

April 27, 2020

VIA EMAIL

Andrew Smith, Director Lois Greisman, Associate Director Rick Quaresima, Acting Associate Director Bureau of Consumer Protection Federal Trade Commission



Re: Herbalife Nutrition's False and Deceptive Coronavirus Marketing

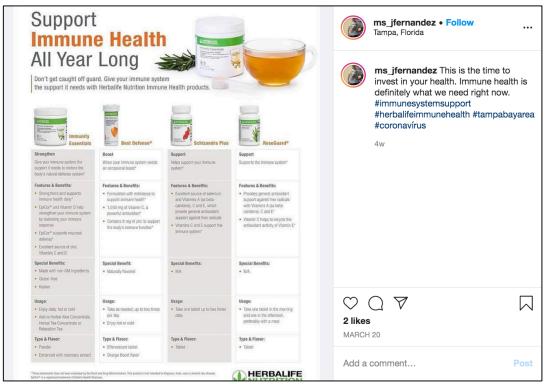
Dear Mr. Smith, Ms. Greisman, and Mr. Quaresima:

We write to file a complaint against Herbalife International of America, Inc., the multibillion-dollar, California-based multilevel marketing company that was the subject of a 2016 FTC deceptive marketing lawsuit. In recent advertising, the company, through its distributors, deceptively claims that using various Herbalife products can treat and/or prevent the coronavirus by boosting one's immune system.

By way of example:



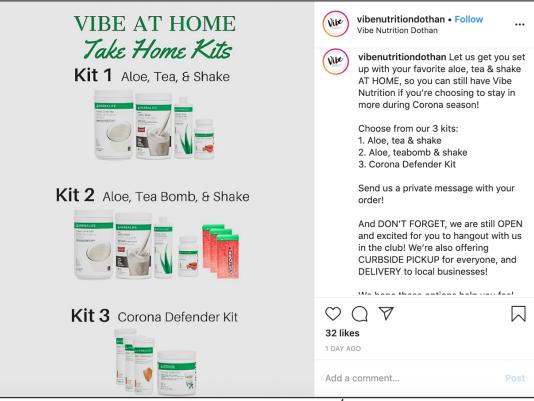
"#protectyourself with #immunity Essentials taste great! #covid-19..."



"This is the time to invest in your health. Immune health is definitely what we need right now. #immunesystesupport #herbalifeimmunehealth ... #coronavirus"²



"Hope everyone is keeping safe and taking the nesscery [sic] precautions as best as possible. One of the way [sic] I am doing that is by protecting my immune system by having a glass of Herbalife Best Defense..."³



"Corona Defender Kit"⁴



"Now is the time to boost and strengthen your immune system as much as possible! There's no better trio than this one...#coronavirus"⁵



"While some people still running around looking crazy due to this virus...I'm on my patio living my best life because I am fueled by the best! Build your Immunity Right! ... #nocoronavirus #herbalifeimmunityessentials #strongimmunesystem..."

TINA.org has collected more than 30 examples of such deceptive and unsubstantiated claims, which are available at <u>https://www.truthinadvertising.org/herbalife-coronavirus-claims-database/</u>.

While the 2016 FTC lawsuit against the company was focused on – and resulted in, among other things, a prohibition against – deceptive earnings claims used to market the company's business opportunity rather than health claims used to market its products, it nonetheless put Herbalife on notice that it is responsible for deceptive marketing claims made by its distributors.⁷

Now, during the coronavirus pandemic,⁸ the company's salesforce is capitalizing on the fact that there currently is no competent and reliable scientific evidence that any product can effectively treat and/or cure COVID-19 and marketing Herbalife supplements and nutrition products as a way to do just that – prevent and treat coronavirus.

As the above deceptive marketing examples show, Herbalife is taking advantage of susceptible consumers' fear of the pandemic to sell its products. This tactic not only causes financial harm for consumers but can also have serious health consequences as well.

As such, TINA.org strongly urges the FTC to immediately investigate the claims being made by Herbalife and take prompt and appropriate enforcement action.

If you have any questions, please do not hesitate to contact us.

Sincerely,

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Laura Smith, Esq. Legal Director Truth in Advertising, Inc.

YZ

Bonnie Patten, Esq. Executive Director Truth in Advertising, Inc.

Cc via email: Henry Wang, General Counsel, Herbalife

¹ <u>https://www.instagram.com/p/B_DMZcBB7Qe/?igshid=1tpbhtru6r42z</u> (also available at <u>https://www.truthinadvertising.org/wp-content/uploads/2020/04/Jennifer-Walsh-IG-04_16_20-wm.png</u>).

² <u>https://www.instagram.com/p/B999Ma1pi6w/</u> (also available at <u>https://www.truthinadvertising.org/wp-content/uploads/2020/04/Jessica-Fernandez-IG-03_20_20-wm.png</u>).

³ <u>https://www.instagram.com/p/B90HRcRBam4/</u> (also available at <u>https://www.truthinadvertising.org/wp-content/uploads/2020/04/Adrienne-Montgomery-IG-03_16_20-wm.png</u>).

⁴ <u>https://www.instagram.com/p/B_GRE0rgOig/</u> (also available at <u>https://www.truthinadvertising.org/wp-content/uploads/2020/04/Vibe-IG-03_19_20-i-wm.png;</u> <u>https://www.truthinadvertising.org/wp-content/uploads/2020/04/Vibe-IG-03_19_20-ii-wm.png;</u> <u>https://www.truthinadvertising.org/wp-content/wp-content/wp-content/wp-content/wp-content/wp-content/wp-content/wp-content/wp-content/wp-con</u>

⁵ <u>https://www.instagram.com/p/B_LxKsLpIIX/</u> (also available at <u>https://www.truthinadvertising.org/wp-content/uploads/2020/04/Marian-IG-04_19_20-ii-wm.png;</u> <u>https://www.truthinadvertising.org/wp-content/uploads/2020/04/Marian-IG-04_19_20-ii-wm.png;</u> <u>https://www.truthinadvertising.org/wp-content/uploads/2020/04/Marian-IG-04_19_20-ii-wm.png;</u> <u>https://www.truthinadvertising.org/wp-content/uploads/2020/04/Marian-IG-04_19_20-ii-wm.png;</u> <u>https://www.truthinadvertising.org/wp-content/uploads/2020/04/Marian-IG-04_19_20-ii-wm.png;</u> <u>https://www.truthinadvertising.org/wp-content/uploads/2020/04/Marian-IG-04_19_20-ii-wm.png;</u> <u>https://www.truthinadvertising.org/wp-content/uploads/2020/04/Marian-IG-04_19_20-ii-wm.png;</u> <u>https://www.truthinadvertising.org/wp-content/uploads/2020/04/Marian-IG-04_19_20-ii-wm.png;</u> <u>https://www.truthinadvertising.org/wp-content/uploads/2020/04/Marian-IG-04_19_20-iii-wm.png</u>].

The caption to this post goes on to state:





⁶ <u>https://www.instagram.com/p/B_IC75aDiB7/</u> (also available at <u>https://www.truthinadvertising.org/wp-content/uploads/2020/04/Takiyah-IG-04_18_20-wm.png</u>).

⁷ See FTC v. Herbalife Internat'l of Am., Inc., July 15, 2016 Stipulation to Entry of Order for Permanent Injunction and Monetary Judgment, available at https://www.ftc.gov/system/files/documents/cases/160715herbalife-stip.pdf.

⁸ As of April 27, 2020, the coronavirus, which has caused millions of Americans to live in quarantine to avoid contracting the deadly disease, has infected nearly one million people (according to testing results) and has claimed more than 55,000 lives in the United States.