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LEGISLATION, REGULATIONS & STANDARDS

FTC Warns Companies and Social Media Influencers on Sponsorship Disclosure

The Federal Trade Commission (FTC) sent 90 letters to companies and social media influencers warning of the requirement to disclose material connections to brands in advertisements appearing on social media channels. Celebrities and other influencers frequently post photos and updates for products they were paid to promote—including, often, cosmetics and dietary supplements—and many fail to disclose the financial or other gains the company has provided to them.

In addition to influencers, the letters targeted several dietary-supplement, cosmetics and skincare companies, including Josie Maran Cosmetics, Hairburst Ltd., Glanbia Nutritionals, Lancer Skin Care LLC, ToGoSpa LLC, Optimum EFX Formulations LLC and Rodial Ltd. *See Women's Wear Daily*, May 8, 2017.

California Considers Bill Requiring Professional Cosmetic-Ingredient Disclosure

The California State Legislature is considering a bill that would require all professional cosmetic products manufactured or sold in the state—including online sales—to be sold with labels disclosing all ingredients in order of weight. Manufacturers with websites would be required to disclose the information online as well.

Laurie Henry
816.559.2421
lhenry@shb.com

New Dietary Supplement Informational Website Available to the Public

The Uniformed Services University of the Health Sciences' Consortium for Health and Military Performance has created a dietary-supplement website that provides military service members and the public with articles, videos and other educational materials. Operation Supplement Safety includes a list of dietary supplements banned by the Department of Defense and provides information on supplements considered high-risk because of stimulant, steroid or controlled-substance ingredients.

GLOBAL

European Countries Can Set Maximum Levels for Vitamins and Minerals, ECJ Rules

The European Court of Justice (ECJ) has ruled that individual member states can only set their own maximum levels for vitamins and minerals in products if they consider international risk assessments and relevant scientific data rather than "purely hypothetical considerations." The ruling is part of a dispute between France and a supplement maker selling products exceeding the country's maximum levels, which are lower than those of other EU states. ECJ ruled that France violated EU law by failing to establish a consistent process for registration of food supplements legally made and sold in other member states and must reconsider its own levels using assessments such as those made by the European Food Safety Authority or the U.S. National Academy of Medicine.

LITIGATION

Consumer Challenges Effectiveness of Garcinia Cambogia Supplement

A California consumer has filed a proposed class action alleging Vitamin Shoppe, Inc.'s weight-loss supplements have no more effect on weight management than a placebo. *Nathan v. Vitamin Shoppe, Inc.*, No. 17-0948 (S.D. Cal., filed May 8, 2017). The plaintiff argues that the ingredients in Vitamin Shoppe's garcinia cambogia extract supplement, including hydroxycitric acid and

Madeleine McDonough
816.474.6550
202.783.8400
mmcdonough@shb.com

ABOUT SHOOK

Shook, Hardy & Bacon attorneys counsel consumer product manufacturers on FDA, USDA and FTC regulatory compliance and risk management issues, ranging from recalls and antitrust matters to facility inspections, labeling, marketing, advertising, and consumer safety. We help these industries develop early legal risk assessments to evaluate potential liability and develop appropriate policies and responses to threats of litigation or product disparagement.

The firm's lawyers also counsel manufacturers on labeling audits and a full range of legal matters such as U.S. and foreign patent procurement; licensing and technology transfer; venture capital and private financing arrangements; joint venture agreements; patent portfolio management; research and development; risk assessment and management; records and information management issues and regulations; and employment matters, including confidentiality and non-compete agreements.

chromium, have no effect on weight loss, appetite control, lean muscle mass or body fat. The complaint cites studies published in the *Journal of the American Medical Association* and the *American Journal of Clinical Nutrition*, among others. Claiming the products are ineffective and the labeling misleading under state consumer-protection laws, the plaintiff seeks class certification, corrective advertising and actual and punitive damages.

Settlement Proposed in Hair-Loss Class Action

The makers of WEN hair-care products have reached a proposed settlement of a class action alleging the products made users' hair fall out. *Friedman v. Guthy-Renker LLC*, No. 14-6009 (C.D. Cal., notice filed May 1, 2017). WEN by Chaz Dean Cleansing Conditioner allegedly contains chemicals and known human allergens that caused hair loss, scalp irritations and other health problems. Users lost as much as one-third of their hair, the complaint asserted, and Guthy-Renker knew of similar consumer complaints for at least four years without issuing a product recall or warning. The $26.25-million proposed settlement will award $25 to anyone who purchased the product and up to $20,000 to those who can prove they suffered an injury.

Competitor's Suit Alleges Muscle-Building Supplements Contain Unapproved Drugs

A dietary supplement maker has filed a false advertising suit against a rival alleging its products contain carcinogens. *Nutrition Distrib. LLC v. Metabolic Edge Nutritional Supplements, LLC*, No. 17-1522 (D. Ariz., filed May 18, 2017). Nutrition Distribution LLC argues that Metabolic Edge Nutritional Supplements LLC markets bodybuilding supplements containing selective androgen receptive modulators (SARMs), including ostarine, cardarine and andarine. The complaint alleges that SARMs "are not safe for human consumption" and may cause liver cancer. The plaintiff seeks injunctive relief, treble and punitive damages and attorney's fees.

Competitor Targets Makers of Supplements Containing Prescription

Drugs

JST Distribution has filed a lawsuit to enjoin a rival from selling sexual-enhancement products that allegedly contain sildenafil, the drug found in Viagra. *JST Distribution, LLC v. Adult World, Inc.*, No. 17-1009 (S.D. Cal., filed May 16, 2017). JST, which sells an "all-natural" sexual enhancement supplement, alleges Adult World advertises two products with the tagline, "you don't need a prescription," and does not disclose the products' drug contents. Alleging false and misleading advertising and unfair competition, the plaintiff seeks an injunction, damages and attorney's fees.

BOGO Supplement Ads Violated FTC Regulations, Plaintiff Alleges

A California putative class action alleges a "buy something/get something free" advertising campaign spanning four years violated Federal Trade Commission (FTC) regulations and state consumer-protection laws. *Larson v. Puritan's Pride*, No. 17-2536 (N.D. Cal., filed May 3, 2017). The plaintiffs allege that Puritan's Pride advertised bundled sales of its dietary supplement and sports nutrition products as "limited time," "semi-annual events" or the "best sale of the year," despite offering the sales continuously for four years. The complaint argues that FTC regulations limit such "free" offers for products to six months in any 12-month period. The plaintiffs also claim they did not receive the deep discounts advertised because the cost of the "free" products was factored into the premium price they actually paid. Alleging violations of California consumer-protection statutes, the plaintiffs seek class certification, injunctive relief, corrective action, damages and attorney's fees.

Class Action Claims Weight-Loss Products Are Adulterated with DMBA

Consumers have filed a putative class action alleging IQ Formulations added an illegal stimulant to its weight-loss products, violating the Food, Drug and Cosmetic Act. *DeBernardis v. IQ Formulations*, No. 17-21562 (S.D. Fla., filed April 26, 2017). The complaint argues that IQ's weight-loss products include methylpentane citrate (DMBA), which has not been approved as a new dietary ingredient by the U.S. Food and Drug Administration. Alleging violations of Illinois and New York consumer-protection laws, the plaintiffs seek class certification, an injunction, damages and attorney's fees.

Pharmavite Settles False Claims Suit for $6.9 Million

Pharmavite, LLC, the maker of Nature Made® dietary supplements, has agreed to settle a class action alleging that advertisements for its TripleFlex® glucosamine-chondroitin products were false, deceptive and misleading. *Barrera v. Pharmavite LLC*, No. 11-4153 (C.D. Cal., motion filed April 28, 2017). The complaint alleged that Pharmavite claimed TripleFlex® products improved joint health despite a lack of supporting scientific data. The settlement includes $1 million for cash compensation and $5.9 million in product and fulfillment costs. Pharmavite has also agreed to remove labeling promising to "rebuild," "renew," "rejuvenate" or similar terms to describe the effects of glucosamine or chondroitin on cartilage. Class members with proof of purchase may claim up to $100; those without may claim up to $50.

Court Issues Injunction in Dispute Over Zeolite Products

A Florida court has issued a preliminary injunction in a trade-secrets dispute between a dietary-supplement developer and a direct-sales company that manufactured and sold the supplements. *MGRD, Inc. v. Waiora, LLC*, No. 17-60061 (S.D. Fla., order entered May 8, 2017). MGRD, Inc. claims that Waiora, LLC violated the Defend Trade Secrets Act by continuing to manufacture and sell liquid zeolite products—Natural Cellular Defense, Superior Fiber Blend, MegaDefense and others—after its licensing and royalty agreement expired in July 2016 and a 180-day sell-off period ended in January 2017. The court ordered Waiora to return all of MGRD's intellectual property and enjoined the company from using it to produce or sell zeolite products until the matter goes to trial in 2018.