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## Inspections, Compliance, Enforcement, and Criminal Investigations

### HCG Diet Direct, LLC 11/28/11



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



DEPARTMENT OF HEALTH  
AND HUMAN SERVICES  
FOOD AND DRUG ADMINISTRATION  
SILVER SPRING, MD 20993

#### WARNING LETTER

November 28, 2011

Clint Ethington, CEO  
HCG Diet Direct, LLC  
7850 N Silverbell Road, #114-287  
Tuscon, AZ 85743-5223

Dear Mr. Ethington:

This letter is to advise you that the United States Food and Drug Administration (FDA) and the United States Federal Trade Commission (FTC) have reviewed your firm's product labeling and your website at [www.hcgdietdirect.com](http://www.hcgdietdirect.com). Based on our review, "HCG Diet Homeopathic Drops" is an unapproved new drug in violation of sections 301 and 505 of the Federal Food, Drug, and Cosmetic Act (the Act) [21 U.S.C. §§ 331 and 355] and is misbranded in violation of section 503 and 301 of the Act [21 U.S.C. §§ 353 and 331].

In addition, it is unlawful under the FTC Act, 15 U.S.C. § 41 *et seq.*, to advertise that a product can prevent, treat, or cure human disease unless you possess competent and reliable scientific evidence, including, when appropriate, well-controlled human clinical studies, substantiating that the claims are true at the time they are made. See *FTC v. Direct Mktg. Concepts*, 569 F. Supp. 2d 285, 300, 303 (D. Mass. 2008), *aff'd*, 624 F.3d 1 (1st Cir. 2010); *FTC v. Nat'l Urological Group, Inc.*, 645 F. Supp. 2d 1167, 1190, 1202 (N.D. Ga. 2008), *aff'd*, 356 Fed. Appx. 358 (11th Cir. 2009); *FTC v. Natural Solution, Inc.*, No. CV 06-6112-JFW, 2007-2 Trade Cas. (CCH) P75,866, 2007 U.S. Dist. LEXIS 60783, at \*11-12 (C.D. Cal. Aug. 7, 2007). More generally, to make or exaggerate such claims, whether directly or indirectly, through the use of a product name, website name, metatags, or other means, without rigorous scientific evidence sufficient to substantiate the claims, violates the FTC Act. See *In re Daniel Chapter One*, No. 9239, slip op. 18-20, 2009 WL 516000 (F.T.C.), 17-19 (Dec. 24, 2009) <http://www.ftc.gov/os/adjpro/d9329/091224commissionopinion.pdf><sup>1</sup>, *pet. for review den.*, 2010 WL 5108600 (D.C. Cir. Dec. 10, 2010).

Statements on the immediate container label that document the intended uses of your product include, but are not limited to, the following:

- "Ultimate Weight Loss & Metabolism Formula"
- "Provides homeopathic support for managing weight along with proper dieting."

In addition to the above, your website documents the intended uses of your products including, but not limited to, the following:

- "Lose 26 lbs in 26 days™ if you follow the HCG Diet Direct™ weight loss plan as directed."
- "Our homeopathic HCG Diet Direct™ weight loss plan in conjunction with the low calorie developed diet, is formulated to encourage extra fat to be mobilized for energy and eliminate the rest."
- "HCG Diet Direct™ formula stimulates the body's natural ability to make adjustments to alleviate imbalances."

We recognize that a number of pages on your website contain a disclaimer stating that the products are not intended to diagnose, treat, cure, or prevent any disease. However, notwithstanding this disclaimer, the claims made on your product labeling and website for "HCG Diet Homeopathic Drops" clearly demonstrate that this product is a drug as defined by section 201(g)(1) of the Act [21 U.S.C. § 321(g)(1)], because it is intended to affect the structure or any function of the body.

Further, "HCG Diet Homeopathic Drops" is a "new drug" within the meaning of section 201(p) of the Act [21 U.S.C. § 321(p)] because there is no evidence that it is generally recognized as safe and effective for its intended uses.

Under sections 301(d) and 505(a) of the Act [21 U.S.C. §§ 331(d) and 355(a)], a new drug may not be introduced or delivered for introduction into interstate commerce unless an application approved by FDA under either section 505(b) or (j) of the Act [21 U.S.C. § 355(b) or (j)] is in effect for the product. There is no FDA-approved application on file for the above product. Therefore, the marketing of "HCG Diet Homeopathic Drops" without an approved application constitutes a violation of these provisions of the Act.

We recognize that labeling identifies this product as a homeopathic drug with active ingredients measured in homeopathic strengths.<sup>[1]</sup> The definition of "drug" in section 201(g)(1) of the Act [21 U.S.C. § 321(g)(1)] includes articles recognized in the official Homeopathic Pharmacopeia of the United States (HPUS), or any supplement to it. Homeopathic drugs are subject to the same regulatory requirements as other drugs; nothing in the Act exempts homeopathic drugs from any of the requirements related to adulteration, labeling, misbranding, or approval. We acknowledge that many homeopathic drugs are manufactured and distributed without FDA approval under enforcement policies set out in the Agency's Compliance Policy Guide entitled "Conditions

Under Which Homeopathic Drugs May be Marketed (CPG 7132.15)" (the CPG). As its title suggests, the CPG identifies specific conditions under which homeopathic drugs may ordinarily be marketed; thus, in order to fall under the enforcement policies set forth in the CPG, a homeopathic product must meet the conditions set forth in the CPG. The CPG defines a homeopathic drug as: "Any drug labeled as being homeopathic which is listed in the Homeopathic Pharmacopeia of the United States (HPUS), an addendum to it, or its supplements." The CPG additionally states that "drug products containing homeopathic ingredients in combination with non-homeopathic active ingredients are not homeopathic drug products."

"HCG Diet Homeopathic Drops" lists its active ingredients as "HCG 12,30,60x, Arginine 3x,12x,30x, L-Carnitine 3x,12x,30x and Ornithine 3x,12x,30x, Foeniculim vulgare 2x, Antimonium crudum 8x, Gallium [sic] aparine 6x, Rubus idaeus 6x, Calcarea carbonica 6x, Lac defloratum 6x, Manganum metallicum 6x and Phosphorus 6x." Although, Foeniculim vulgare, Antimonium crudum, Gallium [sic] aparine, Calcarea carbonica, Lac defloratum, Manganum metallicum, and Phosphorus are established homeopathic ingredients listed in the HPUS, HCG, Arginine, and L-Carnitine are not established homeopathic active ingredients included in the HPUS or any of the addenda or supplements. Furthermore, to our knowledge, HCG, Arginine, and L-Carnitine are not listed in any recognized materia medica containing information on the preparation of homeopathic medicines. Therefore, HCG, Arginine, and L-Carnitine are not considered homeopathic drug ingredients and "HCG Diet Homeopathic Drops" is not considered a homeopathic drug product under the CPG. Accordingly, the policies set forth in the CPG for the marketing of homeopathic drug products do not apply to "HCG Diet Homeopathic Drops."

"HCG Diet Homeopathic Drops" is a prescription drug under section 503(b)(1) of the Act [21 U.S.C. § 353(b)(1)]. Section 503(b)(1) of the Act [21 U.S.C. § 353(b)(1)] provides that a drug which "because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug" shall be dispensed upon a prescription by a practitioner licensed by law to administer such drug. Your labeling provides that your product should be taken in conjunction with a very low calorie diet (VLCD). A VLCD should only be used under proper medical supervision. Because it is subject to section 503(b)(1) of the Act, "HCG Diet Homeopathic Drops" is misbranded under section 503(b)(4) of the Act [21 U.S.C. § 353(b)(4)] in that its label fails to bear the symbol, "Rx only." [2] Your marketing of this misbranded product violates sections 301(a) and (k) of the Act [21 U.S.C. §§ 331(a) and (k)].

The issues and violations cited in this letter are not intended to be an all-inclusive statement of violations that exist in connection with your products. You are responsible for investigating and determining the causes of the violations identified above and for preventing their recurrence or the occurrence of other violations. It is your responsibility to assure that your firm complies with all requirements of federal law and FDA regulations.

You should take prompt action to correct the violations cited in this letter. Failure to promptly correct these violations may result in legal action without further notice, including, without limitation, seizure and injunction. Other federal agencies may take this Warning Letter into account when considering the award of contracts.

We note that under section 201(ff)(3)(B) of the Act [21 U.S.C. § 321 (ff)(3)(B)], dietary supplements cannot contain an article that is approved as a new drug under section 505, which was not marketed as a dietary supplement or food prior to FDA approval of such drug. FDA approved Pregnyl, which contains HCG as the active ingredient, as a new drug on October 20, 1976. To FDA's knowledge there is no evidence that HCG was marketed as a dietary supplement or food prior to FDA approval of Pregnyl. As such, a product containing HCG could not be a dietary supplement.

In addition, we have the following comment: Your firm's website, www.hcgdietdirect.com, makes use of the FDA logo. The FDA logo is for the official use of FDA and not for the use of the private sector. To the public, such use would send a message that FDA favors or endorses an organization, its activities, its products, its services, and/or its personnel which it does not and cannot do. Misuse of the FDA logo may violate federal law and subject those responsible to civil and/or criminal liability.

Within fifteen working days of receipt of this letter, please notify this office in writing of the specific steps that you have taken to correct violations. Include an explanation of each step being taken to prevent the recurrence of violations, as well as copies of related documentation. If you cannot complete corrective action within fifteen working days, state the reason for the delay and the time within which you will complete the corrections. Furthermore, please advise this office of what actions you will take to address product that you have already distributed.

Your reply should be directed to the attention of John J. Stamp, Compliance Officer, 19701 Fairchild, Irvine, CA 92612-2506. If you have questions regarding any issue in this letter, please contact Mr. Stamp at 949-608-4464.

FTC strongly urges you to review all claims for your products and ensure that those claims are supported by competent and reliable scientific evidence. Violations of the FTC Act may result in legal action seeking a Federal District Court injunction or an Administrative Cease and Desist Order. An order also may require that you pay back money to consumers. Please notify FTC via electronic mail at [healthproducts@ftc.gov](mailto:healthproducts@ftc.gov), within fifteen working days of receipt of this letter, of the specific actions you have taken to address FTC's concerns. If you have any questions regarding compliance with the FTC Act, please contact Richard Cleland at 202-326-3088.

Sincerely,

/S/

Alonza E. Cruse, District Director  
Los Angeles District Office  
Food and Drug Administration

/S/

Mary K. Engle, Associate Director  
Division of Advertising Practices  
Federal Trade Commission

/S/

Ilisa B.G. Bernstein, Pharm.D., J.D.  
Acting Director, Office of Compliance  
Center for Drug Evaluation and Research  
Food and Drug Administration

cc:

Robert J. St. Clair, Esq.  
215 North Court Avenue, 2nd Floor  
Tucson, AZ 85701

Mr. Clint Ethington  
5880 N. Tucson Mountain Dr.  
Tucson, AZ 85743

Mr. Clint Ethington  
2753 East Broadway

Suite 101-205  
Mesa, AZ 85204

[1] For example, the label for "HCG Diet Homeopathic Drops" includes the ingredients "HCG 12,30,60x, Arginine 3x,12x,30x, L-Carnitine 3x,12x,30x and Ornithine 3x,12x,30x, Foeniculum vulgare 2x, Antimonium crudum 8x, Gallium aparine 6x, Rubus idaeus 6x, Calcarea carbonica 6x, Lac defloratum 6x, Manganum metallicum 6x and Phosphorus 6x, base of 20% USP alcohol."

[2] The Agency's guidance, "Conditions Under Which Homeopathic Drugs May be Marketed (CPG 7132.15)," states that, in accordance with § 503(b)(1) of the Act, homeopathic drug products offered for conditions that require diagnosis or treatment by a licensed practitioner must bear the prescription legend, "Caution: Federal law prohibits dispensing without prescription." This guidance was issued by the agency in 1988. In 1997, Congress enacted the Food and Drug Administration Modernization Act (FDAMA); section 126 of FDAMA amended § 503(b)(4) of the Act to require that the label of a prescription drug must bear the symbol "Rx only."

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**Links on this page:**

1. <http://www.ftc.gov/os/adjpro/d9329/091224commissionopinion.pdf>