



November 3, 2021

VIA EMAIL

Josh Foukas
Chief Legal Officer and General Counsel
USANA Health Sciences
3838 West Parkway Boulevard
West Valley City, UT 84120

Re: Deceptive Marketing by USANA Health Sciences in Violation of FTC Law

Dear Mr. Foukas:

I write on behalf of Truth in Advertising, Inc. (“TINA.org”), a nonprofit consumer advocacy organization dedicated to protecting consumers from deceptive advertising, because we have found that USANA Health Sciences and its distributors continue to flout truth-in-advertising laws and mislead consumers with deceptive marketing campaigns.

Specifically, TINA.org has found that USANA and its distributors continue to use unsubstantiated disease-treatment claims to market USANA products, an issue that USANA has been aware of since at least November 2016.¹ Such marketing includes claims that USANA products can improve memory and focus,² prevent photo-oxidation of the eye,³ prevent COVID-19,⁴ treat prostate cancer,⁵ prevent degenerative diseases,⁶ reduce blood pressure and risk of cancer,⁷ and eliminate the need for heart medications,⁸ among others. A sampling of unsubstantiated disease-treatment claims, all of which violate FTC law, are available at <https://www.truthinadvertising.org/usana-health-claims-database/>.

TINA.org also found that USANA and its distributors continue to use deceptive income claims to promote the USANA business opportunity, an issue that USANA has been aware of since at least December 2017.⁹ Such marketing includes claims of making money and succeeding,¹⁰ earning one million dollars,¹¹ having multiple streams of income,¹² achieving time and financial freedom,¹³ transitioning from a struggling guitar teacher to a successful and lucrative business owner,¹⁴ and earning generous commissions each week.¹⁵ However, according to USANA’s own income disclosure statements, the typical USANA distributor earns no money or loses money.¹⁶ As such, the marketing statements collected by TINA.org, all of which are available at

<https://www.truthinadvertising.org/usana-income-claims-database/>, are atypical and in violation of FTC law.

Finally, TINA.org found that numerous USANA-sponsored athletes advertise company products on their social media accounts without clearly and conspicuously disclosing their material connection to the company in violation of FTC law. TINA.org has collected more than 125 examples of such deceptive social media posts across more than 25 USANA-sponsored athletes, all of which are available at <https://www.truthinadvertising.org/usana-influencer-database>. Examples include posts that completely lack disclosure, posts that bury the disclosure in a place that is unlikely to be seen, and posts that use unclear language in a failed attempt to disclose the material relationship.¹⁷ Several of these posts also include unsubstantiated disease-treatment claims.

There is no excuse for USANA's continued use of such deceptive marketing claims. Not only did TINA.org alert USANA in 2016 and 2017 to the company's deceptive marketing issues, but TINA.org also provided USANA with a copy of its June 30, 2021 letter to the FTC urging the Commission to implement a penalty offense program to address false earnings representations and misleading health claims within the direct selling industry.¹⁸ Further, on October 26, 2021, the FTC provided USANA with formal notice regarding penalty offenses pertaining to deceptive income claims, as well as the use of endorsements without properly disclosing material connections.¹⁹ As such, *each* of these violations could result in a \$43,792 penalty.²⁰

We trust USANA will take immediate action to fully remedy its continuing and widespread deceptive marketing.

Sincerely,



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

¹ See November 22, 2016 letter from TINA.org to USANA Health Sciences, <https://www.truthinadvertising.org/wp-content/uploads/2021/10/2016-notification-ltr-to-USANA-re-health-claims.pdf>.

² <https://askthescientists.com/qa/copaprime/> (“Focus? Ready? Your life moves fast[.] Your brain should too[.] ... Find your focus ... Strengthen your neural pathways so you can focus right now and protect your long-term brain performance with the USANA InCelligence cognitive support complex ... Stay focused with this advanced nootropic. Nootropic? A nootropic is any substance or supplement that’s used to enhance memory or other cognitive functions. Yay! Learning! Fight brain fog[.] increase efficiency[.] and protect your focus[.] memory[.] clarity[.] performance[.] brain...”); <https://www.usana.com/ux/cart/en-US/product/126.010102> (same).

³ <https://www.usana.com/ux/cart/en-US/product/113.010100> (“An antioxidant formula designed to help protect the delicate tissues of the eye from photo-oxidation*”).

⁴ <https://www.instagram.com/p/CHBfTVJHEaW/> (“Getting to the highest places with #usana. Keeping me healthy with a strong immune system. With winter at our doorstep, and a pandemic among us, I encourage you to give your body what it needs to stay health[y]...”)

⁵ https://www.instagram.com/p/CU_dpBxB4rP/ (“#forprostatecancer”)

⁶ <https://www.instagram.com/p/CVI5eE1o3sa/> (“#avoiddegenerativediseases”)

⁷ <https://www.instagram.com/p/CM0vMqmLV1w/> (“It also reduce blood pressure, reduce cancer risk and deliver powerful support for your immune.”)

⁸ <https://www.youtube.com/watch?v=ScjrbSawHOs> (“...from having a congenital heart defect...I’m so grateful today that I’m on no heart medication much to the surprise of my electrophysiologist...”)

⁹ See December 18, 2017 letter from TINA.org to USANA Health Sciences, <https://www.truthinadvertising.org/wp-content/uploads/2021/10/2017-notification-ltr-to-USANA-re-income-claims.pdf>.

¹⁰ <https://www.usana.com/ux/dotcom/enu-US/opportunity>.

¹¹ <https://ir.usana.com/news-events/press-releases/detail/247/usana-unveils-million-dollar-club-walk-of-fame>.

¹² <https://www.facebook.com/photo.php?fbid=2204277026372139&set=pb.100003695906841.-2207520000.&type=3>.

¹³ <https://www.instagram.com/p/CLqDwWOAb8D/>.

¹⁴ <https://www.youtube.com/watch?v=QIRoHCFkUic>. (Note that the FTC has made it clear to USANA and others that simply disclosing “Results not typical” is not sufficient to dispel the implication that a testimonial depicts typical results.)

¹⁵ <https://laneethridge.wordpress.com/compensation/>.

¹⁶ In 2016, USANA’s income disclosure statement revealed that a majority of its distributors – or 58.01 percent – made no money (before expenses), meaning that these distributors actually lost money. *See* 2016 USANA income disclosure statement, <https://www.truthinadvertising.org/wp-content/uploads/2021/10/2016-USana-income-disclosure-statement.pdf>. The same was true the following year: In 2017, a majority of USANA distributors – or 53.45 percent – lost money. *See* 2017 income disclosure statement, <https://www.truthinadvertising.org/wp-content/uploads/2021/10/2017-USana-income-disclosure-statement.pdf>. Then, in an apparent effort to make its percentages look more promising, USANA started separating those who earn “less than 0%” from those who earn “\$0 to \$250,” putting those who make no income (i.e., lose money) on the same level as those who make \$250 (before expenses). In 2019, USANA’s income disclosure statement stated that 45.1 percent of its distributors made less than \$0 and 32 percent made \$0 to \$250. *See* 2019 USANA income disclosure statement, <https://www.usana.com/static/images/na/Training/ComplianceCorner/AveIncome-US-EN.pdf> And in 2020, USANA disclosed that 34 percent of distributors made less than \$0 and 17.5 percent made \$0 to \$250. *See* 2020 USANA income disclosure statement, <https://www.usana.com/static/images/na/Training/ComplianceCorner/IncomeDisclosureStatement-US-EN.pdf>.

¹⁷ *See* The FTC’s Endorsement Guides: What People Are Asking, <https://www.ftc.gov/tips-advice/business-center/guidance/ftcs-endorsement-guides-what-people-are-asking> (Note that in addition to providing guidance on disclosure language and placement, the FTC also addresses the use of built-in disclosures on social media platforms and states that such disclosures are not necessarily sufficient as the disclosure “should catch users’ attention and be placed where they aren’t likely to miss it. A key consideration is how users view the screen when using a particular platform. For example, on a photo platform, users paging through their streams will likely look at the eye-catching images. Therefore, a disclosure placed above a photo may not attract their attention.”)

¹⁸ *See* June 30, 2021 letter from TINA.org to FTC, https://www.truthinadvertising.org/wp-content/uploads/2021/06/6_30_21-ltr-to-FTC-re-penalty-offense-authority_MLM.pdf.

¹⁹ *See* October 26, 2021 letter from FTC to companies regarding penalty offenses concerning money-making opportunities, <https://www.ftc.gov/system/files/attachments/penalty-offenses-concerning-money-making-opportunities/cover-letter-mmo.pdf>; FTC Puts Businesses on Notice that False Money-Making Claims Could Lead to Big Penalties, Oct. 26, 2021, <https://www.ftc.gov/news-events/press-releases/2021/10/ftc-puts-businesses-notice-false-money-making-claims-could-lead>.

²⁰ While some of the USANA marketing examples in TINA.org's databases were originally published some months or years ago, those still in publication today are easily accessible on the internet regardless of publication date and therefore a current violation of law.