

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Jonathan Barash (“proposed respondent”). Proposed respondent collaborated with others in the marketing of a purported children’s weight loss product called “Pedia Loss,” and a purported female libido enhancer called “Fabulously Feminine.”

The proposed consent order has been placed on the public record for thirty (30) days for 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 review the agreement in light of 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.

The Commission's complaint charges that advertising for Pedia Loss made unsubstantiated claims that (1) Pedia Loss causes weight loss in overweight or obese children ages 6 and over, and (2) when taken by overweight or obese children ages 6 and over, Pedia Loss causes weight loss by suppressing appetite, increasing fat burning, and slowing carbohydrate absorption. The Commission’s complaint also charges that advertising for Fabulously Feminine falsely represented that clinical testing proves that Fabulously Feminine enhances a woman’s satisfaction with her sex life and level of sexual desire. In addition, the complaint challenges the unsubstantiated claim that Fabulously Feminine will increase a woman’s libido, sexual desire, and sexual satisfaction by stimulating blood flow and increasing sensitivity.

Part I A of the proposed order pertains to Pedia Loss. It requires that proposed respondent possess and rely on competent and reliable scientific evidence to support claims that Pedia Loss or any other covered product or service causes weight loss, suppresses appetite, increases fat burning, or slows carbohydrate absorption; causes weight loss in overweight or obese children ages 6 and over; or causes weight loss by suppressing appetite, increasing fat burning, or slowing carbohydrate absorption, when taken by overweight or obese children ages 6 and over. Part IB of the order pertains to Fabulously Feminine. It requires that proposed respondent possess and rely on competent and reliable scientific evidence to support claims that Fabulously Feminine or any other covered product or service will increase a woman’s libido, sexual desire, or sexual satisfaction.

Part II of the proposed order requires that proposed respondent possess and rely on competent and reliable scientific evidence to support benefits, performance, or efficacy claims for covered products or services defined as any dietary supplement, food, drug, or device, and any health-related service or program promoting weight loss or sexual enhancement.

Part III of the proposed order prohibits proposed respondent from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or studies. Part IV of the proposed order permits proposed respondents to make certain claims for drugs or dietary supplements that are permitted in labeling under laws and/or regulations administered by

the U.S. Food and Drug Administration.

The remainder of the proposed order contains standard requirements that proposed respondent maintain advertising and any materials relied upon as substantiation for any representation covered by substantiation requirements under the order; distribute copies of the order to certain company officials and employees; and file one or more reports detailing their compliance with the order. Part IX of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

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