

**KELLEY DRYE**  
**COLLIER SHANNON**

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June 18, 2007

**Via Electronic Filing**

Federal Trade Commission  
Office of the Secretary  
Room H-135 (Annex S)  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: Endorsement Guides Review, Project No. P034520

Dear Sir or Madam:

Attached is Kelley Drye Collier Shannon's response to the Federal Trade Commission's request for comment on its Guides Concerning the Use of Endorsements and Testimonials in Advertising. Kelley Drye Collier Shannon submits this comment on behalf of a coalition of clients that manufacture and market food and dietary supplements. We appreciate the Commission's attention to this matter.

Sincerely,

William C. MacLeod

Attachment

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

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In the Matter of )

Guides Concerning the Use of Endorsements )  
and Testimonials in Advertising; Request )  
for Comments )

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Commission File No. P034520

**COMMENTS OF KELLEY DRYE COLLIER SHANNON ON  
THE COMMISSION’S GUIDES CONCERNING THE USE OF ENDORSEMENTS  
AND TESTIMONIALS IN ADVERTISING**

Kelley Drye Collier Shannon (“Kelley Drye”) is pleased to file these comments pursuant to the Federal Trade Commission’s (“FTC” or “Commission”) request for public comments regarding its Guides Concerning the Use of Endorsements and Testimonials in Advertising (the “Guides”)<sup>1</sup> as part of the Commission’s systematic review of all current regulations and guides.<sup>2</sup> Our clients include manufacturers and marketers of foods and dietary supplements who use endorsement and testimonials as part of their advertising campaigns for their products.

**I. Executive Summary**

Testimonial advertising is an anecdotal means of providing helpful information to consumers who are making a purchase decision. Consumers understand that testimonials relay the individual experiences of satisfied customers and they evaluate this information in the context of promotional advertising for a product or service. Consumers reviewing that

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<sup>1</sup> 16 C.F.R. pt. 255.

<sup>2</sup> See *Request for public comments*, 72 Fed. Reg. 2,214 (Jan. 18, 2007); *Extension of deadline for submission of comments*, 72 Fed. Reg. 13,051 (March 20, 2007).

information understand that their own experience may vary depending on individual circumstances.

The Commission intended that the Guides would provide a framework for advertisers to communicate truthful and non-misleading messages to consumers that incorporate the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser.<sup>3</sup> The consumer research the Commission released in connection with its request for comments uses quantitative analysis that does not illustrate the complexity of consumer perception and understanding of testimonials and the claims they describe.<sup>4</sup> More relevant research would focus on how consumers interpret the advertisements in a way that is material to their own decisions. Using that approach, independent, third-party research indicates that the research conducted on behalf of the Commission does not support changing the Guides as contemplated. To the contrary, this research suggests that the Guides are more restrictive than necessary to prevent testimonials from deceiving consumers. Specifically, in-depth discussions by consumers in focus groups revealed far more sophisticated interpretations than the Commission's surveys suggest. For example:

- Consumers already understand that third-party endorsements and testimonials about a product or service represent the experience of that particular user, which is often a "best case" result. For example, participants in the research stated that advertisers "*picked the best ones out of the bunch*" and that "*[Weight Guard] probably works for some, it doesn't work for everybody.*"
- Consumers consider endorsements and testimonials in the context of their own individual circumstances and recognize that their own personal factors may result in a different experience from the endorser's experience.

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<sup>3</sup> See 16 C.F.R. § 255.0.

<sup>4</sup> Kelley Drye submitted a Freedom of Information Act request in an attempt to obtain the verbatim responses to the Second Endorsement Study that was included with the FTC's January 16, 2007, request for comments. The Commission responded by stating that those verbatim responses are not in its control and, therefore, not available.

- Consumers understand simple disclaimers. For example, one participant recognized that the “results not typical” disclaimer means “*You’re probably not going to do this well.*” Other participants made similar comments during the discussions.
- Consumers expect that endorsers receive some form of compensation for their testimony. Specifically, the participants recognized that endorsers may be paid for providing endorsements by stating, “[*T*]hey probably are involved somehow where they are going to make money off of us calling or going to their website.”
- Consumers did not understand the nature of the product in the advertisements (Weight Guard) and speculated about what it could be. If consumers have little to no idea about the advertised product, this lack of knowledge directly affects their reactions to the testimonial component of the advertising. This type of play-back devalues quantitative research and underscores the need for qualitative analysis. This play-back also indicates that these advertisements were flawed and therefore not adequate vehicles for the Commission’s quantitative research.

A copy of the independent research report, *Testimonial Advertising Focus Group Research*, is attached. Although these results indicate that the Guides are already more than adequate to protect and inform consumers, to the extent the Commission believes further research is necessary, Kelley Drye suggests any research the Commission undertake begin with qualitative research and use an approach similar to focus groups, taking into account individual characteristics (*e.g.*, weight, cholesterol levels, etc. for a weight loss product) as well as whether consumers really think the advertisements are making objective claims to them. We are confident that any additional research would confirm the results from the research discussed in greater detail below.

## **II. Commission’s Request for Comments**

The Guides currently require an advertiser to communicate endorsements that reflect “the honest opinions, findings, beliefs, or experience of the endorser” and they “may not contain any representations which would be deceptive or could not be substantiated if made directly by the

advertiser.”<sup>5</sup> The Guides further provide that consumer endorsements that reflect the experience of an individual or a group of consumers will be “interpreted as representing that the endorser’s experience is representative of what consumers will generally achieve with the advertised product in actual, albeit variable conditions of use,” unless the advertiser clearly and conspicuously discloses “the limited applicability of the endorser’s experience to what consumers may generally expect to achieve.”<sup>6</sup> Research indicates that consumers take away this message from advertising even without the qualifications suggested by the Guides. Indeed, focus group participants revealed that they already understood the limited applicability of testimonials by stating, for example, “[I]t probably works for some, it doesn’t work for everybody.”<sup>7</sup>

As part of its request for public comments, the Commission asked several questions regarding the existence of additional research to help evaluate the Guides, including:

1. Is there “any other research that would be relevant in assessing the messages communicated by consumer testimonials?”;
2. Is there “any other research that would be relevant in assessing the effectiveness of disclaimers in limiting any communication from consumer testimonials of product efficacy or typicality?”;
3. In the context of weight loss advertising is there “other evidence . . . regarding the prevalence or effect of consumer testimonials, either generally or for specific product categories, especially with respect to typicality of the testimonials?”;
4. With respect to weight loss advertising is there “other evidence . . . regarding the prevalence or effect of disclaimers of typicality”;

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<sup>5</sup> 16 C.F.R. § 255.1(a).

<sup>6</sup> *Id.* § 255.2(a).

<sup>7</sup> See STRATEGYONE, *Testimonial Advertising Focus Group Research* 10 (June 18, 2007).

5. Is there “other research . . . on the role of consumer endorsements in marketing?”; and
6. Is there “any research showing whether consumers have any expectations regarding compensation paid to celebrities who speak favorably about particular products while being interviewed outside the context of an advertisement . . . and if so, what does that research show?”<sup>8</sup>

In order to answer some of these questions, Kelley Drye commissioned an independent company, StrategyOne, to conduct consumer perception research. The research used focus groups to elicit extended discussions of the advertising. The participants in these focus groups illustrated the thought processes and understanding of consumers as they encounter advertisements that use customer testimonials.

### **III. Overview of Additional Research**

StrategyOne is a research firm comprising experts who have conducted public opinion research for more than 12 years. Robert Moran, the Senior Vice President, has extensive experience with brand positioning, market research, and corporate reputation research with subject matter as diverse as e-commerce, mobile commerce, Internet privacy, electric power, biotechnology, health care and health benefits, banking, credit, home loans, transportation, energy, technology, entertainment, defense, data privacy, and education. He has conducted over 300 focus groups across America ranging from basic image research, to crisis communications, to product development.

On June 7, 2007, Robert Moran moderated two focus groups among male and female adult consumers in Baltimore, Maryland at the focus group facility, Baltimore Research. The research was designed to explore the following concepts: (1) how consumers interact with

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<sup>8</sup> See *Request for Public Comments*, 72 Fed. Reg. at 2,216-17.

testimonial-based advertisements; (2) what goes through consumers' minds when they see these types of advertisements; (3) how much faith consumers place in customer testimonials; (4) how closely consumers believe testimonials represent the average customer experience; and (5) how closely consumers believe the testimonials represent their own expected customer experience.

Each focus group contained 10 individuals, with one group consisting of 10 males and the other of 10 females. Participants were recruited at random from a large, proprietary, opt-in database of over 80,000 potential respondents managed by Baltimore Research. This database was compiled, and is continually updated and expanded, through random calling and periodic random mailings, advertising, and purchasing space at public events to network with the public to enroll research candidates. Using this database, StrategyOne randomly contacted individuals via telephone and screened them to ensure eligibility. Specifically, StrategyOne screened potential respondents to ensure a mix of ages, ethnicities, incomes, and education levels within each group. The groups were segmented by gender; women participated in one group, while men were recruited for a separate group. Participants were screened out if they had participated in market research within the last three months.

Members of each focus group were asked to consider one of two print advertisements for a weight loss program called Weight Guard, which the FTC used in its own study on this issue.<sup>9</sup> The female-based focus group considered a Weight Guard ad claiming significant weight loss (i.e., 60 pounds in 90 days), while the male-based focus group considered a Weight Guard ad claiming more modest weight loss (i.e., 30 pounds in 90 days). The focus groups assessed initial

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<sup>9</sup> See Hastak and Mazis, *Effects of Consumer Testimonials in Weight Loss, Dietary Supplement and Business Opportunity Advertisements* (Sept. 22, 2004). The men in the StrategyOne focus group worked with version 3B from the Hastak and Mazis study and the women worked with version 3D.

exposure to the advertisements, testimonial motives, effect of disclaimers, and prior exposure/experience with testimonial advertising.<sup>10</sup>

After focus group members viewed the subject advertisements, they were asked to write down their initial thoughts about the advertisement. They were then questioned about (1) their initial feelings regarding the advertisement; (2) the perceived message; (3) reactions to the advertisement and the customer statements; (4) whether they believed the statements; (5) whether they thought the statements matched the experience average customers would have; (6) whether they thought the statements matched the personal experience they would have; (7) what bearing the customer statements had on their feelings about the program; and (8) expectations about the endorsers. Following this, the focus group members were asked to explain disclaimers that may or may not have appeared in the advertisement and what effect the disclaimers had on their opinions about the customer statements and the program itself. Finally, focus group members were asked about their personal experience with testimonial advertising and their reaction to this type of advertising.

#### **IV. Results from Additional Research**

The results of this research suggest that if the existing framework of the Guides is revised, the amendments should recognize that consumers are more sophisticated than the Guides presume.

##### **A. Consumers already understand that endorsements and testimonials about a product or service represent the experience of that particular user.**

Generally, the focus group subjects recognized that the claims included in the Weight Guard advertisements were “testimonials,” and these consumers had well-developed views of

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<sup>10</sup> See *Testimonial Advertising Focus Group Research* at 16-18.



this type of claim due to their prior exposure to such advertising. Their reactions revealed their inherent skepticism of testimonial-based advertising as well as their preconceived ideas when they view this type of advertising. For example, one participant commented:

I'm always the cynic when I always see all the testimonials. I'm always not like – I've never been swayed towards a product because somebody else, you know. I always hear my father, "If everyone else does it – jumps off the bridge, are you going to jump off the bridge?"<sup>11</sup>

Because of this, consumers do not believe that results featured through testimonials translate into specific expectations about one's personal potential with the advertised product. This attitude is especially interesting given that the current Guides presume the contrary:

An advertisement employing an endorsement reflecting the experience of an individual or a group of consumers on a central or key attribute of the product or service will be interpreted as representing that the endorser's experience is representative of what consumers will generally expect to achieve with the advertised product in actual, albeit variable, conditions of use.<sup>12</sup>

The subjects understood that advertisers frequently showcase "best case" scenarios when using testimonial-based advertising. For example, focus group members from both groups commented that advertisers "picked the best ones out of the bunch"<sup>13</sup> and "always advertise to the extreme. It's never just the average; it's always the extreme one way or the other,"<sup>14</sup> and further that "less than half [of users] are probably getting the results in the period of time,"<sup>15</sup>

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<sup>11</sup> *Testimonial Advertising Focus Group Research* at 10.

<sup>12</sup> 16 C.F.R. § 255.2(a).

<sup>13</sup> *Testimonial Advertising Focus Group Research* at 7.

<sup>14</sup> *Id.* at 10.

<sup>15</sup> *Id.*

“[i]t’s a little bit of a ‘pie in the sky,’”<sup>16</sup> and “it probably works for some, it doesn’t work for everybody.”<sup>17</sup>

This was especially true for the focus group that viewed testimonials touting substantial amounts of weight loss (*i.e.*, 60 pounds in 90 days). Subjects were particularly skeptical of these claims in light of the high amount of weight loss and could not relate to the advertising.

Comments were made such as:

- “Results seem too good to be true – too much weight off in too little time;”<sup>18</sup>
- “[S]ome of these results seemed a little too good to be true. Because it’s an awful lot of weight gone in a short period of time;”<sup>19</sup>
- “[B]ecause I don’t always believe, I guess when I read all this weight loss, you know, I’m very skeptical about anything that’s going to tell you [that you are] going to lose that much weight;”<sup>20</sup>
- “[I]t’s just – doesn’t seem something that I would be interested in;”<sup>21</sup>
- “[F]rom what I’m seeing here, nobody in this room would really be a good candidate for it because nobody here is that morbidly obese where they would need to lose that kind of weight in that period of time;”<sup>22</sup>
- “I was very skeptical of the testimonials, what they said about, you know, this product that they didn’t really tell you much about, but lost that much weight and not know what the product was . . . . I was kind of skeptical about that;”<sup>23</sup>

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 9.

<sup>19</sup> *Id.* at 11.

<sup>20</sup> *Id.* at 10.

<sup>21</sup> *Id.* at 3.

<sup>22</sup> *Id.* at 8.

<sup>23</sup> *Id.* at 11.

- “[A]s I read the rest [I] was very skeptical, [it was] very unfriendly, and not enough information . . . so it made me think it’s not valid . . . there’s nothing there.”<sup>24</sup>
- “I don’t think it is a good idea to lose that much weight that fast, and I mean, even doctors recommend two pounds a week. So I was just thinking, no, it probably won’t work. And then, after reading through the whole thing, I sort of am skeptical of – long term effect.”<sup>25</sup>

Even the male subjects who viewed the ad with more modest weight loss were not persuaded by the advertising. One participant stated “I wouldn’t really give it any [attention] unless there was something else. This one there's nothing – if any other weight loss product was like this, I wouldn’t give it a chance either.”<sup>26</sup>

Based on statements like the above, it is evident that consumers do not believe that results featured in testimonials mean that they will achieve the same results when using the advertised product.

**B. Current disclaimers that communicate the limited applicability of depicted results are more than adequate; enhanced disclaimers are confusing.**

During the focus groups, participants were asked to evaluate the use of three different disclaimers that may or may not have been included in the subject advertisements. These are the same disclaimers that the FTC tested in its own studies. The disclaimers were:

1. “Results not typical.”
2. “The average Weight Guard user loses about 10 pounds in three months.”
3. “These testimonials are based on the experiences of a few people. You are not likely to have similar results.”

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<sup>24</sup> *Id.* at 2.

<sup>25</sup> *Id.* at 8.

<sup>26</sup> *Id.* at 11.

As outlined above, the focus group data indicated that consumers already understand the limited applicability of testimonial advertising. The discussion regarding these three disclaimers further supported this understanding and revealed that, to the extent that any disclaimers are to be included to specifically state this already obvious fact, there is no need for anything more than a simple disclaimer that “results [are] not typical.”

The simple disclaimer, “results not typical,” was well-known to participants and consistent with their aforementioned beliefs about this type of advertising. This was evident by statements noting that the disclaimer communicates to consumers that “You’re probably not going to do this well.”<sup>27</sup> Consumers expected to see this type of disclaimer language in conjunction with testimonial advertising. Indeed, participants commented that this disclaimer was “believable, [a]nd they all say that,”<sup>28</sup> “that wouldn’t turn me off,”<sup>29</sup> and that “you expect it.”<sup>30</sup> One participant even indicated that such a disclaimer would be unnecessary by remarking, “I don’t know if I’ve seen them on any weight-loss ads like that, because that would be bad for business, I would think, first of all, because you’re going to read that and [think], ‘Oh, look what they’re saying; it doesn’t work for you.’”<sup>31</sup>

The disclaimer that “the average Weight Guard user loses about 10 pounds in three months” gave consumers more information, but to some the disclaimer actually contradicted the testimonials – suggesting that consumers may not understand what the disclaimer is trying to

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<sup>27</sup> *Id.* at 12.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

convey. Participants commented that, “I think the disclaimer, along with this, shows the range [of results] that you can have.”<sup>32</sup> However, other participants stated, “If you put that particular disclaimer in, you might as well throw away all these testimonials from unsolicited buyers. I mean, they’re just negated, as far as I’m concerned, because the average user could – I’m figuring I’m going to be average.”<sup>33</sup> Notably, focus group participants did not specifically indicate or imply that the information in this disclaimer was more useful or necessary than a simple and directed disclaimer, such as “results not typical,” which is routinely used by advertisers today.

The more explicit disclaimer, “These testimonials are based on the experiences of a few people. You are not likely to have similar results” was disliked by the participants. This disclaimer was seen as “very negative”<sup>34</sup> and made participants ask, “why even bother”<sup>35</sup> with the advertising. Participants stated, “I’m sorry. I’ve got to hear why they’re shooting themselves in the foot. They’re basically telling you it’s not going to work.”<sup>36</sup> “So, you know, the fact that they say a few, I don’t like that either because that is – a few means like a small amount. So they should say even – keep it broad, like, say some users. But by saying a few, that just means they just picked out a tiny bit, and that tiny bit happened to have really good results with this

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*Id.*

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*Id.*

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*Id.* at 13.

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*Id.*

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*Id.*

product.”<sup>37</sup> Again, focus group participants did not indicate a preference for a disclaimer with this verbage as opposed to a disclaimer simply stating “results not typical.”

**C. Focus group members had certain expectations regarding the type of person that provided testimonials for the product.**

Participants noted that the featured testimonials in the Weight Guard advertisements were from apparently unknown citizens, which they found less believable in comparison to testimonial advertising provided by famous individuals or celebrities. Testimonials from well-known individuals or celebrities were preferred because the frequent exposure of these individuals in the media enabled consumers to track their progress as opposed to unknown endorsers whose results could not be verified. The seemingly anonymous testimony was not viewed to be as compelling. One participant commented, “[I]f you look at every other major weight loss company, they’re bringing in any kind of major star to endorse their product, approve it. And then we have this, and you got, you know, Jim Smith down the street going, ‘Works for me,’ and I’m going to go, ‘Well, geez . . . .’”<sup>38</sup> As a comparative example, they discussed seeing celebrity endorsements for NutriSystem by Dan Marino and for Weight Watchers by Sarah Ferguson, which enabled them to monitor their progress.<sup>39</sup>

Participants also expected that the endorsers received some sort of compensation or benefit for their testimony. More specifically, the groups generated comments that “[endorsers] got a pretty penny”<sup>40</sup> and “they probably are involved somehow where they are going to make

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 6.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 7.

money off of us calling or going to their website.”<sup>41</sup> Participants questioned whether testimonials were truly unsolicited, stating, for example, “[I]f they were unsolicited, why did they write if it’s unsolicited? Most people don’t – unless there’s some benefit, they either pay them something, they say if you write us, give them some extra service, whatever, for letters – most people don’t go out of their way to say anything.”<sup>42</sup> Others commented that “often times there are payoffs, give them some free product or whatever it is.”<sup>43</sup> One person commented that there is no real way to know if they were compensated and that “They might just be happy they lost the weight, so they sent the letter in”<sup>44</sup> and therefore provided the testimony. However, it is clear that the majority believed that some sort of compensation for testimony was provided by the advertiser. In light of this, they generally did not believe that the testimonials were truly “unsolicited” as stated in the advertisements. Of note, the current Guides presume the contrary:

[W]hen the endorser is neither represented in the advertisement as an expert nor is known to a significant portion of the viewing public, then the advertiser should clearly and conspicuously disclose either the payment or promise of compensation prior to and in exchange for the endorsement or the fact that the endorser knew or had reason to know or to believe that if the endorsement favors the advertised product some benefit, such as an appearance on TV, would be extended to the endorser.<sup>45</sup>

**D. Limited consumer understanding about the product undermines our ability to draw conclusions from these ads.**

In both focus groups, consumers were confused about the advertised product, Weight Guard. When asked for their initial thoughts about the advertising at issue, participants could not

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<sup>41</sup> *Id.* at 11.

<sup>42</sup> *Id.* at 7.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> 16 C.F.R. § 255.5.

ascertain from either of the advertisements the nature of the product and speculated whether the product was a dietary supplement, weight loss center, liquid diet, etc. They were troubled by this lack of information. For example, participants made the following statements:

- “[I]t was pretty shady and then when I was done I still thought it was even more shady . . . you know nothing about it at all and I didn’t like that.”<sup>46</sup>
- “First I wanted to know what WeightGuard was. How does it help, what makes it work so soon?”<sup>47</sup>
- “I don’t know they’re helping people lose weight, is it like Curves or Weight Watchers? I need to know – they’re saying it’s a new way, but why is it a new way? I don’t understand.”<sup>48</sup>
- “[T]hey don’t give you any idea of what that quick loss is going to be . . . .”<sup>49</sup>
- “[I]s it a liquid diet? Is it – you know, is it a pill?”<sup>50</sup>
- “[I]t could be a surgical procedure . . . .”<sup>51</sup>
- “Do you sit on a couch or take a pill or do you have to run 35 miles a day?”<sup>52</sup>
- “There’s no explanation of the product and what it was.”<sup>53</sup>
- “Is it pills? The weight loss center? Is it similar to something else? Does it involve exercise, dieting, nutrition, change of lifestyle, portion control?”<sup>54</sup>
- “[T]here’s really no information as to how this product works.”<sup>55</sup>

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<sup>46</sup> *Testimonial Advertising Focus Group Research* at 11.

<sup>47</sup> *Id.* at 3.

<sup>48</sup> *Id.* at 9.

<sup>49</sup> *Id.* at 3.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 4.

<sup>55</sup> *Id.*



- “I see two scales – what are they saying? Is it a supplement? Is it a dietary direction or what?”<sup>56</sup>
- “[W]hat is it? We don’t know what it is . . . .”<sup>57</sup>

Moreover, throughout these focus groups, participant remarks made it evident that this lack of information colored their perception of the advertisements. Participants stated:

- “You just don’t know what it is, so that is kind of – that sort of makes it say that I would want to try it because I have no idea what I would be doing. Like, I said, do I have to starve myself? Do I take two pills a day? Do you take three pills – it’s just – doesn’t seem something that I would be interested in.”<sup>58</sup>
- “It’s a little bit of a ‘pie in the sky’. You know, everybody wants this, but how do you get there? And they never tell you how you can get there. If you use Weight Guard, you’re going to lose weight. Well, what’s so dramatic about Weight Guard? I don’t know, you haven’t told me. So therefore, why should I believe I’m going to lose all this weight?”<sup>59</sup>

In light of this clear consumer confusion, we question the relevance of the analysis conducted on behalf of the FTC with regard to these advertisements. If consumers have little idea about the advertised product, this lack of knowledge directly affects their reactions to the testimonial component of the advertising. Advertisements so different from familiar messages are unlikely to provide a reliable basis for quantitative research on the claims conveyed by testimonials.

## **V. Conclusion**

To the extent that the Commission believes that any changes to the Guides are warranted, the FTC should take into account that consumers are already sensitized to this form of

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<sup>56</sup> *Id.* at 2.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 3.

<sup>59</sup> *Id.* at 10.

advertising through consistent exposure. Thus, additional research is necessary before reaching conclusions about the efficacy of the current Guides. The research should also explore the possibility that the current Guides are more restrictive than necessary to prevent deception.

Consumers already understand that advertisers feature “best case” scenarios in testimonial advertising to highlight success stories from use of the advertised product and that results will vary among users. They also expect that endorsers receive some sort of benefit or compensation for their testimony. Furthermore, consumers’ understanding of the advertised product affects their perception of the testimonials and any disclosures. The lack of understanding among participants about the nature of the Weight Guard product undermined the FTC’s quantitative research.

With regard to disclaimers, the focus group data indicated that more detailed disclaimers did not provide any greater benefit to consumers than a statement that “results [are] not typical.” Moreover, it is not clear that consumers need be reminded that results described in testimonials are not typical. In addition, there does not appear to be a rationale based on a theory of deception to require advertisers to disclose the generally expected performance whenever a testimonial is not generally representative of what consumers can expect from the advertised product. As discussed above, consumers understand that results vary from person to person.

When results vary by consumers, disclosing the “generally expected performance” would become guesswork as it would be impossible for advertisers to account for everyone’s individual circumstances that might cause a result to vary (*i.e.*, gender, starting weight, body type, metabolism, diet restrictions, exercise programs, motivation, etc.). The end result of such a requirement would be a *de facto* prohibition on this type of advertising, depriving advertisers of a

means of providing relevant purchase information to consumers. The research conducted by the FTC and Kelley Drye does not warrant such a change to the Guides.

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We thank you for your consideration in this matter. We hope that the information contained in this comment will help the Commission as it seeks answers to the questions posed in its request for comments.

Respectfully submitted by:

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## Testimonial Advertising Research

TO: Bill MacLeod, Kelley Drye Collier Shannon  
FROM: Robert Moran, StrategyOne  
DATE: June 18, 2007

Each group reviewed WeightGuard print advertising. Participants reviewed the ad they were given quietly, wrote their initial reactions, thoughts and questions on their pads, and then discussed how they interacted with this testimonial ad. The discussion then focused on perceptions of the testimonial givers in the ads. From there discussion turned to the topic of disclaimers. And, finally, the group ended in a discussion of testimonial ads generally.

### Key Findings:

1. ***Participants clearly had an informal range of tools and questions that they used when reviewing advertising, especially testimonial advertising.***  
We asked focus group participants to write their reactions to the WeightGuard print ad on their paper and then used this as a springboard to group discussion.

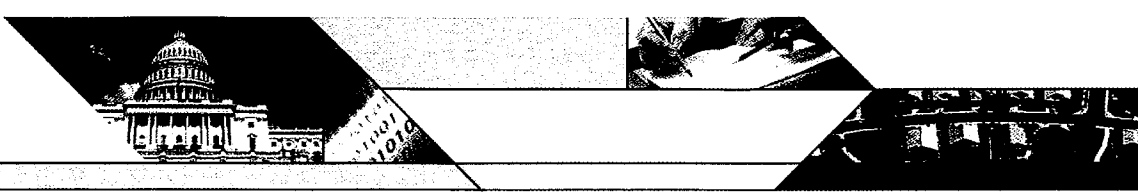
The discussion clearly showed that participants reacted to and analyzed the advertisement in a number of ways beyond simply reviewing the testimonials themselves. Examples of analysis and questioning include:

#### Review of Non-Testimonial Features:

- Analysis of the visual elements of the ad, specifically the scale graphics (implied weigh ins) and the color palette (black and white)
- Analysis of the title copy "WeightGuard"
- Analysis of the non-testimonial copy
- Search for pricing information
- Search for "before and after" photo of product/service users
- Search for comparative claims against other product/service providers
- Questioning the product or service type (medication? Counseling? Surgery? Prepared meals? Aerobic/Strength conditioning?)

#### Review of Testimonial Features:

- Analysis of the wording utilized in the testimonials
- Analysis of the testimonial givers' names and if these names are well-known individuals or everyday citizens
- Analysis of the geographic spread of testimonial givers
- Analysis of the gender distribution of testimonial givers
- Analysis of the weight loss claims in the testimonials
- Analysis of the healthfulness of weight loss over cited duration
- Questioning as to the motives of the testimonial givers
- Questioning as to the healthfulness of the program itself
- Questioning as to the appropriateness of the regimen for various types of individuals



### **Review of Non-Testimonial Features:**

Participants' reviews of the non-testimonial features of the ad demonstrated (a) a keen use of visual cues, (b) analysis of non-testimonial copy, and (c) search for standard information that was not provided.

All of this suggests that the non-testimonial elements of this advertising were also significant for participants, especially the visual cues in the graphics.

As an example, the scale graphic was interpreted by participants as symbolic not only of weight loss but of the program itself. Some interpreted the scales to mean that the program utilized weigh-ins. Others were simply confused by the scales image:

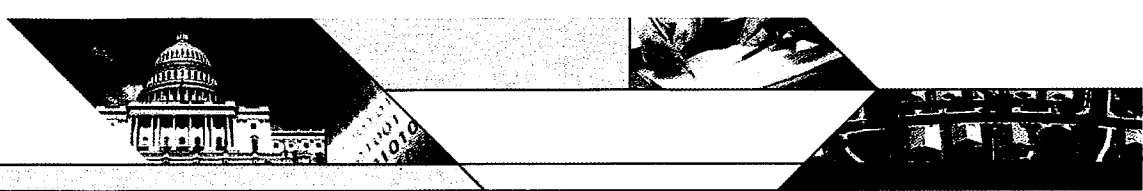
*"I see two scales -- what are they saying? Is it a supplement? Is it a dietary direction or what?"*

*..."what is it? We don't know what it is..."*

In addition to the analysis of visual cues in the advertising, there was also a search for visual cues not included in the advertising. For example, many participants thought the advertising could be improved by showing "before and after" photos. But several participants made fun of the "before and after" photos and questioned their reliability and authenticity. A female participant noted the lack of substance in the literature; *"as I read the rest [I] was very skeptical, [it was] very unfriendly and [did not have] enough information... so it made me think it's not valid... there's nothing there"*. Some participants were skeptical about the weight loss regime. A female participant remarked, *"it's like 'take this pill, but only eat 100 calories a day and you'll be good to go'... if I could do that in the first place I wouldn't be here taking your pill"* (laughter).

Analysis of the title copy "WeightGuard" led many participants to question whether the product/service was more about weight loss or more about eliminating weight gain. One participant asked:

*"WeightGuard, the word WeightGuard, again I don't get an idea of what that method is. What are you guarding? What are you – I didn't get that. I was concerned about the amount of weight loss in such a short time. Is that safe? I don't see if it could be effective to keep it off or what the plan would be and is that really true?"*



Analysis of the term “weight loss centers” led participants to believe that WeightGuard was a facilities-based system that utilized (a) gym equipment, or (b) outpatient surgical procedure, or (c) counseling with weigh-ins. Examples of this include:

Gym Equipment: *“What was actually in the centers, whether there were people meetings, machines, kind like what you said, and then, is it safe?”*

Surgical Procedure: *“It could be a surgical procedure”*

Counseling: *“Well, do they have counselors that help them? I mean, nobody mentions their assistance after they get started. Is there somebody helping them monitor their plan or whatever they call it?”*

Analysis of the term “a new way to lose weight” led participants to question what “new” meant. This led several to assume that it was a medical or surgical product. A female participant inferred, *“I don’t know [whether] it’s surgical, but for that amount of weight and the fact that they’re not telling you anything makes me think that maybe that’s what it is.”*

Analysis of the term “satisfied users” led some participants to believe that WeightGuard was a medication that an individual could “use.” As one participant put it, *“But it says satisfied users, so they were using something.”* Another asked, *“And also, too, I mean, is it a liquid diet? Is it – you know, is it a pill?”*

Participants also searched for copy that was NOT included in the advertising. For example, participants inquired as to (a) the product’s pricing, and (b) how the product in question compared to others in its category. Participants were clearly conditioned over years of advertising exposure to search for and analyze specific visual and written cues.

And some were simply confused and frustrated:

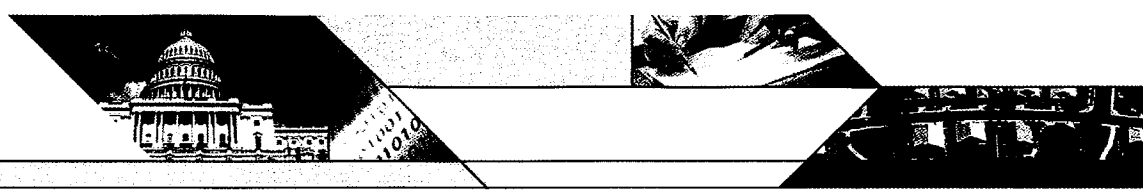
*“Do you sit on a couch or take a pill or do you have to run 35 miles a day? If it were the running part, just having kids, forget the laziness, it probably wouldn’t happen; I wouldn’t have much success.”*

*“There’s no explanation of the product and what it was.”*

*“First I wanted to know what WeightGuard was. How does it help, what makes it work so soon?”*

*“I mean, everybody claims they have a new way, but they don’t give you any idea of what that quick loss is going to be and there again, 60 pounds in 90 days? I don’t know.”*

*“You just don’t know what it is, so that is kind of – that sort of makes it say that I would want to try it because I have no idea what I would be doing. Like, I said, do I have to starve myself? Do I take two pills a day? Do you take three pills – it’s just – doesn’t seem something that I would be interested in.”*



*“Well, my first thought is what is Weight Guard because they don’t tell you. So is it – what’s involved besides “the product”. I mean, is it pills? The weight loss center? Is it similar to something else? Does it involve exercise, dieting, nutrition, change of lifestyle, portion control? What’s – it says new weight loss. A new way to lose weight. What’s new about it? Why is it different than other weight loss programs?”*

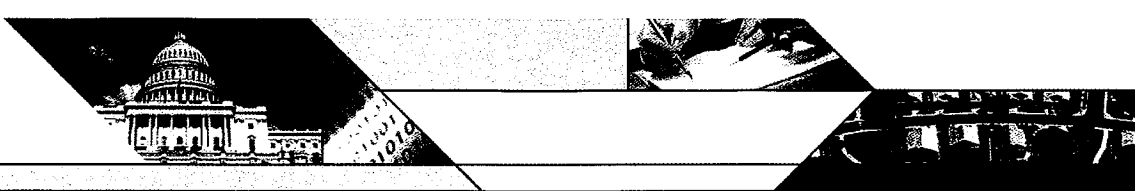
*“And there’s really no information as to how this product works and that all the testimonials basically lost 30 pounds that took approximately three months.”*

**Review of Non-Testimonial Features:**

**Specific examples<sup>1</sup> of participant analysis and questioning include:**

- Analysis of the visual elements of the ad, specifically the scale graphics (implied weigh ins) and the color palette (black and white)
  - Scale Graphics:
    - *“Scale turns me off”*
    - *“Don’t like picture of scale.”*
  - Black and White Palette:
    - *“No color”*
    - *“Black and white picture – doesn’t draw me to it”*
    - *“Poor graphics, not eye catching – stark, not inviting”.*
    - *“Black and white very effective”*
    - *“No people pictures, no color, no food pictures. Definitely makes you curious.”*
- Analysis of the title copy “WeightGuard”
  - *“Don’t like name – WeightGuard – doesn’t make sense.”*
  - *“WeightGuard – again, don’t get an idea of what method is”*
- Analysis of the non-testimonial copy
  - *“easy to read”*
- Search for pricing information
  - *“how much to start?”*
- Search for “before and after” photo of product/service users
  - *“Perhaps before and after presentation would be more direct”*
- Search for comparative claims against other product/service providers
  - *How does it differ from other weight loss programs?*
- Questioning the product or service type (medication? Counseling? Surgery? Prepared meals? Aerobic/Strength conditioning?)
  - *“What else is involved besides the product? Exercise, dieting, nutrition of lifestyle, portion control”*
  - *“Process? Workout , diet, prepared food? Group or individual?”*
  - *“No info as to how it works”*

<sup>1</sup> Taken from initial, written exercise where participants were asked to record their thoughts as they reviewed the ad quietly and on their own.



### **Review of Testimonial Features:**

Participants used a range of analytical tools and questioning to review the testimonial portion of the ad.

Many participants felt the testimonial wording was stilted<sup>2</sup> and inauthentic. These participants felt that the use of the phrase “I lowered my weight” was awkward and not colloquial. In fact, several participants postulated that the testimonials were written by the same person.

*Participant: They look like they were all written by the same person. I mean, they all had the same sort of like goofy, stilted language to them.*

*Participant: That's why I don't believe a word of it. It all looks the same. It looks like it was written by somebody.*

*Participant: The way they're written, they're too formulated. They sound the same, like the same person wrote them. So they're different, but they're not. I mean, you really read into them. And after I read the first two, I was like – okay, that's enough. I didn't have to read it anymore.*

The content of the testimonials was also scrutinized. Many felt that there was little information given beside weight loss in pounds and that that made these testimonials less authentic and believable. A participant claimed, “I can't imagine average people losing that much weight, and that is why I don't find it believable.”

The names of the testimonial givers were also scrutinized. Participants, for example, joked that “Ted Flangers” reminded them of The Simpson's character “Ned Flanders.”<sup>3</sup>

On a more serious note, participants, especially in the 8 PM men's group, noted that the testimonial givers were average citizens, but that much of the testimonial-driven advertising they viewed was driven by well known individuals. At least one participant felt that the latter was superior to the former because well known individuals can be viewed frequently on television and on print and this frequent exposure can ensure that the viewers can track the results of the weight loss regimen on these individuals over time. By comparison, unknown testimonial givers' progress cannot be viewed over time due to their anonymity.

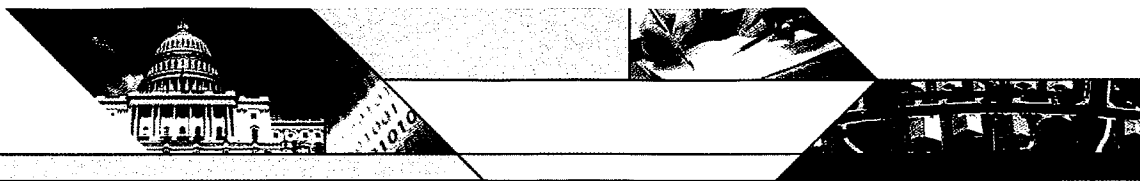
As one participant observed, “You can list an actor or a star, famous person. You have a more chance of seeing their long term stuff that they say they're on it, like, Kirstie Alley. You say -- I mean, she lost a lot of weight, and it seems that she's kept it off, and you know that she's got it off because you see her all the time. Now these people, you don't know who they are. You don't see them, you don't know if they've kept the weight off, none of that.”

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<sup>2</sup> “I thought the language was very stilted. Why would you say, I lowered my weight by 48 pounds? No one says that, people say, I lost 48 pounds in a few months.”

<sup>3</sup> “You know, the facts are believable, you know, but personally thinking, you know, that just feels a little -- Ned Flanders -- sounds like Ned Flanders from “The Simpsons” to me. (Laughter.) So, you know, there some things are a little -- so the facts seem believable, but the presentation doesn't feel believable.”





As male participants observed:

Participant: *"I mean, there's no – I mean, if you're going to have testimonials almost this day in age, if you look at every other major weight loss company, they're bringing in any kind of major star to endorse their product, approve it. And then we have this, and you got, you know, Jim Smith down the street going, works for me, and I'm going to go, well, geez, I'm going – "*

Participant: *"But Dan Marino does NutriSystem, so you're fine."*

Participant: *"Exactly."*

Participant: *"So they got Dan Marino, you know, they just got Valerie, Bertinelli; they got Kirstie Alley. Who else? They had what's her face, the Duchess of –"*

Participant: *"York; Sarah Ferguson"*


Participant: *"-- she was in WeightWatchers. Ferguson, thank you. Name, you know, name of the product – famous names with product. Endorsements prove that maybe it works, maybe it doesn't. But at least, I'd actually look at something that, you know, a little bit of cred – like you said, you go to Hopkins for stuff. You know, you do something to your hand, you go to Union Memorial. You do something, a certain thing, you go certain places where you know where they're good for it and know what they do. And I have no idea what Weight Guard does, and I wouldn't go there."*

The gender composition of the testimonial givers was very important to many participants as it signaled to them what type of weight loss product was being offered and which sex it was optimally designed for. One male participant surmised that since most testimonial givers were women, there would be weigh-in meetings where customers shared their experiences, challenges, and triumphs<sup>4</sup>. Some examples of this gender-based dimension include:

*"Who is the market here? Is this more towards a woman or for a man? I mean, we have Ted, Victoria, Michelle, Sandra and Ruth, so out of it, you got -- sounds like four women and one guy. So is this product more towards a woman? I mean, L.A. Weight Loss I would think of right off the top, is more of like -- if I was a woman, I'd go to L.A. Weight Loss or, you know, stars that do the -- you know, they're all focused on women."*

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<sup>4</sup> *"This is kind of a unisex ad -- I'm just a little off topic. I'm looking at it saying, would a woman want to do it after she read this ad, as opposed to a man? And, you know, because women prefer like Weight Watchers, I mean they like the groupy thing where they go in and they support each other. Men, I don't think so. I think they want to be more independent and, you know, they don't want to share feelings about weight loss and all this stuff."*



*“Also, if you were a man, there’s only one man on here, so it wouldn’t be very, you know. I don’t know if a man would think – I don’t know how they would think. But it would – you’d sort of read it maybe as a man would think, well, it’s mostly women.”*

Analysis of the weight loss claims themselves were met with a significant dose of skepticism. The 6 PM group was especially skeptical, mostly due to the higher weight loss claims in the ad this group reviewed. Participants were clearly skeptical of the claims in these ads and at least one participant in each group joked that the testimonial givers were being compensated. Some examples are provided below.

*“And, you know, if they were unsolicited, why did they write if it's unsolicited? Most people don't -- unless there's some benefit, they either pay them something, they say if you write us, give them some extra service, whatever, for letters -- most people don't go out of their way to say anything.”*

*“No, I don’t really – I just don’t – I don’t think it’s believable that these people did this in any kind of a healthy way or that these statements are not solicited or written by more than one person.”*

*“I agree with Scott. They obviously -- (off mike) -- if they got multiple letters, they only got them from the people who were probably the biggest weight losses -- (off mike). And the company probably picked the best ones out of the bunch, so I would think these would be on the high end as opposed to an average set of -- (off mike) -- so it's probably expected to be much less than this.”*

*“I could believe that they did – that some of these people did lose this weight this quickly, but – if they had a surgical procedure. But I don’t believe that, as Joan (ph) said, that these are unsolicited letters, and I don’t believe that these statements were written by more than one person. One person wrote this entire ad, in my opinion.”*

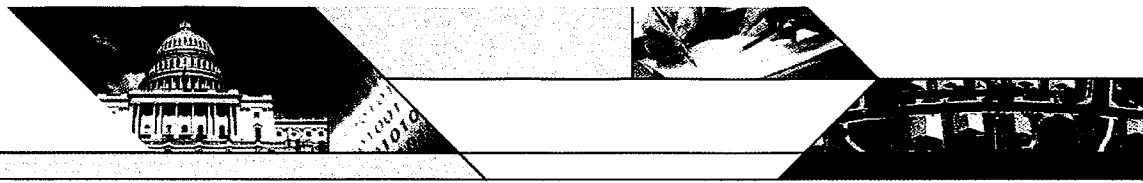
*“The testimonials don't say anything either, other than we lost weight. And if the letters weren't solicited, why do the people write them in the first place?”*

*“It's hard to tell, honestly, and I do not know. The initial thinking is they were told, "Hey, listen, we don't want you to get the impression that we're asking you to write this letter, but if you would, we'd greatly appreciate it." Then they gave a three-month supply of whatever it was.”*

*“They have got a pretty penny for running that.”*

*“There could be payoffs, which you don’t know about. Often times there are payoffs; give them some free product or whatever it is.”*

*“They might just be happy they lost the weight, so they sent the letter in.”*

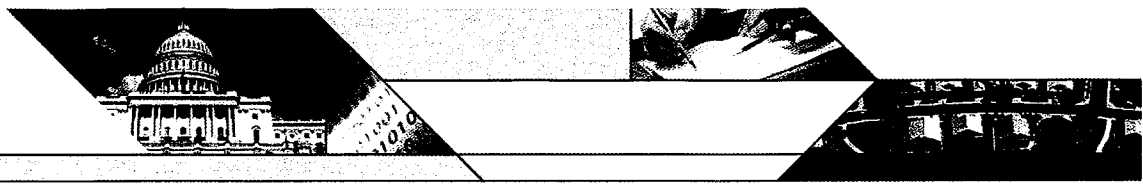


Another key analysis point was the duration over which the weight loss occurred. In the case of the 6 PM group, most felt that the significant weight loss exhibited in this ad over a short period of time was, if true, extremely unhealthy or achieved by morbidly obese individuals. As participants noted:

*"I thought that it might be believable, but only if the people involved were huge, like way big, like two-chairs big at least."*

*"...from what I'm seeing here, nobody in this room would really be a good candidate for it because nobody here is that morbidly obese where they would need to lose that kind of weight in that period of time..."*

*"I don't think it is a good idea to lose that much weight that fast, and I mean, even doctors recommend two pounds a week. So I was just thinking, no, it probably won't work. And then, after reading through the whole thing, I sort of am skeptical of – long term effect."*

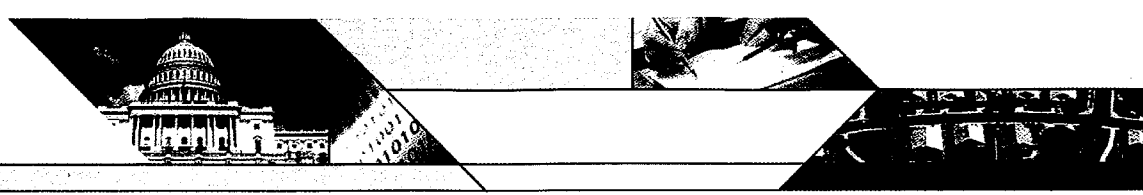


**Review of Testimonial Features:**

Specific examples<sup>5</sup> of participant analysis and questioning include:

- Analysis of the wording utilized in the testimonials
  - *“Why do all the clients say ‘lowered my weight’ or ‘reduced my weight’? Its ‘lost weight’.”*
- Analysis of the testimonial givers’ names and if these names are well-known individuals or everyday citizens
  - Several participants noted that the names of the testimonial givers’ were not people in the public eye and that their claims of weight loss were, therefore, more difficult to verify.
- Analysis of the geographic spread of testimonial givers
  - *“Across the country – east to west”*
- Analysis of the gender distribution of testimonial givers
  - *“Male and female”*
- Analysis of the weight loss claims in the testimonials
  - *“All testimonials lost about 30 lbs in about 3 months- limits their market”*
  - *“Weight loss range 24/36 – more dramatic losses”*
  - *“60 lbs in 90 days? I’m skeptical”*
  - *“Results seem too good to be true – too much weight off in too little time”*
  - *“Don’t believe it, not average”*
  - *“Letters – ‘quick loss’ program”*
- Analysis of the healthfulness of testimonial givers’ weight loss over the cited duration
  - *“Too much too fast...”*
  - *“they’ll probably put it back on!”*
  - *“Does it help continue to keep weight off?”*
  - *“Some of the amounts of weight loss seem unhealthy – 60lbs in 90 days? 70lbs in a few short months? I have no idea how they help you lose weight. Is it like Curves, WeightWatchers? I need to know it’s a ‘new way’.”*
  - *“Need to show some long term results”*
  - *“Amount of weight was in short time – safe? Effective to keep off? Really true?”*
- Questioning as to the motives of the testimonial givers
  - In each group at least one participant noted the possibility that the testimonial givers could have been compensated in some way.
- Questioning as to the healthfulness of the program itself
  - *“Another weight loss gimmick that doesn’t focus on wellness of an individual”*
- Questioning as to the appropriateness of the regimen for various types of individuals
  - It was assumed in the 6 PM group that the product was designed for morbidly obese individuals. This is due to the fact that this group reviewed the ad citing larger weight loss numbers.

<sup>5</sup> Taken from initial, written exercise where participants were asked to record their thoughts as they reviewed the ad quietly and on their own.



2. **Significant skepticism toward testimonial-based advertising.**

Participants were skeptical of advertising and testimonial-based advertising. Most participants reported that they found this type of advertising to be less believable than advertising in general. Examples include:

*"There's no guarantee that this will even work for anybody. I mean, even most of the ones they'll have the money-back column where they get, you know, if you use this for 30 days and you don't -- you aren't satisfied, you get your money back, you know, which they're hoping for like a pyramid scheme, you get enough people to put their money in the more come to get their money back. It has no basis for you to believe it."*

*"But, you know, to me, I'm always the cynic when I always see all the testimonials. I'm always not like -- I've never been swayed towards a product because somebody else, you know. I always hear my father, 'If everyone else does it -- jumps off the bridge, are you going to jump off the bridge?'"*

*"Sure. Testimonials in weight loss, you know, I think we're all saying pictures, but then I think about what Ken's saying. You know, testimonials in biomedical sciences and things like that, then Johns Hopkins, or if you're selling a Porsche and Mario Andretti thinks this is the best car he's ever driven, I don't need a picture of him driving -- (laughter) -- the car with two thumbs up. You know, I buy that. And you know, so I guess it depends on the product. But testimonials, I guess it depends on what you're looking at because I think what Ken's speaking about in his business, Hopkins says it's pretty good, it's probably very credible just because of who's saying it. So here it's, once again, John Doe is basically saying this, so you really don't have a point of reference."*

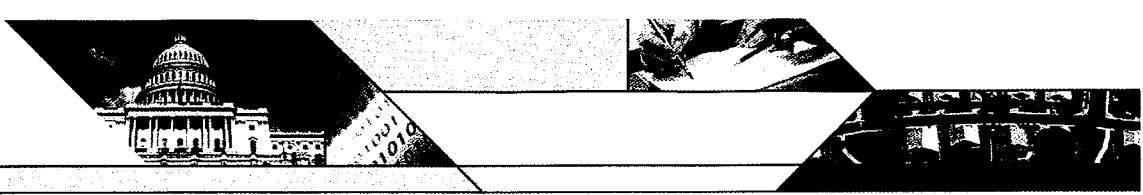
*"...less than half are probably getting the results in the period of time."*

*"...It's a little bit of a "pie in the sky". You know, everybody wants this, but how do you get there? And they never tell you how you can get there. If you use Weight Guard, you're going to lose weight. Well, what's so dramatic about Weight Guard? I don't know, you haven't told me. So therefore, why should I believe I'm going to lose all this weight?"*

*"Well, Mike, it works for some people probably. You know, even if these aren't accurate, it probably works for some, it doesn't work for everybody and, you know, other stuff."*

*"Okay, because I don't always believe, I guess when I read all this weight loss, you know, I'm very skeptical about anything that's going to tell you going to lose that much weight."*

*"We always advertise to the extreme. It's never just the average; it's always the extreme one way or the other."*



*"...I was very skeptical of the testimonials, what they said about, you know, this product that they didn't really tell you much about, but lost that much weight and not know what the product was – (unintelligible) – I was kind of skeptical about that."*

*"I wrote that some of these results seemed a little too good to be true. Because it's an awful lot of weight gone in a short period of time."*

*"...they probably are involved somehow where they are going to make money off of us calling or going to their website."*

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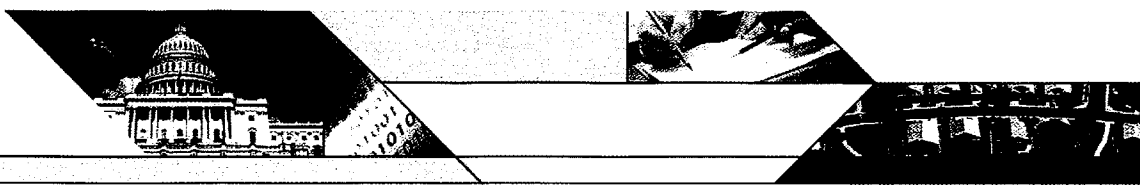
PARTICIPANT: *"In one word I put that it was pretty shady and then when I was done I still thought it was even more shady."*

MODERATOR: *"Okay, tell me about that."*

PARTICIPANT: *"You see so many things that are, you know, supplements or treatments and you always down the road hear negative things about it. It causes problems here, there, and the other way. And I just – it just, it gave me now information to go on. It's basically like a number to call, you know, you know nothing about it at all and I didn't like that. You didn't know what you were walking into when you picked up the phone or went on the website and I didn't like that."*

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Finally, many participants reported that they did not pay much attention to this type of advertising. A male participant said, *"I wouldn't really give it any [attention] unless there was something else. This one there's nothing -- if any other weight loss product was like this, I wouldn't give it a chance either."*



### 3. Participant Review of Disclaimers

Participants were clearly familiar with disclaimers. Some remembered seeing these on weight loss advertising and others did not. As one participant noted, *"I don't know if I've seen them on any weight-loss ads like that, because that would be bad for business, I would think, first of all, because you're going to read that and, "Oh, look what they're saying; it doesn't work for you."*

Participants were asked about three (3) different types of disclaimers.

#### **Results Not Typical:**

The "results not typical" disclaimer was well-known to many participants (*"You expect it."*). The meaning of this disclaimer was clear to them and consistent with what they believed about testimonials – that advertisers are rational and select the best examples/outcomes/appraisals of their product's performance.

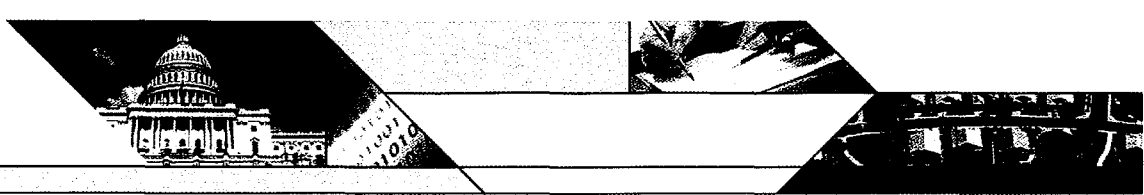
Example comments include:

- *"To me, they say, "You're probably not going to do this well."*
- *"When I first saw it on other ads, I thought, well, then why are you saying that. But now it would be – that is, like, believable. And they all say that."*
- *"...that wouldn't turn me off..."*

#### **The Average WeightGuard User Loses About 10 pounds in Three Months**

The disclaimer reading "the average WeightGuard user loses about 10 pounds in three months" was viewed by many participants as reducing the ad's already limited effectiveness.

- *"If you put that particular disclaimer in, you might as well throw away all these testimonials from unsolicited buyers. I mean, they're just negated, as far as I'm concerned, because the average user could -- I'm figuring I'm going to be average. So if you say the average user is going to lose 10 pounds, fine."*
- *"You just add your water intake and you can lose that anyway, which is – like, I say, it's the average – that is pretty average for most people, then why say one thing and then put in writing something that just makes it – the whole thing seem ridiculous. That is too – too – staged (?)."*
- *"It sounds like it should be with a different product. (Laughter.) To have these big, you know, huge amounts of weight loss that are unbelievable if they are healthy – unhealthy, and then have a disclaimer that is – 10 pounds in three months. I mean, you don't really need a weight loss product and do that. You can start walking around the block three times a day and probably lose 10 pounds in three months."*
- *"Well, I think the disclaimer, along with this, shows the range that you can have..."*

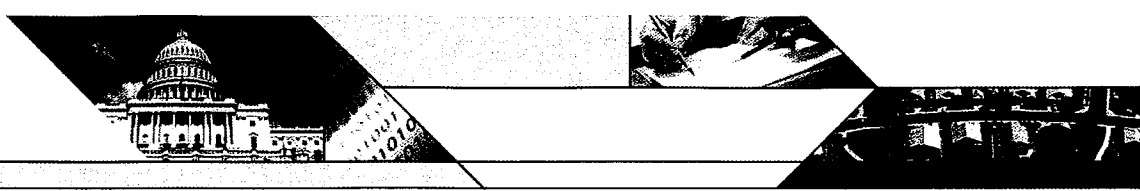


**These Testimonials Are Based On The Experiences Of A Few People. You Are Not Likely To Have Similar Results**

The disclaimer reading “These testimonials are based on the experiences of a few people. You are not likely to have similar results” made several participants laugh at the implied put-down in “YOU are not likely to achieve similar results.”

- *“I’m sorry. I’ve got to hear why they’re shooting themselves in the foot. They’re basically telling you it’s not going to work.”*
- *“Based on – which means it’s not exactly, but it’s kind of taken along the same lines. So put based on the results – and when it says, you aren’t likely, then why should I trust you...”*
- *“Trying to talk you out of it –“*
- *“Yeah, they should say, you may not have –“*
- *“Very negative.”*
- *“So, you know, the fact that they say a few, I don’t like that either because that is – a few means like a small amount. So they should say even – keep it broad, like, say some users. But by saying a few, that just means they just picked out a tiny bit, and that tiny bit happened to have really good results with this product.”*
- *“Why even bother.”*





### **Methodology:**

At the request of Kelley, Drye & Warren LLP, StrategyOne conducted one (1) night of focus groups June 7<sup>th</sup> among a random recruit of American adults in the Baltimore area.

The focus groups were conducted at Baltimore Research at 8320 Bellona Ave., Suite 220, Baltimore, MD 21204.

Two (2) groups were conducted. The first (6 PM – 8 PM) was conducted among women. The second (8 PM – 10 PM) was conducted among men.

Each group was composed of ten (10) participants. Participants were recruited at random from a large, proprietary, opt-in database managed by the focus group facility.

Participants in these focus groups were recruited at random from a database of over 80,000 potential respondents. This database was compiled, and is continually updated and expanded, through random calling and periodic random mailings, advertising, and purchasing space at public events to network with the public to enroll research candidates.

Using this database, StrategyOne randomly contacted individuals via telephone and screened them to ensure eligibility. Specifically, StrategyOne screened potential respondents to ensure a mix of ages, ethnicities, income, and education level within each group. The groups were segmented by gender; women participated in the 6:00 pm group, while men were recruited for the 8:00 pm group. In addition, a standard professional screen eliminated those employed (or those living in households with those employed) in the following industries:

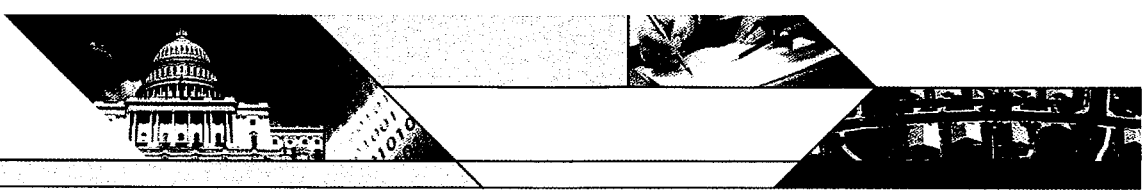
- market research
- advertising
- public relations
- the federal government
- legal firms

Lastly, participants were screened out if they had participated in market research within the last 3 months.

Upon arrival at the focus group facility, respondents were re-screened using the same questionnaire to validate their responses.

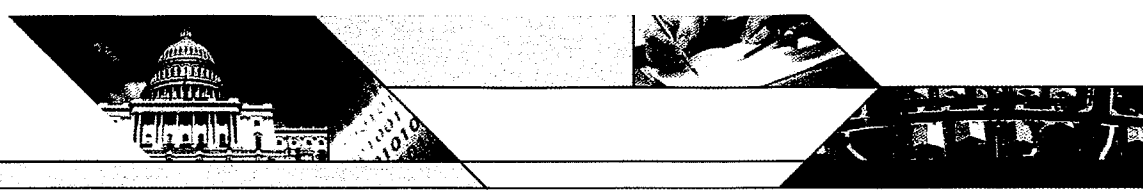
The focus groups were moderated by Robert Moran, who has conducted hundreds of focus groups and is a trained focus group moderator.

The 6 PM group reviewed the WeightGuard advertising with the testimonials claiming significant weight loss. The 8 PM group reviewed the WeightGuard advertising with the testimonials claiming more modest weight loss.



Focus group research is extremely useful when exploring perceptions, attitudes and language around advertising.

Focus group research is directional, but not statistically projectable. Findings may only generally be ascribed to the wider research universe, but unlike survey research cannot be directly projected to the target universe.



## DISCUSSION GUIDE

### 1. INTRODUCTION (5 MINUTES)

#### 1A. Introduction of focus group mechanics and process

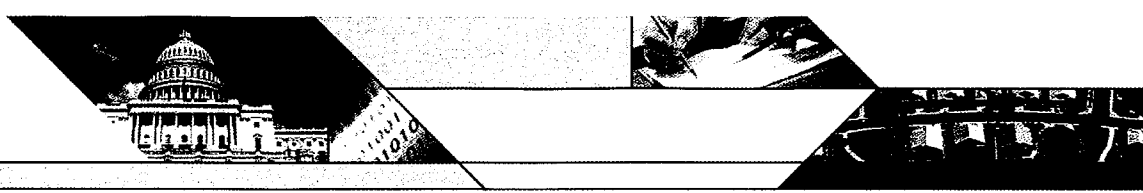
- Moderator name and function
- Define focus group
- Disclose audiotape / one-way mirror
- No right or wrong answers
- Respect for views of participants
- Cannot get in trouble (aggregate data and anonymous responses)
- Cannot get moderator “in trouble” with what you say tonight

### 2. INITIAL AD EXPOSURE (60 MINUTES / TRT 65)

To begin, I would like to show you a print advertisement for a weight loss product called Weight Guard. As you read through this ad, I would like you to use your pens and paper to write down all of your thoughts.

(HAND OUT PRINT COPIES OF THE WEIGHT LOSS AD W/O DISCLAIMER)

1. When you first looked at this ad, what did you see first? What next? After that?
2. What were your initial feelings when you saw the ad? Once you read more of the ad, what were your feelings?
3. Overall, how would you summarize what this ad is saying?
4. What was your reaction to the ad?
5. What was your reaction to the customer statements? Tell me more about that.
6. What are these testimonials saying? In your own words, how would you sum up the message these testimonials are telling us?
7. How much do you believe these statements? Why is that? Are they true, did that customer really have that experience?
8. How well do these statements match the experience average customers will have with Weight Guard?



9. How well do these statements match the experience you, personally, would have if you bought Weight Guard?
10. How did this ad make you feel about Weight Guard?
11. What impact, if any, did these statements have on your feeling that Weight Guard works? How so?

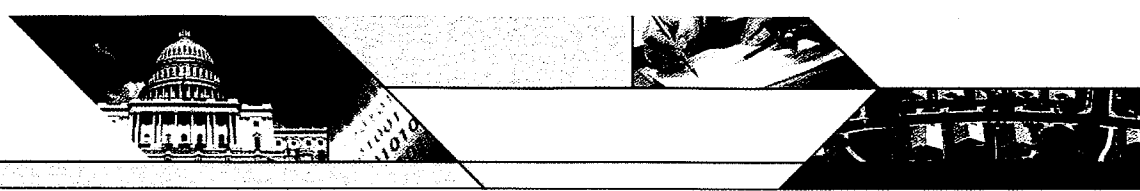
### **3. TESTIMONIAL MOTIVES (15 MINUTES / TRT 80)**

12. Tell me a little about the people who are endorsing Weight Guard?
13. (PROBE IF NECESSARY) Why do you think these people would endorse Weight Guard?
14. (PROBE IF NECESSARY) How many of you feel that these people were paid to give these testimonials?
15. How does this impact your perception of their claims?

### **4. DISCLAIMER (20 MINUTES / TRT 100)**

I will now read you a disclaimer that may or may not appear on this ad...

- These testimonials are based on the experiences of a few people. You are not likely to have similar results.
  - The average WeightGuard user loses about 10 pounds in three months.
  - Results not typical.
16. In your own words, what does that disclaimer mean?
  17. Did the disclaimer have any impact on your opinions about the statements in the ad? How so?
  18. Did the disclaimer have any impact on your opinions about Weight Guard? How so?



## 5. EXPERIENCE WITH TESTIMONIAL ADS (10 MINUTES / TRT 110)

19. How many of you have seen ads like this on TV or in magazines or newspapers?
20. What is your reaction to these types of testimonial ads when you see them?
21. When you do come across them, how much attention do you give these types of ads? Do you give them more or less attention compared to other types of ads?
22. In general, do you consider these types of ads to be more or less believable compared to regular ads? Why is that?

## 6. CONCLUSION (5 MINUTES / TRT 115)

23. Before we wrap-up, are there any last thoughts you would like to share?

## 7. THANK AND CLOSE