimonials claiming extreme and atypical weight loss as typical or ordinary experiences is likely to be deceptive without an indication of the more modest weight loss results that the typical user would experience using the product.²³

Typicality Disclaimers: The most common way to address this last issue is through disclaimers. Seventy (70) of the 195 ads (36%) had some form of disclaimer addressing the issue of whether the reported results are meant to be representative of users of the product or service. In only 18 of the cases, however, was the disclaimer conspicuous or proximate to the testimonials. In the vast majority of advertisements, disclaimers were buried in fine print footnotes or, in video ads, flashed as a video superscript too quickly for viewers to read. Table 3 provides a sample of disclaimers found in the selected advertisements.

Some of these disclaimers do little to inform consumers that the results reported in the advertisements are, at best, extreme cases, and that consumers should not expect to achieve similar results. For example, a disclaimer telling consumers that “results may vary” tells consumers almost nothing other than that everyone will not achieve 50 pounds of weight loss. With one or two notable exceptions, advertisers made no effort to provide specific information about the actual weight loss the average consumer could expect using a particular product.

2. Before/After Photos

Before-and-after photos, often appearing with testimonials, are commonly used in weight loss ads. Forty-two percent (42%) of the ads in this sample contained before-and-after pictures. More than just graphic consumer testimonials, these pictures try to create an image of what the consumers could accomplish personally if they only used the advertised product. Before-and-after pictures usually fall into one of two categories: (1) the illustrated personal testimonial, and (2) the

Table 3: Sample disclaimers used in weight-loss advertisements.

Results not typical and depends on diet and training program.
Results not typical.
Results may not be typical.
Results may vary.
Individual results vary and can be more or less than the results mentioned.
Results Atypical.
These results are not typical of every client. As individuals vary, so do results.
Your results may vary.
Benefits vary from each person.
Results obtained with this program can and do vary.
Yes! These are actual comments from our customers – girls just like you telling us about the exceptional, non-typical results they got with our amazing weight loss system.



clinical comparison of isolated body portions.²⁴ The former type often contains the following elements:

Before Picture: Snapshot quality photograph of the subject that incorporates poor posture, neutral facial expression, unkempt hair, unfashionable attire, poor lighting, and washed out skin tones.

After Picture: Brightly lit (sometimes studio portrait quality) pose of smiling subject in fashionable, often skimpy, attire, shoulders held back, tummy tucked in, with a stylish hair style and carefully applied makeup.

Eighty-eight percent (88%) of the ads with before-and-after pictures contained illustrated testimonials. In television spots and infomercials, this type of before-and-after treatment often incorporates a before photograph superimposed over a videotaped segment featuring the subject after using the advertised product or service making his/her videotaped testimonial.

Another form of before-and-after illustration isolates one portion of a subject's anatomy, usually the waist or buttocks, to show purported results, sometimes in a progression of three or more photographs over a period of time. These pictures often emulate the kind of illustrations found in medical articles. A few ads (two in this sample) feature both types of before-and-after pictures. Eleven percent (11%) of the ads with before- and-after pictures featured “clinical” comparison pictures.



Often the only discernable difference in the before picture and the after picture is a change in posture and body control. In the before picture the subject's shoulders are slumped, the abdominal muscles are relaxed, and the pelvis thrust forward to emphasize body fat. The after picture shows the subject holding in his/her abdomen and/or holding back his/her shoulders to emphasize lean body mass. A close examination of the before picture in this type of ad raises the question of whether the subject needed to lose weight and suggests that little or no weight was actually lost.



Some before-and-after photographs clearly appear to have been altered, usually by placing an image of the after subject's head on the photographic image of another (very obese) subject's body. Finally, it is not always clear whether "clinical" before-and-after pictures are depicting the results from actual users of the advertised product or service or are intended merely to be illustrative of the product's or service's capacity to produce weight loss.



3. Rapid Weight-loss Claims

Fifty-seven percent (57%) of the ads in our sample promised rapid weight loss, often claiming that excess weight or fat can disappear in a matter of days or weeks. Claims in this category range from explicit promises of rapid weight loss ("A Quick Weight Loss Plan For People In A Hurry" "RAPID WEIGHT LOSS IN 28 DAYS!" "Clinically proven to help you lose weight . . . fast") through claims for immediate or near immediate results ("Starts to work within minutes" "Works in one minute" "You only have to stay on it 2 DAYS TO SEE RESULTS") to promises of amounts of weight loss over time periods that compute to rapid rates of weight loss. ("YOU CAN LOSE 18 POUNDS IN ONE WEEK!" "lose up to 10 lbs in 48 hours"). Additional examples are set

Table 4: Representative Claims That Promise Fast Results

"This combination of plant extracts constitutes a weight-loss plan that facilitates what is probably the fastest weight loss ever observed from an entirely natural treatment." (elixir purportedly containing 16 plant extracts)
"Just fast and easy, effective weight loss!" (fucus vesiculosus)
"Lose 10 lbs. in 8 Days!" (apple cider vinegar)
"Rapid weight loss in 28 days!" (ephedra)
"Knock off your unwanted weight and fat deposits at warp speeds! You can lose 18 pounds in one week!" (ingredients not disclosed)
"Clinically proven to cause rapid loss of excess body fat." (phosphoserine)
"Two clinically proven fat burning formulations that are guaranteed to get you there fast or it costs you absolutely nothing." (ingredients not disclosed)

forth in Table 4. Even the product names (“Redu-Quick, “Slim Down Fast”) emphasize speedy results.

Such results are not only unlikely, they would be accomplished at an increased risk to health. Rapid weight loss has been associated with an increased risk of developing gallstones.²⁵ Consequently, responsible programs that offer proven means of rapid weight loss for obese patients with such diseases as coronary artery disease or Type II diabetes provide physician supervision while patients are actively losing weight.

Rapid weight-loss claims often appeared in combination with the promise of easy weight loss (“Lose those pounds the quick and easy way,” “Lose weight while you sleep,” “Lose weight quickly and easily and keep it off”) without the need for diet or exercise. In 54% of the ads promising rapid weight loss, there are also claims for easy weight loss or weight loss without the need for changing diets or increasing exercise levels.

4. Lose Weight Without Diet or Exercise

Despite the well-accepted prescription of diet and exercise for successful weight management,²⁶ 42% of all of the ads reviewed promote a dizzying array of quick-fix pills, patches, potions, and programs for effortless weight loss. An ad for an apple cider vinegar pill, for example, boasts that “you can eat as much as you want and still lose weight,” because “when properly distributed, an intake of 4,000 calories a day can actually help you lose weight instead of gain it.” Another ad exclaims that a pill purportedly containing the “herbal equivalents” of ephedrine, caffeine, and aspirin, plus other ingredients, is “scientifically shown in a recent clinical study to elicit a 613% greater rate of fat loss in non-exercising subjects as compared to subjects not using it.”²⁷ Additional examples are set forth in Table 5.²⁸

In addition, 64% of the ads containing the effortless weight-loss claims outlined above also promise

Table 5: Lose Weight Without Diet or Exercise Claims

“awesome attack on bulging fatty deposits . . . has virtually eliminated the need to diet.” (Konjac root pill)

“They said it was impossible, but tests prove [that] my astounding diet-free discovery melts away...5, 6, even 7 pounds of fat a day.” (ingredients not disclosed)

“The most powerful diet pill ever discovered! No diet or workout required. The secret weight-loss pill behind Fitness models, Show Biz and Entertainment professionals! No prescription required to order.” (ingredients not disclosed)

“lose up to 30 lbs . . . No impossible exercise! No missed meals! No boring foods or small portions!” (plant extract fucus vesiculosus)

“lose up to 8 to 10 pounds per week . . . [n]o dieting, no strenuous exercise.” (elixir purportedly containing 16 plant extracts)

“my 52 lbs of unwanted fat relaxed away without dieting or grueling exercise.” (hypnosis seminar)

“no exercise...[a]nd eat as much as you want – the more you eat, the more you lose, we’ll show you how.” (meal replacement)

that the advertised products and services will produce fast results. These ads include such claims as “[t]ake off up to 10 pounds and 6" in just 2 days...[n]o exercise,” “lose 3-4 pounds a week without dieting or exercise,” “[I]’ve lost 68 lbs in 4 months...does not require restricted diets or exercise,” and “[I] ate more and exercised less and still lost 44 lbs.”

5. Lose Weight Permanently

“You lose it. You gain it back. Use [the advertised product] with every diet program and keep it off.” Many consumers have lost weight only to gain it back again. In fact, studies indicate that most people who lose weight gain it back within five years.²⁹ Consequently, “take it off and keep it off” claims are fairly common in weight-loss advertising. In spite of the blue-sky promises of many marketers (“Get weight off and keep it off,” “You won’t gain the weight back afterwards, because your weight will have reached its equilibrium,” “Discover the secret to permanent weight loss”), experts have repeatedly observed that although persons generally lose weight while actively participating in a weight loss regimen treatment, they tend to regain the weight over time once treatment ends.³⁰ According to the National Academy of Science Food and Nutrition Board, “Many programs and services exist to help individuals achieve weight control. But the limited studies paint a grim picture: those who complete weight-loss programs lose approximately 10 percent of their body weight only to regain two-thirds of it back within 1 year and almost all of it back within 5 years.”³¹

For persons who have lost weight in the past only to gain it all back again, the appeal of a “once and forever” weight-loss product can be strong, especially when combined with references to the syndrome of failure many dieters experience or the promise of effortless, no-sacrifice weight-loss success. (Table 6) According to almost all weight-loss experts, if there is a key to long-term maintenance success, it requires permanent lifestyle changes on the part of the dieter: nutritional eating at moderate caloric levels, a regular physical fitness routine, and abandonment of old habits that may have contributed to weight gain.³²

Table 6: Long-term Weight Maintenance Claims and Other Related Claims

Percentage of ads with long-term maintenance claims	41%
Percentage of ads combining long-term maintenance claims with no diet or exercise claims	26%
Percentage of ads combining long-term maintenance claims with references to past failures	23%
Percentage combining all three	15%

The publicly available scientific research contains very little evidence that would substantiate long-term or permanent weight-loss claims for most of today’s popular diet products. Experts usually insist on studies going out at least one year, if not two, in order to substantiate a claim for long-term weight-loss maintenance.³³ Reliable studies of the long-term effectiveness of weight-loss products and programs are difficult and expensive to conduct. Not many marketers are likely to want to spend the money and the time necessary to have such tests of their product’s effectiveness

done. But that does not prevent many of them from assuring consumers that their product or service is “the secret to permanent weight loss” or that “you may never need to diet again.”

6. No Matter How Many Times You Failed Before

Among the weight-loss product advertisements surveyed, many contain “no more failure claims” that, although this may not be the first product tried, it will be the last. (Table 7) One marketer asks, for example: “Are you tired of fad diets that never seem to work? Are you frustrated when you gain back most or all of the weight you lose? Are you fed up with throwing money down the drain on diets that don’t work?” This marketer, of course, claims to offer the one product that will finally work.

Many advertisers take an empathetic and understanding tone, assuring consumers that they are not to blame for their failure to lose weight:

Table 7: No More Failure Claims

Percentage of ads with no more failure claims	34%
Percentage of ads with no more failure claims and long term/permanent claims	23%
Percentage of ads with no more failure claims and testimonials	29%

Dear Friend: If you’ve ever tried losing weight using one of the hundred diets programs available, you know how difficult and frustrating it can be. And you are not alone. Most people who sincerely – even desperately – want to lose weight have never been successful on a diet. That’s because diets do not work.

Others take advantage of the difficulty many consumers have in maintaining lost weight:

You’ve been there. You want to lose weight, and you’ve been successful before. But after a while, you’re right back where you started - and the pounds always seem to come back . . . [The advertised product] can help you break the cycle.

This advertising technique frequently takes the form of a testimonial from a product user who confides that he or she has experienced the same weight-loss frustrations:

Discouraged, I started trying all the tricks, appetite suppressants, creams, diets and medications. Fads came and went and I had spent a fortune with no result. Of course, I tried to lose weight numerous times. But each new diet left me starved and deprived. I’d lose weight, but end up irritable and unhappy. Diets weakened me physically and emotionally. I once lost all my weight on a liquid fast. It was incredibly expensive. Of course, the weight came right back on.

As a result of extravagant advertising claims such as the ones described in this report, consumers may develop unrealistic notions about how much weight they can lose or keep off.

Consumers purchase products purporting to be “unique” or “revolutionary” in their effectiveness and experience failure after failure.

7. Scientifically Proven/Doctor Endorsed

Many marketers attempt to bolster the credibility of their claims by asserting that the advertised product has been scientifically tested and proven to work. (Table 8) Phrases like “the clinically proven healthy way to lose weight,” “clinically tested,” “scientifically proven,” and “studies confirm” bestow products with an aura of scientific legitimacy and aim to persuade consumers that they should feel confident that a product will work.

Table 8: Clinically Proven, Medically Approved Claims

Percentage of all ads with clinically proven claims	40%
Percentage of ads with medical approval claims	25%
Percentage of ads with both clinically proven and medical approval claims	17%

Several advertisements describe the dramatic results obtained in clinical studies. One advertisement, for example, asserts that “Clinical studies show people lost 300% more weight even without dieting.”³⁴ Many advertisements also tout the fact that products were either developed or tested at well-known, respected, and “independent” institutions, such as “major universities,” “a leading U.S. medical center,” or “leading hospital[s].” Other advertisements showcase the impressive credentials of the researchers conducting the studies supporting the product, such as an advertisement that claims that a study proving the efficacy of the product was conducted by “the country’s most respected scientists.”

Many advertisers also imply that there is a substantial body of competently conducted scientific research supporting the efficacy of the product.³⁵ For instance, one advertisement claims that the efficacy of a product is “[b]acked by volumes of independent research and hundreds of published studies by the most prominent universities and medical journals in the world.” Another marketer claims that “[s]cientists dedicated years of research to come up with a high powered diet ingredient [contained in the product] with no side effects.”

Although some advertisements briefly describe the results, and provide some information about the methodology, of a particular study, such as the study’s duration and number of participating subjects, most of the advertisements fail to give consumers sufficient detail about a study to allow consumers to verify the advertiser’s representations. Moreover, 20 of the 117 ads making “clinically proven” claims were for products that contained ingredients already evaluated by the Federal Trade Commission in the context of past law enforcement actions challenging specific weight loss claims. These ingredients, which include fucus vesiculosus, chromium, L-carnitine, chitosan, psyllium, 7-keto-DHEA, hydroxycitric acid, seaweed, konjac root, garcinia cambogia and glucomannan, were challenged based on insufficient scientific evidence to support the weight loss claims made in the advertisements.

Still another technique that advertisers use to convince consumers that they are buying a tested and proven product is to assure consumers that a product is “recommended,” “approved by,” and often “developed” or “discovered” by a medical professional. (Table 8) For example, several advertisements prominently feature a “physician” wearing a white lab coat and a stethoscope and sitting in front of a diploma-filled wall. To add an air of legitimacy to the advertised product, some advertisements appear to be written by a physician. Others feature interviews with doctors or researchers who tout the product as being safe and effective. One Internet site even invites customers to call a “Medical Advisory Board” staffed with “qualified medical professionals” to answer medical questions.

Expert endorsements, however, can be misleading. For example, an advertisement may fail to disclose that the medical professional endorsing the product has a financial interest in promoting the sale of the product – a fact likely to affect the weight consumers give the endorsement and that could affect their purchase decision.³⁶ Marketers may even use a fictitious medical professional to endorse their products.³⁷ In other instances, experts either may not have actually reviewed the scientific evidence on the product or its ingredients or failed to utilize existing expert standards in conducting their review.³⁸

8. Money-back Guarantees

The analysis revealed that money-back guarantees are one of the most frequently used techniques in weight-loss advertising. Fifty-two percent (52%) of all the ads reviewed include this representation. (Table 9) One advertiser, for example, encourages consumers to pay the price of the product only if the product has helped the consumer slim down: “If not, send it back and pay nothing. There will be no questions asked and you won’t owe us a dime.” Another advertiser advises consumers that the company would not guarantee its products if they did not work as advertised: “Believe me, I am not a gambler.

Table 9: Money-back Guarantees

Percentage of ads that promise guaranteed results	52%
Percentage of ads that have both guaranteed results and no more failure claims	24%

I would never provide such an opportunity if I wasn’t totally convinced that this is the weight-loss breakthrough of the decade, and there’s no need to worry about too many requests for refunds.”

Although many companies guarantee “consumer satisfaction” in general, several advertisements make very specific guarantees: “Whether you diet or not, [the marketer] guarantees that you’ll lose up to seven pounds in the first week and then one dress or pant size every two weeks thereafter, or pay nothing.” Another marketer promises consumers that, “no matter how many times you’ve tried before . . . no matter how much weight you have to lose . . . no matter how sluggish your metabolism . . . you will lose up to 10 to 15 pounds in just one week . . . up to 35 pounds in 3 weeks. Yes. Guaranteed! You lose or it doesn’t cost you a penny.”

For any number of reasons, marketers may fail to honor refund requests at all or delay honoring them for months. In fact, the Federal Trade Commission has brought several cases against marketers failing to make refunds promised in their advertising.³⁹

9. Safe/All Natural Claims

Safety claims are a prevalent marketing technique in weight-loss advertising. Nearly half of all the ads in the sample (42%) contained specific claims that the advertised products or services are safe. These claims are made in a variety of ways. Some ads contain direct, unqualified representations about the safety of the product or service in producing weight loss, including such statements as “safe and effective,” “100% safe and natural,” “safe and gentle as a vitamin pill,” “safe, immediate weight loss,” and “safely lose up to 6 lbs of fat, fluid, and flesh in just the first 24 hours alone.” Others make direct comparisons between the safety of the product or service and other weight-loss methods, with claims like “safer than liposuction,” “safest and most effective strategy [for weight loss],” and “safest weight management system in the world.” Finally, some safety claims are combined with compelling assertions of scientific proof of safety. Examples of those claims include such statements as “proven safe and effective,” “proven 100% safe,” and “tested for years and found to be very safe.”

Many other weight-loss advertisements strongly imply that the product or service is safe because it has no side effects, is not a prescription weight-loss drug, or contains no potentially harmful stimulants. These representations include claims like “no side effects,” “no dangerous pills or tablets to take,” “[pills] do not pose a health hazard,” “88% success rate with virtually no side effects,” “in no way can [product X] harm your health,” “no dangerous dehydration nor depression,” “contains no stimulants that can harm the heart, increase blood pressure...,” “skip risking your health [from prescription drugs],” and “none of the harmful side effects often associated with prescription diet products.” One ad claimed that “the active compound has been recognized by the FDA as safe and effective for weight loss.”

Claims of “all natural” often appear in conjunction with safety claims. Almost three quarters (71%) of those ads containing safety claims also had “natural” claims. These two claims appeared in 30% of all the ads that we reviewed, often in the same sentence. Examples of combined claims include “100% natural with no side effects,” “all natural 100% safe,” “lose weight naturally, safely,” “100% natural so it’s totally safe,” and “lose weight in an easy way that is natural and that won’t hurt your body.” Overall, 44% of the ads that we reviewed made some version of the “all natural” claim.

Safety claims sometimes appeared in ads promoting the product in a way that could create the potential for injury. For example, 73% of the ads in our sample that contained safety claims also represented that the product or service would produce “fast,” “quick,” or “immediate” results. If the product actually worked as quickly as advertised, it could produce potentially dangerous results, because rapid weight loss and safety are antagonistic goals. In fact, rapid weight loss, if not closely monitored by a physician, can result in serious adverse health consequences.⁴⁰

Finally, of those weight-loss advertisements that contained safety claims, 27% also included some type of safety-related warning in the advertisements. These warnings varied widely in substance and detail. Some stated simply that you should “consult your doctor,” or “consult your physician before beginning this or any weight-loss or exercise program.” Others included more targeted warnings, such as “do not use this product if you have high blood pressure, are pregnant or breast feeding, or on medication for a heart condition.” Often, the safety warning is presented in a manner that viewers are likely not to notice it.

One ad contained a warning about serious health effects: “[t]his product has ephedrine group alkaloids in the form of herbal extracts and may cause serious adverse health effects.” This ad also included the claim that the product was “shown to be safe by two independent laboratories.” Conflicting messages in an advertisement about safety may confuse consumers and, ultimately, may cause them to ignore safety-related warnings.

Safety claims for weight-loss products are of serious concern. The primary concern is that potentially serious adverse health effects can result if the claim is untrue or the effects of a product are unproven. This concern is particularly important where the product may present special undisclosed risks for certain populations, such as pregnant women or nursing mothers, or where the long-term health effects are unknown. In addition, certain products or ingredients may interact adversely with other medications that consumers might be taking, or may exacerbate pre-existing health conditions faced by overweight and obese consumers, including, for example, heart disease, high blood pressure, and diabetes. Ephedra or ephedrine alkaloids, for example, may be associated with dangerous effects on the central nervous system and heart and may result in serious injury for some persons.⁴¹

Almost half (48%) of the ads that identified ephedra as a product ingredient made safety claims, yet only slightly more than half of those (55%) included a specific warning about the health risks of ephedra. Only 30% of all ads that identified ephedra as an ingredient included a specific health warning about its potential adverse effects. Even more disturbing from a safety perspective, fully 60% of ads that made safety claims did not identify ingredients at all. Consumers’ inability to make informed decisions about the safety of such products clearly raises the potential for serious adverse health consequences.

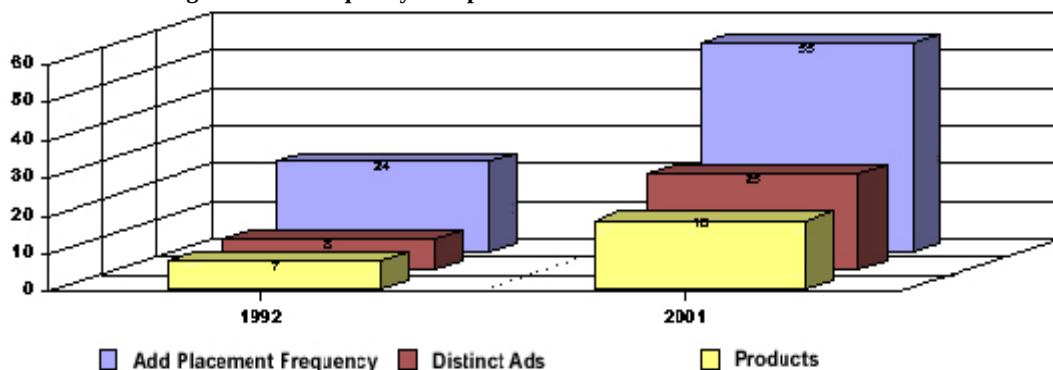
IV. Historical Comparison: 1992/2001

To develop a perspective on how weight-loss advertising has changed over time, we compared advertisements appearing in a sample of magazines published in February thru May 2001 with ads that appeared in the same magazines in February thru May 1992. The magazines selected were *Family Circle*, *Cosmopolitan*, *Women's Day*, *Glamour*, *McCall's*, *Ladies Home Journal*, *Self*, and *Redbook*.⁴² These magazines were selected because they have been in publication for more than 10 years and have a history of running weight-loss ads. With the exception of *Self*, each of these magazines has run one or more weight-loss ads that the Commission has challenged since 1995. The year

1992 was selected for comparison because it allowed us to compare ads that appeared after the FDA promulgated its final rule on

weight-loss products with ads appearing after the passage of the Dietary Supplement Health and Education Act (DSHEA). (See Section V.C for a detailed discussion of DSHEA).

Figure 2: Ad Frequency Comparison



The change in the extent and tenor of weight-loss advertising has been dramatic. Compared to 1992, readers of the selected magazines saw more diet ads, more often, and for more products. As detailed in Figure 2, the number of times weight-loss advertisements appeared in these magazines increased 129%, the number of distinct advertisements increased 212%, and the number of products increased 157%.

There was also a major shift in the types of weight-loss products and services advertised. In 1992, meal replacement products such as Ultra Slim Fast™ and Weight Watchers™ topped the list of advertised products. By contrast, in 2001, two-thirds of the weight-loss products promoted in the magazine sample were for dietary supplements. (Table 10)

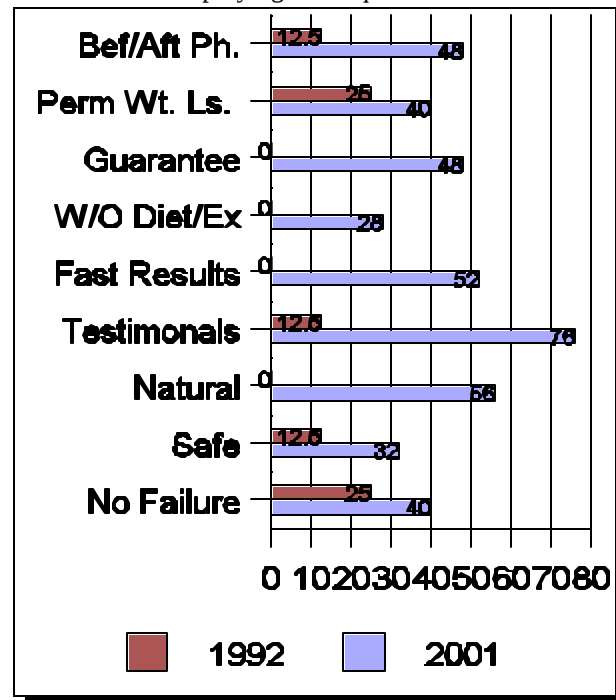
Techniques used to promote weight-loss products have changed as well. The 2001 advertisements were much more likely than the 1992 ads to use compelling before-and-after photos, promise permanent weight loss, guarantee weight-loss success, claim that weight loss

Table 10: Product Comparison

Product Type	1992	2001
Meal Replacements	4	3
OTC Drugs	2	0
Exercise Equipment	1	0
Dietary Supplements	0	12
Topical Treatments	0	1
Food	0	1
Diet Center	0	1

could be achieved without diet and exercise, claim that results could be achieved quickly, claim that the product is all natural, and make express or implied claims that the product is safe. (Figure 3) Perhaps the most striking change is in the use of consumer testimonials. In 1992, only one of the eight ads (12.5%) used a consumer testimonial and in that case the ad did not specify the exact amount of weight lost. By contrast, 76% of the 2001 ads used consumer testimonials, and all claimed a specific amount of inches or weight lost. In some cases, the reports were extreme to the point of being absurd: 44 lbs. in 30 days; 54 lbs. in 6 weeks; and 120 lbs. in 7 weeks. On the other hand, there did not appear to be a significant difference in the percent of ads using claims that weight-loss benefits were scientifically proven (25% for 1992 vs. 28% for 2001) or the use of medical professionals to endorse products (12.5% for 1992 vs. 16% for 2001). It should be noted, however, that given the greater frequency of 2001 ads, the total number of ads using these techniques has increased.

Figure 3: Advertising Techniques Comparison
Percent of ads employing technique



It appears that the rhetoric of weight-loss advertising has changed significantly. The list below compares examples of claims made in 1992 with 2001. In each case, we attempted to capture the theme of the advertisement.

1992

- Give us a week, we'll take off the weight.
- Finally a plan that really works.
- Guilt free eating from morning till night.
- Just think, now you can indulge in the foods you love, without the guilt.
- In universities across the country, clinical studies prove that four out of five people lost weight with Dexatrim.
- It's all the nutrition her body needs and everything she wants to slide into something sexy.
- The only sure way to take body fat off and keep it off is to lower your set point. And the only way to do that is aerobic exercise.

2001

- You could lose 8 to 10 pounds per week, easily, . . . and you won't gain the weight back afterwards.
- Reduces body fat deposits in your belly, thighs and butt.
- Lose up to 2 pounds daily...without diet or exercise!
- A natural way to jumpstart your weight loss.
- I lost 120 LBS.
- Pounds come off slowly but steadily.
- In six months I lost 40 pounds, and have maintained my weight for eight months.
- Makes sure that the fat from your last meal leaves your body before being digested.
- An intake of 4000 calories a day can actually help you lose weight instead of gain it.
- The only thermogenic diet supplement that has been clinically proven to increase fat-loss by a phenomenal 38.6 times more than diet and exercise alone.
- A revolutionary thermogenic diet supplement clinically shown to increase fat-loss by an astounding 17 times more than diet and exercise alone.
- Weight loss breakthrough "Do you have 48 hours to lose weight?"
- Lose 10 lbs. and unwanted inches in 48 hours. Guaranteed!
- Can help you achieve weight loss through detoxification in just two days.
- We guarantee that you'll lose between 2 and 8 lbs a week . . . and you won't put the fat back on.
- I lost 68 pounds.
- Clinically proven . . . uses this technology to give you a better body without spending countless hours dieting or working out.
- As you're dieting you'll lose weight in the right places and drop clothes sizes without the dreaded Yo-Yo effect.
- Scientifically formulated to help you achieve your weight loss goals.
- By summer you can lose ten pounds (or more)!
- True weight loss success occurs when you eat right.
- I Cheat! Don't you?

- I learned that losing weight requires much more than just dieting – it takes a whole lifestyle change.
- You could lose up to 10 lbs. this weekend!
- Curbs cravings . . . reduces calorie absorption

Although both the 1992 and 2001 examples include unobjectionable statements, as well as facially questionable claims, the 2001 advertisements appear to be more likely to make specific performance promises that are deceptive and misleading. For example, 31% of the 2001 ads made at least one representation that almost certainly is false, compared to zero percent in 1992. These ads appeared in *Family Circle*, *Cosmopolitan*, *Women's Day*, *McCall's*, and *Redbook*.

On its face, although not conclusive, this comparison of 1992 and 2001 ads supports the following observations:

- The amount of weight-loss advertising has increased dramatically since 1992.
- The increase in weight-loss advertising is due to the explosion in the number of dietary supplement products now being promoted for weight loss.
- The use of consumer testimonials claiming substantial, specified amounts of weight loss has increased significantly.
- The use of specific performance claims, including claims that on their face are almost certainly false, has proliferated.

This report looked at only specific magazines and compared only ads appearing during a four-month period in 2001 with ads appearing in the same months for 1992. Without additional supporting evidence, these results cannot be extrapolated to other forms of media. Moreover, there may be alternative explanations for the apparent increase in deceptive ads in these publications that would not necessarily mean that there has been an overall increase in deceptive weight-loss product advertising. For example, it is possible that ads have shifted from other forms of media, such as supermarket tabloids, to these magazines. Nevertheless, the observed results are consistent with the FTC staff's general impressions in monitoring weight loss advertising.

The review set forth above suggests that weight-loss product and service advertising is permeated with false and misleading representations. Moreover, this type of advertising appears to be on the rise. At the same time, as detailed in the following section, there has been an historically unprecedented level of law enforcement aimed at preventing this type of advertising.

V. Regulatory Framework

The FTC and the FDA have concurrent jurisdiction over weight-loss products. The FTC has primary jurisdiction over the advertising of over-the-counter drug products, devices, and dietary supplements.⁴³ The FDA has primary jurisdiction over the labeling of over-the-counter drug products and dietary supplements and the advertising and labeling of prescription drug products.⁴⁴

A. Legal Standards Applicable to Weight-loss Advertising

Under the FTC Act, the advertising of products and services for weight loss is governed by the same legal standards that apply to all other product and service promotions. The two basic principles of FTC advertising law⁴⁵ are that: 1) the ad must be truthful and not misleading; and 2) before disseminating an ad, advertisers⁴⁶ must have adequate substantiation for all objective product claims.⁴⁷

The FTC's substantiation requirement applies to both express and implied claims. Thus, for example, FTC law prohibits an advertisement containing the statement that "I'm 5' 4" and weighed 200 pounds before I started taking product X, now I weigh 110," if supporting research does not substantiate the underlying claim that product X would enable a user to lose substantial weight, including as much as ninety pounds.

The level of substantiation required depends in large part on the specific claim being made and how it is presented and qualified. For instance, an ad claiming that "Scientists Now Agree" likely would be held to a scientific consensus standard, and the advertiser would have to show that scientists in fact agree. Where no specific level of support is stated, the FTC requires "competent and reliable scientific" evidence to substantiate weight loss, and other health-related, advertising claims. In general, competent and reliable scientific evidence consists of tests, studies, or other scientific evidence that has been conducted and evaluated according to standards that experts in the field accept as accurate and reliable. Under the FTC Act, anecdotal reports, articles in popular magazines, opinions, and inadequately controlled open label studies are not considered adequate substantiation and cannot be used as substitutes for scientific support.⁴⁸

Moreover, study results must be relevant to the claims being made for the product. Studies that test different ingredients or that test ingredients at a substantially different dose level than that contained in the product being marketed are not adequate substantiation. In addition, the study population and conditions of use must be consistent with the advertising claims. Studies that are limited to specific populations may not apply to other populations. Finally, if an advertisement claims that a product causes weight loss without dietary modifications, then it may not be appropriate to extrapolate results from studies using restricted caloric intake.⁴⁹

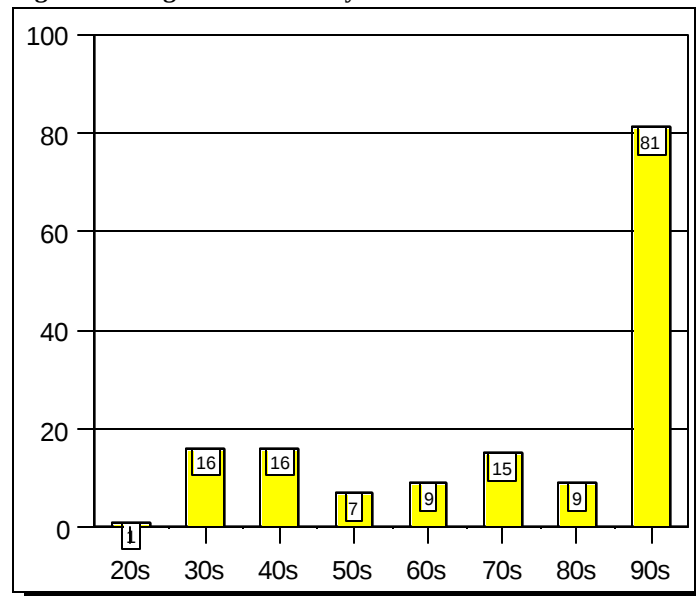
B. FTC Enforcement History

The FTC filed its first weight-loss case in 1927.⁵⁰ The product was called McGowan's Reducine, and advertisements that appeared in *True Romances* magazine claimed that "excess fat is

literally dissolved away, leaving the figure slim and properly rounded, giving the lithe grace to the body every man and woman desires” and “applying and patting it gently onto the parts of the human body which the purchaser desires to slenderize, will thereby reduce any and every part of the body so treated, . . . quickly, surely, and permanently.” It was only the beginning. Since then, the Commission has filed over 160 cases challenging false and unproven weight-loss claims.⁵¹

Throughout the 1990s, the commercial marketplace for the treatment of overweight/obesity was a high-profile topic among policy makers, the media, academia, the scientific community, and government regulators. In 1990, hearings before the U.S. House of Representatives Committee on Small Business focused principally upon the marketing of commercial diet clinics and physician-supervised, very-low-calorie weight-loss programs. The hearings’ underlying message was that beneath the glitter and the hype that comprised so many advertising campaigns for weight-loss products and programs lay the sobering reality that too many consumers ultimately failed in losing weight and keeping it off. The hearings stressed the need for increased government scrutiny of the weight-loss marketplace to police deceptive advertising claims such as unsubstantiated success claims and atypical user testimonials.⁵²

Figure 4: Weight Loss Cases by Decade



Over half of the Commission’s weight-loss cases have been filed since 1990. (Figure 4) The Commission has challenged numerous ingredients touted for their efficacy in producing weight loss, some of which were chitosan,⁵³ chromium picolinate,⁵⁴ pyruvate,⁵⁵ glucomannan,⁵⁶ dietary fiber,⁵⁷ cellulose/ox bile,⁵⁸ fucus,⁵⁹ hydroxycitric acid,⁶⁰ and L-carnitine.⁶¹ In addition, the Commission has challenged the advertising claims of the leading commercial weight-loss centers,⁶² weight-loss promotions for hypnosis,⁶³ and a wide variety of weight-loss devices⁶⁴ and exercise equipment.⁶⁵ Since 1990, FTC cases challenging deceptive claims for diet pills, potions, patches, and programs have resulted in administrative or federal district court orders requiring companies or individuals to pay over \$48 million in consumer redress or disgorgement. Another \$4.35 million has been assessed as civil penalties for violations of prior Commission orders.⁶⁶

In the early 1990s, the FTC initiated investigations of the advertising and promotion of the largest commercial weight-loss clinics and physician-supervised, very-low-calorie diet programs. This undertaking resulted in more than twenty consent orders that addressed such advertising practices as unsubstantiated weight-loss and weight-loss maintenance claims, atypical consumer testimonials, and

misleading staff credentials and endorsements. The consent orders included remedies that require substantiation for weight-loss or weight-maintenance claims, disclosures triggered by maintenance claims ("For many dieters, weight loss is temporary"), disclosure of total costs, and prohibitions against misrepresenting staff credentials.⁶⁷

This set of orders was followed by "Operation Waistline" in 1997. It consisted of nine cases that focused on advertising claims that consumers could lose weight quickly and easily by using anything from "Fat Burners" diet supplements to skin patches to "slimming" shoe insoles or cellulose-bile products.⁶⁸ In the second phase of this effort, the Commission announced "Operation Workout" – four administrative settlements targeting exaggerated claims for fitness equipment by marketers of some of the most popular exercise equipment on the market, including the Abflex,⁶⁹ an abdominal exerciser; the Lifecycle,⁷⁰ a stationary bicycle; and the Cross Walk Treadmill,⁷¹ a motorized treadmill. Generally, these cases focused on various weight-loss success, rate-of-weight-loss, spot-reduction and calorie-burning claims.⁷² These four cases followed on the heels of the FTC's 1996 action targeting the weight-loss claims of another well-known fitness equipment maker, NordicTrack, Inc.⁷³

As part of "Operation Waistline," the FTC's Bureau of Consumer Protection sent letters to more than 100 publications that ran the weight-loss advertisements challenged in the Commission's complaints. The letter called on these publications to step up their advertising review efforts to prevent blatantly deceptive weight-loss ads from reaching consumers. This letter, however, appeared to have little effect on publications' advertising screening policies.

Since "Operation Waistline," the Commission has completed 17 cases challenging a variety of false and unsubstantiated claims for weight-loss products.⁷⁴ Recent cases have included strong financial remedies and broad liability. For example, the orders require \$19.2 million in consumer redress, and in one case, the Commission has taken action against a celebrity host for his role in an infomercial promising that two products, "Fat Trapper" and "Exercise in a Bottle," would result in substantial weight loss even for those indulging in high fat foods.⁷⁵

Notwithstanding the FTC's enforcement actions, however, as this report demonstrates, false and unsubstantiated weight-loss claims continue to proliferate. Many of these claims are for substances or products already challenged by the FTC as either ineffective for weight loss or, at a minimum, lacking reasonable scientific support for effectiveness as a weight-loss agent. In fact, of the 81 ads for dietary supplements or transdermal products (where the active ingredient is absorbed through the skin) that disclosed ingredients, 35 consisted of active ingredients, most often chitosan or chromium, that have been the subject of prior FTC actions for deceptive advertising.

C. FDA Regulation of Weight-loss Products

Prior to 1994, weight-control products were regulated as drugs,⁷⁶ and an over-the-counter (OTC) product labeled for weight control was misbranded under Section 502 of the Food, Drug, and Cosmetic Act⁷⁷ unless it was either generally recognized as safe and effective or was an approved new drug.⁷⁸ As a part of its regulatory oversight process, the Food and Drug Administration, in February

1982, issued an advance notice of proposed rulemaking to establish conditions under which OTC weight-control products are generally recognized as safe and effective and not misbranded.⁷⁹ That proceeding culminated in a final rule, issued in August 1991, determining that the 111 ingredients considered in the rulemaking process were **not** generally recognized as safe and effective for weight-control use.⁸⁰ As a result, after February 8, 1992, an OTC product labeled for weight control, other than phenylpropanolamine hydrochloride (PPA) or benzocaine,⁸¹ required some form of pre-market review and approval to determine safety and effectiveness.

In 1994, the passage of the Dietary Supplement Health and Education Act of 1994 (DSHEA) dramatically changed the regulatory framework for weight-loss supplements, shifting FDA's role from premarket clearance to post-market enforcement and shifting the responsibility from government to industry to ensure products were safe and effective. DSHEA created a definition for a class of products called "dietary supplements"⁸² and established that these products are deemed, for almost all purposes, to be foods. The effect was to create two classes of weight-control products. The first class consists of those products intended to treat obesity and non-dietary supplements⁸³ intended to be used for weight control. These products remain subject to pre-market approval requirements. The second class of products consists of dietary supplements intended to be used for weight control. With regard to these products, weight-control statements appearing on the label must be truthful and not misleading and the manufacturer is required to possess substantiation for the statements.⁸⁴ These products, however, are not subject to pre-market approval. As demonstrated in this report, this change in regulatory structure has coincided with a dramatic increase in the number of dietary supplement weight-loss products as well as the amount of weight-loss product advertising. To illustrate, between January 1996 and August 2001, at least 280 nutritional support statements were filed with FDA for dietary supplement products claiming weight-loss related benefits. This figure, of course, does not reflect the many new dietary supplement products for which no FDA filing may have been made. Moreover, according to industry estimates, the sales revenues for weight-loss supplements has increased 10 to 20 percent annually from 1997 to 2001.⁸⁵

VI. Media Responsibility

Advertisements for weight-loss products and services too frequently contain extravagant and sensational efficacy claims that are scientifically groundless. Although many of them could be screened out by responsible media before they reach the public, mainstream newspapers, magazines, radio stations, and broadcast and cable TV outlets run ads for weight-loss products that strain credibility. Moreover, the appearance of these ads in what appear to be reputable publications may increase the credibility of the promotions and serve to overcome or reduce consumer skepticism. This problem may be exacerbated in the case of publications that consumers purchase, such as newspapers, if consumers view these publications to be sources of more credible information than advertisements that are essentially free to consumers, *e.g.*, direct mail solicitations. It is apparent that most media make little or no attempt to screen questionable ads for weight-loss products. The major television broadcast networks, ABC, CBS, and NBC, are an exception. These networks employ stringent advertising clearance standards that require advertisers to submit proposed advertisements, along with adequate substantiation for all claims, to the networks for review prior to dissemination. As an illustration, with

regard to weight reduction and control products, ABC's published standards prohibit, among other practices, unsubstantiated claims and representations that weight loss is simple, quick, or easy.⁸⁶ There are other exceptions as well. For example, *Good Housekeeping Magazine* has a policy of not running any advertisements containing facially false or dubious weight loss claims.

Recent efforts to heighten media awareness have been largely unsuccessful. In May 2000, The Partnership for Healthy Weight Management inaugurated a campaign to promote media responsibility for the weight-loss advertising publishers disseminate. *Ad Nauseam*, as the initiative was named, sought to call the media's attention to the many groundless claims appearing in ads they publish. Claims that the Partnership identified include the following:

- Lose up to 2 Pounds Daily . . . Without Diet or Exercise
- Imagine Losing As Much As 50% Of All Excess Fat In Just 14 Days! Not Even Total Starvation Can Slim You down and Firm You up this Fast - this Safely! . . . Lose up to 1 Full Pound Every 8 Hours. Lose up to 2 ½ to 3 Full Pounds Each Day and you do it without counting calories.
- U.S. Patent reveals weight loss of as much as 28 lbs. in 4 weeks and 48 lbs. in 8 weeks.... Eat all your favorite foods and still lose weight (pill does all the work).
- New Medical Breakthrough! Lose A Pound A Day Without Changing What You Eat. No impossible exercise! No missed meals! No dangerous pills. No boring foods or small portions!"
- You lose weight even if you eat too much.... You will lose at least 16 pounds in the first two weeks. And at least six pounds every week thereafter.

These claims and other similar claims cited in the Ad Nauseam campaign appeared in such publications as *Cosmopolitan*, *Esquire*, *McCall's*, *Redbook*, *Woman's Day*, *The Atlanta Journal - Constitution*, *The [Denver] Rocky Mountain News*, *USA Today*, and *Smart Source* (a publication of News America, FSI, Inc.). Unfortunately, the media, for the most part, have failed to respond to the Partnership's message. As reflected in this report, and as the examples set forth in Appendix B illustrate, ads for weight-loss products promising dubious outcomes still appear regularly in mainstream media. Table 11 provides a list of the top

Table 11: Top 12 Magazine or Tabloid Publishers (by volume) of Ads Collected for This Report

<i>Let's Live</i>	50
<i>Cosmopolitan</i>	23
<i>Redbook</i>	11
<i>National Enquirer</i>	10
<i>Weekly World News</i>	9
<i>Star</i>	9
<i>Woman's Day</i>	8
<i>Globe</i>	7
<i>Women's Own</i>	7
<i>Ladies Home Journal</i>	6
<i>Family Circle</i>	6
<i>First for women</i>	6

magazines and tabloids that published ads collected for this report. In most instances, a single ad appeared in more than one publication.

Most broadcasters and publishers already screen ads for taste and appropriateness, but too often the screening process stops short of questioning the accuracy of facially extravagant claims. As this report demonstrates, this shortcoming is particularly apparent in the area of ads for weight-loss products and services. Fraudulent ads cost legitimate advertisers and consumers millions of dollars each year. Government agencies and self-regulatory groups can step in once the ad has been disseminated to an unwary public, but only the media can stop false ads before they are disseminated.

Effective ad clearance standards reduce the damaging effects of advertising fraud on American consumers and commerce. Exercising responsibility in the screening of advertising for weight-loss products and services is a way that the media can contribute to the Surgeon General's Call to Action to Prevent and Decrease Overweight and Obesity 2001. That document characterized the media's role in the following manner:

The media can provide essential functions in overweight and obesity prevention efforts. From a public education and social marketing standpoint, the media can disseminate health messages and display healthy behaviors aimed at changing dietary habits and exercise patterns.⁸⁷

Among the strategies that the Call to Action recommended for the media was to “[e]ncourage truthful and reasonable consumer goals for weight-loss programs and weight management products.”⁸⁸ This report underscores that in responding to the Surgeon General's Call to Action, the media must assess not only how their editorial content can meet the challenge, but most importantly, how their revenue generating divisions can respond to the call and “promote *truthful* and *reasonable* consumer goals” through the advertising they accept.

VII. Conclusion

False promises of effortless weight loss feed on and exacerbate consumers' hunger for the easy fix to overweight and obesity. Consumers taken in by such attractive claims lose both economically, by wasting resources on products that do not work as advertised, and medically, by foregoing or postponing other weight-loss methods and necessary lifestyle changes that have demonstrated benefits in reducing the adverse health consequences of overweight and obesity.

The use of deceptive and misleading claims in weight-loss advertising is rampant. Nearly 40% of the ads in our sample made at least one representation that almost certainly is false. The vast majority of these ads were for dietary supplements or hypnosis. In addition, 55% of the ads in our sample made at least one representation that is very likely to be false or, at the very least, lacks adequate substantiation. Some of the more obvious questionable representations include:

- Specific performance claims, such as lose up to 10 pounds per week, that are outside the realm of possibility for the products being advertised;
- Claims that users can lose substantial amounts of weight rapidly without diet or exercise;
- Testimonials claiming weight loss that exceed what is physiologically possible under normal circumstances, for example, losing 120 pounds in seven weeks;
- Claims that weight loss will be long-term or permanent; and
- Unqualified safety claims or confusing representations concerning safety for ingredients known to have potential risks for a significant number of users or to have potential adverse interactions with commonly prescribed prescription drugs.

Below this level, a considerable number of advertisements contain claims that may be misleading or unsubstantiated. Determining whether the claims in this category are actually deceptive would require further inquiry, such as reviewing the substantiation the advertiser has to support the claim.

The proliferation of misleading weight-loss ads has proceeded in the face of, and in spite of, an unprecedented level of FTC enforcement. Although conclusive evidence is not available, what evidence there is suggests that the incidence of false and deceptive claims has increased over the last decade. It is beyond the scope of this report to recommend specific remedies to combat this growing problem. Nevertheless, the need for critical evaluation seems readily apparent. Government agencies with oversight over weight-loss advertising must continually reassess the effectiveness of enforcement and consumer and business education strategies. Critical questions include whether the level of resources currently devoted to law enforcement is adequate; whether more specific advice to advertisers would improve compliance; and if so, how to provide that advice.

Trade associations and self-regulatory groups must do a better job of educating their members about fair advertising standards and enforcing those standards. This is a particularly difficult challenge. Even companies that subscribe to a self-regulatory code may feel competitive pressure to exaggerate their claims in the face of a marketplace that seems out of control. Unless self-regulatory groups are willing to review questionable advertisements, take disciplinary action where appropriate, and publicize their decisions, the industry as a whole will continue to suffer from a lack of credibility. Even so, a significant amount of the questionable advertising identified in this report was generated by companies that are outside the mainstream of current self-regulatory efforts. With regard to these companies, self-regulation will have little, if any, effect.

It is clear from this report that false and misleading weight loss advertising is not limited to the back of supermarket tabloids. Many of the ads we identified as making almost certainly false claims appeared in mainstream media publications such as *Family Circle*, *Cosmopolitan*, *Women's Day*, *McCall's*, and *Redbook*. Although 74% of the ads in tabloid publications included at least one almost

certainly false claim, so did 54% of the ads in newspapers and FSIs. The media must be encouraged to adopt clearance standards that weed out facially deceptive and misleading weight-loss claims. In most cases, the questionable claims are not hard to identify and asking advertisers for substantiation is not unreasonable. Improved lines of communications between government and self-regulatory groups and publishers could also be beneficial. Although the ultimate decision of whether to disseminate a particular advertisement rests with the publisher, improved communications could be useful in alerting publishers to ads and claims that pose problems.

Finally, individual consumers must become more knowledgeable about the importance of achieving and maintaining healthy weight, more informed about how to shop for weight-loss products and services, and more skeptical of ads promising quick-fixes. Government and industry share a responsibility to insure that accurate and understandable information about weight loss treatments is readily available to consumers. As one expert notes, success will come when the public is convinced “that there is no ‘magic bullet.’”⁸⁹

Endnotes

1. U.S. Department of Health and Human Services. The Surgeon General's call to action to prevent and decrease overweight and obesity. [Rockville, MD]: U.S. Department of Health and Human Services, Public Health Service, Office of the Surgeon General; [2001].
2. *Id.*
3. *Id.* at XIII, 10.
4. See *FDA Announces Withdrawal of Fenfluramine and Dexfenfluramine*, (Sept. 15, 1997), available at <<http://www.fda.gov/cder/news/phen/fenphenpr81597.htm>> (visited Jan. 31, 2002).
5. See generally Laura Fraser, *Losing It: America's Obsession with Weight and the Industry That Feeds on It* (Dutton, 1997) pp. 19, 87-91.
6. See Allison, D.B., et al., *Alternative Treatments for Weight Loss: A Critical Review*, 41(1) Critical Reviews in Food Science and Nutrition 1-28 (2001).
7. See Anderson, E.R., AMA Letter to the Food & Drug Administration re: Dietary Supplements Containing Ephedrine Alkaloids, Sept. 28, 2000; U.S. General Accounting Office, *Dietary Supplements: Uncertainties in Analyses Underlying FDA's Proposed Rule on Ephedrine Alkaloids* (July 1999); Haller, C.A. and Benowitz, N.L., *Adverse Cardiovascular and Central Nervous System Events Associated with Dietary Supplements Containing Ephedra Alkaloids*, 343 N. Engl. J. Med. 1833-1838 (2000), available at <<http://www.nejm.org/content/haller/1.asp>> (visited Jan. 31, 2002).
8. See Health Canada, *Advisory not to use products containing Ephedra or ephedrine*, available at <http://www.hc-sc.gc.ca/english/protection/warnings/2001/2001_67e.htm> (visited Feb. 2, 2002).
9. Serdula, M.K., et al., *Prevalence of Attempting Weight Loss and Strategies for Controlling Weight*, 282 JAMA 1353-1358 (1999).
10. *Id.*
11. Bryant, J., *Fat is a \$34 Billion Business*, Atlanta Business Chronicle (Sept. 24, 2001), citing research by Marketdata Enterprises, Inc.
12. *Id.*
13. *Big Gains in Weight Loss*, 169 Prepared Foods 104 (Jun. 2000) citing Business Communications Co., Norwalk, Conn., *RGA-111 Weight Loss Supplements, Foods and Beverages*.
14. Blanck, H.M., et al., *Use of Nonprescription Weight Loss Products: Results From a Multistate Survey*, 286 JAMA 930-935 (2001).

15. *Id.*

16. Response Magazine: Infomercial Media Billings, available at <http://www.responsemagazine.com/topics/mediabillings/4Q99mediabillings.html> (visited Mar. 25, 2002).

17. The advertisements included in the sample were identified through monitoring of specific media, such as selected magazines; provided by members of the Partnership for Healthy Weight Management; or, in the case of Internet websites, randomly selected from a list of sites identified in an independent Internet surf. In the case of advertisements provided by members of the Partnership for Healthy Weight Management, it is possible that some were selected based on the questionable nature of the claims they contain.

18. The Partnership for Healthy Weight Management is a coalition of representatives from science, academia, the health care profession, government, commercial enterprises, and organizations whose mission is to promote sound guidance on strategies for achieving and maintaining a healthy weight. The Partnership has adopted principles relating to weight loss treatments; adopted voluntary industry guidelines, entitled, *Voluntary Guidelines for Providers of Weight Loss Products or Services*; and published consumer information, including *Setting Goals for Weight Loss: Finding a Weight Loss Program that Works for You*. Additional information concerning the Partnership is available at <http://www.consumer.gov/weightloss/index.htm>.

19. We discarded one infomercial from the sample because it did not involve a weight-loss product.

20. The “surf day” project was organized by Aimee D. Prawitz, Ph.D., Associate Professor, and Judith Lukaszuk, Ph.D., Assistant Professor, with the assistance of Patrick M. O’Neil, Ph.D., Professor and Director, Weight Management Center, Medical University of South Carolina. Drs. Prawitz and Lukaszuk assembled the student-team that collected the data.

21. The total in Table 1 exceeds 300 ads because some ads appeared in more than one form of media.

22. Although the labels for these products likely disclose the ingredients, in many instances consumers order the products over the phone, through the mail, or over the Internet and may never see the label until the product arrives at their home. The failure to disclose the primary active ingredients in weight-loss ads may result in consumers ordering products they would not have otherwise ordered if those ingredients had been disclosed in the ads. This may be the case where consumers have already tried a product with the same active ingredient, for example, chitosan, and it did not work for them. Additionally, consumers may want to avoid certain ingredients in weight-loss products, for example, ephedrine alkaloids or St. John’s Wort, because of fear of serious side effects or adverse drug interactions. In either case, consumers must undertake the resource-intensive task of trying to get refunds or accepting and paying for products they do not want.

23. The FTC has provided detailed guidance on this subject in *FTC Guides Concerning Use of Endorsements and Testimonials in Advertising*, available at

<<http://www.ftc.gov/bcp/guides/endorse.htm>>. These guides are scheduled for periodic review in 2003.

24. A third type, which uses a picture of a professional model for clearly illustrative purposes, is used occasionally. One example like this is included in our database.

25. Weinsier, R., *et al.*, *Medically Safe Rate of Weight Loss for the Treatment of Obesity: A Guideline Based on Risk of Gallstone Formation*, 98 Am. J. Med. 115-117 (1995).

26. Surgeon General's Report (cited in note 1) at 1.

27. This statement of purported study results is a good example of scientific doublespeak seen in many weight-loss ads that we reviewed. For example, the statement "613% greater rate of fat loss" sheds no light on what the actual weight-loss results were, or whether those results were clinically significant.

28. One of the products listed in Table 5 contains konjac root and another contains fucus. The Commission challenged as unsubstantiated weight-loss claims for products containing konjac root (also known as "konjac glucomannan" or "glucomannan") in *FTC v. SlimAmerica, Inc.*, 77 F. Supp. 2d 1263 (S.D. Fla. 1999) and *Herbal Worldwide Holdings Corp.*, 126 F.T.C. 356 (1988) (consent). The Commission also has taken action against a marketer of a diet patch purportedly containing fucus for allegedly unsubstantiated weight-loss claims. See *2943174 Canada, Inc.*, 123 F.T.C. 1465 (1997) (consent) (Svelt-PATCH transdermal skin patch).

29. *Methods for Voluntary Weight Loss and Control*, NIH Technol Assess Conf Statement Online 1992 Mar 30- Apr 1; 10, available at <http://odp.od.nih.gov/consensus/ta/010/010_statement.htm> (visited Feb. 2, 2002).

30. *Id.*

31. Thomas, P.R., ed., *Weighing the Options: Criteria for Evaluating Weight-Management Programs* at 1 (National Academy Press 1995).

32. National Institutes of Health, National Heart, Lung, and Blood Institute, *Clinical Guidelines on the Identification, Evaluation, and Treatment of Overweight and Obesity in Adults*, HHS Public Health Service (1998), pp. 72-3.

33. *Weighing the Options* (cited at note 31) at 16; Wing, RR, *et al.*, *Successful Weight Loss Maintenance*, 21 Annu Rev. Nutr. 323-41 (2001).

34. Claims such as this one can be misleading, because the difference in weight loss between the control and experimental groups in the study can be significant in percentage points, but very small in actual measurement or pounds. For example, if the control group lost one-half of a pound, a 300% difference would only be 1.5 pounds.

35. The FTC typically requires claims about the efficacy or safety of weight-loss products to be supported with "competent and reliable scientific evidence," defined in FTC cases as "tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results." *See, e.g., Roger J. Callahan*, 125 F.T.C. 599, 631-32 (1998) (consent).

36. The FTC requires that a marketer disclose any "material connection" between an endorser and the advertiser (*i.e.*, a relationship not reasonably expected by a consumer that might materially affect the weight or credibility of the endorsement). *See Tru-Vantage Int'l, LLC*, 2001 WL 558240 (F.T.C.) (Mar. 29, 2001) (marketer failed to disclose that the physician endorsing the product was an investor in the company marketing the product); *Body Wise Int'l, Inc.*, 120 F.T.C. 704 (1995) (consent) (marketer failed to disclose that the physicians and other health-care professionals endorsing the advertised product were distributors of the product and derived income from their sale).

37. *See Global World Media Corp.*, 124 F.T.C. 426 (1997) (consent) (advertisement included an endorsement from a fictitious physician).

38. *See Synchronal Corp.*, 116 F.T.C. 989 (1993) (consent).

39. *See, e.g., Wayne Phillips Seminars, Inc.*, Civil Action No. 88-1220 PHX CAM (D. Ariz. Aug. 2, 1988) (Stipulated Final Judgment); *Zygon Int'l, Inc.*, 122 F.T.C. 195 (1996) (consent); *Taleigh Corp.*, 119 F.T.C. 835 (1995) (consent).

40. Weinsier (cited in note 25).

41. *See Anderson* (cited in note 7); *Dietary Supplements: Uncertainties in Analyses Underlying FDA's Proposed Rule on Ephedrine Alkaloids* (cited in note 7); and Haller and Benowitz (cited in note 7). The Ephedra Education Council, an industry trade group, endorses the following disclosure on the label of products containing ephedrine: "Not for use by anyone under the age of 18. Do not use this product if you are pregnant or nursing. Consult a health care professional before using this product if you have heart disease, thyroid disease, diabetes, high blood pressure, psychiatric condition, difficulty in urinating due to prostate enlargement, or seizure disorder, if you are using a monoamine oxidase inhibitor (MAOI) or any other prescription drug, or if you are using an over-the-counter drug containing ephedrine, pseudoephedrine or phenylpropanolamine (ingredients found in certain allergy, asthma, cough/cold and weight control products). Exceeding recommended serving will not improve results and may cause serious adverse health effects." The Commission has taken action against marketers of products that included ephedra, requiring, among other things, affirmative disclosures to consumers warning them about the serious health risks of ephedra. *See, e.g., Robert C. Spencer*, 2001 WL 874512 (F.T.C.) (Jul. 30, 2001) (consent).

42. *McCalls* ceased publication in March 2001. *Rosie*, which acquired *McCall's* subscription base, was substituted for *McCalls* beginning with the May 2001 issue.

43. Working Agreement Between FTC and Food and Drug Administration, 3 Trade Reg. Rep. (CCH) ¶ 9,850.01 (1991).

44. *Id.*

45. The Commission enforces Section 5 of the Federal Trade Commission Act (FTC Act), which prohibits “unfair or deceptive acts or practices in or affecting commerce,” 15 U.S.C. § 45, and Section 12, which prohibits the false advertisement of “food, drugs, devices, services, or cosmetics,” 15 U.S.C. § 52. Advertising is deceptive under Section 5 of the FTC Act if it contains a representation or omission that is likely to mislead consumers acting reasonably under the circumstances, and the representation or omission is material; that is, likely to affect consumers’ conduct or decisions with respect to the product or service at issue. Examples of material claims are representations about a product’s performance, features, safety, price, or effectiveness. Advertising is false under Section 12 of the FTC Act if it is misleading in any material respect.

46. Commission enforcement actions have not been limited just to the advertiser. The Commission has also pursued advertising agencies, retailers, and others who assist or facilitate the advertiser in the creation or dissemination of deceptive advertising. Accordingly, all parties who participate in the dissemination of advertising of weight-loss services and products should insure that claims are presented truthfully and check the adequacy of the support behind those claims.

47. These principles are articulated in *FTC Policy Statement on Deception* and *FTC Policy Statement Regarding Advertising Substantiation*, available at <http://www.ftc.gov/bcp/policystmt/ad-decept.htm> and <http://www.ftc.gov/bcp/guides/ad3subst.htm>, respectively. The FTC also has authority to challenge unfair trade practices. An unfair practice is one that causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n). Most advertising cases are brought pursuant to the FTC’s deception authority.

48. These principles and their application in the health care area are explained in great detail in *Dietary Supplements: An Advertising Guide for Industry* (Nov. 1998), available at www.ftc.gov/bcp/conline/pubs/buspubs/dietsupp.htm.

49. *See id.*

50. *McGowan Laboratories, Inc.*, 11 F.T.C. 125 (1927) (decision).

51. A complete listing of the Commission’s weight loss cases is available at <http://www.ftc.gov/opa/1997/9703/dietcase.htm>.

52. Hearings on *Juvenile Dieting, Unsafe Over-The-Counter Diet Products, and Recent Enforcement Efforts by the Federal Trade Commission* of the Subcommittee on Regulation, Business Opportunities, and Energy of the House Committee on Small Business, 101st Congress (Mar. 26 and Sept. 24, 1990).

53. *FTC v. Enforma Natural Products, Inc.*, No 00-4376JSL (CWx) (C.D. Cal. Apr. 25, 2000) (Stipulated Final Judgment) (\$10 million in consumer redress ordered).
54. *Nutrition 21*, 124 F.T.C. 1 (1997) (consent).
55. *Enforma Natural Products* (cited in note 53).
56. *SlimAmerica* (cited in note 28).
57. *National Dietary Research*, 120 F.T.C. 893 (1995) (consent).
58. *William E. Shell, M.D.*, 123 F.T.C. 1477 (1997) (consent).
59. *2943174 Canada* (cited in note 28).
60. *Victoria Bie*, 123 F.T.C. 96 (1997) (consent).
61. *Weider Nutrition Int'l*, 2001 WL 1717579 (F.T.C.) (Nov. 15, 2000) (consent and \$400,000 in consumer redress) (dietary supplement products called “PhenCal” and “PhenCal 106”).
62. *See, e.g., Weight Watchers Int'l, Inc.*, 124 F.T.C. 610 (1997) (consent); *Jenny Craig, Inc.*, 125 F.T.C. 333 (1998) (consent).
63. *See, e.g., IHI Clinics, Inc.*, 120 F.T.C. 264 (1995) (consent).
64. *BodyWell, Inc.*, 123 F.T.C. 1577 (1997) (consent and \$100,000 in consumer redress) (slimming inserts for shoes); *Original Marketing, Inc.*, 120 F.T.C. 278 (1995) (consent) (acupressure device designed to be inserted into the ear).
65. *See, e.g., NordicTrack, Inc.*, 121 F.T.C. 907 (1996) (consent).
66. *See, e.g., NuSkin Int'l, Inc.*, No 2:97-CV-0626G (D. Utah 1997)(consent) (\$1.5 million in civil penalties); *General Nutrition, Inc.*, No 94-686 (W.D. Penn. 1994) (consent) (\$2.4 million in civil penalties).
67. *See, e.g., Nutri/System, Inc.*, 116 F.T.C. 1408 (1993) (consent).
68. *Amerifit, Inc.*, 123 F.T.C. 1454 (1997) (consent and \$100,000 in disgorgement) (Fat Burners System, with tablet and drink); *KCD Holdings, Inc.*, 123 F.T.C. 1535 (1997) (consent and \$150,000 in consumer redress) (SeQuester OTC cellulose-bile product); *Interactive Medical Technologies, Ltd.*, 123 F.T.C. 1525 (1997) (consent and \$35,000 in consumer redress), *William Pelzer, Jr.*, 123 F.T.C. 1519 (1997) (consent), and *William E. Shell* (cited in note 58) (consent and \$20,000 in consumer redress) (Lipotrol cellulose-bile weight-loss product and SeQuester); *2943174 Canada* (cited in note 28); *Guildwood Direct Ltd.*, 123 F.T.C. 1558 (1997) (consent and \$7,500 in consumer redress) (Slimming Insoles for shoes, based on reflexology); *BodyWell* (cited in note 64); and *Dean Distributors, Inc.*, 123 F.T.C. 1596 (1997) (consent) (Food for Life Weight Management System and

Cambridge Diet low calorie and very low calorie weight-loss programs, with formula drinks).

69. *Abflex, U.S.A., Inc.*, 124 F.T.C. 354 (1997) (consent).

70. *Life Fitness*, 124 F.T.C. 236 (1997) (consent).

71. *Icon Health and Fitness, Inc.*, 124 F.T.C. 215 (1997) (consent).

72. The fourth settlement was with Kent & Spiegel Direct, Inc., the producer of the infomercial for the Abflex abdominal exerciser. *Kent & Spiegel Direct, Inc.*, 124 F.T.C. 300 (1997) (consent).

73. *NordicTrack*, 121 F.T.C. 907 (1996) (consent).

74. *Technobrand, Inc.*, C-4041 (Apr. 15, 2002) (consent) (Hollywood 48-Hour Miracle Diet, the Enforma System; \$200,000 consumer redress); *ValueVision Int'l, Inc.*, 2001 WL 968398 (F.T.C.) (Aug. 22, 2001) (consent) (variety of weight-loss, cellulite treatment, and other products); *Weider Nutrition Int'l* (cited in note 61); *Enforma Natural Products* (cited in note 53); *Fitness Quest, Inc.*, 1999 WL 701841 (F.T.C.) (Jul. 26, 1999) (consent) (exercise gliders/abdominal devices); *SlimAmerica* (cited in note 28); *Home Shopping Network*, No 99-897-CIV-T-25C (M.D. Fla. Apr. 28, 1999) (weight-loss products); *Herbal Worldwide Holdings* (cited in note 28) ("Fattache," a purported dietary product, in ads run on Spanish-language television stations); *TrendMark Int'l, Inc.*, 126 F.T.C. 375 (1998) (consent) ("THIN-THIN" Diet program, composed of products NEURO-THIN, primarily made of various amino acids, and LIPO-THIN, whose main ingredient is chitin); *Bogdana Corp.*, 126 F.T.C. 37 (1998) (consent) (Cholestaway dietary supplement tablets); *Western Direct Marketing Group, Inc.*, 126 F.T.C. 105 (1998) (consent) (ad agency for Bogdana Corp.); *Mega Systems Int'l, Inc.*, 125 F.T.C. 973 (1998) (consent) (Eden's Secret Nature's Purifying Product and Dr. Callahan's Addiction Breaking System); *Venegas Inc.*, 125 F.T.C. 266 (1998) (consent) (dietary supplement Alen - Spanish language); and *Kave Elahie*, 124 F.T.C. 407 (1997) (consent) (NutraTrim Bio-Active Cellulite Control Cream and Weight Loss Tablets with aminophylline for weight loss - Spanish language); *NuSkin Int'l* (cited in note 66).

75. *FTC v. Garvey*, No 00-09358-AHM(AIJx) (C. D. Cal. filed Aug. 31, 2000).

76. Section 201(g) of the Food, Drug, and Cosmetic Act defines "drug," in relevant part, as (1) an article intended for use in the diagnosis, mitigation, treatment, or prevention of disease, or (2) any article, other than a food, intended to affect the structure or function of the human body. 21 U.S.C. § 321(g).

77. 21 U.S.C. § 352.

78. A new drug is defined under Section 201(p)(1) of the Food, Drug, and Cosmetic Act to be any drug that is not generally recognized as safe and effective in accordance with the procedures delineated in 21 C.F.R. § 330.10. 21 U.S.C. § 321(p)(1). Section 505(a) of the Act prohibits the introduction into interstate commerce of any new drug without an approved drug application. 21 U.S.C. § 355(a).

79. 47 C.F.R. § 8466.

80. Food and Drug Administration, *Weight Control Drug Products for Over-the-Counter Human Use, Certain Active Ingredients*, 56 Fed. Reg. 37792-37799 (Aug. 9, 1991).

81. Both phenylpropanolamine hydrochloride (PPA) (under certain specified conditions, including dosage limitations) and benzocaine were classified as safe and effective. Food and Drug Administration, Advanced Notice of Proposed Rulemaking, 47 Fed. Reg. 8466 (Feb. 26, 1982). Following the publication of a study showing an increased risk of stroke associated with the use of PPA, manufacturers agreed to withdraw PPA products from the market in November 2000. Food and Drug Administration, *Public Health Advisory: Safety of Phenylpropanolamine* (Nov. 6, 2000), available at <<http://www.fda.gov/cder/drgu/infopage/ppa/advisory.htm>> (visited Feb. 2, 2002).

82. In general, a “dietary supplement” is defined as a product intended to supplement the diet that bears or contains a vitamin; mineral; herb or other botanical; amino acid; dietary substance for use by man to supplement the diet by increasing the total dietary intake; or a concentrate, metabolite, constituent, extract, or combination of any of these ingredients. Food, Drug, and Cosmetic Act, Section 201(ff), 21 U.S.C. § 321(ff).

83. For example, an active ingredient that was absorbed through the skin would not be a dietary supplement.

84. Food, Drug, and Cosmetic Act, Section 403(r)(6)(B), 21 U.S.C. § 343(r)(6)(B).

85. *Dietary Supplements: Limited Federal Oversight Has Focused More on Marketing than on Safety* (July 31, 2002) (statement of Janet Heinrich, Director, Health Care–Public Health Issues, U.S. General Accounting Office, before the Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia, Committee on Governmental Affairs, U.S. Senate), p. 1.

86. See, e.g., *Advertising Standards and Guidelines*, ABC, Inc., Department of Broadcast Standards and Practices, March 2001, pp. 102-03.

87. Surgeon General’s Report (cited in note 1) at 23.

88. *Id.*

89. Miller, W.C., *A Monumental Accomplishment*, 16 Healthy Weight J. 1 at 1, 8 (Jan./Feb. 2002).

APPENDIX A

Product List

3 Day Diet Plan
48 Hour cyclone diet
A Nu You
ABC Diet Program
Advanced Weight Loss
Advanced Weight Loss & Wellness
AdvantRx Weight Loss Accelerator
Advocare
Algoxyl
Alph-Lean
AM-300
Amazing Mega Trim
Amerifit Fatburner System
Ann Morgan Book
Anorex
Aoqili Premium Seaweed Soap
Apidex-P
Apple Cider Vinegar Capsules
Aprinol
AS-200
Asparagus Superactivated Tablets
Atkins Diet
Banish Your Belly, Butt and Thighs Forever
Bariatric Treatment Centers
Berry Trim Plus
BeTrimToo's Liquid Drops
BeTrimToo's Thin
Beverly Hills Fat Burners
BioGenesis
BioSulpt
Blast Away Fat
Body Furnace
Body Type Supplement
Botanic Choice Apple Cider Vinegar
Calorad
Calorad 2000
Caloslim 2000
Calotrol/M.D.
Caltrim
Carb Cutter
Carb Trapper Plus

CarbFighter
Cellucal
CelluLife Anti-cellulite Fashion Hosiery
Cellulite Reduction Cream
CelluRid
Changes Now Super Fat Binder
Cheat and Lean
Chito-Trim
Chitogenics
Chitosan
Chitosan
Chitosol
ChromasTherm
Cutting Gel
Cyclone Diet System
Cytodyne Xenadrine
Cytoplex
Dallas Hypnosis Center
Dermalin-Apg
Dessert Avert
DetoX
Didrex
dietdivas
DietMagic
DietSmart
Doctor's Fat Burner
DoctorsCare
Dr. Sandra Cabot's Natural Health Formulas
Dr. Jackish's Redu-Quick
Dynamic Fatburner
EAS Betalean
Exercise in a Bottle
Extreme Power Plus
Fast-Burn
Fat-B-Gone
Fat Complexer
Fat Fighter
Fat Metabolizer Capsules
Fat Neutralizer
Fat-Sponge in a Pill
Fat Trapper Plus
Fit America
Forever Young (HGH)
Fostec
Friendly 7

Gentle Ferocity
Get Slim Slippers
Goen Method
Gorayeb Weightloss Seminar
Grow.Lean 15
Herbal Body Wrap
High Protein Low-Carb Diet Quick Weight Loss Diet
Hollywood 48-Hour Miracle Diet
Hollywood Miracle Diet
Human Growth Hormone
Hunger Ease
Hydroxycut
Inches-A-Weigh
Inferno
Ionamin
Jenny Craig
Kaloski Method
KarbKiller
Kashi Cereals
LA Weight Loss Centers
Lipodrene
Lipoguard
LipoSlim
Lipotropic Injections
Livatone
LivLite Weight Management Program
Luprinol
Magic Herb Diet Plus Chromium Picolinate
Mega Apple Cider Plus
Meridia
Meta-Biological Dietary Supplement
Metabolic Weight Loss Center
Metabolic Research Center
Metabolic Thyrolean
Metabolic Weight Loss
Metabolife (shakes, diet and energy bars)
Metabolife 356
Metabolift
MeTrim Block
MeTrim Night
MeTrim SuperBlock
Miami 48 Hour Diet
Millenium Diet
Miracle Diet Formula
Nature's Shape

Negative Calorie Diet ebook
newStart
Nu Life
Nutri/System
Oleda Super Fat Burner
OptiBurn
Optifast
Optifast Plan
Oral GH formula
Oxycise
OZ Garcia's Celebrity Slim 5 Day Diet Plan
PatentLEAN
Phentermine
Physicians Weight Loss Centers
Picture Perfect Weight Loss
Plant Macerat
Positive Changes Hypnosis Centers
Power Diet Plus
Prescriptions for Healthy Living
Protein and Plus Diet System
Pure Lipotric Fat-Burner Tablets
Quick Slim
redu-quick
Richard Simmon's Lose Weight & Celebrate Plan
RS-Fire
Satietrol
Scan Diet
Sea Clay Body Wrap
Serotril
Shipula Center Hypnosis
Simply Slender Body Wraps
Simply Slym
Skinny Me
Sleep A Weigh
Slender Life Weight Loss Centers
Slender Now Weight Management Program
Slenderstrip
Slendior
Slimdown Fast
SlimSense System
Stay-N-Thin Rapid Burn Diet
Suddenly Slender
Super Fat Burner System
Super Shaper 2000
Synadrene-HCL

Synergie Lifestyle System
TG-2000 Fat Burner
The Body Wrap
The Original Hollywood Celebrity Diet
The Ultimate Weight Loss eBook
Thermal Carb
Thermo Balance
Thermo Life
Thermo-Lift Classic
Thermo-Lift II
Thermo-Lift
Thermo Phen Fen
Thermogencis Plus Stimulant Free
ThermoGencis Plus Quick Start
ThermoGold
Thermojetics Weight-Management Program
ThermoSlim
ThermoSulp
Thyro-Slim A.M./P.M.
ThyroStart
Thyrox T-3
Tonalin CLA
ToppFast
Tri-Amacil
Trim Spa
Trimlife
TrimSpa
Triphetamine
Twin Lab CLA Fuel
U.S. Women's Alpine Ski Team Diet
Ultra Carbo Block 2000
Ultra Carbohydrate Blocker 2000
Ultra Slim-Fast
Ultra Trim 2000
Vinegar Weightloss Plan
Vita-Green
Vitala Trim
Weight Watchers
Xenadrine RFA-1
Xenical
Xeta Lean
Zymax

APPENDIX B

Examples of Questionable Ad Claims From 2001 Sample

- Headline: “THE FASTEST ALL-NATURAL DIET KNOWN FOR RAPID WEIGHT LOSS WITHOUT A PRESCRIPTION!”

Body of the ad: The regular-sized print boasts that while using the product, “You can even eat as much as you like and still lose weight! When properly distributed, an intake of 4000 calories a day can actually help you to lose weight instead of gain it.” The small (very small) print across the bottom of the page is nearly illegible but reveals that these statements have not been approved by the FDA, that consumers should consult their doctors before beginning a weight-loss plan, and that “Individual results may vary and can be more or less than the results mentioned.” The readable hyperbole is accompanied by references to miracles and ancient remedies, before and after pictures, a weight-loss graph, a picture of a man in a white coat with a stethoscope around his neck, a picture of a slender, smiling woman in a bathing suit, and testimonials of amazing success achieved by users of the product (20 pounds lost “without changing any of my eating habits” and 22 pounds lost in 13 days.) The marketer further claims, “The capsules work like an ‘anti-fat police force.’ The ingredients contained in the . . . capsules transmit orders to the fat cells to drain off and send fat to the muscles through the bloodstream. This redirected fat can then be eliminated by the muscles as they burn calories.”

The active ingredient in this product is vinegar. Among the publications that ran this ad in the first half of 2001: *Redbook*, *Woman’s Day*, *Soap Opera Digest*, *Star*, *Women’s Own*.

- Headline: “Amazing Fat-Fighting Diet Pill Produces An Extremely Fast Weight Loss. . . Even if You Cheat or Refuse to Diet!”

Body of the ad: “. . . enjoy your favorite foods and still lose weight.”

“Ingested Fat is immediately Bound up....and literally flushed right out of your body!”

“Contains amazing ingredients proven safe and effective in Europe for over 5 years!”

“It can make a delicious, juicy hamburger as low in fat as a lean turkey sandwich!”

The ad ran in 2001 in the following newspapers: *The Desert Sun* [Palm Springs, CA], *The Charleston [WV] Daily Mail*, *The Charleston [WV] Gazette*, *The Pasadena [CA] Star News*, *The Pensacola [FL] News Journal*, *The Gloucester [NJ] County Times*, *The Salem [OH] News*, *The Vidette [IN] Times*, *The Athens [GA] Daily News*, *The Athens [GA] Banner Herald*, *The Gazeteer* [Colorado Springs, CO], *The Daily Southtown* [Chicago, IL], *The Sun-Sentinel* [Ft. Lauderdale, FL], and the *Houston [TX] Chronicle*.

- Headline: “Our amazing ‘Herbal Bullet’ blasts Fat and Flushes it out of your body!”

Body of the ad: "You'll actually burn 12-16 times more fat each day than running 110 miles/week, 200 situps and pushups a day or 12 hours of nonstop Marine Corps calisthenics."

“You burn away all the calories in all the food you take in, every time you eat.”

The ad ran in the *Kansas City Star*.

- Headline: "Look like a model or be one with [product name]. Our amazing ‘Herbal Bullet’ blast Fat and Flushes it out of your body!” *Kansas City Star*.
- Headline: "Major weight loss breakthrough-New carbkiller lets you cheat and eat like crazy and still get skinny lightning fast! Diet enemies - Carbs and Fat - Instantly neutralized by all natural "Anti-obesity Discovery!" *Sun* (Boca Raton, Florida).
- Headline: “How I conquered my weight problem for good! Local realtor reveals her secret for Shedding 85lbs without dieting!” *Richmond Times Dispatch* (Virginia)

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