



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Consumer Protection
Division of Advertising Practices

October 14, 2005

Ms. Dorith Schwartz, President
Ms. Rita Vaccaro, Executive Vice-President
DK & Associates, Inc.
560 Sylvan Avenue, 3rd Floor
Englewood Cliffs, NJ 07632

VIA FEDERAL EXPRESS TO

Mr. Sheldon S. Lustigman, Esq.
The Lustigman Firm
149 Madison Avenue, Suite 805
New York, NY 10016
Attorney for Ms. Schwartz, Ms. Vaccaro, and DK & Associates, Inc.

Re: *Dori Klein & Associates*, FTC Matter No. 0423134

Dear Ms. Schwartz and Ms. Vaccaro:

As you know, the staff of the Federal Trade Commission has conducted an investigation into whether you and your company violated Sections 5(a) and 12 of the Federal Trade Commission Act in connection with your involvement in disseminating certain weight-loss product advertisements. Our investigation focused on whether you disseminated those ads under circumstances such that you either knew or should have known that they contained false weight-loss claims. Attached are examples of some of the ads that concerned the staff, including ads for Chinese Diet Tea, Himalayan Diet Breakthrough, Hydro-Gel Slim Patch, and Slenderstrip.

Chinese Diet Tea

You have placed numerous ads for Chinese Diet Tea. The attached ad features testimonials from a number of purported users who claim to have lost nearly a pound a day without reducing caloric intake. The ad claims that Chinese Diet Tea will eliminate an amazing 91% of absorbed sugars and prevents 83% of fat absorption. The ad promises that the tea “Sheds pound after pound of fat — fast!” and that “You eat your favorite foods — but still lose weight!” In November 2004, the FTC filed a case¹ challenging as false the following claims made by this ad:

¹ *FTC v. Bronson Partners, LLC*, Civil Action No. 304 CV 1866 (D. Conn., filed Nov. 4, 2004).

- Chinese Diet Tea causes rapid and substantial weight loss without the need to reduce caloric intake or increase physical activity;
- Chinese Diet Tea enables users to lose as much as six pounds per week over multiple weeks and months without the need to reduce caloric intake or increase physical activity;
- Chinese Diet Tea enables users to lose substantial weight while enjoying their favorite foods, including foods high in sugar and animal fat;
- Chinese Diet Tea blocks the absorption of fat and calories, thereby enabling users to lose substantial weight; and
- Chinese Diet Tea causes substantial weight loss for all users.

Himalayan Diet Breakthrough

The second attached ad is for the Himalayan Diet Breakthrough. The ad features a testimonial from a young woman who claimed to have lost 37 pounds in two months. It also features statements such as: "There is now an all-natural (and ultra-fast acting) diet formula which destroys fat . . . even if . . . you cheat or refuse to diet" and "It Burns Off More Fat Than Running 98 Miles Per Week!" In October 2004, the FTC filed a case² challenging as false the following claims made by this ad:

- Himalayan Diet Breakthrough causes rapid and substantial weight loss, including as much as 37 pounds in 8 weeks, without the need to reduce caloric intake or increase exercise;
- Himalayan Diet Breakthrough causes users to lose substantial weight, including as much as 37 pounds in 8 weeks, while still consuming unlimited amounts of food, including anything and everything they want;
- Himalayan Diet Breakthrough causes substantial weight loss, including as much as 37 pounds in 8 weeks, by preventing the formation of body fat;
- Himalayan Diet Breakthrough causes substantial weight loss for all users; and
- Himalayan Diet Breakthrough enables users to safely lose as much as 37 pounds in 8 weeks.

Hydro-Gel Slim Patch

The third attached ad is for Hydro-Gel Slim Patch. The headline of the ad claims: "No starvation diets, small portions or missed meals! . . . No impossible back-breaking exercises! . . . Just fast and easy, LASTING weight loss!" The ad also contains a depiction of before and after photos of a user who purportedly lost 31 pounds over 28 days. The ad contains several other statements, such as: "It is not a boring, soul-destroying diet. It doesn't require grueling exercise. . . . Best of all, you continue to eat your favorite foods! . . . After just a few days on the Hydro-Gel Slim Patch program you will notice the pounds begin to melt away." In December 2003, the

² *FTC v. AVS Marketing, Inc.*, Civil Action No. 040 6915 (N.D. Ill., filed Oct. 27, 2004).

FTC filed a case³ challenging as false the following claims made by this ad:

- Hydro-Gel Slim Patch causes rapid and substantial weight loss without the need to reduce caloric intake or increase exercise;
- Hydro-Gel Slim Patch enables users to lose as much as a pound a day over multiple weeks and months, without the need to reduce caloric intake or increase exercise;
- Hydro-Gel Slim Patch works for all overweight users; and
- Hydro-Gel Slim Patch causes permanent weight loss.

Slenderstrip

The fourth attached ad is for Slenderstrip. The ad claims: "WATCH FAT MELT AWAY WITH Slenderstrip" and "No impossible exercise! No missed meals! . . . No boring foods or small portions! Just fast and easy, effective weight loss!" The ad further claims: "Slenderstrip is the answer for anyone who has tried to lose weight and failed – anyone who has lost weight only for it to pile back on – in fact anyone who is losing the battle of the bulge!" The ad also contains a depiction of before and after photos of a user who allegedly lost 65 pounds using Slenderstrip and claims users can lose up to 90 pounds in 90 days. The ad contains numerous other weight-loss claims as well, such as "It is not a boring, soul-destroying diet. It doesn't require grueling exercise." In the same action described above,⁴ the FTC challenged as false the following false claims made in this ad:

- Slenderstrip causes rapid and substantial weight loss, without the need to reduce caloric intake or increase exercise;
- Slenderstrip enables users to lose as much as a pound a day over multiple weeks and months, without the need to diet or exercise; and
- Slenderstrip works for all overweight users.

We believe that each of the above-referenced ads contained facially false claims. Other ads that you have disseminated, including ads for Apple Cider Vinegar capsules, Algoxyl elixir, Plant Macerat, Montignac weight-loss plan, Maggie Drozd, Metabolism Booster, and Super Fat Burner, appear to raise similar concerns. We have attached samples of these ads to this letter.

In sum, our investigation revealed that you have placed advertisements in national media for numerous weight-loss products that contain likely false claims. As you may know, the Federal Trade Commission has announced a campaign to assist legitimate media companies to screen out ads for weight-loss products that contain false claims. To support this initiative, the FTC released a media reference guide entitled *Red Flag Bogus Weight-Loss Claims* to assist in the identification of false claims. A copy of the *Red Flag* guide is included with this

³ *FTC v. No. 1025798 Ontario, Inc.*, Civil Action No. 03-CV-00910A(SC) (W.D.N.Y., filed Dec. 3, 2003).

⁴ *Id.*

Ms. Schwartz and Ms. Vaccaro

October 14, 2005

Page 4

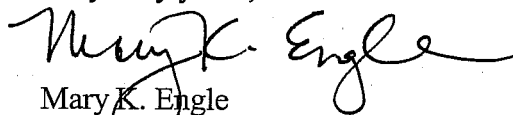
correspondence. The *Red Flag* guide identifies seven false weight-loss claims, including that a product will:

- Cause weight loss of two pounds or more a week for a month or more without dieting or exercise;
- Cause substantial weight loss no matter what or how much the consumer eats;
- Cause permanent weight loss (even when the consumer stops using 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.

All of the claims in the ads you placed that the FTC has challenged (identified above) are referenced in the *Red Flag* guide.

Although the staff continues to have concerns about the above issues, we have decided to close this investigation. This action is not to be construed as a determination that a violation may not have occurred, just as the pendency of an investigation should not be construed as a determination that a violation has occurred. The Commission reserves the right to take such further action as the public interest may require. We know that no reputable ad placement agency wants to participate in the dissemination of false advertisements. Accordingly, we urge you to review and follow the enclosed *Red Flag* guide.

Very truly yours,



Mary K. Engle
Associate Director

Division of Advertising Practices