

FEDERAL TRADE COMMISSION

DECEPTION IN WEIGHT LOSS ADVERTISING: A WORKSHOP

Tuesday, November 19, 2002

9:00 a.m.

Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Room 432  
Washington, D.C.

For The Record, Inc.  
Waldorf, Maryland  
(301)870-8025

FEDERAL TRADE COMMISSION

I N D E X

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Opening Remarks by Chairman Muris -- Page 3

Opening Remarks by Van Hubbard -- Page 10

Science Panel -- Page 13

Remarks by Commissioner Anthony -- Page 113

Industry Panel -- Page 117

Media Panel -- Page 175

Closing Remarks by Howard Beales -- Page 233

## P R O C E E D I N G S

- - - - -

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MS. ENGLE: Good morning. My name is Mary Engle. I'm the FTC's Associate Director for Advertising Practices. Before we begin, I'd like to ask anyone who has any cell phones or devices that might ring, if they could turn them off.

This morning, it's my pleasure to introduce to you the Chairman of the Federal Trade Commission, Tim Muris.

CHAIRMAN MURIS: Thank you very much, Mary, and good morning. Welcome to our Workshop on Deception in Weight Loss Advertising, and thank you for joining us.

I would especially like to thank our distinguished panelists for sharing their insights and expertise in this very important area.

We've convened this workshop to explore the impact deceptive weight loss ads have on the public health and to develop new approaches for combating weight loss fraud. In the past 10 years, despite unprecedented levels of law enforcement and broad consumer education programs, deceptive and misleading weight loss advertising has become rampant. Consumers are bombarded with advertisements for products promising quick fixes and miraculous results with no effort required on their

1 part.

2 These ads run everywhere, in all media,  
3 including TV, newspapers and magazines. Unfortunately,  
4 they can be found in some of the most reputable  
5 publications and media outlets. Equally disturbing is  
6 that this trend of false advertising is on the rise.

7 Two months ago, with the Partnership for  
8 Healthy Weight Management, we released a report that  
9 analyzed 300 weight loss ads that ran last year. We  
10 found that nearly 40 percent of the ads contained at  
11 least one claim that was obviously false. And when we  
12 compared the magazine ads from 1992 with those from last  
13 year, we found that not only were there many more weight  
14 loss ads in 2001 than 1992, we also found that they were  
15 more likely to contain false claims. Claims like 'Eat  
16 all you want and lose weight,' 'Lose weight while you  
17 sleep, and never, ever have to diet again.'

18 And these types of claims are not unique to the  
19 print media. They can be found in all media, including  
20 television.

21 We're going to show a tape of a few ads that  
22 demonstrate the types of claims I'm referring to. The  
23 first ad on the tape is a clip from an infomercial for  
24 the Enforma Weight Loss System. The Commission sued  
25 Enforma for the weight loss claims in this ad and

1 ultimately settled with the company for \$10 million.

2 Despite entering this settlement, Enforma  
3 continued to make weight loss claims in violation of the  
4 consent order. Upon our request, the District Court held  
5 Enforma in contempt of court and ordered the company to  
6 recall several of its products.

7 Bruce, please run the tape.

8 **(First Enforma video clip played.)**

9 CHAIRMAN MURIS: And we have one more, Bruce.

10 **(Second Enforma video clip played.)**

11 CHAIRMAN MURIS: Now, these ads, as I  
12 mentioned, are running everywhere. The day after we  
13 released our report in September, page three of the  
14 Washington Post had a headline: FTC Decries Deceptive  
15 Weight Loss Ads. Page 13 had a quarter page, obviously,  
16 false, deceptive weight loss ad.

17 This is especially troubling that this increase  
18 in diet weight loss ads coincides with an equally  
19 unprecedented epidemic of overweight and obesity among  
20 adults and children.

21 Now, of course, false ads don't cause obesity,  
22 but misleading advertising messages promoting non-  
23 existent quick fixes do nothing to address the health  
24 crisis. All they do is encourage consumers to put their  
25 faith and their hard-earned dollars in remedies that

1 cannot work.

2 It's clear to us then that something more needs  
3 to be done to address this problem. We know that any  
4 successful fight against weight loss fraud will require  
5 efforts on four fronts; law enforcement, consumer  
6 education, industry self-regulation and effective media  
7 screening.

8 Certainly, vigorous law enforcement will  
9 continue. The FTC has a strong record in this area.  
10 We've brought 97 cases since 1990 with more than \$50  
11 million in consumer redress and other financial remedies.  
12 Unfortunately, with numerous new products emerging each  
13 year, manufacturers vying for a slice of this multi-  
14 billion dollar industry, and some companies running phony  
15 weight loss promotions from outside the U.S. using  
16 aliases, middlemen and offshore bank accounts, law  
17 enforcement alone is not enough.

18 Consumer education is another part of our  
19 strategy that will continue in full force. We'll  
20 continue to work with government agencies, public health  
21 groups and others to spread the word that when it comes  
22 to weight loss, there is no magic bullet.

23 The last two components of the strategy, the  
24 need for industry self-regulation and effective media  
25 screening, involve today's workshop panelists and,

1 perhaps, many of you. No effective approach to combating  
2 weight loss fraud could be complete without the attention  
3 of the industry and the media to this growing problem.

4 We have, therefore, convened three panels  
5 today. These panels will consider the current state of  
6 the science regarding weight loss and explore ways that  
7 members of the weight loss industry and the media can  
8 contribute to curtailing this fraud.

9 Our first panel is comprised of distinguished  
10 doctors and scientists, all of whom have expertise in  
11 relevant fields, such as obesity, weight management,  
12 human nutrition, physiology and the mechanics of weight  
13 loss. This panel will fill our morning session and will  
14 focus on such issues as the mechanics of weight loss and  
15 the credibility of certain advertising claims. A primary  
16 goal of this panel is to discuss whether certain claims  
17 made routinely in current weight loss ads promise results  
18 that, based on the current state of the science, are  
19 simply not scientifically feasible.

20 On our second panel will be members of the  
21 weight loss industry, including representatives of the  
22 dietary supplement industry, electronic retailers, the  
23 National Advertising Division of the Council of Better  
24 Business Bureaus, Partnership for Healthy Weight  
25 Management and companies selling fitness and weight loss

1 products and services. This panel will explore the  
2 problems that fraudulent marketers pose for the industry  
3 as a whole and consider the industry's role in and models  
4 of self-regulation.

5 Our third and final panel will focus on the  
6 media's role and will consist of academics and  
7 representatives from media organizations and outlets.  
8 This panel will examine current clearance practices and  
9 guidelines and discuss new approaches to effective media  
10 screening.

11 Our goal here is not to create a television-  
12 style clearance process for weight loss ads. Although a  
13 very good process, we know that not every media can  
14 support the detailed screening of ads of the major  
15 networks. Our goal is much more modest. We're talking  
16 about screening out the most egregious examples. Weight  
17 loss earrings or shoe insoles, pills that tell consumers  
18 they can eat whatever they want and still lose weight,  
19 and products that make physically implausible claims like  
20 lose 30 pounds in 30 days.

21 We look forward to a discussion about what can  
22 be done to stem the tide of these fraudulent weight loss  
23 product ads. Would more guidance be helpful? What about  
24 a list of the kinds of outrageous weight loss claims that  
25 should be, as we call it, 'the tip-off to the rip-off'?



1       Would it be helpful if the FTC distributed such a list to  
2       industry members and to the media?

3               Again, I'd like to welcome you all here and  
4       thank our panelists for their contributions to what we  
5       expect will be a productive and enlightening day.

6               In addition, I'd like to thank my colleague,  
7       Commissioner Sheila Anthony, who will address the group  
8       at the start of this afternoon's sessions and who has  
9       helped educate me on this important issue.

10              I would also like to take the opportunity to  
11      inform you that we will continue to accept written  
12      comments on these issues following the workshop and  
13      encourage anyone who is still interested in submitting a  
14      public comment to do so.

15              Now it's my pleasure to introduce Dr. Van  
16      Hubbard of the National Institutes of Health. Dr.  
17      Hubbard is the Director of the Division of Nutrition  
18      Research Coordination at the National Institutes of  
19      Health. He's also the Chief of the Nutritional Sciences  
20      Branch at the National Institute of Diabetes and  
21      Digestive and Kidney Diseases at NIH. Among his numerous  
22      responsibilities, Dr. Hubbard serves on various Healthy  
23      People 2010 Workgroups. He is co-leader for the  
24      Nutrition and Overweight Focus Area and the Surgeon  
25      General's Initiative to Address Overweight and Obesity.

1 Dr. Hubbard?

2 DR. HUBBARD: Thank you very much for inviting  
3 me and particularly to invite me to provide some opening  
4 remarks.

5 As all of you already know, the problem of  
6 overweight and obesity in this country is not a simple  
7 one and it's not one that we have made tremendous  
8 progress in over the recent years. In fact, since the  
9 introduction of the Call-To-Action To Prevent and  
10 Decrease Overweight and Obesity in December of 2001, we  
11 have had subsequent release of data indicating that we  
12 have progressed in the opposite direction than we desired  
13 in terms of the prevalence of overweight and obesity in  
14 adults and in our youth.

15 The importance of the Surgeon General's Call-  
16 To-Action To Prevent and Decrease Overweight and Obesity  
17 was to highlight the association with increased  
18 prevalence of risk factors and co-morbidities. We wanted  
19 to put the focus on health rather than just on  
20 appearance.

21 Within the Surgeon General's Call-To-Action,  
22 there is an outline or a roadmap of ideas that can be  
23 addressed at many various levels and should be addressed  
24 through many partnerships. One of the partnerships are  
25 the groups here today, the partnership involved in the

1 report that was issued back in September, as well as the  
2 different organizations that each of the people in this  
3 room represent.

4 We need partnerships that represent families,  
5 communities, schools, the health care arena, worksites,  
6 media, along with the government and all individuals.

7 To address the problem of overweight and  
8 obesity, we do have some generic information that we can  
9 provide. We have to change the balance of energy in and  
10 energy out. However, that is not a simple solution. It  
11 is difficult to come forward with simple guidelines or  
12 simple directives that will work for all individuals.  
13 And I think the expectation that there is one treatment  
14 out there that will work for all should be dismissed  
15 because there will have to be variation in the approaches  
16 to this problem as you deal with different individuals.

17 As you deal with other medical conditions, you  
18 don't use one dose of medication or even one medication  
19 to treat all other diseases. You have to modify it based  
20 on the individual's characteristics.

21 One of the things that we need to work on is to  
22 have and help people change their lifestyles and their  
23 lifestyle behaviors. This is best done in a supportive  
24 environment. Part of that environment is influenced by  
25 the messages that they hear through the media and in

1 other arenas.

2 Obviously, people would like to have a simple  
3 solution, do one thing that doesn't make them change any  
4 of their other favorite habits and lifestyles. They  
5 would love to be able to lose weight without change in  
6 diet or activity. But that is unrealistic and we need to  
7 dismiss from their environment some of these messages  
8 that they are hearing that make this issue over-  
9 simplified. The solution to treatment of overweight and  
10 obesity, although in a generic way is simple, changes the  
11 balance of energy in and energy out. When you implement  
12 that at the individual level, it becomes much more  
13 complex.

14 I'm delighted to be here also to portray the  
15 actions that are a follow-up of the Surgeon General's  
16 Call-To-Action. I know the Surgeon General, Vice Admiral  
17 Carmona, took part in the release of the report back in  
18 September, and this is just another example of how both  
19 the federal agencies, in partnership with various  
20 organizations, can come together and help address the  
21 problem as encouraged within the Surgeon General's Call-  
22 To-Action To Prevent and Decrease Overweight and Obesity.

23 It is through such partnerships and efforts  
24 that we have some hope of improving the health of the  
25 U.S. population as we move on into the rest of this

1 century. So, I welcome everybody's thoughts and I look  
2 forward to the discussion that will take place. Thank  
3 you.

4 **SCIENCE PANEL**

5 MR. CLELAND: Good morning. My name is Richard  
6 Cleland. I'm an Assistant Director for the Division of  
7 Advertising Practices at the FTC, and I will be the  
8 moderator of the first panel this morning. With me is  
9 Walter Gross, a Senior Attorney in the Division of  
10 Enforcement, who will be assisting me and keeping track  
11 of time.

12 First, I would like to thank the panelists for  
13 volunteering their time to participate in today's  
14 workshop. I'm very familiar with most of the members of  
15 this panel. I have worked with them, many of them,  
16 through the Partnership for Healthy Weight Management or  
17 through their work as expert witnesses or consultants to  
18 the FTC.

19 This morning's panel consists of scientists,  
20 researchers and physicians with extensive experience in  
21 the study of overweight and obesity. We have a specific,  
22 narrow goal. We will be looking at eight popular diet  
23 claims. Specifically we will be considering whether such  
24 claims are scientifically feasible and the conditions  
25 that might affect the feasibility of such claims.