

FTC (Federal Trade Commission) Announces Several New Initiatives to Target Deceptive Advertising Claims for 'Fad' Weight-Loss Products

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On Tuesday, January 7, 2014, the **Federal Trade Commission (FTC)** held a press conference to announce “Operation Failed Resolution,” a new initiative as part of the FTC’s ongoing effort to combat misleading claims for products promoting easy weight loss and slimmer bodies. The FTC also announced actions against four different marketers and advertisers using deceptive advertising claims to promote weight-loss products, as well as a new guidance for media to screen weight-loss claims.

Jessica Rich, Director of the FTC’s Bureau of Consumer Protection, opened the press conference by noting that weight-loss is a typical subject of New Year’s resolutions. “Resolutions to lose weight are easy to make but hard to keep,” said Rich. “And the chances of being successful just by sprinkling something on your food, rubbing cream on your thighs, or using a supplement are slim to none. The science just isn’t there.”

The principal action cited by Rich in the press conference involved Sensa, a product well-known to many through national advertising, television infomercials, and availability at major retailers. The powdered product is promoted as enhancing food’s taste and smell, and also making users feel full faster so they allegedly can eat less and lose weight. In particular, the FTC expressed concern about claims that consumers could sprinkle Sensa powder on any food and achieve substantial weight-loss without any changes in diet or exercise. To emphasize the point, Rich played a brief portion of one of the Sensa infomercials. In addition to the claims, the FTC alleges that the studies supporting the claims are flawed and that the creator and endorser of the product gave endorsements that are not supported by scientific evidence.

According to the FTC complaint, U.S. sales of Sensa between 2008 and 2012 totaled more than \$364 million. The defendants in the Sensa case have agreed to a consent order imposing a \$46.5 million judgment, \$26.5 million of which they will pay in consumer redress with the rest being suspended due to inability to pay. Three other actions and settlements were disclosed as well, including actions against a company marketing a body-slimming cream, a company marketing a liquid homeopathic hCG drops product, and an operation making alleged deceptive claims for acai berry and “colon cleanse” weight-loss products. Those defendants will be required to pay consumer redress of approximately \$7.5 million.

In addition to the four enforcement actions, the FTC announced updated guidance to help publishers and broadcasters identify phony weight-loss claims when screening ads for publication. The guidance, entitled “Gut Check: A Reference Guide for Media on Spotting False Weight-Loss Claims,” details seven types of weight-loss claims that typically can’t be true and that should prompt a “gut check” for the media. The FTC is following up with letters to 75 publishers and broadcasters, urging them to share the revised guidance with their sales staffs and screen out diet ads that make “gut check” claims. The “Gut Check” guidance can be viewed [here](#).

While the FTC has always scrutinized weight-loss claims, these actions indicate that the FTC intends to continue putting pressure on marketers and advertisers of weight-loss products to be responsible and ensure that all advertising is compliant with the law. Marketers and advertisers should have a checklist of considerations that they run through prior to making weight-loss claims. Some of those considerations include:

- Weight-loss claims that promote weight-loss without diet or exercise are going to be looked at with increased skepticism by the FTC.
- Claims that a product is “magic” or a “miracle pill” are red flags to the FTC; if it sounds too good to be true, the FTC believes it probably is.
- Consumer testimonials touting specific amounts of weight loss are viewed as representative of what a typical person will lose in the depicted circumstances; if the result is not typical, the expected results must be conspicuously disclosed.
- Material connections between endorsers and the company marketing or promoting the product must be disclosed.
- All claims must be supported by competent and reliable scientific evidence.

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