

WEIGHT-CONTROL
ADVERTISERS HIT
WITH \$25 MILLION
IN PENALTIES,
CONSUMER REDRESS

COMPANIES AGREE TO LIMIT FUTURE ADVERTISING CLAIMS

FTC recently filed complaints in four separate cases alleging that weight-loss and weight-control claims were not backed up by competent and reliable scientific evidence. Marketers of the four products—Xenadrine EFX, CortiSlim, TrimSpa, and One-A-Day WeightSmart—have settled with FTC, surrendered cash and other assets worth at least \$25 million, and agreed to limit their future advertising claims.

XENADRINE EFX

Two Marketers Agree to Pay \$8-12.8 Million Over Allegations That Weight-Loss Claims Were False and Unsubstantiated

Two marketers of Xenadrine EFX agreed to pay \$8 to \$12.8 million to settle FTC charges that Xenadrine EFX's weight-loss claims were false and unsubstantiated. These funds will be used for consumer redress. In a bankruptcy case that doesn't involve FTC, these defendants also agreed to pay at least an additional \$22.75 million to settle claims brought by creditors and consumers, including personal injury claims for an earlier ephedra-based product.

This product contains, among other ingredients, green tea extract (EGCG), caffeine and bitter orange. It was advertised heavily in print and on TV, including in such publications as People, TV Guide and Cosmopolitan. Advertising for this product also appeared in Spanish-language publications.

FTC's Complaint: Defendants Made False or Unsubstantiated Claims

FTC's complaint charged that defendants made false or unsubstantiated claims for Xenadrine EFX, including that it was clinically proven to—

- cause rapid and substantial weight loss, and
- be more effective than leading ephedrine-based diet products.

FTC's Complaint: Commissioned-Studies Didn't Show Substantial Weight Loss

According to FTC's complaint, Robert Chinery commissioned several studies of Xenadrine EFX—none of which showed substantial weight loss. FTC's complaint alleged that in one of these studies, subjects taking Xenadrine EFX lost an average of only 1.5 pounds over the 10-week study, while a control group taking a placebo lost an average of 2.5 pounds over the same period.

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*FTC's Complaint: Ads Falsely Claimed Persons in Ads Achieved
Reported Weight Loss Solely By Using Xenadrine EFX*

Additionally, FTC's complaint alleged that Xenadrine EFX ads falsely claimed that persons appearing in the ads achieved the reported weight loss solely by using Xenadrine EFX. However, according to FTC's complaint, consumer endorsers lost weight by engaging in rigorous diet and/or exercise programs. Moreover, the endorsers were paid from \$1,000 to \$20,000 in connection with their testimonials, according to FTC's complaint, and Xenadrine EFX ads didn't disclose those payments.

Stipulated Federal Court Order

The stipulated federal court order with Robert Chinery, Jr. and RTC Research & Development, LLC (RTC) bars—

- certain claims regarding Xenadrine EFX.
- all claims regarding the health benefits, performance, efficacy, safety, or side effects of any weight-loss product, dietary supplement, food, drug, or device, unless the representation is true, not misleading, and substantiated by competent and reliable scientific evidence.
- misrepresentations about any test or study.
- misrepresentations of the actual experience of any user or endorser and requires clear and prominent disclosure of any relationship that would materially affect the weight or credibility given to a user testimonial or endorsement.

Finally, Robert Chinery and RTC agreed not to use their settlement with FTC as a basis for seeking a cash refund of Xenadrine EFX-related income taxes that they previously reported as paid.

CORTISLIM AND CORTISTRESS

*Seven Marketers Agree To Surrender Assets
Worth At Least \$12 Million*

The seven marketers of CortiSlim and CortiStress agreed to surrender assets worth at least \$12 million to settle FTC charges that they made false and unsubstantiated claims that their products can cause weight loss and reduce the risk of, or prevent, serious health conditions. In the final three settlement agreements announced by FTC on January 4, 2007, FTC will recover \$8.4

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million in cash, along with proceeds from the sale of a residence acquired with CortiSlim profits. These settlements also require the two individual defendants to liquidate tax shelters and transfer to FTC funds that remain after paying taxes and penalties. The funds recovered from these seven defendants will be used for consumer redress.

*Infomercials Were Deceptively Formatted
to Appear as Talk Shows: FTC*

The ad campaign for CortiSlim was a nationwide campaign. It included ads on broadcast and cable TV, radio, print media, and the Internet. FTC's complaint alleged that advertising claims about CortiSlim's ability to cause rapid, substantial, and permanent weight loss in all users were false or unsubstantiated, as were claims about CortiStress's ability to reduce the risk of such conditions as osteoporosis, obesity and cancer. FTC also alleged that CortiSlim and CortiStress infomercials were deceptively formatted to appear as talk shows rather than ads.

What All of These Settlements Prohibit

The final settlements announced by FTC are with Stephen F. Cheng and his company, Window Rock Enterprises, Inc., and with Gregory S. Cynaumon and his company, Infinity Advertising, Inc. All of the settlements bar—

- misrepresentations of any tests or studies.
- claims about the performance, effects on weight, or other health benefits of any dietary supplement, food, drug, cosmetic, or device unless the claims are true, not misleading, and substantiated by competent and reliable scientific evidence.
- use of deceptively formatted television and radio advertisements.

Additionally, the defendants agreed not to use their settlement with FTC as a basis for seeking a cash refund of income taxes that they reported as paid.

TRIMSPA

Marketers of Trimspa Agreed to Pay \$1.5 Million

The marketers of TrimSpa agreed to pay \$1.5 million to settle FTC charges that their weight-loss claims were unsubstantiated. According to FTC's complaint, the marketers had inadequate scientific evidence to back up their ad claims that TrimSpa causes rapid and substantial weight loss and that one of its ingredients, Hoodia gordonii, enables users to lose substantial amounts of weight by suppressing appetite.

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Many Ads Featured Testimonials

Many ads for "TrimSpa Completely Ephedra Free Formula X32" featured testimonials. Celebrity Anna Nicole Smith claimed to have lost 69 pounds in eight months by using TrimSpa. Other ad claims included "Your high speed dream body diet pill" and "It makes losing 30, 50, even 70 pounds (or however many pounds you need to lose) painless."

*Ads Appeared on Radio and TV and in
Magazines and Local Newspapers*

TrimSpa ads appeared on TV, in magazines, on radio, and in local newspapers. TrimSpa was also promoted on a website, at some NASCAR events, and other live events.

Claims Must Be Substantiated

Additionally, the agreement bars the marketers from making any claims about the health benefits, performance, efficacy, safety, or side effects of TrimSpa, Hoodia gordonii, or any dietary supplement, food, drug, or health-related service or program, unless the claims are true, not misleading, and substantiated by competent and reliable scientific evidence.

ONE-A-DAY WEIGHTSMART

*Company Agreed to \$3.2 Million Civil Penalty
Over Alleged Violation of Earlier FTC Order*

The Bayer Corporation agreed to pay a \$3.2 million civil penalty to settle FTC charges that ads for One-A-Day WeightSmart multivitamins violated an earlier FTC order requiring all health claims for One-A-Day brand vitamins to be substantiated by competent and reliable scientific evidence.

Bayer ran a national ad campaign for One-A-Day WeightSmart, which contains EGCG (epigallocatechin gallate), a green tea extract. Bayer also advertised on TV, radio, and the Internet, and in newspapers and magazines, such as RedBook, Family Circle, and TV Guide.

Advertising Claims At Issue

The advertising claims at issue in this major FTC action included such claims as:

"Just in! Most women over 30 can gain 10 pounds a decade, due in part to slowing metabolism. . . So eat right, exercise, and take One-A-Day WeightSmart. The complete multi-vitamin with EGCG to enhance metabolism."

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"One-A-Day WeightSmart. The first and only complete multivitamin with an ingredient to enhance your metabolism. EGCG, a natural green tea extract, to help you while you manage your weight."

FTC's Complaint Alleged Unsubstantiated Claims

FTC's complaint alleged that Bayer Corporation marketed One-A-Day WeightSmart with unsubstantiated claims that it

- increases metabolism;
- enhances metabolism through its EGCG content;
- helps prevent some of the weight gain associated with a decline in metabolism in users over age 30; and
- helps users control their weight by enhancing their metabolism.

*FTC: Unsubstantiated Claims Violate
1991 Order Against Predecessor*

FTC charged that these unsubstantiated claims violate a 1991 Commission order against Bayer's predecessor, Miles Inc. That 1991 order requires that all claims about the benefits of One-A-Day brand products must be substantiated by competent and reliable scientific evidence.

*Company Is Barred from
Making Unsubstantiated Representations*

In addition to the \$3.2 million civil penalty, Bayer is barred from violating the FTC order and from making unsubstantiated representations regarding the benefits, performance, efficacy, safety, or side effects of any dietary supplement, multivitamin, or weight-control product.

BOOST FOR SELF-REGULATORY PROCESS

Because of an advertiser's failure to respond, the National Advertising Division (NAD) will refer a particular matter to the appropriate governmental agency (which is often FTC) for possible law enforcement action, pursuant to NAD/NARB Procedures. Indeed, that is what happened in this matter. FTC acknowledged NAD "for its referrals of some of these cases."

FTC's VOTES

FTC's vote to accept the Bayer settlement was 5-0. At FTC's request, the Department of Justice filed the complaint and proposed consent decree on January 3, 2007, in the U.S. District Court for the District of New Jersey.

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FTC's vote to accept the TrimSpa consent agreement, subject to public comment, was 4-0, with Commissioner Rosch recused.

FTC's votes to authorize staff to file the CortiSlim stipulated final orders were both 5-0. The stipulated final orders for permanent injunction were filed in the U.S. District Court for the Central District of California on October 3, 2006 for Stephen Cheng and Window Rock Enterprises, Inc. and on January 3, 2007 for Gregory Cynaumon and Infinity Advertising, Inc.

FTC's vote to authorize staff to file the Xenadrine EFX stipulated final order was 5-0. The stipulated final order for permanent injunction was filed in the U.S. District Court for the District of New Jersey on December 26, 2006.

NOTE: The proposed consent decree and the stipulated final orders are for settlement purposes only and do not constitute admissions by the settling defendants of law violations. They are subject to court approval and have the force of law when signed by the judge. Likewise, the administrative consent agreement is for settlement purposes only and does not constitute an admission of a law violation. When the Commission issues a consent agreement on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of \$11,000.

LAWYER'S REFERENCE SERVICE

FTC v. Robert Chinery, Jr.; Tracy A. Chinery; and RTC Research & Development, LLC, United States District Court for the District of New Jersey, Civil Action No. 05-3460 (GEB), January 4, 2007.

FTC v. Window Rock Enterprises, Inc., also d/b/a, Window Rock Health Laboratories, also d/b/a CortiSlim, Infinity Advertising, Inc., Stephen F. Cheng, Shawn M. Talbott, and Gregory S. Cynaumon, United States District Court, Central District of California Civil Action No.: CV04-8190 DSF (JTLx), January 4, 2007.

In the Matter of Goen Technologies Corporation; Nutramerica Corporation; Trimspa, Inc.; and Alexander Szynalski, also known as Alexander Goen, File No. 042 3127, January 4, 2007.

USA (for FTC) v. Bayer Corporation, United States District Court for the District of New Jersey; Civ. Action No. 07-01 (HAA), January 4, 2007.

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