

BBB NATIONAL PROGRAMS, INC.
The Direct Selling Self-Regulatory Council

Case Number: 7 -2019 - Monitoring Inquiry – It Works!

COMPANY DESCRIPTION

It Works! (“IW” or “Company”) is a multi-level direct selling company founded in 2001 and headquartered in Palmetto FL, that offers a variety of beauty, nutrition, and lifestyle products. According to the Company’s website, IW has 380,000 independent contract distributors in 19 countries and international offices located in Ireland, and South Korea.

BASIS OF INQUIRY

The Direct Selling Self-Regulatory Council (DSSRC), is a national advertising self-regulation program administered by BBB National Programs, Inc. This inquiry was commenced by the DSSRC pursuant to its ongoing independent monitoring of advertising and marketing claims in the direct selling industry.

More specifically, DSSRC identified several core product performance and earnings claims being disseminated on the Facebook and Instagram pages of IW consultants as well as on the Company website.

The representative product performance claims that were the subject of this review are as follows:

A. Product Performance Claims:

- *Before and After photograph of woman’s stomach with claim of 1 Wrap Used and a Time Span of 12 hours.*
- *Before and after photo of a woman with copy stating “Keto Coffee + Chocolate Greens” and “Love these results from the coffee and greens.”*
- *Before and after photograph of a woman with copy stating “She did this with our ThermoFight now since it has been reformulated, it’s now called ThermoFight X.” and copy stating “It’s been clinically proven to shed 31 lbs in 90 days.”*
- *Before and after photograph of a woman with copy stating “It’s a new month and I have 10 new 90-day challenge spots open this weekend! I am looking for anyone who wants to lose 10-50 lbs and/or tighten and tone before summer!!”*
- *Before and after photograph of a woman’s midsection with copy stating “Product Used: It Works!! Cleanse™ - Time Span: 48 hours”*
- *“2 pills (pill emoji), 30 pounds lost (down arrow emoji), 90 days (surprise face emoji) who wants the deets?”*

- *“Previous testers have lost ON AVERAGE 31 pounds in ONLY 90 days 🤍 CLINICALLY PROVEN weight loss + you will lose 2.5X MORE weight than just diet and exercise ALONE! This PROD is 🍷🍷🍷🍷🍷🍷🍷”*
- *“On my way to gym 🤍 Nonetheless 🤍 🍷 to get max results for my people who can't make it to the gym 🍷 Get this product now 📦”*
- *That "crazy wrap thing" you have been hearing about! These are so unbelievable, and YES they really do work!*
- *Before and after photo and image of a woman with a tape measure around her waist with copy stating “You can lose inches in just 45 minutes with one application... what are you waiting for?!”*
- *“Tightens, Tones and Firms In As Little as 45 Minutes (It Works! Body Wrap)*
- *“Reduces the appearance of cellulite” (It Works! Body Wrap)*
- *“Gives you a fast & lasting results from a botanically based formula” (It Works! Body Wrap)*
- *“Activates thermogenesis to achieve and maintain an ideal fat burn.” (ThermoFight X)*
- *“Accelerates ketosis by supporting rapid ketone generation.” (ThermoFight X)*
- *“Supports healthy blood sugar levels to reduce sugar cravings.” (ThermoFight X)*
- *“Boosts energy.” (ThermoFight X)*

The representative earnings claims that were the subject of this review are as follows:

B. Earnings Claims:

- *“Message me and I will show YOU how women/men are earning SIX figure incomes (money emoji) from this crazy business.”*
- *“Because of It Works!!, I can buy gas, pay for bills, and in the next three months I'll pay off my student loans! I can support my family of six because we're able to go shopping and do so without fear of my credit cards declining!”*
- *“I never thought that working from my home could become a reality, but within two years, my husband and I had both retired, and were a full-time It Works!! Family!.”*
- *“Unlimited Income Potential”*
- *“No limit to the amount of money that you can earn.”*

COMPANY'S POSITION

IW explained that its independent distributors play a vital role in all aspects of its business and, accordingly, the Company requires distributors to comply with all applicable laws,

regulations, and industry principles. IW monitors its distributors to prevent the dissemination of improper claims regarding both its products and the It Works! opportunity.

IW stated that it has a robust compliance program that includes an ongoing review of its distributors' social media activities and described the process in detail for DSSRC.¹ More specifically, IW noted that it provides its distributors with:

- specific policies and procedures that distributors review and agree to upon enrollment that govern their behavior in areas including product claims and testimonials; the use of Before and After photographs, income claims and the income disclosure statement and policy violation reporting²
- a dedicated compliance team consisting of nine individuals that constantly monitor and identify improper or unauthorized claims and actions by It Works! distributors³
- a comprehensive, third-party monitoring program to assist in compliance oversight
- a strict “Before and After” photo approval process. More specifically, all “Before and After” testimonials must be submitted and approved by the It Works! Compliance team. Once approved, a Compliance Specialist inserts the photographs into a company approved template with appropriate disclaimers before it is released for publication⁴
- a system whereby other distributors assist the Company in identifying policy violations by submitting a written report of the violation directly to the attention of the It Works!’ Compliance Department
- ongoing education to distributors through many different means of communication including a comprehensive product Information Sheet; a dedicated Product Coach; website videos directed to compliance issues; weekly newsletters; specific training sessions at annual conferences and events; and
- the It Works! eSuite system – a virtual administrative back office service that allows distributors to manage their business profiles to a document library including the It Works! Policies and Procedures and compliance instructions/guidelines.

¹ It Works! provided DSSRC with a copy of its Mission Statement. It states: “The It Works! Compliance team is dedicated to protecting and preserving the integrity of the company while serving its valued team of Distributors. The mission of the Compliance Department is to uphold the company’s dedication to excellence by providing knowledge of and adherence to the It Works! Policies and Procedures. We will establish and maintain operating procedures and a culture of integrity to prevent, detect, and resolve issues of business misconduct or noncompliance in a courteous, friendly and nonthreatening manner, being proactive whenever possible.”

² A copy of the It Works! Compliance Policy and Procedures was provided to DSSRC.

³ It Works! also described its internal protocol for investigating and reconciling compliance issues which can ultimately result in distributor termination if the matter remains unresolved.

⁴ It Works! noted that in 2018, 39,758 Before and After submissions were reviewed. 17,942 of the submissions were approved and 21,413 were denied.

I. Claims Made by It Works!

In response to the claims identified by DSSRC, the Company contended that DSSRC extracted the testimonials from its website in an incomplete format and disagreed with DSSRC's concerns that the testimonials on the Company website are inappropriately presented to consumers. The Company noted that below each testimonial is the IW disclaimer stating that "Earnings of participants in the Compensation Plan may vary. Please see the It Works!! Annual Disclosure Statement." Directly below the disclaimer is a link to the IW Annual Disclosure Statement which the Company maintained clearly sets forth the average earnings of active distributors. IW explained that its Annual Disclosure Statement is provided as a footer link that is easy to identify on every page of its website.

A. Earnings Claims

- *"Unlimited Income Potential" and "No limit to the amount of money that you can earn."*

IW informed DSSRC that these two claims inadvertently appeared on the Company website and were immediately removed after they were brought to IW's attention by DSSRC.

- *"I never thought that working from my home could become a reality, but within two years, my husband and I had both retired, and were a full-time It Works! Family!"*
- *"Because of It Works!!, I can buy gas, pay for bills, and in the next three months I'll pay off my student loans! I can support my family of six because we're able to go shopping and do so without fear of my credit cards declining!"*



Unlimited Income Potential

With opportunities to make money daily, weekly, and monthly (and bonuses on top of that), there's no limit to the amount of money you can earn!



Work from Anywhere

You're already spending time on social media, so why not get paid for it? Your income grows where your phone goes – enjoy the freedom of working from anywhere at any time!



No Experience Needed

Never done anything like this before? No problem! We provide all the tools, training, and support you need from the moment you sign up.

“Because of It Works!!, I can buy gas, pay for bills, and in the next three months I'll pay off my student loans! I can support my family of six because we're able to go shopping and do so without fear of my credit cards declining!”

Kelly L.

From Ossining, NY

SUCCESS STORIES



These claims appeared as part of rotating consumer testimonials on the IW website. IW indicated to DSSRC that it was in the process of modifying the claims to include a clear and conspicuous disclosure in close proximity to the claims that will provide annual income information that can be reasonably expected by program participants.

B. Product Performance Claims

On the IW website the Company also made several specific performance claims for ThermoFight X.

- *Activate Thermogenesis to achieve and maintain an ideal fat burn*

IW stated that there are multiple complementary mechanisms of action of the key ThermoFight X ingredient compounds [caffeine as a sympato-adrenal innervator (catecholamines), caffeine as PDE-4/adenosine inhibitor, and EGCG as COMT inhibitor], that helps tip the metabolic balance within adipocytes from lipogenesis (triglyceride formation and fat accumulation) to lipolysis (fatty acid liberation and fat catabolism). IW maintained that increased lipolysis has scientifically established metabolic outcomes of increased thermogenesis, ketogenesis, and fatty acid oxidation that leads to cellular energy.

- *Accelerates ketosis by supporting rapid ketone production. Boosts energy.*

According to IW, caffeine intake can stimulate ketone production in the liver in a dose dependent manner by increasing plasma ketone Beta-hydroxybutyrate concentrations. The Company stated that increasing plasma ketone levels with doses of caffeine can transiently contribute to brain energy needs when glucose levels drop in the brain. IW further explained that caffeine, as a lipolytic agent, increases plasma free fatty acid levels liberated from adipocytes. The free fatty acids entering the liver are beta oxidized and converted into ketones due to condensation pairs of acetyl-CoA units as their availability exceeds their utilization by the tricarboxylic acid cycle.⁵

- *Supports healthy blood sugar levels to reduce cravings*

It was the Company's position that chlorogenic acid (CGA), as in the green coffee extract in ThermoFight X, has been shown to have anti-hyperglycemic effects in animals and humans. The Company referenced studies which examined CGA's effect on postprandial blood glucose concentration. According to IW, CGA strongly inhibits the activities of alpha-amylase and alpha-glucosidase, sugar and starch digesting enzymes. IW further stated that CGA has also been shown to have an antagonistic effect on glucose transport in the intestines. In addition, it maintained that CGA inhibits approximately 40% of the glucose-6 phosphatase (G-6-Pase) in hepatocytes. IW contended that this helps prevent catchcholamine-induced glucose conversion (*e.g.*, from exercise,

⁵ "Caffeine intake increases plasma ketones: An acute metabolic study in humans." Vandenbergh C, St-Pierre V, Courchesne-Loyer A, Cunnane SC, *Canadian Journal of Physiology and Pharmacology*. 2016 Nov; 95(4).

fasting, low blood glucose and stress) from dumping glucose into the bloodstream from stored glycerin in the liver.⁶

II. Claims Made by It Works! Distributors

A. Product Performance Claims

- *Before and After photograph of woman; Products Used: 1 Wrap Used; Time Span of 12 hours.*



IW stated that the Before and After photos contained in this social media post by the IW distributor were properly submitted, reviewed and approved by an IW Compliance Specialist and placed on Company approved template with the appropriate disclosures. According to IW, the testimonial at issue was reviewed and deemed to be compliant with the results that the average individual would generally expect to achieve from the use of this IW product for the time span noted.

- *Before and after photo; “Keto Coffee + Chocolate Greens” and “Love these results from the coffee and greens.”*

⁶ “Roles of chlorogenic acid on regulating glucose and lipids metabolism: a review.” Meng S, Cao J, Feng Q, Peng J, Hu Y., Evid Based Complement Alternat Med. 2013;2013:801457.

- *Before and after photograph of a woman; “She did this with our ThermoFight now since it has been reformulated, it’s now called ThermoFight X.” and “It’s been clinically proven to shed 31 lbs in 90 days.”*
- *“2 pills (pill emoji), 30 pounds lost (down arrow emoji), 90 days (surprise face emoji) who wants the deets?”*
- *“On my way to gym 🏋️‍♀️ Nonetheless 🙄👁️ to get max results for my people who can’t make it to the gym 🏋️‍♀️ Get this product now [1]” and*
- *“Previous testers have lost ON AVERAGE 31 pounds in ONLY 90 days 📈 CLINICALLY PROVEN weight loss + you will lose 2.5X MORE weight than just diet and exercise ALONE! This PROD is 🙌🙌🙌🙌🙌🙌🙌”*

The above five posts were disseminated by one IW distributor. IW maintained that it does not have a record that the distributors’ posts were approved by the Compliance Department and informed DSSRC that it has reached out to the distributor to ensure that she is aware the Company protocol that must be followed for the dissemination of such photographs.

Subsequently, IW informed DSSRC that these Facebook posts referenced by DSSRC were deleted.

- *Before and after photograph of a woman; “It’s a new month and I have 10 new 90-day challenge spots open this weekend! I am looking for anyone who wants to lose 10-50 lbs and/or tighten and tone before summer!!”*

IW explained that its Compliance team had previously reached out to the distributor regarding the post that was identified by DSSRC and requested that the post be removed. The distributor failed to respond. Consequently, the distributors account was terminated in October 2018.

- *Before and after photograph of a woman’s midsection “Product Used: It Works!! Cleanse™ - Time Span: 48 hours”*

IW informed DSSRC that the before and after photographs featured in this social media post were properly submitted reviewed and approved by the IW Compliance Specialist and placed on the Company approved template with the appropriate disclaimers. According to IW, this testimonial was reviewed and deemed compliant with the expectations that the average individual would achieve from the use of this IW product for the time span noted.

- *“That ‘crazy wrap thing’ you have been hearing about! These are so unbelievable, and YES they really do work! “*
- *Before and after photo and image of a woman with a tape measure around her waist stating “You can lose inches in just 45 minutes with one application... what are you waiting for?!”*
- *“Tightens, Tones and Firms In As Little as 45 Minutes (It Works! Body Wrap)*
- *“Reduces the appearance of cellulite” (It Works! Body Wrap)*

- “Gives you a fast & lasting results from a botanically based formula” (It Works! Body Wrap);

The above claims were disseminated by one IW distributor in one post. IW informed DSSRC that it the Company initiated a compliance proceeding against this distributor and that, consequently, the post has been removed.

ThermoFight X

As support for the efficacy claims regarding ThermoFight X, IW provided DSSRC with studies on the product’s primary ingredient as well as a confidential product overview which summarized the product’s mechanism of action, lipolysis activation, and the complementary action of the product’s green tea extract ingredient and caffeine ingredients. The overview also provided information on how the product contributes to ketosis, inhibits glycogenolysis and regulates blood glucose levels.

IW addressed each individual claim for ThermoFight X that were brought to its attention by DSSRC.

- “Previous testers have lost *ON AVERAGE 31 pounds in ONLY 90 days* ♡ *CLINICALLY PROVEN weight loss + you will lose 2.5X MORE weight than just diet and exercise ALONE! This PROD is* 🍷🍷🍷🍷🍷🍷🍷”

As support, the Company provided an in-vivo clinical study (“the Dulloo study”) of overweight men and women, ages 25-60, taking a daily dose of 300mg of the Green Select Phytosome green tea extract found in ThermoFight X, along with a calorie induced diet.⁷ According to the study results, subjects lost an average of 31 pounds over a 90-day period as compared to only 11 pounds in the reduced-calorie diet control group. IW explained that ThermoFight X is formulated to provide the daily clinically-studied dose of GreenSelect Phytosome green tea extract.

The Company also informed DSSRC that in addition to Green Select Phytosome, ThermoFight X was further enhanced with additional green tea extract to satisfy the Health Canada Green Tea monograph to be approved for Natural Health Product (NHP) product license weight management claims.

Use of Before and After Photographs

The Company explained that its compliance process for the use of before and after photos is set up so that every before and after photo is reviewed by a trained Compliance Specialist and approved only if it meets the expectations of an average individual using the product or a combination of products for the time span indicated.

⁷ Dulloo AG, Seydoux J Giradier L, Chantre P, Vandermander J. *Green Tea and thermogenesis: interactions between catechin-polyphenols, caffeine and sympoathetic activity. Int j Obes Relat Metab Disord.* 2000 Feb;24(2):252-8.

IW argued that DSSRC reviewed the disclosure language that accompanied the Before and After photos out of context by pulling one sentence (“*Earnings of participants in the Compensation Plan may vary. Please see the It Works! Annual Income Disclosure Statement”) out of a disclaimer that was intended to be read in its entirety.

IW provided DSSRC with the parameters/criteria that is set by its Director of Compliance and applied by its Compliance Specialists for the approval of its before and after testimonials. The Company stated that upon submission of before and after photos, IW distributors are required to provide the dates that the photos were taken, identification of the products used and whether the distributor incorporated diet and exercise.

IW also noted that the before and after photographs identified by DSSRC were more than two years old and on a template that is no longer used by the Company. IW stated that that its before and after template is actively reviewed and revised by its Compliance Department as needed to increase compliance and that template was last evaluated in 2018.

With respect to the duration of the depicted results that may be expected by consumers, the Company stated that cosmetics, by definition, only change superficial appearance and results are always temporary. IW provided the disclaimer that it uses for cosmetic testimonials which states that “Results are not permanent. The success of this individual is not necessarily indicative of other success.” Conversely, the Company noted that, the results of dietary supplements could be temporary or permanent depending on the individual and any additional underlying lifestyle changes that are made. It Works! contended that its disclosure for all dietary supplement testimonials states “The success of this individual is not necessarily indicative of other success. Results may be affected by a variety of factors, such as starting weight, body type, exercise and diet.” The Company called DSSRC’s attention to the Federal Trade Commission’s (FTC) Voluntary Guidelines for Providers of Weight Loss Products or Services which it maintained makes clear that the guidelines are not the law but voluntary standards. It Works! asserted that its approved before and after pictures contain representations of how long the effects of the product(s) last which is reflected in time span indicated in the Distributors’ post.

IW revised its disclosure template by increasing the font and contrast and making the disclosure more prominent.

a. Earnings Claim

- *“Message me and I will show YOU how women/men are earing SIX figure incomes (money emoji) from this crazy business.”*



IW advised DSSRC that it previously reached out to the distributor regarding the post that was identified by DSSRC and indicated that the distributor’s account was terminated for other reasons in November 2017.

In response to DSSRC’s concerns regarding income representations and the location of an earnings disclaimer and the link to the It Works! Income Disclosure Statement, the Company explained that it added a disclosure asterisk at the end of all earnings claims and incorporated a link to its Income Disclosure Statement within the disclaimer alleviating the need to scroll further to access the document which states: “Earnings of participants in the Compensation Plan may vary. Please see the It Works! Annual Income Disclosure Statement.”

ANALYSIS

The DSSRC confirmed that the Company had already voluntarily taken action to address a number of the social media posts at issue before this inquiry was commenced. In addition, during the pendency of the inquiry and in the spirit of self-regulation, the Company had several of the social media posts from IW distributors that were identified by DSSRC in its opening letter taken down.

Accordingly, DSSRC reviewed the remaining express and implied income claims that were communicated in the form of testimonials from IW distributors and on the Company website and also evaluated the truth and accuracy of the remaining product performance claims.

1. Earnings Claims

The Company provided DSSRC with a copy of its comprehensive compliance policy and distributor training procedures with respect to the dissemination of earnings claims communicated by IW distributors. IW also advised DSSRC that it works with a reputable third-party vendor to monitor the social media claims made by the Company’s distributors.

The Company informed DSSRC that the earnings claims at issue have either been completely removed or would be significantly modified to disclose the amount of income that could be generally expected by IW distributors.

It is a long-standing principle of advertising that an advertiser has the burden to support all reasonable interpretations of its claims and not simply the messages it intended to convey. Verizon Communications, Inc. (Verizon Wireless Services (“First to 5G”)), Report #6258, *NAD/CARU Case Reports* (May 2019). Further, in the direct selling context, the DSSRC has made clear that the responsibility of the direct selling company extends to the claims disseminated by members of a direct selling company’s salesforce.⁸

With respect to the use of testimonials from IW distributors communicating earnings results that may not be consistent with the expectations of typical consumers or recruits, DSSRC noted that the guidance provided by the FTC Guides was particularly relevant. More specifically, the FTC Guides state that:

An advertisement containing an endorsement relating the experience of one or more consumers on a central or key attribute of the product or service also will likely be interpreted as representing that the endorser’s experience is representative of what consumers will generally achieve with the advertised product or service in actual, albeit variable, conditions of use. Therefore, an advertiser should possess and rely upon adequate substantiation for this representation. *If the advertiser does not have substantiation that the endorser’s experience is representative of what consumers will generally achieve, the advertisement should clearly and conspicuously disclose the generally expected performance in the depicted circumstances, and the advertiser must possess and rely on adequate substantiation for that representation.* 16 CFR § 255.2(b). (emphasis added).

While DSSRC appreciated the commitment of IW to provide a hyperlink to the Company’s Income Disclosure Statement when an atypical earnings claim is communicated by the Company or its sales force, DSSRC remained concerned that the use of a hyperlink alone would not satisfy its burden to disclose the amount of income that could be generally expected by IW distributors.

As stated in the FTC Dot.com Disclosure Guide:

Disclosures that are an integral part of a claim or inseparable from it should not be communicated through a hyperlink. Instead, they should be placed on the same page and *immediately next to the claim* and be sufficiently prominent so that the claim and the disclosure are read at the same time, without referring the consumer somewhere else to obtain this important information.⁹ (emphasis added)

Accordingly, as it pertains to It Works future modifications of atypical earnings claims, DSSRC concluded that in the absence of a clear and conspicuous disclosure indicating the amount of earnings that may be generally expected by consumers or incoming recruits, the presentation of

⁸ See Wildtree, Inc., DSSRC Case No. 1-2019

⁹ <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staffrevises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>.

a hyperlink to an income disclosure statement, by itself, will not be sufficient to satisfy the the Company's disclosure obligations.

- *“Message me and I will show YOU how women/men are earing SIX figure incomes (money emoji) from this crazy business.”*

IW informed DSSRC that it reached out to the former distributor who disseminated this claim on Facebook and requested that the distributor remove the claim.

DSSRC confirmed that this claim has been removed, an action that was deemed necessary and appropriate. More specifically, the Company provided DSSRC with information indicating that the average annual income earned by IW distributors in 2016 was \$612.¹⁰ As such, DSSRC determined that this claim, in the unqualified context in which it was presented, could be reasonably interpreted by consumers as meaning that earning a six figure income could be typically expected by IW distributors. Such message is not supported by IW distributor income data.

DSSRC appreciates the prompt action taken by IW to remove this claim and its ongoing commitment to monitor the income claims communicated by its sales force.

- *“Because of It Works!!, I can buy gas, pay for bills, and in the next three months I'll pay off my student loans! I can support my family of six because we're able to go shopping and do so without fear of my credit cards declining!”*

This claim was presented as a unqualified testimonial claim on the IW website. Although this testimonial may, in fact be authentic, DSSRC concluded that in the context of the online advertising, the representation could be reasonably interpreted by consumers as meaning that IW distributors typically earn a significant monthly income. However, according to the IW 2016 Annual Disclosure Statement, the average IW distributor earns \$51 per month.¹¹ It would be highly unlikely that a monthly income of \$51 would provide enough money to buy gas, pay for bills, pay off student loans and support a family of six or allow an IW distributor to pay off its student loans..

Accordingly, DSSRC determined that the testimonial communicated an unqualified, atypical earnings claim and deemed the voluntary action taken by IW to remove the claim to be necessary and appropriate.

- *“I never thought that working from my home could become a reality, but within two years, my husband and I had both retired, and were a full-time It Works!! Family!.”*

Similarly, this claim was also presented as an unqualified testimonial claim on the IW website. The Company informed DSSRC that this claim would not be presented in the same context in the future on the IW website. DSSRC again concluded that removal and/or modification of the claim was necessary and appropriate.

¹⁰ Based on the It Works! 2016 Annual Disclosure Statement. It Works! advised DSSRC that it is currently in the process of preparing its 2018 Income Disclosure Statement which will be available as a stand-alone link on the It Works! website

¹¹ *Id.*

The use of unqualified claims that imply receiving “career-level income” have been cautioned against by the FTC. Specifically, section thirteen (13) of the FTC’s Business Guidance Concerning Multi-Level Marketing (“FTC Business Guidance”), states that unless it can be demonstrated that direct selling participants can generally achieve such results, companies (and/or their representatives) should not “represent through words or images that participants can earn thousands of dollars a month, quit their jobs, “fire their bosses”.¹² Accordingly, DSSRC concluded that the assertion that IW distributors can retire from their current job and replace that income as a “full-time” IW distributor is a scenario that is both atypical and not supported by the income data provided by the Company.

DSSRC expressed its appreciation to IW for its voluntary commitment to remove the claim in the context in which it is presented to consumers.

- *“Unlimited Income Potential” and “No limit to the amount of money that you can earn.”*

The two above claims suggesting that IW distributors can earn unlimited income appeared as stand-alone claims on the IW website. The Company agreed with DSSRC that unlimited income claims were not an accurate characterization of the amount of money that IW distributors could earn and removed the claims immediately after such claims were brought to the Company’s attention.

2. Product Performance Claims

The product performance claims at issue in this inquiry were communicated both on IW’s official website and on social media by IW distributors. The specific products that were the subject of the DSSRC review included: ThermoFight X, It Works! Cleanse, the It Works! Body Wrap, It Works! Super Greens and It Works! Keto Coffee.

- *It Works! Super Greens and It Works! Keto Coffee*

DSSRC reviewed a social media post that included a before and after photograph of an IW distributor that depicted efficacy results of a combined usage of It Works! Keto Coffee and It Works! Super Greens.

DSSRC expressed concern that the before and after depiction, which showed a woman’s considerable weight loss, did not disclose material information regarding the implied weight loss including the time span in which such results occurred; whether some of the weight loss was attributable to diet and exercise, and whether such results could be reasonably expected by the typical user of two the products.

IW informed DSSRC that it had no record that such a post was approved by the IW compliance department and requested that the distributor to remove the post. DSSRC confirmed that post was taken down and expressed its gratitude to IW for its prompt attention to the matter.

¹² FTC Business Guidance Concerning Multi-Level Marketing, §13 (January 2018)

- *It Works! Cleanse*

A side-by-side, before and after depiction of results using a It Works! Cleanse was accompanied by prominent language indicating that the results occurred over a time span of 48-hours.

Generally, product cleanses focus on eliminating unhealthy or highly allergenic foods while replacing them with nutrient-dense, whole foods to support overall health. Weight loss is a common and ancillary goal of cleanse dieting, but there is no standard definition of what a weight loss cleanse is or what it should include.¹³

DSSRC agreed with IW that the before and after comparison did not depict dramatic or significant weight loss and that the minimal results portrayed in the comparison would be consistent with the peripheral weight loss that would be generally expected from most cleansing regimens. DSSRC also noted that the It Works! product information sheet for the Cleanse does not position It Works! Cleanse as a “weight loss” product but, instead, describes the product as “a wellness cleanse that uses plant-based nutrients to reboot digestive health and help maintain a healthy gut.”¹⁴

Accordingly, DSSRC concluded that the distributor post did not communicate atypical product results. DSSRC also concluded that it would not be generally expected by consumers that losing weight as a result of using It Works! Cleanse was a core message that was communicated by IW and its distributors. Notwithstanding this determination, DSSRC noted that this claim was removed from social media and is no longer being disseminated.

- *It Works! Body Wrap*

DSSRC evaluated the appropriateness of two Facebook posts for the It Works! Body Wrap that were disseminated by Company Distributors.

The first post featured a before-and-after comparison of the IW distributor depicting the results from using the It Works! Body Wrap and was accompanied by bold text indicating “*Time Span: 12 hours*”

Although the post was removed during the inquiry, IW explained to DSSRC that the photo depiction reviewed and approved by the IW compliance team which deemed the depiction representative of the results that the average individual would achieve from the use of this IW product.

In its review of this post, DSSRC was mindful of the FTC’s guidance regarding seven common weight-loss claims made for products available over-the-counter, including nonprescription drugs, dietary supplements, creams, wraps, devices, and patches that it deemed “scientifically infeasible”.¹⁵ More specifically, the FTC cautioned media outlets to think twice

¹³ Healthline Media; “[Weight loss Cleanses: Why do they work?](https://www.healthline.com/nutrition/weight-loss-cleanses-why-do-they-work?)”, <https://www.healthline.com/nutrition/weight-loss-cleanses-why-do-they-work?>

¹⁴ See <https://static.myitworks.com/productsheets/32602/32602-productinfo-en.pdf>

¹⁵ See “*Gut Check: A Reference Guide for Media Spotting False Weight Loss Claims*”, ; <https://www.ftc.gov/tips-advice/business-center/guidance/gut-check-reference-guide-media-spotting-false-weight-loss>

before running any advertisement that says wearing a product on the body or rubbing it into the skin causes substantial weight loss.¹⁶

DSSRC agreed with IW that the Facebook post was not inappropriate as the before-and-after photo depicted very modest results and did not communicate to consumers that use of the It Works! Body Wrap for 12 hours would cause the type of “substantial weight loss” contemplated by the Commission. There is scant evidence showing that body wraps can help users lose weight. Although manufacturers of some body wraps claim that you lose weight by increasing your core body temperature, the weight lost is essentially water weight from sweating while using the product. Here, IW does not position the It Works! Body Wrap as a weight loss product and states only on the It Works! Body Wrap product page that the product will tighten, tone and firm the area of the body on which it is applied after 45 minutes.¹⁷

While DSSRC appreciated that IW voluntarily removed the post and agreed that the Facebook post did not communicate weight loss results that would not be generally expected by consumers, it also noted that the It Works! Body Wrap is actually a two-component system that includes the It Works! Body Applicator and the It Works! Fab Wrap. Although the two products are to be used in conjunction, they are offered separately by IW and also priced separately. Accordingly, DSSRC determined that because the depicted results occurred from the use of two component products, this information is material to consumers in contemplation of purchasing the product and should be disclosed in any future advertising and social media posts disseminated by IW distributors.¹⁸

In addition, results from using the It Works! Body Wrap for forty-five (45) minutes are temporary and, unless otherwise disclosed, DSSRC concluded that a reasonable consumer may take away the message that the results depicted are long-term and possibly permanent when that is not in fact the case. As such, DSSRC recommended that IW distributors should disclose that the generally expected results from the It Works! Body Wrap are temporary and the depicted results are not long-term or permanent.

The second Facebook Post for the It Works! Body Wrap included a picture of woman with a tape measure around her waist and referred to the “unbelievable results” that can be achieved using the It Works! Body Wrap and how users can “...lose inches in just 45 minutes with one application.” The post also includes claims that the product “Reduces the appearance of cellulite” and “Gives you a fast & lasting results from a botanically based formula.”

After DSSRC initiated this inquiry, IW took action to have the post removed immediately and explained that the post had not been approved by the Company’s Compliance Specialist. DSSRC determined that such action was necessary and appropriate based upon the express message that the results are “long lasting” and the implied messages communicated by the post

¹⁶ *Id*

¹⁷ See the It Works! Body Wrap page at <https://itworks.com/shopping/item/111>

¹⁸ Additionally, It Works! offers a Defining Gel that is often used in conjunction with the Body Applicator and the Fab Wrap. If results depicted in advertisements or social media post by It Works! distributors occurred partially as a result of using the Defining Gel, DSSRC recommended that the Company disclose this in the posts and/or advertisements.

that weight loss and losing inches off the waist are results that may be generally expected by users of the product. However, there was no such evidence in the case record to support such a message and DSSRC was advised by IW that it specifically instructs its distributors that they are not authorized to communicate any claims suggesting that the use of the It Works! Body Wrap will result in weight loss or inches lost off the waist.

Lastly, as noted earlier in this section of the decision, DSSRC recommended that any future IW advertising for its Body Wrap (*i.e.*, including social media posts by IW distributors) should disclose that the generally expected results from the It Works! Body Wrap are temporary and that consumers should not construe the depicted results as being long-term or permanent.

- *ThermoFight X*

DSSRC reviewed several social media posts made by IW distributors for ThermoFightX, the Company's weight loss supplement, as well as the description of the product on the IW website. All of these claims included some iteration of the establishment claim that ThermoFight X contains a clinically proven weight-loss ingredient that has been shown to result in an average of 31 pounds lost over 90 days.

As support for this core establishment claim, IW provided DSSRC with a copy of the 2009 Dulloo study which was conducted on, GreenSelect Phytosome, the green tea extract that is the primary ingredient in ThermoFight X.¹⁹ The Dulloo study was conducted on one hundred (100) subjects of both genders on a hypocaloric diet. Fifty (50) subjects were assigned to the green tea extract plus hypocaloric diet while the other fifty subjects followed only the hypocaloric diet.²⁰ Body weight was measured on subjects after forty-five (45) and ninety (90) days of treatment. After ninety (90) days of treatment, the statistically significant results indicated appreciable weight loss of 31 lbs. and a decreased body mass index in the GreenSelect Phytosome group as compared to eleven (11) lbs. in the diet only group. Besides the effect on weight and body mass index, several biochemical parameters were also positively impacted including LDL, HDL and total cholesterol and triglycerides.

Claims that represent that there is scientific evidence that proves or establishes the truth of the advertiser's claims, are establishment claims. DSSRC, like other BBB NP advertising self-regulation programs, require that, where an advertiser makes an establishment claim, it must offer reliable and well controlled clinical testing on that product that can be readily verified to substantiate an establishment claim for a product.²¹

Although the FTC often requires two reliable and competent studies to support an establishment claim, the advertising self-regulatory forums do not rigidly require a specific number of tests to support establishment claims and, rather, focus their analyses on the quality, consumer

¹⁹ "GreenSelect Phytosome as an Adjunct to a Low calorie Diet for Treatment of Obesity: A Clinical Trial," Di Pierro, Menghi, Barreca, Lucarelli and Calandrelli. Alternate Medicine Review, Volume 14, Number 2, 2009.

²⁰ The average starting weight of the Diet only group was 209 lbs. and the average starting weight of the GreenSelect group was 211 lbs.

²¹ See Avon Products, Inc., Skin-So Soft Guard Plus 3535 Insect Repellent, NAD Case #3922, 6/24/02 and iQ Derma/Intelligent Beauty, LLC, ERSP Case #198 (11/21/08).

relevance, and reliability of the of the scientific study offered in support of an advertiser's "clinically proven" establishment claim.²²

In its evaluation of the study protocol, DSSRC acknowledged that the study was well controlled and of sufficient duration to provide clinically relevant results. In addition, the Dulloo study was published in a reputable peer-reviewed scientific journal.²³ DSSRC also confirmed that the dosage of GreenSelect that was administered in the study was appropriate and consistent with ThermoFight X usage instructions and that the weight loss results were statistically significant ($p < 0.001$) after ninety-days.

Having concluded that the IW study was satisfactorily conducted and produced reliable, statistically significant results, DSSRC turned its attention to the context in which the establishment claims were presented in the advertising and whether the company and its distributors appropriately characterized the study data.

"She did this with our ThermoFight now since it has been reformulated, it's now called ThermoFight X." and *"It's been clinically proven to shed 31 lbs in 90 days."*

These two claims accompanied a before and after photograph on a distributor's Facebook post that has since been discontinued. However, because IW informed DSSRC that it intended to continue various iterations of the core claim that use of ThermoFight X has been "clinically proven to shed 31 bs in 90 days," DSSRC evaluated the Company's support for this core establishment claim.

Although DSSRC agreed that the results of the clinical testing on ThermoFight X did demonstrate an average weight loss at the end of 90 days of approximately 31 pounds, at least some of the weight loss was attributable to exercise and the low calorie diet to which test subjects adhered to.²⁴ Exercise and diet are material factors in a consumer's full understanding of the product performance claim.

According to the FTC, a claim may be considered inaccurate if it contains a statement – or omits information - that is "material," or important to a consumer's decision to buy or use the product.²⁵ As further noted by the Commission, the FTC looks at what the ad does not say. The failure to include material information leaves consumers with a misimpression about the product.²⁶ DSSRC also determined that the specific quantified context in which claim was presented (e.g., "lose 31 pounds in 90 days") would, in the absence of any qualifying information indicating otherwise, contribute to implied product performance message that the weight loss was entirely

²² See ReliefBand Technologies, LLC, ReliefBand, ERSP Case #424 (7/18/18).

²³ Alternative Medicine Review is dedicated to providing accurate, timely, and clinically relevant original research articles, literature reviews, monographs, abstract, and editorials for the practicing health care practitioner.

²⁴ Test subjects who did not take the test product and adhered to a hypocaloric diet and exercise regimen averaged weight loss of 11 lbs. after the 90-day examination period.

²⁵ Federal Trade Commission's Advertising FAQs; A Guide for Small Business. <https://www.ftc.gov/tips-advice/business-center/guidance/advertising-faqs-guide-small-business>. April 2001.

²⁶ *Id.*

attributable to the ingredients in ThermoFight X, when that was not in fact the case. With respect to the Company's future disclosure of material information regarding the study, DSSRC reinforced the general advertising principle that the information should be presented clearly and conspicuously so that consumers can actually notice and understand it.

Regarding the product reformulation, DSSRC noted that IW confirmed that chromium was added to the formula to provide support for the product's efficacy in maintaining glucose metabolism and normal blood glucose levels. The Company also informed DSSRC that the reformulation had no impact on the weight loss effectiveness of ThermoFight X's primary ingredient Green Select Phytosome.

In conclusion, DSSRC agreed that IW provided reliable and competent scientific evidence to demonstrate that ThermoFight X has been clinically proven to produce weight loss of 31 pounds in 90 days. However, DSSRC also determined that because the test subjects' adherence to a strict diet and exercise regimen partially contributed to the stated weight loss results, this was a material factor in obtaining the results claimed by IW. As such, this material information should be clearly and conspicuously disclosed in any claims referencing the clinical results.

"2 pills (pill emoji), 30 pounds lost (down arrow emoji), 90 days who wants the deets?"

This Facebook post was disseminated by the same IW distributor responsible for the above post and, similarly DSSRC confirmed that the post has been removed. This post was accompanied by text from the distributor stating *"on my way to the gym... Nonetheless... to get max results for my people who can't make it to the gym...get this product now."*

Unlike the establishment claim post described in previous section of this analysis, this claim did not include the term "clinically proven" and did reference the exercise component that contributed to the weight loss results for ThermoFight X in the Company's testing. However, DSSRC concluded that the social media post could be reasonably interpreted by consumers as suggesting that users could achieve "max results" without exercising but the evidence in the case record did not support such an assertion. While the IW distributor did refer to one material condition (*i.e.*, exercise) that contributed to the average weight loss that could be expected from using ThermoFight X for 90 days, she failed to disclose the second component to the weight loss – that is adherence to low caloric diet.

Accordingly, with respect to any future weight loss claims made by IW that are based upon the 2009 clinical study that was provided to DSSRC, it is recommended that the advertising include reference in the body of the post (or in a clear and conspicuous disclosure) that adherence to a strict diet and exercise regimen contributed to the stated weight loss.

"It's a new month and I have 10 new 90-day challenge spots open this weekend! I am looking for anyone who wants to lose 10-50 lbs and/or tighten and tone before summer!!"

This weight loss claim was also accompanied by a before-and-after photographic comparison and appeared as a stand-alone post on Facebook. This post was removed from circulation during the pendency of this inquiry.

DSSRC agreed that the Company's removal of this post was necessary and appropriate because the range of weight loss communicated by the distributor (*i.e.*, 10-50 lbs.) exceeded the average weight loss that was reported in the 2009 study. Furthermore, no evidence was provided by IW indicating any test subjects lost 50 lbs. during the 90-day test period. As such, the express weight loss claim was not supported.

Lastly, in its assessment of the appropriateness of this claim, DSSRC noted that the post was presented in an unqualified context and, again, reinforced the obligation of IW to disclose that adherence to a strict diet and exercise regimen contributed to the stated weight loss.

"Previous testers have lost ON AVERAGE 31 pounds in ONLY 90 days ♡ CLINICALLY PROVEN weight loss + you will lose 2.5X MORE weight than just diet and exercise ALONE! This PROD is 🍷🍷🍷🍷🍷🍷🍷"

The claims above were communicated in a Facebook post by an IW distributor that was discontinued during the pendency of the inquiry. More specifically, the claims appeared as text in the IW distributor's post and was accompanied by an image of woman with a highlighted claim stating "lose 31 pounds in 90 days! w/ ThermoFight X".

DSSRC agreed with the Company that the two quantified claims stated in the post (*i.e.*, "previous testers lost on average 31 pounds in only 90 days" and "you will lose 2.5X MORE weight than just diet and exercise ALONE!") were consistent with the results of the Dulloo study on the primary ingredient in ThermoFight X.

DSSRC also concluded that, unlike the other weight loss social media posts for ThermoFight X that were reviewed by DSSRC, the weight loss results communicated in this post were adequately qualified with a disclosure that the results were achieved with "diet and exercise."

Accordingly, although the post has been since removed by IW, DSSRC concluded that the qualified weight loss claim was nevertheless appropriately communicated to consumers.

- *"Accelerates ketosis by supporting rapid ketone generation" and "Boosts energy"*

The above two claims were also made on the ThermoFight X product information sheet on the IW website. According to information provided by the Company, the product has been enhanced with additional caffeine from a concentrated green tea extract.

Ketosis is a natural metabolic state that involves the body producing ketone bodies out of fat and using them for energy instead of carbohydrates. As support for this claim, the Company presented several studies to demonstrate the correlation of caffeine to the production of ketones and, consequently increased energy. Notably, in one study entitled "*Caffeine Intake increases ketones: an acute metabolic study in humans*"²⁷, Canadian researchers evaluated the effects of

²⁷ Vandenberghe C, St. Pierre V, Courchesne-Loyer A, Cunnane SC, Evidence Based Complement Alternative Medicine, 2013; Canadian Journal of Physiology and Pharmacology 2016 Nov; 95(4).

caffeine consumption in subjects who ate breakfast after fasting for 12 hours. These individuals were given either no caffeine, the equivalent of about a cup and a half of coffee, or a caffeine equivalent of three (3) cups of coffee. Blood samples were then taken to evaluate not only the caffeine levels over four hours, but also the levels of ketones that were manufactured in the liver from the liberation of body fat. The test results indicated that higher dosages of caffeine in the ten (10) healthy adults dramatically increased *beta-hydroxybutyrate*, one of the most studied ketones as it relates to powering the brain and that the increase in blood ketones brought on by caffeine consumption was twice that observed after an overnight fast.

Another study,²⁸ reported that after administration of 10 mgs of caffeine, energy expenditure increased significantly ($p < 0.001$) during the last hour of the test which was significantly higher than the corresponding values obtained after administration of either the placebo or a caffeine adrenoceptor blocker.

Accordingly, DSSRC agreed that the studies provided by IW provided a reasonable basis for its claims regarding increased energy and ketone production.

- *“Activates thermogenesis to achieve and maintain an ideal fat burn.”*

This claim was disseminated on the ThermoFight X product information sheet on the IW website and characterizes the mechanism of action of the primary product ingredients to increase lipolysis through thermogenesis. The Dulloo study provided by IW²⁹ reported that EGCG increases caloric consumption by increasing thermogenesis through the inactivation of norepinephrine. The study also reported that a green tea extract stimulates brown adipose tissue thermogenesis to a greater extent than can be attributed to its caffeine content per se, and that its thermogenic properties could reside primarily in an interaction between its high content in catechin-polyphenols and caffeine with sympathetically released noradrenaline.

DSSRC determined that the information provided in this study and the other published information provided by IW describing the relationship of the product’s primary GreenSelect Phytosome ingredient and thermogenesis provided adequate substantiation for its claim regarding thermogenesis activation.

- *“Supports healthy blood sugar levels to reduce sugar cravings.”*

IW referenced several studies as support for the above claim which was communicated on the ThermoFight X product information sheet on the IW website. In one study,³⁰ researchers found that chlorogenic acid (CGA) was not only effective in preventing weight gain, but it also helped maintain normal blood sugar levels and healthy liver composition.

²⁸ Acheson KJ, et al, “Metabolic Effects of caffeine in humans; lipid oxidation or futile cycling? American Journal of Clinical Nutrition 2004 Jan; 79(1) 40-6.

²⁹ *Supra at 20.*

³⁰ Yongjie Ma, Mingming Gao, Dexi Liu. Chlorogenic Acid Improves High Fat Diet-Induced Hepatic Steatosis and Insulin Resistance in Mice. *Pharmaceutical Research*, 2014; DOI: [10.1007/s11095-014-1526-9](https://doi.org/10.1007/s11095-014-1526-9)

The Company also provided a meta-analysis of a number of in-vivo studies which have observed that CGA can regulate glucose and lipid metabolism and improve insulin sensitivity.³¹ In one preliminary 12-subject human study³², coffee enriched with CGA in the test group reported a 6.9% reduction in glucose uptake compared to the control group. The authors of the study concluded that CGA conveys significant support for healthy weight management and affects blood glucose uptake in a health-promoting manner.

Another study referenced in the IW submission specifically investigated the effects of chlorogenic acids in coffee on glucose uptake systems in the gut.³³ This small 3-way, randomized, crossover, human clinical trial involved nine (9) healthy volunteers who consumed 25g glucose in either: caffeinated coffee, decaffeinated coffee (equiv. to 2.5mmol chlorogenic acid/L), or 400mL water as a control. Blood samples were taken at regular intervals for the next three hours to monitor blood glucose levels, insulin levels, and also levels of key gastrointestinal hormones to attempt to determine effects on glucose metabolism and a possible method of action in the gut. The study administrators reported that when compared to both decaffeinated coffee and control beverage consumption, caffeinated coffee tended to result in higher plasma glucose and insulin concentrations during the first 30 minutes after consumption. The authors hypothesized that the results were expected due to caffeine's known tendency to encourage a small spike in blood glucose levels. In sum, the study concluded that moderate coffee consumption has been found to be related with higher likelihood of maintaining healthy blood glucose levels throughout an individual's lifetime. Moreover, the study lends support to past observations that the chlorogenic acid is responsible for the beneficial glucose metabolism effects.

Accordingly, DSSRC determined that the totality of research provided by It Works provided sufficient support for its claim that ThermoFight X supports healthy blood sugar levels.

CONCLUSION

IW removed several of the social media posts from IW distributors that were communicating both income and product performance claims to consumers before and shortly after the self-regulatory inquiry was commenced. DSSRC determined that the removal of the posts was necessary and appropriate as a number of posts referenced distributor income that was atypical and did not include any disclosures regarding the annual income that could be generally expected by IW distributors.

The Company also agreed to remove several implied income claims from the IW website. More specifically, IW agreed to remove unqualified testimonial claims that DSSRC determined

³¹ Shengxi Meng, Jianmei Cao, Qin Feng, Jinghua Peng and Yiyang Hu. Roels of Chlorogenic Acid on Regulating Glucose and Lipids metabolism: A Review. *Evidence-Based Complementary and Alternative Medicine* 2013; Article ID 801457.

³² Thom E. 2007. The effect of chlorogenic acid enriched coffee on glucose absorption in healthy volunteers and its effect on body mass when used long-term in overweight and obese people. *Journal of International Medical Research*. 35(6); 900-908.

³³ Johnston KL, Clifford MN, Morgan LM. 2003. Coffee acutely modifies gastrointestinal hormone secretion and glucose tolerance in humans: glycemic effects of chlorogenic acid and caffeine. *The American Journal of Clinical Nutrition*. 78(4):728-33.

could be reasonably interpreted by consumers as meaning that IW distributors typically earn a significant monthly income to pay off student loans, monthly household bills, and buy gas. The Company also removed claim made on social media platforms by IW distributors suggesting that they typical distributor will earn enough income to retire in two years.

In addition, the Company voluntarily removed online claims representing that IW distributors can earn “unlimited income” and that there was “No limit to the amount of money that you can earn.” DSSRC did not object to the descriptive claims on the ThermoFight X product information sheet found on the It Works website.

As it pertains to It Works future modifications of atypical earnings claims, DSSRC concluded that in the absence of a clear and conspicuous disclosure indicating the amount of earnings that may be generally expected by consumers or incoming recruits, the presentation of a hyperlink to an income disclosure statement, by itself, will not be sufficient to satisfy the the Company’s disclosure obligations.

With respect to the product performance claims that were communicated both by IW on its official website and on social media posts by IW’ distributors, DSSRC agreed with IW that the before and after comparison regarding the results of the IW Cleanse did not depict dramatic or significant weight loss and that the minimal results portrayed in the comparison would be consistent with peripheral weight loss that results from most cleansing regimens. DSSRC confirmed that the Company removed the post at issue regarding depicted efficacy results of a combined usage of It Works! Keto Coffee and It Works! Super Greens. DSSRC also agreed with IW that the before-and-after photo depicting the results achieved from using the It Works! Wrap was not inappropriate as the before-and-after photo depicted very modest results and did not communicate to consumers that use of the It Works! Body Wrap for stated 12-hour time period would cause atypical “substantial weight loss.” Notwithstanding this conclusion, DSSRC also determined that depicted results of the It Works! Body Wrap occurred from the use of two component products that are also individually offered for sale by the Company and that because this information is material to consumers, the information should be disclosed in any advertising and social media posts disseminated by IW distributors. Moreover, DSSRC recommended that in the future, IW should disclose that the generally expected results from the It Works! Wrap are temporary and that consumers should not construe the depicted results as being long-term or permanent.

As it pertains to the claims at issue for ThermoFight X, DSSRC concluded that the clinical study submitted by IW was satisfactorily conducted and produced reliable, statistically significant results and provided adequate support for the establishment claims at issue. However, it was also determined that because the test subjects’ adherence to a strict diet and exercise regimen partially contributed to the stated weight loss results that this was a material factor in obtaining the results claimed by IW and this information should be clearly and conspicuously disclosed in any social media posts referencing the clinical results. Similarly, DSSRC recommended that the Company eliminate any social media posts that make an unqualified reference to weight loss results that exceed the amount reported in the clinical study.

COMPANY STATEMENT

“It Works! understands the DSSRC’s mission and appreciates the thoughtful, thorough, and professional way that the DSSRC approached It Works! with its concerns and comments about the product and earnings marketing claims made by It Works! and its independent distributors. It Works! does not admit that it violated any statutes, regulations or properly promulgated rules. It Works! points out that the DSSRC opinion is largely based upon FTC guidance reports, which have not been properly noticed and published based upon proper rulemaking procedures and do not operate as law (the DSSRC recognizes this as its own policies and procedures do not include FTC Guidance materials as a proper source upon which to base a decision.)³⁴³⁵ Further, It Works! notes that the DSSRC report refers to average annual income and average monthly income. It Works! notes that providing a simple numerical number is not meaningful nor is it the proper standard for income disclosure as there is a substantial difference between the “generally expected result” (the standard adopted by the FTC) and an average. At a minimum, the information contained in the income disclosure statement should be provided and not a simple average number provided on its own.

Notwithstanding the above, It Works! agrees to adhere to the DSSRC’s recommendations, and in fact, has already done so. It Works! maintains a robust compliance program that includes, but is not limited to, a dedicated compliance team, specific policies and procedures that all independent distributors agree to upon enrollment, subscription to an industry leading distributor compliance monitoring program, and ongoing education provided to our independent distributors and our corporate team. In response to the DSSRC’s inquiry pointing out specific claims and areas of concern, It Works! immediately investigated and took a proactive stance in addressing each point of concern, requiring that distributors remove improper social media posts, updating and revising the company website, and providing the research and documentation in support of specific product claims. It Works! will continue to monitor and review distributor claims. It Works! plans to implement additional distributor training and monitoring in 2020 to achieve even better compliance moving forward.“

³⁴ The DSSRC’s Policies and Procedures identify the following sources as proper foundation for its findings:

DSSRC shall look to statutes, regulations, judicial precedent, and self-regulatory decisions from the National Advertising Division of BBB National Programs (NAD), Electronic Retailing Self-Regulation Program (ERSP) and/or National Advertising Review Board (NARB), the DSA Code of Ethics, or the BBB Code of Advertising.

<https://bbbprograms.org/programs/DSSRC/dssrc-policies-and-procedures/>

³⁵ It Works! further points out that reliance on FTC Guidance Reports as a legal standard is a key allegation in the recently filed lawsuit, *Nerium International, LLC, et al. vs. Federal Trade Commission* filed in the Northern District of Illinois (Civ. No. 1-19-cv-7189).