

Remarks of FTC Chairman Timothy J. Muris*
Cable Television Advertising Bureau
February 11, 2003
New York, New York

“DO THE RIGHT THING”
(Apologies to Spike Lee)

*This speech reflects the views of Chairman Muris, not necessarily those of the Commission or of any other Commissioner.

I was asked to speak about the FTC's efforts to stop deceptive weight loss advertising. This issue has been at the top of our agenda since I became Chairman in 2001. It involves a multibillion-dollar-a-year industry, a wide spectrum of media, and a plague of deceptive claims. These ads promise that their products will cause fast and substantial weight loss without dieting, exercise, or any other effort. These ads urge consumers just to take a pill, or wear a belt, patch, a certain earring, or a particular shoe insole – which will miraculously result in loss of excess weight and body fat.

You know the ones I mean because they are everywhere – in magazines, newspapers, supermarket tabloids, infomercials, commercial e-mail, Internet websites, on the radio, and, yes, on cable TV. Here is one example of what I am discussing. Let me show you a videotape of a portion of the infomercial by Enforma Natural Products, Inc. that makes these types of fraudulent claims.¹

I would say there is a strong “credibility gap” here. You do not need to be a scientist, ad executive, or expert to recognize the outrageous claims you just heard. Judging by the reaction in this room, I know that you do not. The common reaction when I show such an ad to a sophisticated audience is laughter, but these ads are no laughing matter. Targeted to consumers trying to lose weight, they make claims and promises that are clearly implausible and patently false. They cause millions of dollars in consumer injury by offering the false hope of a “fast fix” to people, some of whom are desperate to solve a serious health problem.

The FTC challenged the weight loss claims in this ad, and settled with the company and its principals for strong injunctive relief and \$10 million in consumer redress.² Unfortunately, Enforma continued to make misleading weight loss claims after the order was entered, and we sought to have the company held in contempt. The court

¹ This excerpt is from the first Enforma infomercial, which aired from December 1998 through September 1999. A second infomercial for the product ran until April 2000. During their combined run in the U.S., the infomercials aired a total of almost 48,000 times. The infomercial segment shows a succession of plates laden with “delicious mouth watering foods” like eggs, bacon, sausage, french fried potatoes, fried onion rings, hamburgers, and lasagna; thin models in bathing suits and claims like, “You can eat anything you want and never, ever, ever have to diet again.”

² *FTC v. Enforma Natural Products*, No. CV 00-04376-JSL (CWx) (C.D. Cal. Apr. 25, 2000) (Stipulated final judgment).

found in our favor and ordered a recall of several of its products.³

Twenty months ago, when I became Chairman of the Federal Trade Commission, I said my goal was to build on the Commission's excellent record of protecting American consumers. Based on what we see every day, that protection is needed in reducing the number of weight loss ads that use false and misleading claims. Advertising impacts the lives of everyone; it is a strong force for the economy; it also can be a powerful force for good. For those of you in the business, it is an exciting place to be, and a challenging one. It is an intensely human endeavor affecting our lives.

We all have a shared stake in promoting truthful advertising. Profit and prosperity are not at odds with ethical advertising. In fact, the opposite is true. Like those MasterCard ads proclaim: profits are good, prosperity is good, a reputation for honesty and trust: *priceless*. The point is simple: the credibility of advertising can directly affect its value.

Certainly, there are legitimate weight loss products and programs being advertised truthfully and responsibly. Yet, too many advertisements make claims that are grossly exaggerated and blatantly false. They tout quick fixes and magic bullets that cannot possibly provide the promised results. They frequently feature claims like the ones I just showed you: "Eat as much as you want—the more you eat, the more you'll lose." Another good one is, "Lose up to 8 to 10 pounds a week—no dieting, no strenuous exercise." Unsupported claims appear in consumer testimonials like this one, "Seven weeks ago, I weighed 268 pounds; now I'm down to just 148 pounds [and] I didn't change my eating habits."⁴ They must be talking about a skeleton.

Three of the most important questions you probably are asking are: "**So what?**", "**Who cares?**", and "**What can we do?**" These are good questions, and I will answer them.

³ *Id.* (later proceeding, Dec. 9, 2002). The defendants filed a notice of appeal on December 12, 2002; however, their motion to stay the preliminary injunction pending appellate review was denied.

⁴ For this and other examples of consumer testimonials in weight-loss ads, see STAFF REPORT, FEDERAL TRADE COMMISSION, WEIGHT LOSS ADVERTISING: AN ANALYSIS OF CURRENT TRENDS 9-11 (Sept. 2002) [hereinafter STAFF REPORT, WEIGHT LOSS ADVERTISING]. The full text of the Report is available on the FTC's website, at <http://www.ftc.gov/bcp/reports/weightloss.pdf>

Let's start with **"So what?"** Why are there special reasons to be concerned about weight loss advertising? Because, today, the problem of being overweight or obese has reached epidemic proportions. *A majority* of adults in the U.S. are now overweight or obese. In 2001, the Surgeon General issued a "Call to Action" documenting this alarming rise.⁵

Because being overweight or obese causes serious health problems. The relationship between excess body weight and heart disease, hypertension, type 2 diabetes, osteoarthritis, sleep apnea, and certain cancers is well established.⁶ There also is the greater possibility of surgical risks when the patient is obese.⁷ The problem of obesity cuts across age, race, ethnic groups, and gender – it is an equal opportunity epidemic, and it has become a major health crisis.

Who cares?

The Public. Medical costs for obesity are in the billions.⁸ Of course, false and misleading ads do not cause obesity, but they encourage consumers to postpone more difficult changes in diet and exercise that actually can make a difference. Joe Louis said, "Everybody wants to go to heaven, but nobody wants to die." Most of us know that diet and exercise are the real keys to weight loss, but it is difficult not to heed the siren call of achievement without effort. Especially when the advertising goes to great lengths to tell us that the products are scientific breakthroughs proven to work. We can all understand that.

Who cares?

Consumers who put their trust and their money in false advertisements and do not get the promised results. Nearly 70 million Americans are trying to lose weight at any

⁵ OFFICE OF THE SURGEON GENERAL, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, THE SURGEON GENERAL'S CALL TO ACTION TO PREVENT AND DECREASE OVERWEIGHT AND OBESITY (2001).

⁶ *Id.* at 8-9.

⁷ *Id.* at 9.

⁸ *Id.* at 9-10.

given time.⁹ This number is staggering. Because more than two-thirds of American adults are trying to lose weight, it creates a huge market for weight loss products and services. In 2000 alone, U.S. consumers spent about *35 billion* of their hard-earned dollars on products and services that they believed would help them lose or maintain their weight.¹⁰

Weight loss is not easy. Someone once said, “Every time you’re hungry, it’s for the first time.” It is an interesting observation, and it is true. We have all been to a dinner or a party, and said, “I ate so much, I’m not going to eat for a week.” Not true. The next day we are hungry again. It is difficult to suppress hunger, and when an advertiser offers you an easy solution by falsely claiming science is on his side, it is very tempting. This kind of false advertising also puts people at risk because many of the products most heavily advertised do not work and, at worst, may be unsafe. By promoting unrealistic expectations, which are doomed to failure, deceitful advertising may discourage some overweight people from making future valid attempts to lose weight.

Who cares?

The media. If the public loses faith in advertising, the entire industry suffers. The problem now is that these fraudulent ads are on the rise. Last September, with a coalition called the *Partnership for Healthy Weight Management*, the FTC released a report that analyzed 300 weight loss ads that ran in 2001.¹¹ We found rampant use of false or misleading claims. Almost 40 percent made a claim that was *obviously false*; another 15 percent made at least one claim that was *likely to be false or unsubstantiated*.¹² When we compared weight loss ads from 1992 with 2001, the recent ads were much more likely to contain obviously false claims.¹³

⁹ M.K. Serdula, et al., *Prevalence of Attempting Weight Loss and Strategies for Controlling Weight*, 282 JAMA 1353-1358 (1999).

¹⁰ The-Infoshop.com, *The U.S. Weight Loss & Diet Control Market* (7th ed. 2002) (Marketdata Enterprises Inc., pub.) (visited Feb. 11, 2003) http://www.the-infoshop.com/study/md11355_weight_loss_diet_control.html.

¹¹ STAFF REPORT, WEIGHT-LOSS ADVERTISING, *supra*, note 4.

¹² *Id.* at 30. This does not mean that the remaining 45% of ads were not deceptive, only that any deception was not apparent on their face. Determining whether the claims in this category were actually deceptive would have required further inquiry, such as reviewing any substantiation the advertiser had to support the claims.

¹³ *Id.* at 21-24.

These fraudulent ads can be found in all forms of media, with the notable exception of network TV. Women's magazines, free-standing newspaper inserts, and cable TV "infomercials" are some of the most egregious, but by no means the only, offenders.¹⁴

Buyers see these ads in reputable publications and on TV, making specific, allegedly scientific claims for weight loss, and they respond with millions of dollars of purchases. Because so many of the ads are in highly respected newspapers and magazines, people tend to believe more than they would otherwise. Why not try the "quick fix"? After all, the tough road still will be available. At the FTC, we know from experience that a catchy "infomercial" can take in tens of millions of dollars a year.¹⁵

What Can We Do?

We have asked ourselves that question at the FTC. One answer, of course, is law enforcement. We have and will continue to attack fraudulent weight loss advertising. Unfortunately, the dramatic rise in the number of deceptive weight loss ads has taken place in the face of unprecedented FTC enforcement. Since 1990, the FTC has brought 98 cases against marketers of weight loss products. We have obtained more than \$50 million in consumer redress and other financial remedies. Thus, as my colleague Sheila Anthony last week stated in an opinion piece in *Advertising Age*,¹⁶ we cannot solve this problem alone. While FTC law enforcement and consumer education will continue full force, the regulatory powers of government should be the *last*, not the first, resort. Relying on private initiative brings us closer to the ideals of a free society while providing a powerful incentive to improve performance.

I am here to ask for your help. We know that most broadcasters and publishers already screen ads for taste and appropriateness. But too often the process stops short of questioning the accuracy of extravagant claims. This shortcoming is particularly apparent with weight-loss ads. The day after our report issued, page three of *The Washington Post* ran a headline saying: "*FTC Assails Deception in Weight-Loss Ads*." On

¹⁴ *Id.* at 5-6, 24, 28-31.

¹⁵ *See, e.g.*, Testimony of Andrew Grey, President and CEO of Enforma Natural Products, Inc., *FTC v. Garvey*, No. CV 00-09358-GAF (CWx) (C.D. Cal.); Trial Transcript Mar. 6, 2002 at 165:10-14 (\$100 million in sales).

¹⁶ Commissioner Sheila Anthony, *Let's clean up the diet-ad mess*, *ADVERTISING AGE*, Feb. 3, 2003, at 18.

page 13 of the very same section, there was a quarter-page, obviously deceptive weight loss ad.¹⁷

Effective monitoring and screening will reduce the damaging effects of this advertising fraud on U.S. consumers. The media will benefit as well. Better screening increases the credibility of all advertising, and advertising after all is the basic product the media sells. Better screening also protects your customers. You work hard to develop a base of loyal readers and viewers. Why risk driving them off when they buy products that do not work? Finally, better screening protects you. When these high-flying frauds crash, the media often hits the ground as well. And it can be a hard landing. In one case we are pursuing, the defendants owe the media \$10 million.

Following our weight loss report, the FTC convened a workshop last November to consider how to help the media and members of the weight loss industry eliminate deceptive ads *before* consumers see them.¹⁸ The workshop brought together scientific and medical experts, industry members, and representatives of media organizations and outlets. We discussed the current science of weight loss and the deceptive weight loss advertising problem. We also discussed possible means of self-regulation and more effective media screening.

One of our most important steps was to assemble a list of eight claims that appeared repeatedly in fraudulent ads. Our science panel explained why the claims are not scientifically plausible.¹⁹

¹⁷ See attached. *FTC Assails Deception in Weight-Loss Ads*, THE WASH. POST, Sept. 18, 2002, at A-3, and *SlimPatch* advertisement, at A-13.

¹⁸ Information about the workshop, including the agenda and transcript, can be found on the FTC's website at <http://www.ftc.gov/bcp/workshops/weightloss/>.

¹⁹ The eight claims considered were:

- (1) "Consumers who use the advertised product can lose substantial weight without reducing caloric intake and/or increasing their physical activity"; and
- (2) "The advertised product will cause substantial weight loss for all users";
- (3) "The advertised product will cause permanent weight loss";
- (4) "Consumers who use the advertised product can lose substantial weight while still enjoying unlimited amounts of high-calorie foods";

In the next few months, we intend to take the information from that panel, review the comments we have received, and refine this list of scientifically unfeasible claims. Then, we will distribute the list to the media to provide clear guidance for screening ads. By identifying false claims, we think we can vastly simplify your job.

We have received input from a variety of sources on our approach. We continue to meet with media, as well as industry and other interested parties, about ways to improve our approach. We are especially interested in whether the National Advertising Division of the Council of Better Business Bureaus can contribute to this screening process. We are aware that there have been discussions between some media organizations and the NAD about NAD involvement or support for media screening. The FTC would be very supportive of such a process.

Objections to Improved Media Screening

Some publishers and broadcasters have raised objections to more media screening. Some expressed concern about the depth of the review we seek. Or, as one newspaper publisher said recently, he will have to hire scientists to review ads.²⁰ I want to be clear: our goal is not to require television-network style clearance procedure for weight loss ads. We know that not every media outlet can support that type of review. We do, however, want to weed out the most egregious examples: weight loss earrings, miracle herbs that claim consumers can eat whatever they want and still lose weight, and products that make promises that are physically implausible, like “lose 30 pounds in 30 days.” We are *not* asking media outlets to review clinical studies or other substantiation for weight loss ads.

(5) “Consumers who use the advertised product can lose weight only from those parts of the body where they wish to lose weight”;

(6) “The advertised product will cause substantial weight loss through the blockage or absorption of fat or calories”;

(7) “Consumers can lose substantial weight through the use of the advertised product that is worn on the body and rubbed into the skin”;

(8) “Consumers who use the advertised product can safely lose more than three pounds per week for a period of more than four weeks.”

67 Fed. Reg. 59,289 (Sept. 20, 2002). *See generally* Science Panel, *Transcript of Workshop on Deception in Weight Loss Advertising*, 13-112 (Nov. 19, 2002), available at <http://www.ftc.gov/bcp/workshops/weightloss/transcripts/transcript-13-112.pdf>.

²⁰ *See* PRESSTIME MAGAZINE, Feb. 2003, at 5.

With the guidance we are offering, the clearance process would simply mean comparing the claims in an ad with the claims on our list and making any necessary cuts.

This is not rocket science. Indeed, some media outlets, large and small, *already* refuse to run these obviously false ads. They refuse to run these ads because they know it is the right thing to do.

Others have expressed concern about the breadth of the requests. How can they know whether claims for the Atkins diet are correct? Again, we are asking for review of only a class of weight loss ads - those selling over-the-counter *products*: like earrings, over-the-counter pills, shoe insoles, and soaps. Not diets, not exercise plans.

There is also concern that the FTC will insist on ever greater scrutiny over time of an ever-greater universe of products. This is not our intention. We will not require network-style screening; we understand this is impractical for many media outlets. Instead, we will send you a list of claims that are commonly made, but that the scientists state are not valid. We will do the hard part of developing the list. You need only screen out those claims. It is still a tough job, but there is no one better qualified than you to do it.

Besides the epidemic of fraudulent diet product claims, this approach is unworkable for most other ads. The facts are too diverse; the claims change with too much frequency; and the science is too unsettled.

Some claim that screening will increase their exposure to tort liability. They claim they are better off doing nothing than using our list of false claims to screen out the worst ads. That dog won't hunt. We will send you a list of claims that scientists state are not scientifically feasible. If you have tort exposure for running these ads, that exposure already exists. Turning a blind eye to fraud will not help your readers and will not reduce your tort liability.

Finally, some have suggested that screening for false weight loss ads raises First Amendment concerns. The media, appropriately, do have substantial First Amendment protection. Yet, there is no Constitutional right to run false commercial advertising;²¹ just as

²¹ The U.S. Supreme Court has held that "there can be no constitutional objection to the suppression of commercial messages that do not accurately inform the public about lawful activity," and that "[t]he government may ban forms of communication more likely to deceive the public than to inform it." *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557, 563 (1980).

there is no Constitutional right to make false statements about individuals in your news stories.²² You take extensive steps to prevent defamation. We are asking for modest steps to prevent fraud.

To conclude, I want to stress that the FTC and advertisers have a longstanding, shared interest in promoting truthful advertising. Working together, we have done a good job.²³ At the same time, the FTC remains committed to our goal of protecting consumers from fraud. As part of that role, we are committed to combating fraudulent weight loss ads.

We hope to achieve this ambitious goal through a joint endeavor, one that includes voluntary and effective media screening. We continue to turn to all of you for assistance and support. Of course, it can be difficult to make changes. I remember a bumper-sticker that said, "*Change is good. You go first.*" We will go first, but we are asking you to help.

Each of us in this country is blessed that we have the right and privilege of practicing our precious freedoms. We also have the responsibility of respecting those freedoms. We hope you will seize this opportunity to foster truthful advertising.

²² The U.S. Supreme Court has found that "there is no constitutional value in false statements of fact." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340 (1974). Accordingly, a publisher is liable for knowingly disseminating a defamatory statement about a public official or a public figure. *New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964). If the speech involves a private person, a finding of negligence is sufficient. *Gertz*, 418 U.S. at 347.

²³ For example, many of the major media trade associations and a number of individual media outlets provide support for the advertising industry's successful self-regulatory efforts conducted by the National Advertising Division and administered by the Council of Better Business Bureaus. Similarly, the media ultimately supported the FTC's efforts to remove restrictions on truthful comparative advertising that existed in self-regulatory codes until the 1970s. *See* J. HOWARD BEALES & TIMOTHY J. MURIS, *STATE AND FEDERAL REGULATION OF NATIONAL ADVERTISING* 11-12 (The AEI Press 1993).

The Washington Post

WEDNESDAY, SEPTEMBER 18, 2002

HOME EDITION

Inside: Food, Classified
Today's Contents on Page A2

NEWSSTAND 35¢

HOME DELIVERY 20¢

Prices may vary in some outside metropolitan Washington. (See box on Page A2)

WEDNESDAY, SEPTEMBER 18, 2002 A3

FTC Assails Deception In Weight-Loss Ads

By SALLY SQUIRES
Washington Post Staff Writer

Ads for billions of dollars of diet products and services sold each year often include false, misleading and exaggerated claims that promise rapid, effortless weight loss and unachievable goals, according to a government report released yesterday.

With nearly 70 million Americans trying to lose weight or to prevent weight gain at any given time, these rampant, deceptive claims not only waste money but also place some consumers at risk, according to the Federal Trade Commission report.

"We have known for some time now that there is a serious problem with weight-loss product advertising," said FTC Chairman Timothy J. Muris. "This report demonstrates the extent of that problem."

The FTC reviewed ads from a wide variety of weight-loss approaches, including well-known programs such as the Atkins Diet and those promoted by Jenny Craig, LA Weight Loss Centers, Metabolife, Richard Simmons and Weight Watchers, as well as those involving the relatively obscure Apple Cider Vinegar Capsules and Synadrene-HCL.

At least 40 percent of the 300 ads reviewed in the two-year study made at least one false representation, such as "can eat as much as you want and still lose weight," according to the report. More than half of the ads either made false statements or statements that were very likely to be false, including the suggestion that pounds could be shed without cutting calories and increasing physical activity, and the promise of a steady weight loss of eight to 10 pounds per week.

Other ads made unproven claims about safety and effectiveness, and still others purported that their products produced long-term permanent weight loss, when there was little to support that claim.

While the report included a list of the programs and products reviewed, it stopped short of specifying which weight-loss products or programs had been found to be engaging in false, deceptive or misleading advertising, saying that was beyond its scope.

"Government and industry share a responsibility to insure that accu-

rate and understandable information about weight-loss treatment is readily available to consumers," the FTC report concluded. "Success will come when the public is convinced that there is no magic bullet."

Reputable weight-loss companies continue to avoid false and misleading claims, Muris said, but "it appears that too many unscrupulous marketers are making false claims promising dramatic and effortless weight loss to sell their products." Moreover, since 1992, the number of false or misleading claims made in diet product ads "appears to have increased dramatically," the report stated.

In 2000, according to the FTC, Americans spent approximately \$35 billion on a wide variety of weight-loss products, including videos, audiotapes, books, medications, special diet foods, dietary supplements, medical treatments and other related goods and services. Six out of every 10 Americans, 18 years and older, are overweight or obese, putting them at increased risk for heart disease, diabetes and high blood pressure.

"As with cigarette smoking and alcohol abuse, false or deceptive advertising of weight-loss products and services puts people at risk," said George Blackburn, chairman of nutrition medicine at Harvard Medical School and a member of the Partnership for Healthy Weight Management, a coalition of scientists, federal agencies, commercial enterprises and nonprofit groups that helped the FTC conduct the study. "Many of the products and programs most heavily advertised are at best unproven and at worst unsafe," he said.

Since 1990, the FTC has filed 93 cases challenging false and misleading weight-loss claims involving over-the-counter drugs, dietary supplements, commercial weight-loss centers, weight-loss devices and exercise equipment.

The most recent was announced yesterday against a Canadian corporation operating in the United States as Bio Lab. The FTC said the company and its president, Jean-Francois Brochu, were charged on Sept. 3 in U.S. District Court with deceiving consumers through false advertising for their purported rapid weight-loss product, Quick Slim, and for the alleged anti-cellulite product, Cellu-Fight.

WEDNESDAY, SEPTEMBER 18, 2002 A13

Do You Want To Lose Weight?

NOW YOU CAN!

Lose From 2-5 Pounds a Week! Safely!
Your Satisfaction Is Guaranteed!



The Original Slimpatch™ Herbal Patches

Are Now Available
In The U.S.A.

Introducing the **Slimpatch™**, developed in Europe and now available to the general public in the U.S.A. Finally, a weight loss formula, with all natural herbal ingredients that work, and all in a discreet little patch! Until now, the only way to lose weight was to exercise, diet, or to take a pill. Not any more!

The **Slimpatch™** is simple to use, just apply a patch a day! It's that easy! You will see results your very first week! So call today, and join the thousands of satisfied customers from around the world who use the **Slimpatch™**. You won't be disappointed! Call Now!

Here is what some of our customers from around the world are saying:

"I have tried just about everything...diets, shakes, pills... this is so simple...in 3 weeks I have lost 18 lbs! ...It's amazing!"

- Dirk- Sydney, Australia

"I can't believe how fast and easy I lost 36lbs... it's been months since I have been able to wear my jeans."

- Sandra- Yorkshire, England
(She had a baby boy!)

- Over 95% More Effective Than Many Other Weight Loss Programs
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- Easy To Use • Safe

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