

BEFORE THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
FOOD AND DRUG ADMINISTRATION

In the Matter of
Assessing Consumer Perceptions of Health Claims;
Public Meeting; Request for Comments

Docket No. 2005N-0413

Comments of the Staff of
the Bureau of Economics,
the Bureau of Consumer Protection,
and the Office of Policy Planning
of the Federal Trade Commission

January 17, 2006*

*These comments represent the views of the staff of the Bureau of Economics, the Bureau of Consumer Protection, and the Office of Policy Planning of the Federal Trade Commission. They do not necessarily represent the views of the Federal Trade Commission or any individual Commissioner. The Commission has, however, voted to authorize the staff to submit these comments. Questions or comments concerning this document may be addressed to Dennis Murphy (202-326-3524 or dmurphy@ftc.gov) or Pauline Ippolito (202-326-3447 or pippolito@ftc.gov) in the Bureau of Economics.

I. Introduction

On November 17, 2005, the Food and Drug Administration (“FDA”) held a public meeting to present findings of five recent studies of consumer perceptions of qualified and unqualified health claims for conventional foods and dietary supplements. In the meeting announcement, FDA also sought public comment on (1) available research and the implications of the research for further consumer studies and (2) other approaches that might convey effectively to consumers the strength of science supporting health claims.¹ The staff of the Federal Trade Commission’s Bureau of Economics, Bureau of Consumer Protection, and Office of Policy Planning (“FTC staff”) is pleased to submit this comment in response to FDA’s request for public comment.

In this comment, the FTC staff identifies five findings from the studies that may help guide future research in this area. These findings are: (1) Current FDA language for qualified and unqualified claims does not communicate the intended levels of scientific certainty to consumers; (2) The current language the FDA uses to communicate an unqualified Significant Scientific Agreement claim does not convey strong scientific certainty to consumers; (3) The FTC staff’s research indicates that language may be crafted that will differentiate clearly among differing levels of scientific certainty; (4) The “report card” formats perform consistently well in ranking scientific certainty; and (5) Consumer interpretation of the individual qualified claims that researchers have tested varies widely. The comment then suggests several ways in which researchers might build on these findings.

¹ Assessing Consumer Perceptions of Health Claims; Public Meeting; Request for Comments, Docket No. 2005N-0413, 70 Fed. Reg. 60749, 60750-51 (Oct. 19, 2005) (hereinafter “FDA Public Meeting”).

rating given an FDA “D” level claim.²⁰ Finally, in the France-Bone study, participants did not rate an FDA “A” claim as more certain than an FDA “B” claim.²¹ In short, these results suggest that the current FDA language for qualified claims does not distinguish adequately between the levels of science supporting these claims.

Finding #2: Consumers do not perceive the current FDA SSA claim to convey strong scientific certainty.

Research to date has found consistently that consumers believe that SSA claims are supported by less science than is in fact the case.²² This discounting of what is intended to be the strongest claim available in labeling greatly increases the difficulty of crafting qualified claims that differentiate varying levels of scientific certainty below the level of significant scientific agreement.

Evidence of this discounting can be found in all of the studies that conducted relevant tests. In the FDA study, the average scientific certainty score for the various SSA claims ranged from 3.9 to 4.8 on a 7-point scale.²³ The IFIC study findings are similar.²⁴ The Teratanavat-Hooker study recorded an average certainty rating of 4.11 out of a possible seven points for the

²⁰ Hooker, *supra* note 9, at 19.

²¹ France & Bone, *supra* note 10, at 45.

²² The format for this claim is: “Diets rich in substance X may reduce the risk of disease Y.”

²³ Analysis is based on data provided to FTC staff by FDA staff. Removing the “may” from this claim made very little difference in the certainty scores. The maximum average score achieved was still was only about 4.8.

²⁴ Again, the highest average rating for the SSA claim was 4.8 and the lowest recorded average score was only 2.8 out of a possible seven points. (Analysis is based on data provided to FTC staff by IFIC staff.)

