FEDERAL TRADE COMMISSION.

[File No. 982 3035]

Weider Nutrition International, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 6, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Cleland or Lemuel Dowdy, FTC/S–4002, 600 Pennsylvania Ave., NW., Washington, DC 20580; (202) 326–3088 or 326–2981.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commisison's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 5, 2000), on the World Wide Web, at ''http://www.ftc.gov/os/2000/09/index.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania. Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible by a 3½-inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Weider Nutrition International, Inc. (hereinafter ''Weider'').

The proposed consent order has been placed on the public record for thirty (30) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter involves advertisements for a dietary supplement called PhenCal or PhenCal 106. Advertisements claimed that PhenCal and PhenCal 106 have been proven to cause weight loss and to prevent the regaining of lost weight. These advertisements appeared in major newspapers such as the New York Times, the Washington Post, and USA Today.

The proposed complaint alleges that Weider could not substantiate claims that PhenCal and PhenCal 106: (1) Cause significant weight loss; (2) significantly increase a person's ability to maintain a reduced caloric diet and exercise program; (3) significantly reduce food cravings and eating binges; (4) prevent the regaining of lost weight; (5) are as effective as the prescription weight loss treatment commonly known as ''Phen-Fen''; and (6) are safe when used to promote or maintain weight loss. The complaint also alleges that Weider made false representations that claims (1), (3), (4), (5), and (6) above, had been scientifically proven.

The proposed consent order contains provisions designed to prevent the respondent from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondent, when advertising any food, drug, dietary supplement or program, to possess competent and reliable scientific evidence before making claims (1) through (6) above.

Part II of the proposed order requires respondent, when advertising any food, drug, dietary supplement, or program, to possess competent and reliable scientific evidence before making claims relating to—

A. The safety of such product or program;

B. The effect of such product or program on any disease; or

C. The comparative or superior health benefit of such product or program with respect to any other product or program.

Part III prohibits respondent from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study or research in an advertisement for any food, drug, dietary supplement or program.

Part IV allows the respondent to make representations for any drug that are permitted in labeling for that drug under any tentative final or final Food and Drug Administration (''FDA'') standard or under any new drug application approved by the FDA.

Part V allows the respondent to make representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Part VI requires respondent to pay $400,000 to the Commission. These funds will be used for consumer redress or, if that is impracticable, the funds will be paid to the United States Treasury.

Part VII requires respondent to retain, and make available to the Commission, upon request, all advertisements and promotional materials containing any representation covered by the order, as well as any materials that it relied upon in disseminating the representation and any materials that contradict, qualify, or call into question the representation.

The remainder of the proposed order contains standard requirements that the respondent distribute the order to relevant personnel, that respondent notify the Commission of any changes in corporate structure that might affect compliance with the order and that the respondent file one or more reports detailing its compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way its terms.

By direction of the Commission.

C. Landis Plummer,

Acting Secretary.

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