

The Controversial Advertising case: Weigh-Loss Product— Hoodia

Marketing advertising and public policy

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- **Introduction:**

Obesity has been a critical health issue in the United States so, unsurprisingly, millions of Americans are trying to lose weight. The marketplace has reacted with a proliferating array of products and services, many promising phenomenal quick-fix remedies. Hoodia was one of the weight loss products that was advertised as a natural and effective remedy by Nutraceuticals International and Stella Labs. Nutraceuticals International and Stella Labs are the suppliers of the ingredient Hoodia gordonii (hoodia), and they claim that consumers are able to lose weight and suppress appetites by using hoodia, which is found in Southern Africa. However, the Federal Trade Commission (FTC), as a significant regulatory agency in preventing unfair methods of competition and unfair or deceptive acts or practices in the marketplace for the protection of consumers, charged both companies with false and deceptive advertising in violation of Section 5 and 12 of the FTC Act¹. The FTC questioned Nutraceuticals International and Stella Labs not only for making fraudulent and deceptive claims about Hoodia's obesity fighting qualities, but also, on many occasions, falsely claimed that their product was from the native African plant Hoodia gordonii, which is a flagrant fabrication. Based on these reasons, the Commission requested that the court order these two companies not to make false or deceptive statements, and it also

¹ Federal Trade Commission Act . (2011, Feb 3). Legal Resources - Statutes Relating to Both Missions.

sought to bar them from deceptively advertising hoodia and forced them to disgorge the profits made from their untruthful hoodia sales.

- **Factual Overview:**

New Jersey-based Stella Labs and Delaware-based Nutraceuticals International were raw material suppliers of botanical extracts, amino acids, and specialty ingredients. These two suppliers made false and deceptive claims to promote, advertise, sell, and distribute the supposed hoodia to trade customers who manufactured and marketed supplements. They were also charged for providing deceptive advertising and promotional materials for trade customers to validate their claims; therefore, these trade customers had the means to mislead consumers who purchased weight-loss products purportedly containing hoodia². In General, the FTC accused Stella Lab and Nutraceuticals International of making false and deceptive claims, expressly or by implication, about the product they sold as hoodia: causing substantial weight loss; causing users to reduce caloric intake by 1000 to 2000 calories per day; suppressing appetite sufficiently to cause substantial weight loss in humans; and being an effective treatment for obesity.

²Federal Trade Commission. (2009, April 27). FTC Charges Marketers of 'Hoodia' Weight Loss Supplements With Deceptive Advertising.

Hoodia is often advertised as a natural appetite suppressant from Southern Africa, with no side effects as seen by the tribesmen who have used it to control hunger for centuries. According to Stella Labs and Nutraceuticals International, the product they sold is authentic Hoodia gordonii and is the only FDA-approved one in the United States. Nevertheless, the product sold by these two suppliers was not authentic Hoodia gordonii, and the FDA had not approved the product yet. In fact, Hoodia has not been evaluated by the FDA for safety, effectiveness or purity. Although initial clinical studies showed positive results, the real effect of hoodia as a weight loss product has not officially been proven. Additionally, it is unknown how hoodia will affect people who are taking prescription drugs and whether this could affect liver function. Due to the fact that there are some health concerns related to the use of hoodia, patients who have diabetes, heart problems, and a bleeding or blood clotting disorder should not take hoodia without consulting with a doctor first. As a result, the FTC charged Nutraceuticals International and Stella Labs for making falsified claims about their product and exaggerated the effectiveness of hoodia with deceptive advertising in 2009. On November 3, 2011, the case ratified against the companies, Nutraceuticals International and Stella Labs, who were prohibited from making any further weight-loss claims about future dietary supplements³. Besides, the

³The Senators Firm. (2011). FTC Charges Against Hoodia Suppliers Settled.

two companies were fined \$22.5 million for their involvement in fraudulent and deceptive practices. Other participants involved in this operation were also fined millions of dollars.

- **Issues presented**

The FTC alleged that New Jersey-based Stella Labs and Delaware-based Nutraceuticals International misled consumers by falsely asserting that their ingredient was derived from the Southern African Hoodia gordonii and making false and deceptive claims about hoodia effectiveness⁴. At first, these two companies claimed that their hoodia reduces appetite, thereby causing significant weight loss in humans, but certain research found that hoodia was no better than a placebo for affecting energy intakes or body weight. Secondly, they maintained that clinical studies proved that users are capable of reducing caloric intake by 1000 to 2000 calories a day with hoodia, but in fact, clinical studies do not prove that hoodia has such miraculous influence on the reduction of caloric intake. Further, they presented their product, expressly or by implication, as authentic Hoodia gordonii and as the only FDA-approved Hoodia gordonii in the United State. However, the product sold by them was not authentic Hoodia gordonii and had not been officially approved by

⁴ Elaine, W. (2011, November 04). More bad press for hoddia as FTA crack down on firms in false advertising case. *Nutra*.

the FDA. Next, these two companies claimed that there are no side effects from the usage of hoodia since the San Bushman people in Southern Africa have used it to stop hunger, but the San people using this product for centuries does not justify that it is a safe product. Last but not least, they have provided their trade customers with advertising, promotional, and unsubstantiated materials for the commission of deceptive acts and practices. Based upon these claims and practices, the FTC thought that consumers throughout the United States have suffered considerable monetary loss due to these two companies' unlawful practices. Additionally, the companies were likely to continue to injure consumers, reap unjust enrichment, and harm the public interest if unregulated.

The Federal Trade Commission has the authority to regulate advertising practices by enforcing laws, so people can be protected from unfair or deceptive advertising. According to the FTC, an adequate advertisement should be truthful and accurate, and all claims made in an ad should be sufficiently substantiated. In order to fulfill the legal requirement of advertising substantiation, advertiser and ad agencies should have a reasonable basis for advertising claims before dissemination⁵. In this case, New Jersey-based Stella Labs and Delaware-based Nutraceuticals International exaggerated the efficacy of hoodia without providing a reasonable basis for their

5. Federal Trade Commission. (1989). FTC policy statement regarding advertising substantiation.

claims. The absence of reasonable support to their expressed or implied claims might seriously mislead customers who are eager for weight loss to purchase hoodia, which constitutes a deceptive practice and the making of false advertisement, in or affecting commerce, in violation of Section 5 and 12 of the FTC Act. In other words, New Jersey-based Stella Labs and Delaware-based Nutraceuticals International failed to provide representations of substantiation, which is the driving force of consumer purchase. As a result, their deceptive and false advertising seriously jeopardized public interest.

- **Policy analysis**

Advertising or commercial speech is protected by the First Amendment of the U.S. Constitution. When commercial speech goes too far and encroaches on public interest, the Federal Trade Commission is empowered to regulate unfair or deceptive acts or practices in or affecting commerce. Basically, Section 5, 12, and 15 of the FTC Act can be boiled down to two important principles: 1) advertising must be truthful and not misleading; and 2) before disseminating an ad, advertisers must have adequate substantiation for all objective product claims⁶. New Jersey-based Stella Labs and Delaware-based Nutraceuticals International have represented expressly or by implication “that only Hoodia gordonii has shown proven results as a highly

⁶Bureau of Consumer Protection. (2011, April). Dietary Supplements: An Advertising Guide for Industry.

effective appetite suppressant, so it is the world's best chance at a cure for obesity".

From the FTC perspective, the claim is indeed a deceptive advertisement. First of all, the advertisement contains a misrepresentation (e.g. the world's best remedy for obesity) and omission (e.g. evidence of proven results) that is likely to mislead consumers acting reasonably under the circumstances to their detriment. In this way, because of inaccurate and incomplete information provided by these two companies, hoodia consumers are likely to reach false beliefs that they can lose a significant amount of weight because of the best product in the world. Secondly, the FTC believes that to be deceptive representation, omission or practice must be likely to mislead reasonable consumers under the circumstances⁷. When representations or advertising practices are targeted to a specific audience, the commission decides the effect of the practice on a reasonable member of that group. In the hoodia case, people who want to lose weight might be particularly susceptible to the exaggerated claim that the product is an effective appetite suppressant and thus able to cure obesity. To obese consumers, the promise of curing obesity is the Siren's call; accordingly, they would be easily misled by the unqualified commercial claims. Furthermore, the third element of deception is materiality. Namely, a representation, omission or practice must be the one which is likely to affect a consumer's choice of or conduct regarding

⁷ Federal Trade Commission. (1983, October 14). FTC Policy Statement of Deception.

a product. In this case, the two companies not only did not provide adequate evidence to support that their product is the world's best cure for obesity, but they also omitted potentially unknown side effects of using hoodia. The omission material is extremely significant to consumers for it involves health and safety. Consumers probably would choose other alternatives if they are informed of the unknown side effect brought by the hoodia product. In a nut shell, the inaccurate claim (e.g. the world's best cure for obesity) and the omitted information (e.g. unknown side effect) are material; therefore, injury is likely.

An advertisement can also be deceptive due to what it fails to say. When New Jersey-based Stella Labs and Delaware-based Nutraceuticals International promoted hoodia, they claimed that “their hoodia is grown from seedlings on approved farms in South Africa with the knowledge and help of the San People⁸”. However, the product sold by these two companies as Hoodia gordonii was not authentic Hoodia gordonii, in one or more instances. Section 15 of the FTC Act requires advertisers to disclose information if the information is material with regard to representations made or suggested by the advertisement. The claim is misleading enough since the purity and authenticity of hoodia might be a crucial factor in influencing consumers' decision. Thus, a failure to complete its commercial claim (authentic hoodia) is regarded as an

⁸ United States District Court District of New Jersey. (2009, March 20). Case2;09-cv-01262-WJM-CCC

unfair and deceptive act or practice.

Under FTC law, advertisers not only should convey product claims clearly and accurately, but they also need to substantiate their claims. Prior to disseminating an ad, advertisers must possess a certain level of support to all expressed and implied commercial claims. For the purpose of attracting customers' attention, New Jersey-based Stella Labs and Delaware-based Nutraceuticals International cited a clinic study performed by Phytopharm, claiming that hoodia can cause users to reduce daily caloric intake by 1000-2000 calories. While the results were positive, the sample size was too small to totally validate hoodia's effectiveness. The study was not published in a medical journal, and therefore no one can review the results and the methodologies used. As a result, the lack of competent and reliable scientific research in claiming hoodia's effect in reducing calorie consumption from 1000-2000 a day might not be adequately substantiated by the Commission's standard.

Normally, consumers make their choices based on advertising to some extent. The dissemination of false or misleading information may distort consumer selection-making. If the entire field of weight- loss advertising is subject to untruthful, inaccurate, and unfair practices, the advertising loses its important role in the efficient allocation of resources in a free market economy⁹. Even more detrimental, if the

⁹ Federal Trade Commission Staff Report. (2002, September). Weight Loss Advertising: An analysis of Current Trends.

quick-fix remedy drives the marketplace, then other competitors may be forced to follow the lead to survive in the over exaggerated commercial advertising field. Also, public interest will be endangered. In consequence, for consumer protection, maintaining a marketplace free of unfair and deceptive acts or practices is the biggest objective of the FTC and government.

- **Recommendations**

Overweight and obesity have been primary health issues in the United States. The popularity of advertising for weight loss products and services reflects the burgeoning public need. The hoodia product is one of the examples that demonstrates consumers are easily misled by unproven or worthless weight loss product through false and deceptive acts or practices. Being accused by the FTC, New Jersey-based Stella Labs and Delaware-based Nutraceuticals International were banned from making any weight loss claims related to food, drugs, and dietary supplements. Also, the final settlement imposed multi-million fines on the two companies. This case is witness to the FTC's ongoing efforts to impede bogus health claims.

In order to achieve a more efficient manner to stop unfair claims of weight loss products, industry self- regulation and media screening are essential. Certain over-exaggerated claims would drive or distort the weight-loss product marketplace,

so other companies might be compelled to promise the impossible. In this way, it is necessary for industry associations to establish clear rules or voluntary guidelines that address issues related to product advertising¹⁰. Self-regulation is the first mechanism to make sure the quality of advertising that is under the FTC's guidelines. Nowadays, media plays an important role in disseminating information including deceptive weight-loss ads. Media can compare ads they receive with the FTC's standard and filter out false ads before they reach consumers¹¹. The dissemination of overhyped, unfair, deceptive weight-loss advertising can be stopped by the media's involvement in implementing viable media clearance standards in advance. Besides, the media can be a great education channel to inform the public about the risks of unhealthy approaches to weight loss, the benefits of losing weight in a healthy way, and realistic expectations toward weight-loss products or services. In fact, the FTC prepared a list of obviously false weight-loss advertising claims, but the public was still only partially informed on the subject. Clearly, there is an apparent need for media to continue distributing this form of guidance to consumers. Thus, consumers are able to identify specific weight-loss claims that are not scientifically feasible while in fact are untruthful and deceptive.

¹⁰ Federal Trade Commission Staff Report. (2003, December). Deception in Weight-loss advertising Workshop: Seizing Opportunities and Building Partnerships to Stop Weight-Loss Fraud.

¹¹ Federal Trade Commission Staff Report. (2003, December). Deception in Weight-loss advertising Workshop: Seizing Opportunities and Building Partnerships to Stop Weight-Loss Fraud.

- **Conclusion**

Personally, I agree with the FTC's charge that New Jersey-based Stella Labs and Delaware-based Nutraceuticals International constitute a deceptive practice and the making of false advertisements, in or affecting commerce, in violation of Section 5 and 12 of the FTC Act. Hoodia, a succulent plant native to Southern Africa, was overly marketed as a miraculous weight-loss ingredient to consumers throughout the United States, but there are still many unknown side effect of the usage of hoodia. The dissemination of deceptive, false, and misleading claims in weight loss advertising is outrageous and potentially dangerous, resulting in unacceptable injury to consumers and legitimate businesses. Many unproven values of weight -loss ingredients are linked to serious health risks, in which case public interest would certainly be endangered. As a result, the FTC should continue to scrutinize weight-loss advertising for better consumer protection. Industry self-regulation and media screening should be emphasized and practiced for the improvement of weight-loss advertising.

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