

Analysis of Proposed Consent Order to Aid Public Comment In the Matter of TruHeight, File No. 242-3093

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an agreement containing a consent order from Vanilla Chip LLC, which does business as TruHeight (“TruHeight”), Eden Stelmach, and Justin Rapoport (collectively, “Respondents”).

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

This matter concerns TruHeight’s marketing and sale of a line of dietary supplements (the “TruHeight Products”). The complaint alleges that Respondents deceptively advertised the TruHeight Products, in violation of Sections 5 and 12 of the FTC Act and the Reviews and Testimonials Rule. It alleges that Respondents made unsubstantiated claims that TruHeight Products cause increased height and height growth in children and teenagers, and that clinical studies showed that TruHeight Products were effective. The complaint also alleges that Respondents used fake consumer reviews and fake social media profiles to market TruHeight Products, and offered consumers incentives (including discounts and free products) in return for leaving positive reviews of TruHeight Products on Respondents’ website and on third-party platforms.

The proposed order includes injunctive relief that prohibits these alleged violations and fences in similar and related conduct. The provisions of the order apply to any dietary supplement, food, or drug marketed or sold by Respondents.

Provision I prohibits representations about increased height and height growth unless they are non-misleading and substantiated by competent and reliable scientific evidence.

Provision II prohibits representations about the health benefits, performance, efficacy, safety, or side effects of covered products other than those covered by Provision I, unless they are non-misleading and supported by competent and reliable scientific evidence.

Provision III sets forth document preservation obligations regarding any competent and reliable scientific evidence proposed respondents would rely on to satisfy their obligations under Provisions I and II of the order.

Provision IV contains a standard carve-out to Provisions I and II for FDA-approved claims.

Provision V prohibits misrepresentations about the existence of reviewers and testimonialists, and their experience with covered products.

Provision VI prohibits providing compensation or other incentives to consumers in return for writing a consumer review conditioned on expressing a particular sentiment.

Provision VII requires Respondents to pay the Commission \$750,000, to be paid in three installments. Upon making the required payment, the remainder of Respondents' liability will be suspended. Provision VIII sets out additional requirements related to the monetary relief. Provision IX requires the respondents to provide customer information to facilitate consumer redress.

Provisions X through XIII of the proposed order contain reporting and compliance provisions. Provision X mandates that Respondents acknowledge receipt of the order, distribute the order to principals, officers, and certain employees and agents, and obtain signed acknowledgments from them. Provision XI requires them to submit compliance reports to the Commission one year after the order's issuance and submit notifications when certain events occur. Under Provision XII, they must create certain records for ten years and retain them for five years. Provision XIII provides for the Commission's continued compliance monitoring of the respondents' activity during the order's effective dates.

Finally, Provision XIV provides the effective dates of the order, including that, with exceptions, the order will terminate in 20 years.

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