

AMERICAN MEDIA, INC.

Slim-Fast 100 Calories Snacks

Challenger: *National Advertising Division*

Product Type: *Food/Beverage*

Issues: *Implied Claims/Consumer Perception*

Disposition: *Modified/Discontinued*

- **Advertising that appears in a format that makes it look like editorial content has the potential to mislead or confuse consumers because consumers may attach a different weight or significance to editorial content than to pure advertising content.**

Basis of Inquiry:

As part of its routine monitoring program, NAD reviewed advertising in Star Magazine for Slim-Fast Foods Company's Slim-Fast 100 Calories Snacks and its Slim Café Meal Replacement Drink. We asked the publisher of Star Magazine, American Media, Inc., to respond to our inquiry as to why an advertisement promoting the benefits of Slim-Fast products appeared as a cover story and directed consumers to the page where the corresponding "article" appeared. Both the cover and internal advertisement were designed to look like editorial content in Star Magazine. NAD was concerned that advertising in a format that substantially blurs the line between editorial content and advertising in a way that is likely to confuse consumers.

Implied Claims:

The front cover of Star Magazine featured what appeared to be an article on weight loss that claimed, "Joann LOST 40 lbs" and "snack away the weight." The cover page referred readers to page 46 of the magazine for an article titled "Snack Your Way to Slim," which told the stories of three women who "met their weight loss goals the easy way – by picking a plan that works and giving in to their cravings" and claiming Slim-Fast is the "superfast slim-down secret." This cover story and article appeared to be editorial content but were in fact advertisements for Slim-Fast.

Another article titled, "The Ultimate Coffee Break! Kick-start your day and lose weight" promoted high-protein meal replacement shakes from Slim-Fast, Slim-Fast Slim Café and appeared to be part of the editorial content in *Star Magazine* but was an advertisement for Slim-Fast.

NAD was concerned that consumers may give more credence to Star Magazine's objective claims about Slim-Fast's weight loss capability because the women's stories appear to be editorial (unbiased) content rather than advertising.

Advertiser's Position:

American Media, Inc. advised NAD in writing that Star Magazine will not be running advertisements using the format and presentation of the challenged Slim-Fast advertising in future issues of Star Magazine.

Decision:

NAD opened this monitoring case because of a concern that advertisements in Star Magazine for Slim-Fast products blurred the line between advertising and editorial content. Star Magazine featured a cover story about weight loss, “Snack Away the Weight,” which linked readers to an internal article about the weight loss experience of three women who used Slim-Fast products in their weight loss, and promoted SlimFast as “the superfast slim-down secret.” NAD was concerned that this advertising was displayed in a way which could confuse consumers. The advertising NAD reviewed appeared in the same format as editorial content in Star Magazine and included objectively provable claims that Slim-Fast products are “clinically backed” and “proven to lose weight and keep it off,” and that it is the “superfast slim-down secret!” Advertising in a format that appears to be editorial has the potential to mislead or confuse consumers because consumers may attach a different weight or significance to editorial content than to pure advertising content.¹ Additionally, claims like “clinically backed” and “proven to lose weight and keep it off,” when they appear in an advertisement, must be truthful and accurate.

Although this was advertising for Slim-Fast products, Star Magazine was marketing the product for Slim-Fast when it published an advertisement which appeared to be Star Magazine’s editorial content. A third-party entity who “persuad[es] the audience of the value or usefulness of a . . . product” engages in “national advertising” under NAD’s *Policies and Procedures* and is considered to be an advertiser for those products.² NAD has reviewed advertising by third-parties who market a product and held them to the same standard as the advertiser itself and reminded that third-parties are also obligated to insure that advertising claims are truthful, accurate and not misleading.³ While Star Magazine’s editorial content is not held to this standard, when Star Magazine acts in the place of the advertiser of a product, its advertising must meet the same standards.

NAD appreciated American Media, Inc.’s agreement to permanently discontinue the challenged advertising and its use of this advertising format in Star Magazine. In reliance on the advertiser’s representation that these advertisements and advertising format has been permanently discontinued, NAD did not review this matter on its merits. The voluntarily discontinued advertising and advertising format will be treated, for compliance purposes, as though NAD recommended its discontinuance and the advertiser agreed to comply.

Conclusion:

¹ The FTC cautions that “deception occurs when an advertisement misleads reasonable consumers as to its true nature or source, including that a party other than the sponsoring advertiser is the source of an advertising or promotional message, and such misleading representation is material. In this regard, a misleading representation is material if it is likely to affect consumers’ choices or conduct regarding the advertised product or the advertisement, such as by leading consumers to give greater credence to advertising claims or to interact with advertising with which they otherwise would not have interacted.” *FTC Enforcement Policy Statement on Deceptively Formatted Advertisements*,

https://www.ftc.gov/system/files/documents/public_statements/896923/151222deceptiveenforcement.pdf.

² NAD’s *Policies and Procedures*, Sections 1.1(A) and (B).

³ See *Joyus, Inc. (Dr. Brandt’s Needles No More Wrinkle Relaxing Cream)*, Report #5956, *NAD/CARU Case Reports* (May 2016) (While Joyus was not the manufacturer of the product at issue, Dr. Brandt’s Needles No More Wrinkle Relaxing Cream, NAD nonetheless asked Joyus to substantiate the efficacy claims it made for the product).

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In reliance on American Media, Inc.'s representation that these advertisements and advertising format has been permanently discontinued, NAD did not review this matter on its merits. The voluntarily discontinued advertising and advertising format will be treated, for compliance purposes, as though NAD recommended its discontinuance and that American Media, Inc. agreed to comply.

Advertiser's Statement:

While American Media, Inc. respectfully disagrees with some of the concerns expressed by NAD, it appreciates NAD's efforts and agrees to discontinue the challenged practice. **(#6039 LB, closed 12/21/2016)**