Analysis of Proposed Consent Order to Aid Public Comment

In the Matter of Beiersdorf, Inc., File No. 092-3194

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an Agreement Containing Consent Order from Beiersdorf, Inc. ("respondent"). The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) 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 involves the advertising, marketing, and sale of "NIVEA My Silhouette! Redefining Gel-Cream" ("My Silhouette") by respondent. Respondent has marketed My Silhouette to consumers through third-party retail outlets.

My Silhouette is a skin cream that contains "Bio-slim Complex," a combination of ingredients that includes white tea and anise. According to the FTC complaint, respondent promoted My Silhouette as able to slim and reshape the body.

Specifically, the FTC complaint alleges that respondent represented, in various advertisements, that regular use of My Silhouette results in significant reductions in body size. The complaint alleges that this claim is false and thus violates the FTC Act.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts or practices in the future. Specifically, Part I prohibits respondent from claiming that My Silhouette or any other topically applied product causes substantial weight or fat loss or a substantial reduction in body size.

Part II covers any representation that a drug, dietary supplement, or cosmetic causes weight or fat loss or a reduction in body size. Part II prohibits respondent from making such representations unless the representation is non-misleading, and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates that the representation is true. For purposes of Part II, the proposed order defines "competent and reliable scientific evidence" as at least two randomized, double-blind, placebo-controlled human clinical studies that are conducted by independent, qualified researchers and that conform to acceptable designs and protocols, and whose results, when considered in light of the entire body of relevant and reliable scientific evidence, are sufficient to substantiate that the representation is true.

Part III of the proposed order prohibits respondent from making representations, other than representations covered under Parts I or II, about the health benefits of any drug, dietary supplement, or cosmetic, unless the representation is non-misleading, and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable

scientific evidence, to substantiate that the representation is true. For purposes of Part III, the proposed order defines "competent and reliable scientific evidence" as "tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, and that are generally accepted in the profession to yield accurate and reliable results."

Part IV of the proposed order states that the order does not prohibit respondent from making representations for any drug that are permitted in labeling for that drug under any tentative or final standard promulgated by the Food and Drug Administration ("FDA"), or under any new drug application approved by the FDA. This part of the proposed order also states that the order does not prohibit respondent from making representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Part V of the proposed order requires respondent to pay nine hundred thousand dollars ($900,000) to the Commission to be used for equitable relief, including restitution, and any attendant expenses for the administration of such equitable relief.

Parts VI, VII, VIII, and IX of the proposed order require respondent to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to its personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part X provides that the order will terminate after twenty (20) years, with certain exceptions.

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