



**2004
Weight-Loss
Advertising
Survey**

**Staff Report
Federal Trade Commission
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Federal Trade Commission

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Executive Summary

Beginning in February 2003, the Federal Trade Commission (“FTC” or “Commission”) asked for the media’s help in preventing the dissemination of facially false advertising claims for weight-loss products.¹ Specifically, the FTC encouraged the media not to disseminate weight-loss advertisements that contained any of seven facially false (“Red Flag”) claims. In 2004, the FTC staff conducted a survey of weight-loss advertisements for certain products in print, television, and radio to evaluate the effect of the Commission’s initiative and accompanying media education campaign. In addition, where there were comparable data, FTC staff compared the results of the 2004 survey with data from a weight-loss advertising survey the FTC conducted in 2001.² In general, analysis of the 2004 survey results suggest that, compared to 2001, there has been a significant decline in the incidence of Red Flag weight-loss claims in the television, radio, and print advertisements included in the survey. Although this decline is consistent with results the Commission hoped its Red Flags initiative would have, we cannot determine with certainty whether the observed results were the result of the FTC’s initiative. In addition, the decline in Red Flag claims does not necessarily imply a decline in deceptive weight-loss claims more generally.

I. Background

The rapid increase in overweight and obesity in America has created serious public health problems. According to the Surgeon General, six out of every 10 Americans are overweight or obese.³ The estimated cost of obesity exceeds \$100 billion per year.⁴

Many Americans turn to weight-loss aids to trim pounds, whether to supplement a diet and exercise plan or as a substitute. Industry sources estimate that consumers spend billions of dollars a year on products and services that purport to promote weight loss.⁵

Many weight-loss products, however, do not live up to their promises. In September 2002, the FTC issued a staff report entitled *Weight-Loss Advertising Report: An Analysis of Current Trends*.⁶ This report, which was based on weight-loss advertisements collected in 2001 (the “2001 survey”), was a comprehensive, albeit non-scientific, review of the state of weight-loss product and service advertising. The survey included 300 ads, from a wide variety of media, that were collected in February through May 2001. The report concluded that false or misleading claims were pervasive in weight-loss advertising and documented a “downward spiral to deception in weight-loss advertising.”⁷ Of the advertisements included in the 2001 survey for nonprescription drugs, dietary supplements, creams, wraps, diet patches, and devices that appeared in

print or on television or radio, 49% contained at least one almost certainly false representation.⁸

Red Flags Initiative

This widespread deception persisted even in the face of aggressive Commission law enforcement action. In the last 10 years, the Commission has brought more than 100 cases challenging false or misleading claims in advertising for weight-loss products. The Commission also has disseminated widely consumer education materials warning consumers to be skeptical of “too good to be true” weight-loss claims and emphasizing the importance of diet and exercise in losing weight. The prevalence of facially false and misleading weight-loss ads – despite the Commission’s consumer education initiatives and aggressive law enforcement in the weight-loss area – sparked a search for new approaches to address the problem. In November 2002, the Commission held a public workshop on deception in weight-loss advertising to explore new strategies.⁹

In preparation for the workshop, the Commission in September 2002 solicited public comment on whether the current state of the science was sufficient to determine that certain common weight-loss claims were false.¹⁰ At the workshop, 10 scientific experts in nutrition and the study and treatment of overweight and obesity evaluated a number of weight-loss claims typically found in weight-loss advertising and considered whether the claims promised results that were not scientifically feasible. The discussion was limited to claims for products available over-the-counter: nonprescription drugs, dietary supplements, creams, wraps, devices, and patches (collectively, “covered weight-loss products”). Overall, the experts believed that the identified claims about these weight-loss products were simply not feasible based on the current state of the science.

Following the workshop, an outreach program was initiated to encourage the media’s voluntary efforts to adopt and implement screening standards that would reduce the level of facially false advertising for covered weight-loss products appearing in their venues. This initiative included meetings with media trade associations and individual companies. In addition, as part of the initiative, in February 2003, then-Chairman Timothy J. Muris spoke to the Cabletelevision Advertising Bureau and met with industry members to ask the industry, in his words, to “do the right thing” by screening out false weight-loss ads.¹¹ In that speech, Chairman Muris identified the specific claims at issue. In October 2003, Chairman Muris made a similar call to action in a speech to the Magazine Publishers of America.¹² Other Commissioners echoed this message in various speeches and publications.¹³

In December 2003, the FTC issued a staff report entitled *Deception in Weight-Loss Advertising Workshop: Seizing Opportunities and Building Partnerships to Stop Weight-Loss Fraud*.¹⁴ Based on the discussions at the 2002 workshop – together with written comments received before and after the workshop, the published literature, and the Commission’s investigative

experience – the staff compiled a list of claims that are not scientifically feasible for the covered weight-loss products. With some minor modifications, this list reflected the claims identified in the Commission’s Federal Register Notice announcing the workshop.¹⁵ At the same time that it issued the Workshop Report, the Commission also released a media reference guide entitled *Red Flag: Bogus Weight Loss Claims*.¹⁶ These claims – the “Red Flag” claims – are:

Consumers who use the advertised product can lose two pounds or more per week (over four or more weeks) without reducing caloric intake and/or increasing their physical activity.

Consumers who use the advertised product can lose substantial weight while still enjoying unlimited amounts of high calorie foods.

The advertised product will cause permanent weight loss (even when the user stops using the product).

The advertised product will cause substantial weight loss through the blockage of absorption of fat or calories.

Consumers who use the advertised product (without medical supervision) can safely lose more than three pounds per week for a period of more than four weeks.

Users can lose substantial weight through the use of the advertised product that is worn on the body or rubbed into the skin.

The advertised product will cause substantial weight loss for all users.¹⁷

II. 2004 Survey Analysis

The survey discussed in this report was conducted to determine whether there was any discernible change in the incidence of Red Flag claims in the wake of the Commission’s Red Flags initiative.¹⁸ To make this determination, a sample of weight-loss advertisements collected from February through May 2004 was compared to a similar sample from the 2001 survey. In general, using the Red Flag criteria, this comparison suggests that there has been a significant decline in the incidence of Red Flag weight-loss claims in the television, radio, and print advertisements included in the survey. Specifically, in the comparable ads reviewed from the 2001 survey, nearly half (49%) contained at least one facially false Red Flag claim. By comparison, 15% of the 2004 weight-loss ads made one or more Red Flag claims. It must be noted, however, that neither the 2001 nor the 2004 survey was designed to produce results that can be generalized to all weight-loss advertising. Moreover, the absence of Red Flag claims does not mean that the advertisements contained no deceptive weight-loss claims at all. In addition, although these results suggest that there has been significant improvement

in the occurrence of Red Flag claims since 2001, they do not prove that the improvement is the result of the Red Flags initiative.

A. Media Surveyed¹⁹

To conduct the current study, FTC staff analyzed a sample of 293 advertisements collected in February through May 2004 (“collection period”) from broadcast and cable television (including infomercials), radio, magazines, newspapers, supermarket tabloids, and free-standing inserts (“FSIs”).²⁰ These are all media in which it is possible for a third party to screen the advertisements before running them (in contrast to advertisements contained in Internet websites or spam). The breakdown of these advertisements by media is provided in Table 1.

Table 1: Advertisements by Media

Media Source	Number of distinct advertisements in sample
Magazines	127
Tabloids	30
Newspapers/FSIs	44
Television (short-form)	28
Television Infomercials	3
Radio	61

B. Product Types

Because the Commission’s Red Flag initiative only relates to claims for certain weight-loss products (the “covered weight-loss products,” that is, non-prescription drugs, dietary supplements, diet patches, creams, wraps, and devices), the survey was limited to advertisements for that category. The vast majority (91%) of the surveyed advertisements were for dietary supplements. Advertisements for creams made up 5% of the survey, wraps 2%, and patches 1%.²¹ For the same types of non-prescription products included in the 2001 survey, 88% of the advertisements were for dietary supplements, 6% for patches and creams, and another 6% for wraps.²² The 2004 survey did not cover advertisements for prescription drugs, exercise equipment, meal replacement products like breakfast shakes or breakfast bars, low-calorie foods or drinks, liposuction or other forms of surgery, hypnosis, or special diets such as low-carbohydrate or low-calorie diets.

C. 2001 Survey Comparisons

To make comparisons between the 2004 and the 2001 surveys, it was necessary to adjust for certain differences between the surveys. The 2001 survey had looked at weight-loss advertisements disseminated in a broader range of

media, including broadcast and cable television (including infomercials), radio, magazines, newspapers (including FSIs in Sunday newspapers), supermarket tabloids, direct mail, unsolicited commercial e-mail (spam), and Internet websites between February and May 2001. Thus, it included advertisements in media where third-party screening cannot occur. The 2001 survey also had included all types of products and services, including dietary supplements, meal replacements, hypnosis, food, diet plans and centers, transdermal patches and creams, and wraps. It thus included a wider array of products than were included in the 2004 sample.

Therefore, the staff analysis of the 2001 advertisements published in the *Weight-Loss Advertising Report* generally combined data on all weight-loss products and services and covered all forms of dissemination.²³ Given the different scope of the 2001 and 2004 surveys and the resulting differences in the coding of the 2001 and 2004 advertisements, in some instances it is not possible to compare data from the two surveys on certain questions. For example, some data were collected in 2001 that were not collected in 2004 and vice versa.

In other instances, however, it was possible to re-tabulate the 2001 data so they could be compared to the 2004 data.²⁴ Focusing on products covered by the Red Flags initiative reduced the original 2001 sample from close to 300 advertisements to 178. We further narrowed the sample to 98 advertisements by looking only at radio, television, magazines, newspapers, and tabloids (in other words, media where screening can occur). Each of these ads was coded, before the release of the *Weight-Loss Advertising Report*, on whether it contained at least one Red Flag Claim (although not as to each specific Red Flag claim contained in the ads).

D. Red Flag Claims

In the current survey, 15% (45 of 293) of distinct advertisements made Red Flag claims.²⁵ In contrast, about half (49%, 48 of 98) of the 2001 advertisements for covered weight-loss products that appeared in print media, or on television or radio, contained at least one Red Flag claim.²⁶ This comparison suggests that, judged by the absence of facially false Red Flag claims, weight-loss advertising has improved since 2001 in the advertisements surveyed, in the media capable of being screened by the third-party medium disseminating the advertisement.

For the first Red Flag Claim it is possible to compare the 2004 and 2001 survey data as to prevalence. This claim, which is perhaps the most common, is that consumers who use the advertised product can lose two pounds or more per week (over four or more weeks) without reducing caloric intake and/or increasing their physical activity. Of the advertisements surveyed in 2004, 5% (16 of 293) of advertisements communicated this Red Flag claim. In contrast, in 2001, 43% (42 of 98) of the advertisements for covered weight-loss products that appeared in print media or on television or radio contained claims that users can lose two pounds or more per week over four or more weeks without dieting or exercising.²⁷

The frequency of the other Red Flag claims in 2004 ads are set forth below in Table 2.

TABLE 2: Frequency of Red Flag Claims²⁸

Red Flag Claim	Number of Ads in 2004 Sample Containing Claim	Percentage of Ads in 2004 Sample Containing Claim
RF#1 Consumers who use the advertised product can lose two pounds or more a week (over four or more weeks) without reducing caloric intake and/or increasing their physical activity	16	5%
RF#2 Consumers who use the advertised product can lose substantial weight while still enjoying unlimited amounts of high calorie foods. ²⁹	11	4%
RF#3 The advertised product will cause permanent weight loss (even when the user stops using the product).	13	4%
RF#4 The advertised product will cause substantial weight loss through the blockage of absorption of fat or calories.	9	3%
RF#5 Consumers who use the advertised product (without medical supervision) can safely lose more than three pounds per week for a period of more than four weeks.	10	3%
RF#6 Users can lose substantial weight through the use of the advertised product that is worn on the body or rubbed into the skin.	11	4%
RF#7 The advertised product will cause substantial weight loss for all users. ³⁰	13	4%

E. Other Advertising Techniques

In addition to analyzing the advertisements found in the 2004 survey for the prevalence of Red Flag claims, FTC staff analyzed the advertisements for the prevalence of other advertising claims and techniques employed. Unlike Red Flag claims, these techniques are not necessarily deceptive. They are reported here solely for the purpose of providing a better understanding of weight-loss product advertising.

1. Safety and Efficacy Claims

About one in five advertisements (19%, 56 of 293 advertisements) specifically claim that the product is safe.³¹ Less than half (44%, 130 of 293 advertisements) of the advertisements in the survey claim that the product was tested or proven effective for weight loss.³²

Eighteen percent (53 of 293) of the advertisements represented that a medical professional such as a doctor, nurse, or hospital recommends the product. This category includes advertisements claiming that a specific doctor, pharmacist, nurse, or hospital recommends the product; stating that doctors generally endorse the product; or featuring someone dressed the way a doctor might dress (for example, in a lab coat with a stethoscope) to imply that doctors support the product.³³

Finally, one third of the advertisements (34%, 100 of 293 advertisements) promise that the product works quickly.

2. Diet and Exercise Disclosures

The 2004 survey also tracked for the first time whether the advertisement expressly told consumers that they would have to diet or exercise to lose weight. Almost half of the advertisements (46%, 135 of 293 advertisements) informed consumers that, to lose weight, they would have to diet, not just use the advertised product. About the same number (45%, 133 of 293 advertisements) indicated that the user would have to exercise. About a third of those advertisements, however – 32% (43 of 135 advertisements making diet disclosures) and 33% (44 of 133 advertisements making exercise disclosures) – included this information only in small-print disclosures.

3. Testimonials

Almost half (47%, 137 of 293 advertisements) of the advertisements in the 2004 survey used testimonials to promote the product.³⁴ These advertisements included an average of two testimonials. In 55 advertisements (40% of 137 advertisements), endorsers claimed to have lost at least 40 pounds, and, in 20 of those advertisements (15%), the endorsers claimed to have lost at least 80 pounds. These data suggest that weight-loss advertising continues to rely heavily on testimonials and other representations promising extreme weight loss that is unlikely to be achieved by any significant number of users.

F. Magazine Advertising: A Historical Comparison

In the 2001 survey, FTC staff compared weight-loss product advertising that appeared in 1992 in the February through May issues of eight national magazines (*Cosmopolitan*, *Family Circle*, *Glamour*, *Ladies Home Journal*, *McCall's/Rosie*, *Redbook*, *Self*, and *Woman's Day*) with advertising that appeared in the same magazines in 2001. Between 1992 and 2001, the number of weight-loss products advertised in these magazines more than doubled, and the number of distinct

advertisements for those products more than tripled.³⁵ Between 1992 and 2001, the types of products advertised also shifted, from primarily meal replacements such as diet shakes to primarily dietary supplements.³⁶

The comparison between 2004 and 2001 is summarized below in Table 3. In the 2004 survey, five out of 34 (15%) distinct advertisements for covered weight-loss products made a Red Flag claim in the February through May issues of seven of the eight magazines.³⁷ By contrast, in February through May 2001, six out of 13 (46%) distinct advertisements for similar products made one or more Red Flag claims.³⁸

Table 3: Ad Frequency Comparison

Comparison	2004	2001
# of Distinct Weight-Loss Ads	34	13
# of Distinct Ads Containing Red Flag Claims	5	6
% of Distinct Ads Containing Red Flag Claims	15%	46%

This comparison shows that the volume of weight-loss advertising in the identified magazines has continued to increase – although the volume of Red Flag claims has not. Instead, the Red Flag claims’ share has actually fallen, consistent with the decline evident in the broader comparison of the two surveys.

III. Conclusion

The results of the 2004 survey examining weight-loss advertising for dietary supplements, creams, wraps, devices, and patches in a variety of screened media suggests that there has been a substantial reduction in Red Flag claims in the last few years. Although we documented this reduction in Red Flag claims after the Commission’s 2003 initiative, we do not know if, or to what extent, the Commission’s initiative caused the reduction.

It is worth noting again that although the primary comparisons in this report are based on comparable sets of advertisements from 2001 and 2004, the underlying data were not collected in a way designed to produce results that could be generalized to all weight-loss advertising. Caution must therefore be used when drawing conclusions from these results. Nonetheless, FTC staff believes these results support the Commission’s continuing efforts to encourage the media to screen out facially false weight-loss advertisements.

Endnotes

1. Timothy J. Muris, Chairman, Federal Trade Commission, “*Do the Right Thing*” (*Apologies to Spike Lee*), Remarks Before the Cable Television Advertising Bureau (Feb. 11, 2003), available at <http://www.ftc.gov/speeches/muris/030211rightthing.htm>. See also Timothy J. Muris, Chairman, Federal Trade Commission, Remarks Before the Electronic Retailing Association Spring Conference and Trade Expo (Feb. 24, 2003); Sheila F. Anthony, Commissioner, Federal Trade Commission, *Let’s Clean Up the Diet-Ad Mess*, ADVERTISING AGE, Feb. 3, 2003 at 18; Thomas B. Leary, Commissioner, Federal Trade Commission, *Allies in a Common Cause*, available at <http://www.ftc.gov/speeches/leary/fdli.pdf>; Orson Swindle, Commissioner, Federal Trade Commission, *Combating Deceptive Advertising: The Role of Advertisers, the Media, and the FTC*, Remarks at the Aggressive Advertising and the Law Conference (Apr. 28, 2003), available at <http://www.ftc.gov/speeches/swindle/030428aggressive.htm>.
2. In 2002, the Commission authorized the staff to issue its report, *Weight-Loss Advertising: An Analysis of Current Trends*. THE STAFF OF THE BUREAU OF CONSUMER PROTECTION, U.S. FED. TRADE COMM’N, WEIGHT-LOSS ADVERTISING: AN ANALYSIS OF CURRENT TRENDS (2002), available at <http://www.ftc.gov/bcp/reports/weightloss.pdf> (hereinafter *FTC Weight-Loss Advertising Report*). For reasons discussed below, the 2001 survey included product types and methods of dissemination that are not included in the 2004 survey. In some instances, to aid comparison, the FTC staff re-tabulated the 2001 survey data to focus only on advertising appearing on television or radio, or in print media, or only on particular types of products advertised, e.g., nonprescription drugs, dietary supplements, diet patches, wraps, or creams. These previously unpublished results are cited herein as “FTC Staff Analysis of 2001 Survey.”
3. OFFICE OF THE SURGEON GEN., U.S. DEP’T OF HEALTH AND HUMAN SERV., THE SURGEON GENERAL’S CALL TO ACTION TO PREVENT AND DECREASE OVERWEIGHT AND OBESITY xiii (2001), available at <http://www.surgeongeneral.gov/topics/obesity/calltoaction/CalltoAction.pdf>.
4. *Id.* at 10.
5. See, e.g., MARKETDATA ENTER., INC., U.S. WEIGHT LOSS & DIET CONTROL MARKET 6 (2002). Marketdata estimated that the total U.S. weight-loss market for 2001 was \$37.1 billion and growing at a rate of six to seven percent a year. See also Kruger et al., *Attempting to lose weight: specific practices among U.S. adults*, 26 Am. J. of Preventive Med. 402 (2004) (Americans spend over \$33 billion annually on weight-loss products).
6. *FTC Weight-Loss Advertising Report*, *supra* note 2.
7. *Id.* at x.
8. FTC Staff Analysis of 2001 Survey.
9. See Public Workshop: Advertising of Weight-Loss Products, available at <http://www.ftc.gov/os/2002/09/weightlossfrn.htm>.
10. 67 Fed. Reg. 59,289 (Sept. 20, 2002).
11. *Do the Right Thing*, *supra* note 1.
12. See *Do the Right Thing: A Call for Media Responsibility (with Apologies to Spike Lee)*, Remarks of FTC Chairman Timothy J. Muris, Magazine Publishers of America, Oct. 9, 2003, New York, New York.
13. See *supra* note 1.
14. THE STAFF OF THE BUREAU OF CONSUMER PROTECTION, U.S. FED. TRADE COMM’N, DECEPTION IN WEIGHT-LOSS ADVERTISING WORKSHOP: SEIZING OPPORTUNITIES AND BUILDING PARTNERSHIPS TO STOP WEIGHT-LOSS FRAUD (2003) (hereinafter *Workshop Report*), available at <http://www.ftc.gov/os/2003/12/031209weightlossrpt.pdf>. The Commission voted to authorize the staff to issue this report.
15. See Public Workshop, *supra* note 9.
16. U.S. FED. TRADE COMM’N, RED FLAG BOGUS WEIGHT LOSS CLAIMS: A REFERENCE GUIDE FOR MEDIA ON BOGUS WEIGHT LOSS CLAIM DETECTION (2003), available at <http://www.ftc.gov/bcp/online/pubs/buspubs/redflag.pdf>.
17. *Workshop Report*, *supra* note 14, at 31.
18. The primary objective of this survey was to look at the frequency of facially false Red Flag claims in print media and on television and radio following the announcement of the Commission’s Red Flag

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initiative. Accordingly, the survey did not address issues such as the extent to which advertisers may have only marginally changed the wording of their claim to avoid the specified false claims, *e.g.*, by dropping references to specific amounts of weight loss, or the extent to which such advertising may have shifted to other media, *e.g.*, the Internet.

19. For more on the survey's collection methodology, see Appendix A.

20. A free-standing insert ("FSI") is an advertising supplement inserted into a newspaper, usually the Sunday edition, and is characterized by cents-off coupons and mail or telephone order advertising. An entity other than the newspaper prepares the FSI.

21. Due to rounding, in some cases, percentages do not add up to 100%.

22. In addition, the 2001 survey included twenty-four advertisements for which the staff could not determine the product type. The staff categorized these advertisements as "other." *FTC Weight-Loss Advertising Report, supra* note 2, at 9.

23. For the 2001 survey, the FTC staff and the Partnership for Healthy Weight Management collected the ads for inclusion in the sample, with the exception of Internet advertisements. (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 healthy weight. Additional information concerning the Partnership is available at <http://www.consumer.gov/weightloss/index.htm>.) No effort was made to select a scientifically random sample, although, at the same time, there was no concerted effort to collect only problematic ads. *FTC Weight-Loss Advertising Report, supra* note 2, at 3-4. The advertisements in the 2004 survey were collected by a third-party contractor that monitored advertising running during the selected time period.

24. In each instance below where the coded questions, products, and media are not identical, the relevant differences are disclosed. Finally, for some comparisons, which are identified in the endnotes by citations to FTC Analysis of 2001 Survey, this report relies on previously unpublished analysis of the 2001 data.

25. This result should not be construed to mean that 85% of the advertisements contained no deceptive or misleading claims, only that they did not include one of the Red Flag false claims. The breakdown by media was as follows: magazines 12% (15 of 127), newspapers/FSIs 30% (13 of 44), radio 13% (eight of 61), tabloids 20% (six of 30), television/infomercials 10% (three of 31).

26. FTC Staff Analysis of 2001 Survey.

27. FTC Staff Analysis of 2001 Survey. This was the primary claim used to determine whether the 2001 advertisements contained at least one Red Flag claim. Because of the importance of this claim, the 48 advertisements containing a Red Flag claim from the 2001 survey were reviewed to determine whether they contained a claim of weight-loss exceeding two pounds per week or more for four or more weeks. In terms of amount of weight loss, the original coding had been limited to whether the advertisements promised substantial weight loss.

We determined that an advertisement communicated this claim if the advertisement both promised weight loss of at least two pounds per week (over four or more weeks), and either claimed that users could enjoy unlimited amounts of high calorie foods or indicated that users need not reduce caloric intake.

28. The total number of Red Flag claims is 67 (the sum of the claims in column 1 in Table 2), while there are only 45 ads with at least one Red Flag claim. Thus, there are about 1.5 Red Flag claims per advertisement for the subset of advertisements with at least one Red Flag claim (67/45).

29. Advertisements making this type of Red Flag claim either referred to specific high-calorie foods such as cookies, cakes, and ice cream, promised more generally that users can eat "anything you want" or "eat all you want," or made statements that a user need not show restraint in eating.

30. A related survey question addressed whether the advertisement claimed that the product would work – even if consumers had tried other products and gotten no results. Eight percent of the advertisements (22 advertisements) communicated that the product works, no matter how many times the user has tried and failed to lose weight before.

31. Because of the way the ads in the 2001 survey were coded, it is not possible to make direct comparisons to the 2004 data with respect to claims made for covered weight-loss products appearing in screened media. Therefore, the data regarding the 2001 survey provided in this and the following three

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endnotes are informative but not directly comparable to the 2004 survey data. In the 2001 survey, 42% of the advertisements in the total sample (all weight-loss products in all media) included a claim that the product or service was safe. *FTC Weight-Loss Advertising Report, supra* note 2, at 19. On February 6, 2004, the U.S. Food and Drug Administration published a final rule, effective April 12, 2004, prohibiting the sale of dietary supplements containing ephedrine alkaloids (ephedra). 21 C.F.R. § 119. It is unclear what effect, if any, this rule had on the number of safety claims in the surveyed advertisements.

32. In the 2001 survey, 40% of the advertisements in the total sample communicated that the product was clinically proven effective. *FTC Weight-Loss Advertising Report, supra* note 2, at 17. Of advertisements for dietary supplements, wraps, and patches disseminated in all forms of media, 54% made claims that the product was clinically proven to work. *Id.* at 9; FTC Staff Analysis of 2001 Survey. Some of these advertisements were disseminated through direct mail or the Internet. Looking at television, radio, and print media, 21% of the advertisements made clinically proven claims. *Id.* These advertisements included some products or programs not included in the 2004 survey.

33. In the 2001 sample, 25% of the advertisements in the total sample indicated that the product was endorsed by a doctor or other medical professional. *FTC Weight-Loss Advertising Report, supra* note 2, at 17. Twenty-two percent of the advertisements disseminated through television, radio, and print media contained this claim. FTC Staff Analysis of 2001 Survey.

34. For comparable products, the 2001 survey found that 58% of the advertisements included consumer testimonials. This calculation is based on advertisements disseminated in all media surveyed. Looking at advertisements for all types of products surveyed that appeared in the screened media – television, radio, or print – 64% of the advertisements used testimonials. *Id.*

Twenty-nine percent of the advertisements (84 advertisements) in the 2004 survey provided typicality disclosures of some kind. These disclosures include statements such as “Results not typical” or “Results are extraordinary and may not represent the results of the average person.”

35. *FTC Weight-Loss Advertising Report, supra* note 2, at 21.

36. *Id.*

37. *McCall's* (later named *Rosie*) was included in the 1992 and 2001 surveys, but because that magazine is no longer published, the 2004 survey tracked advertisements appearing in the seven extant publications.

38. In the 2004 survey, 34 distinct advertisements for covered weight-loss products ran a total of 49 times in the February through May issues of the seven magazines. Five of these advertisements (15%) ran seven times (14% of forty-nine) and made a Red Flag claim. By contrast, in February through May 2001, 13 distinct advertisements for similar products ran 30 times in the same magazine sample. FTC Staff Analysis of 2001 Survey. Six distinct advertisements (46%) ran 11 times (36% of thirty) and made one or more Red Flag claims. *Id.*

Appendix A: Collection Methodology

To conduct the study, FTC staff analyzed a sample of 293 advertisements collected in February through May 2004 (“collection period”) from broadcast and cable television (including infomercials), radio, magazines, newspapers, supermarket tabloids, and FSIs. In addition, to evaluate how weight-loss advertising has changed over time, the staff compared ads disseminated in selected national magazines in 2001 with ads appearing in those same publications in 2004.¹

A contractor² monitored six major television networks, more than 40 national cable television networks, more than 90 local broadcast television markets, 26 radio markets, and approximately 635 print media for weight-loss advertisements disseminated during the collection period. With the exception of FSIs and certain magazines, the contractor monitored its usual television stations, radio stations,³ and print media.⁴ The Commission provided the contractor with FSIs; the contractor collected all other advertisements. For all media, the contractor both identified and coded the weight-loss ads.⁵

The contractor collected 1156 ads for all types of weight-loss products and services and identified each ad with a number, the name of the product, the name of the parent company when identifiable, the date the ad appeared, and the media vehicle where it appeared. The contractor excluded 863 ads from the sample on two grounds. First, the contractor removed duplicate ads so that the final sample contained only distinct ads. Second, the contractor excluded ads for types of

1. Because this current survey was designed primarily to gauge whether weight-loss advertising appearing in print, or on television or radio, has improved since the announcement of the Commission’s media screening initiative, its scope differs from the Commission’s 2001 survey in two key ways. First, the survey included advertisements only for the types of weight-loss products to which the screening guidelines apply: nonprescription weight-loss products such as pills, potions, capsules, or tablets that are not prescription drugs; products intended to be rubbed on, wrapped around, or stuck on the body; products that purport to stimulate muscles electronically or that jiggle or vibrate; and products intended to be worn such as earrings, bracelets, or shoe inserts. Second, this survey reviewed advertising only in media that are capable of being screened by a publisher. Therefore, unlike the 2001 survey, this survey did not include unscreened advertisements such as unsolicited commercial e-mail (spam), direct mail pieces, or Internet sites.

2. The FTC contracted with VMS Advertising Services (“VMS”) to collect and code survey advertisements.

3. The contractor monitors radio stations in 27 of the 90 largest markets and considers the popularity of the station as measured by Arbitron and the format of the station (music, talk, news, etc.) so that a mix of formats are measured.

4. The contractor selects the media that it monitors primarily based on market and audience size/circulation. The contractor monitors approximately the top 90 American media markets, including all of the commercial television stations and all of the major daily and weekly newspapers in those markets. The contractor chooses consumer magazines primarily based on circulation; a secondary consideration is the types of advertising likely to be found in the publication. In addition, the contractor monitored six publications specifically chosen by FTC staff: *Globe*, *Let’s Live*, *National Examiner*, *Sun*, *Weekly World News*, and *Women’s Own*.

5. FTC staff trained the coders and supervisor using a coding sheet and instructions. A description of the coding process is attached as Appendix B.

weight-loss products to which the Red Flag guidelines do not apply.⁶ The final sample contained 293 distinct ads. Table 1 provides the breakdown of these ads by media.

Table 1: Advertisements by Media

Media Source	Number of distinct ads in sample
Magazines	127
Tabloids	30
Newspapers/FSIs	44
Television (short-form)	28
Television Infomercials	3
Radio	61

Magazines and Tabloids: The contractor collected weight-loss ads published in tabloids and magazines. For monthly magazines, the contractor reviewed the February to May 2004 issues. For weeklies and tabloids, the contractor collected the first issue published each month. The contractor collected all tabloid ads that were at least a quarter page and all magazine ads except classified ads. Of 162 magazine ads and thirty-eight tabloid ads collected, the contractor identified 127 distinct magazine ads and thirty distinct tabloid ads for covered products.

Newspapers and FSIs: The contractor collected non-classified weight-loss ads from March 25 to May 30, 2004. Initially, the contractor monitored ads from fifty newspapers across the country ranging from small town newspapers to newspapers from major cities.⁷ To increase the number of ads collected, the contractor expanded the selection on April 16, 2004 to include all of the newspapers the contractor normally monitors. FTC staff collected the weekly FSIs from the Chicago Tribune, Los Angeles Times, Seattle Post-Intelligencer/Seattle Times, and the Washington Post. The contractor coded the ads for covered products appearing in newspapers that were distinct from ads collected in other print media. Of 640 ads collected from newspapers and FSIs, the contractor identified forty-four distinct ads for covered products.

Television and Infomercial: The contractor collected all weight-loss ads in the “Diet and Health” category in both broadcast and cable television for the monitored stations. For infomercials, the contractor collected all weight-loss infomercials initially aired during the monitored period on the monitored

6. The contractor removed advertisements for prescription drugs, exercise equipment, meal replacement products like breakfast shakes or breakfast bars, low-calorie foods or drinks, liposuction or other forms of surgery, hypnosis, or special diets such as low-carbohydrate or low-calorie diets. If the nature of the advertised product could not be determined from the face of the ad, the ad was excluded from the sample. The exclusion of certain types of weight-loss products and services from the survey should not be taken to imply that those products are either more or less effective than the covered products.

7. The contractor selected the original list of 50 newspapers to achieve a mix of geographic representation and city size.

stations. Of 155 television ads and eight infomercials collected in this category, the contractor coded 28 distinct television ads and three distinct infomercials for covered products.

Radio: The contractor collected all radio ads in the following categories: “meal replacements (diet),” “diet/weight loss centers/clinics and descendants (category),” “diet-related aids,” “mail order exercise equipment,” and “weight loss aids.” Of these 153 radio ads, the contractor coded 61 distinct radio ads for covered products.

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Appendix B: Advertising Coding

The contractor coded 293 distinct ads remaining in the sample following the collection process. To simplify the coding process, the coding contractor broke down each of the Red Flag claims into component questions. For purposes of analysis, the results were recombined to analyze whether a particular ad communicated Red Flag claims. For example, to determine whether an ad communicated the claim that “consumers who use the advertised product (without medical supervision) can safely lose more than three pounds per week for a period of more than four weeks,” an ad had to 1) claim that users could lose more than three pounds per week for a period of more than four weeks; 2) claim that it was safe; and 3) either be silent about the need for medical supervision or claim that such supervision was not necessary.

The coders initially completed a pretest including 20 print ads, one television ad, and one radio ad. The pretest results were submitted to Commission staff to determine whether the staff should change the coding sheet or instructions to clarify issues leading to disagreements between the coders. No changes were necessary to the coding sheet. In addition, another instruction was added: coders were instructed to mark instances where the advertisement provided material information only in a small-print disclosure. If the same information contained in the small-print disclosure was also found anywhere in the main body of the advertisement, however, the survey would not be so marked.

With the aid of instructions, two coders independently reviewed each ad and completed a coding sheet. Coders first identified central claims in the advertisements. Next, the coders noted whether the ads promised that users of the product would lose at least three pounds a week for four weeks or more, or at least two pounds a week for four weeks or more. If not, the coders determined whether the ads promised that users would lose “substantial weight” or “a lot of weight.” Coders were given several criteria to guide them in determining whether an ad claims “substantial weight loss,” such as whether the ad promises at least one pound weight loss per week for more than four weeks. If an ad did not reference a particular time period but referenced the number of pounds lost, any weight loss greater than 15 pounds was deemed “substantial.” An ad was also considered to have claimed substantial weight loss if it promised that users would lose more than one clothing size, or more than one inch around a body part such as the waist, hips, or thighs.¹

Coders answered a series of questions about ad elements – for example, whether the ad claimed that the product suppresses appetite or is safe. For some questions, coders indicated whether an ad made an affirmative statement

1. An ad could also imply substantial weight loss by including “before” and “after” pictures where the person looks much thinner in the “after” picture than in the “before” picture. As instructed, coders noted only express or strongly implied claims.

(e.g., users need to reduce their caloric intake to lose weight); made a negative statement (e.g., users do not need to reduce their caloric intake to lose weight); or made no statement (e.g., the ad does not say whether users need to reduce their caloric intake to lose weight). In some cases, the coders recorded information from the ad; for example, if the ad included a disclosure such as “Results may vary,” the coder wrote down the text of the disclosure.

After each coder finished coding a group of ads, the coders compared results and recorded any disagreements. The coders discussed the disagreements and, to the extent possible, reconciled the answers. The coders discussed any disagreements that could not be reconciled with their supervisor. The contractor then forwarded the ads and the collected data to FTC staff who reviewed each ad that was coded as containing one or more Red Flag claim. If the staff disagreed over the coding of a particular ad, at least two other FTC staff attorneys reviewed and discussed the ad.

As a result of the staff review, six ads were excluded from the sample (including four that had been coded as containing Red Flag claims) because the weight-loss claims in the advertisements did not necessarily pertain to the advertised product. For example, one advertisement featured a medical center that offered dietary supplements but also provided diet programs. It was not clear whether the weight-loss claims related to the dietary supplement, to the diet program, or the two in combination. In 19 other instances, advertisements that the coders initially determined made one or more Red Flag claims were re-coded by the FTC staff as not making a clear Red Flag claim.² All but two of these re-codes³ involved the same two Red Flag claims: that the advertised product will cause permanent weight loss (even when the user stops using the product), and that the advertised product will cause substantial weight loss for all users.⁴

2. These corrections did not change the general tenor of the results. Including these advertisements as originally coded, i.e., as representing a Red Flag claim, 22% (64 of 293) would have included a Red Flag claim in 2004.

3. In one case, the FTC reviewers reversed the coders' initial determination that an advertisement communicated that someone using the product would lose substantial weight.

4. For example, for purposes of this survey, a claim that emphasized a product's mode of operation (such as claiming that the product operates by increasing the body's rate of metabolism so that more calories are burned off) was not coded as a claim that the product would work for all users, without additional representations.

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