



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

Office of the Secretary

VIA UNITED STATES MAIL

January 12, 2011

Timothy G. Blood, Esq.
Blood Hurst & O'Reardon LLP
600 B Street, Suite 1550
San Diego, CA 92101

Re: Nestlé HealthCare Nutrition, Inc. (File No. 0823145)

Dear Mr. Blood:

Thank you for your comment on the proposed consent order accepted by the Federal Trade Commission for public comment in the above-captioned matter. Your comment suggests that the proposed consent order, while laudable, does not go far enough and should require respondent to disseminate corrective advertising. Your comment also states that respondent should pay a significant monetary fine, referring to another Commission case in which a defendant agreed to pay equitable monetary restitution for consumer redress. The Commission has placed your comment on the public record and reviewed it in connection with its decision concerning whether to accord final approval to the proposed consent order.

The Commission's proposed complaint in this matter alleges that respondent's advertising claims constituted unfair or deceptive acts or practices in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. § 45(a) and 52. Sections 5 and 12 do not authorize the Commission to obtain fines or civil penalties based on these allegations. If respondent violates the Commission's final order, however, it would be liable for civil penalties of up to \$16,000 per violation, pursuant to Section 5(l) of the FTC Act, 15 U.S.C. § 45(l). With respect to corrective advertising, given the short duration of the challenged ad campaign, the Commission believes that the order appropriately addresses the violations alleged by requiring FDA approval for future upper respiratory tract infection claims, as well as rigorous substantiation for other claims.

After considering your comments, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without the suggested modifications. A copy of the final Decision and Order is enclosed for your information. Relevant materials also are available from the Commission's Website at <http://www.ftc.gov>.

It helps the Commission's analysis to hear from a variety of sources in its work, and we appreciate your interest in this matter.

By direction of the Commission.

Donald S. Clark
Secretary