

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright
 Terrell McSweeney

In the Matter of

WACOAL AMERICA, INC.
a corporation.

Docket No. C-

COMPLAINT

The Federal Trade Commission, having reason to believe that Wacoal America, Inc. (“Respondent”) has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a Delaware corporation with its principal office or place of business at One Wacoal Plaza, Lyndhurst, New Jersey.
2. Respondent advertises, offers for sale, sells and distributes women’s undergarments under the brand name iPants, including bike shorts, tights and leggings (collectively the “Garments”), which incorporate microcapsules containing caffeine and other ingredients in the fabric. The Garments are “devices” and the encapsulated caffeine and other ingredients are a “drug” and/or “cosmetic” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.
3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.
4. The retail price of the Garments ranges from \$44 to \$85, depending on the style. Respondent promotes the Garments as able to slim the body and reduce cellulite.
5. Beginning not later than April 2011, Respondent has disseminated or has caused the dissemination of promotional materials for the Garments, including, but not limited to, print advertisements, point-of-sale displays and videos and online and mail order catalogs in the attached Exhibits A to G. These promotional materials contain the following statements and depictions:

A. (Exhibit A – print ad)

NEW

Anti-Cellulite Hi-Waist iPant

B. (Exhibit B – product hangtags)

Novarel Slim microfiber incorporates microcapsules containing **caffeine**, retinol, ceramides and other **active principles** that improve skin's appearance and control cellulite. The caffeine activates **microcirculation** and speeds up the breakdown of fat. The active principles are released during the garment's use, providing a permanent anti-cellulite effect.

After 28 days of use of this garment:

- 76% Slimming efficiency*
- 72% Users feel lighter*
- 63% State orange peel reduction*

*Clinical and sensorial trial carried out by an independent laboratory.

C. (Exhibit C – Wacoal-sponsored Facebook post, 1/28/11)

Wacoal Debuts Revolutionary iPant New shapewear that works with your body to eliminate cellulite

D. (Exhibit D – product hangtag)

HOW IT WORKS

It is recommended to wear the iPant 8 hours a day, 7 days a week for 28 days.

Novarel Slim® test results show most women reported improved appearance, a reduction in thigh measurement and that their clothes felt less tight.

E. (Exhibit E – point-of-sale video script)

Introducing, the revolutionary new anti-cellulite iPant from Wacoal. Superior comfort and smoothing, with amazing cosmetic benefits that fight cellulite. Made with Novarel Slim® nylon microfibers, embedded microcapsules combine the best selection of active ingredients: caffeine, retinol, ceramides, vitamin E, fatty acids and aloe vera. Caffeine is a renowned active slimming agent that promotes fat destruction.

F. (Exhibit F – print ad, appeared in *Glamour*, September 2011, and incorporated in point-of-sales poster)

iPant Anti-Cellulite Shapewear

Wacoal's new iPant offers superior comfort and smoothing along with amazing cosmetic benefits. The iPant is constructed of Novarel Slim® nylon microfibers with embedded microcapsules containing caffeine to promote fat destruction, vitamin E to prevent the effects of aging, ceramides to restore and maintain the skin's smoothness, and retinol and aloe vera to moisturize and increase the firmness of the skin.

G. (Exhibit G – Wacoal-sponsored blog post, 8/18/11)

My iPant and I, a perfect pair

As national spokesperson for Wacoal, I always have to look my best, which, for me, means slipping into a shaper as often as possible. I know that when I'm wearing Wacoal shapewear, I'll always have a great silhouette. So in January when Wacoal introduced the revolutionary new iPant – with microfibers containing caffeine to promote fat destruction; vitamin E to prevent the effects of aging; ceramides to restore and maintain the skin's smoothness; and retinol and aloe vera to moisturize and increase the firmness of the skin – I couldn't have been more delighted. It was a love affair at first sight (or sit!).

Efficacy Claims

6. Through the means described in Paragraph 5, Respondent has represented, expressly or by implication, that

- A. the Garments eliminate or substantially reduce cellulite;
- B. the Garments cause a substantial reduction in the wearer's thigh measurement; and
- C. the Garments contain caffeine, which causes the destruction of fat cells and results in substantial slimming.

7. Through the means described in Paragraph 5, Respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 6 at the time the representations were made.

8. In truth and in fact, Respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 6, at the time the representations

were made. Therefore, the representation set forth in Paragraph 7 was, and is, false or misleading.

Establishment Claims

9. Through the means described in Paragraph 5, Respondent has represented, expressly or by implication, that

- A. scientific tests prove that most iPant wearers achieve a substantial reduction in thigh measurement; and
- B. scientific tests prove that wearing the Garments for eight hours a day for 28 days will substantially reduce a wearer's thigh measurement.

10. In truth and in fact,

- A. scientific evidence does not prove that most iPant wearers achieve a substantial reduction in thigh measurement; and
- B. scientific tests do not prove that wearing the Garments for eight hours a day for thirty days will substantially reduce a wearer's thigh measurement.

Among other things, the evidence relied on by Respondent for its representations concerning the Garments consisted primarily of results from two unblinded, uncontrolled clinical trials with significant methodological flaws. Moreover, Respondent exaggerated the results of the studies: the average reported reduction in hip circumference was less than one-fourth of an inch and the average reported reduction in thigh measurement was less than one-sixth of an inch. Therefore, the representations set forth in Paragraph 9 were, and are, false and misleading.

11. The acts and practices of Respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this day of , 201 , has issued this complaint against Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: