The Federal Trade Commission’s Regulation of Weight-Loss Advertising Claims

Edward Correia
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I. INTRODUCTION

Advertisements for products promising dramatic weight loss are ubiquitous. They promote hunger-suppression pills, metabolism-boosting pills, special exercise programs, and even patches worn against the skin, all the while promising that weight loss is easy and fast! Some unpleasant realities, however, explain the explosion of such advertisements. First, many Americans are too heavy and are desperate to lose weight. Second, losing weight effectively and safely is difficult—it almost always involves dieting, exercise, or both. Moreover, it takes prolonged effort and, usually, at least a week to lose just one or two pounds. Starvation dieting or dehydration can lead to short-term dramatic weight loss, but such weight loss is only temporary and can be dangerous as well.

This article discusses the role of the Federal Trade Commission (FTC) in policing the advertising of weight-loss products. The legal standards the agency uses in determining whether weight-loss claims are deceptive are discussed as well as the FTC’s recently released *A Reference Guide for Media on Bogus Weight Loss Claim Detection*,¹ which identifies claims that the agency views as inherently incapable of substantiation. These include claims that a product can:

- cause weight loss of two pounds or more a week without dieting;
- cause substantial weight loss no matter what, or how much, the consumer eats;
- cause permanent weight loss (even after the consumer stops using the product);
- block the absorption of fat or calories to enable consumers to lose substantial weight;
- safely enable consumers to lose more than three pounds per week for more than four weeks;
- cause substantial weight loss for all users; and
- cause substantial weight loss by wearing it on the body or rubbing it into the skin.

Finally, the article offers practical advice for advertisers and company personnel who want to substantiate more reasonable—and much less dramatic—claims.

II. BACKGROUND: THE FTC’S ENFORCEMENT AUTHORITY

The FTC has the authority to regulate the advertising of virtually all weight-loss products. The Food and Drug Administration (FDA) and the FTC share regulatory authority for certain classes of weight-loss products, particularly dietary supplements

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¹ Federal Trade Commission (FTC), Reference Guide for Media on Bogus Weight-Loss Claim Detection, at www.ftc.gov/bcp/edcams/redflag/index.html (last visited Oct. 26, 2004). This guidance applies only to nonprescription diet products (e.g., drugs, dietary supplements, skin patches, creams, and wraps). It does not apply to prescription drugs, meal replacement products, low-calorie foods, surgery, hypnosis, special diets, or exercise equipment.
and prescription drugs. In general, the FTC is responsible for regulating advertising, while FDA concentrates on labeling, sales of dangerous products, and regulation of drug claims. Sometimes the agencies coordinate their actions with regard to a particular product.

The source of the FTC’s enforcement authority is a short, simply worded section of the Federal Trade Commission Act, which prohibits “unfair or deceptive acts or practices.” Deceptive claims are those that are false or misleading in some way, either because they expressly misstate the facts or because they fail to disclose important information that consumers should know. One of the most important legal principles applied by the FTC is that, except in cases of vague claims that can be considered “puffery,” an advertiser implies that it has a reasonable basis for making a claim at the time the claim is made. Consequently, the failure to have such substantiation is a deceptive practice. Although the FTC generally requires that the advertiser have the substantiation at the time the claim is made, the FTC may use its discretion to consider substantiation acquired after the claim is made.

III. THE ADVERTISING SUBSTANTIATION DOCTRINE

The advertising substantiation doctrine is a cornerstone of FTC advertising enforcement. In virtually every enforcement action the FTC has brought against sellers of

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2 A memorandum of understanding between the FTC and the Food and Drug Administration (FDA) provides that FDA has primary regulatory responsibility for policing the truth or falsity of prescription drug advertising while the FTC has that responsibility for over-the-counter (OTC) drug advertising. Updated FTC-FDA Liaison Agreement—Advertising of Over-the-Counter Drugs, 4 Trade Reg. Rep. (CCH) ¶ 9,851 (1971).

3 The Dietary Supplement Health and Education Act of 1994 (DSHEA) limited FDA’s authority over dietary supplements, one of the principal types of weight-loss products. Under DSHEA, FDA’s authority depends on the specific claim that is made for the product. For example, claims that a product will “diagnose, mitigate, treat, cure, or prevent a specific disease” may not be made on the labeling of dietary supplements unless the product has been subjected to the drug approval process. A claim that a dietary supplement is intend to affect the structure or function of the body can be made, however, as long as the manufacturer has the necessary substantiation and discloses that the claim has not been approved by FDA. See 21 U.S.C. § 343(r) (FDCA § 403(r)). The FTC does not pre-approve any claims, and generally does not distinguish among specific categories of claims in its application of the general bar on deceptive practices.

4 For example, the FTC filed a complaint against Americanloe, Inc. and Seasilver USA, Inc., for the sale of dietary supplements that the advertisers claimed would treat or cure several hundred diseases. FDA ordered that the products be seized. Press Release, FTC, No Silver Lining for Marketers of Bogus Supplement; Federal Agencies Crack Down on Health Fraud: FTC Charges Marketers of Seasilver with Making False and Deceptive Claims; FDA Seizes Seasilver Inventories (June 19, 3003), available at http://www.ftc.gov/opa/2003/06/seasilver.htm (last visited Feb. 18, 2005).


6 “Puffery” refers to advertising claims that are so general that they do not lend themselves to measurement. See Castrol, Inc. v. Pennzoil Co., 987 F.2d 939, 946 (3d Cir. 1993); Pfizer, 81 F.T.C. 23, 64 (1982) (puffery does not include “affirmative product claims for which either the Commission or the consumer would expect documentation”).


Objective claims for products or services represent explicitly or by implication that the advertiser has a reasonable basis supporting these claims. These representations of substantiation are material to consumers. That is, consumers would be less likely to rely on claims for products and services if they knew the advertiser did not have a reasonable basis for believing them to be true. Therefore, a firm’s failure to possess and rely upon a reasonable basis for objective claims constitutes an unfair and deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act.

Id.

8 Id.
weight-loss products, the agency has alleged that the advertiser failed to have adequate substantiation for the claim. Thus, the key to understanding the legal standards for weight-loss claims is to understand the requirement for substantiation.

The FTC first articulated its advertising substantiation policy in 1972,9 and formally issued a policy statement in 1984.10 In the last twenty years, the Commission has applied its substantiation requirement hundreds of times but has stated repeatedly that there is no rigid standard for what constitutes adequate substantiation. The FTC has provided the following helpful guidelines:

- An advertiser must at least have the substantiation it claims to have.
- For claims related to health and safety—a category that generally includes weight-loss claims—there must be “competent and reliable scientific evidence.”11
- In determining the specific level and type of substantiation required, the FTC will consider the six “Pfizer factors” 1) the type of product; 2) the type of claim; 3) the benefits of a truthful claim; 4) the cost/feasibility of developing substantiation; 5) the consequences of a false claim; and 6) the amount of substantiation that experts in the field believe is reasonable.12

The Pfizer factors are helpful because they provide flexibility. An advertiser who has made a good faith effort to substantiate a claim usually has an opportunity to convince the FTC that its efforts were reasonable and reliable, even though they might not meet rigorous scientific standards. At the very least, a good faith effort will influence the remedy that the Commission chooses to seek.

IV. OTHER FTC POLICY STATEMENTS

The FTC has issued other policy statements that are relevant for advertisers of weight-loss products, including Dietary Supplements: An Advertising Guide for Industry13 and the Enforcement Policy Statement on Food Advertising, which discusses the FTC’s approach to substantiating health claims in food advertising.14 These policy guides, while they focus on particular kinds of claims, are consistent with the more general guides described above. The Dietary Supplement Advertising Guide is particularly helpful in providing guidance for substantiating this class of weight-loss products. Advertisers frequently promote weight-loss products through testimonials (i.e., statements by individuals who have tried the product). Another important source of FTC guidance, therefore, is the Guides Concerning Use of Endorsements and Testimonials in Advertising,15 which addresses both consumer endorsements and expert endorse-

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9 See Pfizer Inc., 81 F.T.C. 23, 86-87 (1972). The Pfizer case dealt with claims regarding the effectiveness of Un-Burn, a drug sold to prevent sunburn pain. In one of its most significant decisions, the Commission announced: “[T]he Commission is of the view that it is an unfair practice in violation of the Federal Trade Commission Act to make an affirmative product claim without a reasonable basis for making that claim.” Id. at 86. The factors mentioned by the Commission in evaluating the basis for a claim later came to be known as the ‘Pfizer factors.’
10 Substantiation Policy Statement, supra note 7, at 839.
12 Pfizer Inc., 81 F.T.C. at 91-93.
V. SUBSTANTIATING WEIGHT-LOSS CLAIMS: LEGAL AND PRACTICAL CONSIDERATIONS

There are at least four ways that an advertiser can attempt to substantiate a weight-loss claim. First, the advertiser can conduct a scientifically-valid clinical study of the effect of a product; alternatively, if someone else already has conducted a clinical study, an advertiser can rely on that study and save the time and expense of conducting one on its own. Second, the advertiser can rely on the opinion of an expert. Third, for certain products, such as exercise programs, the advertiser can rely on widely-accepted scientific principles (e.g., the relationship between caloric deficits and weight reduction) to infer the effects of the product. Fourth, the advertiser can rely on evidence supplied by individual users of the product. Each of these approaches has advantages and limitations.

A. Clinical Studies of the Product

Clinical studies that meet traditional scientific standards (e.g., a sample size large enough to make the results statistically significant, use of a protocol that rigorously controls the conditions of the trial, or use of a control group) rarely are conducted by advertisers of weight-loss products because the time and expense of such clinical trials usually are too great. Relying on someone else’s study would be an alternative, but it is rare that an advertiser finds a published study of a valid clinical trial of the same particular product used under the same circumstances that consumers of the advertised product will experience. Consequently, many advertisers tend to conduct their own less-than-rigorous studies, or they infer the effects of their product from studies done under different circumstances.

While a rigorous clinical trial is always the best substantiation, the FTC has signaled that it is willing to consider less rigorous studies if they are reliable and if they avoid bias. There must be sufficient numbers of participants in the clinical trial and the study must go on long enough to produce meaningful results. If those requirements are met,
the remaining problem is to ensure that consumers are not losing weight from factors other than the tested product.

For example, assume that an advertiser wants to test the effects of a particular exercise program over a particular time period (e.g., six weeks) and establish that the exercise program will result in significant weight loss. Assume, in addition, that consumers faithfully follow the exercise program and experience an average weight loss of ten pounds over the six-week period. But, what if consumers were dieting at the same time? Or, what if they increased their exercise routine in other ways? Consumer behavior during prolonged trials is notoriously difficult to monitor. The problem is compounded if the advertiser creates some additional incentive for “success,” such as rewarding participants with a free supply of the product if they lose a significant amount of weight.21

There are three important principles advertisers should follow in this area. First, advertisers should make reasonable efforts to monitor what participants are doing.22 Second, advertisers should avoid distorting the results by introducing bias.23 Third, advertisers should conduct a poststudy review to confirm, to the extent possible, that consumers followed the program guidelines. Even if all of these steps are taken, however, there sometimes will be results that are so out of line with widely-accepted scientific principles of nutrition that the results should be ignored.

B. Reliance on Other Types of Studies

Advertisers of dietary supplements often rely on published studies of the active ingredient in their products and must infer an effect based on the relationship found in the published study. Consider the hypothetical of a study that shows that ingredient X increases metabolism for a representative group of individuals. The advertiser intends to sell a product containing ingredient X at the dosage used by the subjects in the study and wants to claim that, by taking ingredient X, consumers can lose substantial weight without dieting or exercise. The problem is that, even if ingredient X actually increases metabolism, the extent of the increase may be so small that it could not possibly lead to significant weight loss.

For example, a study of green tea extract found a four percent increase in metabolism over a twenty-four-hour period.24 How much weight can be lost from consuming green tea every day if this finding is correct? The conventional assumption about the relationship between caloric expenditure and weight loss is that a caloric deficit of 3,500 calories is required to lose one pound of fat. This is also the FTC’s working assumption.25 A

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21 The FTC recently challenged the payment of compensation to consumers who provided testimonials for use in an advertisement. See Vital Basics, Inc., and Creative Health Inst., Inc., FTC File No. 012-3248 (consent order, Apr. 26, 2004). In that case, the advertiser expressly stated that no compensation was provided when, in fact, it was. In addition, the advertiser failed to disclose that consumer endorsements were solicited with a promise of a six-month supply of the product if their testimonials were used in advertising. The FTC’s concern apparently was that consumers will distort their experience in an effort to be chosen.

22 For example, the advertiser should obtain an agreement in writing from the participants in advance of the trial about the exercise and eating patterns they should follow, their use of the advertiser’s product, and the need to avoid other activities that could promote significant weight loss.

23 An example of introducing bias is to compensate the participants in some way based on their success. For example, providing free gym memberships to participants who lose substantial weight distorts the results by encouraging participants to engage in other activities to lose weight.


25 See, e.g., DECEPTION IN WEIGHT-LOSS ADVERTISING, supra note 24, at 11.
moderately active male who weighs 200 pounds will expend about 3,000 calories per day. Assume that the subject’s caloric expenditure and caloric intake are in equilibrium before he begins to consume green tea every day. If his metabolism increases by four percent while his food consumption remains the same, he will experience a calorie deficit of 120 calories per day, or 840 calories over the course of a week. Based on the conventional assumption about the relationship between caloric deficits and weight loss, he will lose about twenty-five-hundredths pound per week. Consequently, an advertiser cannot claim that drinking green tea will lead to significant weight loss.

C. Relying on an Expert

Many advertisers rely on experts to provide opinions for them and to evaluate the available evidence. An expert can be extremely valuable in analyzing published studies and designing a study, if the advertiser is inclined to conduct one. An expert opinion is inadequate, however, unless it is based on adequate substantiation. In other words, the advertiser must “look behind” the credentials of its expert and the expert’s conclusions were determined. Outside counsel or the advertiser’s in-house technical expert can review the basis of the expert’s conclusion. In the end, the expert opinion explains and validates the substantiation, but the opinion itself does not constitute adequate substantiation.

D. Relying on Individual Consumer Statements: The Problem With Testimonials

Few commercials are more dramatic and powerful than those that convey an individual’s actual experience. Nonetheless, testimonials can be misleading in several ways. The first and most obvious way is that the experience claimed is simply false. An individual who claims to have lost 100 pounds really may not have lost that much weight. Second, the testimonial may be misleading. For example, before and after photos frequently are unreliable. Consumers may expand their abdomens in a “before” photo and contract them in the “after” photo. This is particularly true if consumers submit unsolicited photos or testimonials, which were developed without oversight by the advertiser. Obviously, such distorted demonstrations are deceptive. A third, and more subtle, problem is that while consumer endorsers actually may have lost as much weight as claimed, the weight loss may not have been the result of only the advertised product. The individual may have engaged in some other activity (e.g., intensive dieting) that had a much more significant effect than the advertised product. A fourth problem is that a consumer’s experience may be stated accurately, but may not be representative; most people will not lose as much weight as the endorser.

For these reasons, the FTC has said that anecdotal evidence never constitutes scientifically-valid substantiation. Thus, advertisers need more than the accounts of a

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26 Caloric expenditure varies widely with level of activity and metabolism. Metabolism can be increased through chemical stimulation, exercise, and by adding muscle mass. A good starting point, however, is an assumption that average caloric expenditure for moderately active males is about 15 calories per pound and, for moderately active females, about 12 calories per pound. See, e.g., Stanford University School of Medicine, Calculating Calories and Fat Grams, at www.stanfordhospital.com/healthLib/atoz/cardiac/formula.html (last visited Dec. 14, 2004).

27 See DECEPTION IN WEIGHT-LOSS ADVERTISING, supra note 24, at 6 (“[T]he amount of weight loss that can be achieved through the use of nonprescription products without reducing caloric intake or increasing exercise is likely to be no more than one-fourth to one-third pound per week with additional weight loss being attributable to reduced caloric intake.”).

28 See, e.g., Dietary Supplements Advertising Guide, supra note 13, at 10 (“Anecdotal evidence about the individual experience of consumers is not sufficient to substantiate claims about the effect of a supplement … . Individual experiences are not a substitute for scientific research.”).
limited number of individuals to substantiate a claim that requires “competent and reliable scientific evidence.”\textsuperscript{29} The usefulness of testimonials is not to substantiate a claim, but to provide a dramatic illustration of how use of the product affected particular individuals. Nevertheless, even that use of testimonials is limited by the requirements of the FTC’s \textit{Endorsements Guide} discussed above. In particular, if a consumer’s experience is not “typical,” the advertisement must disclose that fact as well as the details of a typical experience.\textsuperscript{30}

Consider a testimonial by a consumer who claims to have lost seventy-five pounds over a six-month period by following a new exercise program. The consumer states that regular eating and activity patterns were maintained over this period, except for following the exercise program. If the advertiser has “competent and reliable scientific evidence” that the exercise program will promote seventy-five pounds of weight loss over this period for most consumers, the testimonial can be presented without qualification. Based on standard principles of nutrition and physiology, however, there is no scientific basis for claiming weight loss of about three pounds per week based on exercise alone, unless the exercise is extremely strenuous and prolonged.\textsuperscript{31} Thus, the FTC’s \textit{Endorsements Guide} would require a disclosure that the typical weight loss from the program was much less.\textsuperscript{32}

\textbf{VI. RECENT FTC CASES}

Recent FTC enforcement against advertisers who made weight-loss claims illustrates some of the key elements of the FTC’s approach.

\textbf{A. Skinny Pills}

The FTC alleged that Fountain of Youth Group LLC made deceptive claims for its “Skinny Pill.”\textsuperscript{33} The advertisements claimed that the Skinny Pill caused substantial weight loss overnight while consumers slept. According to the advertisements, the product increased “fat burning,” caused dietary fat to be passed out of the body before it could be digested, and prevented the absorption of carbohydrates. The FTC and defendant settled with a consent judgment, including four million dollars in redress for consumers.

\textbf{B. Peel Away the Pounds}

The advertisements for a product called “Peel Away the Pounds” claimed that wearing a patch daily could result in weight loss of as much as three-to-five pounds per week by boosting metabolism and suppressing appetite, and that the product would cause weight loss for all users.\textsuperscript{34} The settlement included a one million dollar redress order.

\textsuperscript{29} Of course, if sufficient individual accounts can be observed under controlled circumstances, these accounts collectively can become a clinical trial.

\textsuperscript{30} 16 C.F.R. § 255.2(a). Note also that the Guide cautions that a disclosure that simply states, “Not all consumers will get this result” is inadequate. \textit{Id.} § 255.2, Guide 2, Example 1.

\textsuperscript{31} A weight loss of three pounds per week would require a caloric deficit of about 1,500 calories per day. Even strenuous exercise burns only about 300 calories per day in excess of resting levels.

\textsuperscript{32} How should an advertiser determine what is typical? If the advertiser has conducted its own study and the study is reliable, the average weight loss of participants in that study can be used. A more straightforward way to estimate typical weight loss is to use an estimate of the calories burned during the exercise program as a basis for projecting the calorie deficit for the applicable period.


\textsuperscript{34} FTC v. Advanced Patch Tech., Inc., FTC Matter No. 032 33043 (N.D. Ga. settlement filed Mar. 9, 2004).
C. Zero Fat Pills

The FTC sued the country’s largest “home shopping channel” based on alleged violations of a prior FTC order. While several products were involved, the weight-loss claims promoted “For Women Only—‘Zero Fat’” pills, which allegedly prevented absorption of dietary fat. Testimonials claimed weight loss of 50, 60, 100, or more pounds. Another allegation involved “Fat Fighting Bars” and “Fat Fighting System Shakes,” which also claimed to enable users to lose weight. Testimonials claimed weight loss of up to 125 pounds. That complaint was filed on March 25, 2004.

D. Body Flex

In the “Body Flex” case, the FTC challenged claims for a weight-loss product that consisted of a work-out video and an “exercise bar.” Weight-loss claims were made primarily in the form of claims of “lost inches” (e.g., a claim that users would lose four-to-fourteen inches in the first seven days). The workout consisted of stretching and other nonstrenuous exercise that could be performed sitting down. The FTC reached a settlement with the defendants in September 2004, which included $2.6 million in consumer redress.

E. Lessons and Implications

What lessons can we derive from these cases? First, advertisements for Skinny Pills, Peel Away the Pounds, and Zero Fat pills promised significant weight loss without dieting or exercise. Essentially, they promised that the product would cause some physiological effect on the body, either by reducing absorption of nutrients, increasing metabolism, or suppressing appetite. This is the “too easy” approach to weight loss that the FTC highlighted in its media guide. While nonprescription products that do not involve diet or exercise can cause some weight loss, claims that exceed certain levels are vulnerable to challenge by the FTC.

Second, at least one of the campaigns—Peel Away the Pounds—claimed a particular rate of weight loss. Advertisements that claim weight loss in excess of two pounds per week without dieting or exercise are particularly vulnerable to challenge by the FTC. The announcer in the Peel Away the Pounds advertisements claimed weight loss of three-to-five pounds per week, and many testimonials claimed even faster weight loss (e.g., seventy-one pounds in sixty days, and five-to-eight pounds per week). Specific rates of weight loss are more difficult to substantiate than aggregate weight loss that can take place over a long period. The rates of loss claimed in these advertisements are impossible to substantiate based on scientific principles.

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39 See also FTC’s Dietary Supplement Advertising Guide, supra note 13. Even though the Advertising Guide singles out this type of claim, there is no “safe harbor” for weight-loss claims of less than two pounds per week. For example, all ten experts at an FTC workshop concluded that losing more than one pound per week without dieting or exercise is not scientifically feasible. See Deception in Weight-Loss Advertising, supra note 24, at 5.
Third, all three campaigns included testimonials claiming substantial weight loss. The Skinny Pills advertisements included consumer claims of losing 30, 67, and 75 pounds. QVC’s “Zero Fat” claims included a loss of 125 pounds. Even if the advertisements do not mention any particular rate of loss, the FTC views claims of that much weight loss as inherently deceptive. As the Director of the Bureau of Consumer Protection stated when the QVC complaint was issued, “No pill or drink can cause anyone to lose 125 pounds.”

In contrast to these three campaigns, the Body Flex campaign has presented a more difficult case for the FTC. The product consisted of a gym bar and a videotape describing deep-breathing techniques and a nonstrenuous stretching program; total physical activity called for was about fifteen minutes per day. Although the exercise program was not strenuous, it at least had the potential to increase caloric expenditure to some extent. While a specific rate of loss was claimed—losing four-to-fourteen inches in seven days—the weight-loss claims were based on a reduction in inches rather than a reduction in pounds. Because there is not a precise relationship between losing inches and losing pounds, it is more difficult to establish the amount of weight loss that would be required to justify these claims. In fact, the court initially concluded that the advertisements did not make weight-loss claims at all and declined to grant a preliminary injunction.

The Body Flex case suggests that weight-loss claims for products involving exercise are potentially easier to substantiate than products that do not involve dieting or exercise. The calories required for exercise usually are not sufficient to promote significant weight loss, however, unless they are accompanied by dieting. Even a strenuous exercise program for one hour per day might result in increasing caloric expenditure by 300- to-400 calories over normal calorie consumption, if that. Such a level of caloric expenditure would lead to weight loss of less than one pound per week; nonstrenuous programs that last for shorter periods involve even lower caloric expenditure. The FTC argued that the caloric expenditure required by the Body Flex exercise program was so low that it could not conceivably lead to the level of weight loss claimed in the advertising campaign. Consequently, advertisers must be prepared to establish the number of calories expended during an exercise program in order to substantiate a weight-loss claim.

VII. CONCLUSION

As noted earlier, a discussion of the FTC’s substantiation rules will not help advertisers who want to make claims that are inherently incapable of substantiation. Unfortunately, there are numerous such advertisers. Responsible advertisers have every right to feel frustrated because they have to compete by making less dramatic claims. Significant weight loss is difficult because it almost always involves dieting—and few people like to diet. Even strenuous exercise—unaccompanied by any changes in


\[41\] “[The FTC] claims that defendant’s products cannot possibly burn calories and cause weight loss. The defendants are not making those claims. The claims they do make, although admittedly hard to believe, are that the product produces lost inches. Those claims have not been shown by the court to be false.” Transcript of Hearing, FTC v. Savvier, Inc., Dkt. No. CV 03-8159 FMC (C.D. Cal. Dec. 16, 2003).

eating patterns—usually does not lead to significant weight loss unless it is practiced daily over a prolonged period. The fundamental problem with most weight-loss advertising is that there is a powerful incentive for advertisers to state expressly, or at least to imply, that people do not have to change their eating patterns. The FTC’s resources for policing weight-loss advertising claims are taxed because of this powerful market incentive. The epidemic of obesity in the United States will expand the FTC’s task.

Responsible weight-loss product advertisers need to build into their advertising campaigns the message that some dieting is required. If the market worked well—and the FTC could prevent all deceptive weight-loss claims—advertisers of weight-loss products would compete based on how well their product promoted responsible dieting. That product characteristic would be the subject of advertisement claims—not, for example, that the product “burns fat overnight.” The public would benefit also because products do exist (e.g., exercise programs, techniques for changing attitudes and impulsive behavior, and even dietary supplements) that can be effective in promoting sensible eating and calorie reduction. People desperate to lose weight would hear about those products because spurious claims would not drown out less-dramatic—but more useful—advertising messages. Also, there would be greater incentives to bring these effective products to market.