Shook, Hardy & Bacon L.L.P.

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LEGAL TRENDS REPORT

COSMETICS • COSMECEUTICALS • DIETARY SUPPLEMENTS • NUTRACEUTICALS

CONTENTS

INSIDE GOVERNMENT

FTC Approves Final Orders Settling "Get High School Skinny" Charges

The U.S. Federal Trade Commission (FTC) has approved final orders settling charges that HealthyLife Sciences, LLC and its founder, John Matthew Dwyer III, made unsubstantiated claims that Healthe Trim® supplements would cause users to "Get High School Skinny" after rapid and substantial weight loss. According to an October 24, 2014, FTC press release, the Commission approved the settlement in a 5-0 vote, banning Dwyer from the weight-loss industry by prohibiting him from manufacturing or marketing weight-loss products and barring HealthyLife from making any of seven specific claims about weight-loss supplements, over-the-counter drugs or products worn on or rubbed into the skin. Further information about the settlement appears in Issue 33 of this *Report*.

At FTC's Request, Court Orders Nine Companies to Stop "Free" Trial Offers

A Nevada federal court has granted the U.S. Federal Trade Commission's (FTC's) motion for a temporary restraining order preventing nine companies—including Health Formulas, LLC, Pure Vitamins, LLC and Weight Loss Dojo, LLC—and four of the companies' shared officers from "using 'free' trial offers and health claims that the agency charges are deceptive and illegal to pitch green coffee bean extract" and other dietary supplements, according to an October 20, 2014, agency press release. *FTC v. Health Formulas, LLC*, No. 14-1649 (U.S. Dist. Ct., D. Nev., order filed October 9, 2014).

The four individual defendants serve various capacities in the nine defendant companies, with each involved in at least five and one involved in all nine. FTC alleges that the companies charged consumers without their knowledge for "a variety of dietary supplements and other weight-loss, virility, muscle-building, or skin cream products," which they allegedly advertised with unsubstantiated claims. The complaint also asserts that the defendants used consumer payment information to enroll them in automatic-debit programs,

SHB offers expert, efficient and innovative representation to clients targeted by plaintiffs' lawyers and regulators. We know that the successful resolution of health, wellness and personal care product-related matters requires a comprehensive strategy developed in partnership with our clients.

For additional information on SHB's Health, Wellness & Personal Care Products capabilities, please contact

Debra Dunne
215-278-2555
ddunne@shb.com

Laurie Henry
816-559-2421
lhenry@shb.com

Madeleine McDonough
816-559-2342
mmcdonough@shb.com

If you have questions about this issue of the Update, or would like to receive supporting documentation, please contact Mary Boyd (mboyd@shb.com) or Dale Walker (dwalker@shb.com); 816-474-6550.

with charges for Simple Pure's weight loss supplements—such as Pure Green Coffee Bean Plus and RKG Extreme—typically ranging from $60 to $210 per month.

According to FTC, the charges represent the first action alleging violations of the Restore Online Shoppers' Confidence Act; in addition, the complaint alleges that the defendants violated the FTC Act and the Commission's Telemarketing Sales Rule. "The defendants behind Simple Pure used nearly every trick in the book to deceive customers," Director of the FTC's Bureau of Consumer Protection Jessica Rich reportedly said. "They not only deceived consumers about the effectiveness of their products, but also repeatedly debited consumers' accounts without their approval."

FDA Seeks Comments on Dietary-Supplement Substantiation-Claim Submissions

The U.S. Food and Drug Administration (FDA) has **requested** public comments on the time burdens associated with the submission of information that would substantiate the claims that dietary-supplement manufacturers place on product labels.

FDA has estimated that "it will take 44 hours to assemble information needed to substantiate a claim on a particular dietary supplement when the claim is widely known and established. We believe it will take closer to 120 hours to assemble supporting scientific information when the claim is novel or when the claim is pre-existing but the scientific underpinnings of the claim are not widely established." According to the agency, this information is needed only when manufacturers choose to place a "nutritional deficiency, structure/function, or general well-being" claim on the product's label. The substantiation required "is consistent with the standards set by the Federal Trade Commission for dietary supplements and other health-related products that the claim be based on competent and reliable scientific evidence." The deadline for submission of comments is January 5, 2015.

N.J. Senate Approves Microbead Ban Bill; On Governor's Desk

The New Jersey Senate has unanimously approved an Assembly bill (**A3083**) that would prohibit the manufacture, sale or promotion of cosmetic products containing microbeads. Now awaiting Gov. Chris Christie's (R) approval, the measure would prohibit the production or manufacture of any personal care product "containing synthetic plastic microbeads, except for an over the counter drug," as of January 1, 2018. A ban on the sale of personal care products with microbeads would take effect the following year, and on the sale of over-the-counter drugs with microbeads in January 2020.

LITIGATION AND REGULATORY ENFORCEMENT

Court Dismisses False HGH Advertising Claims Against SanMedica

A California federal court has dismissed with leave to amend a putative class action alleging that SanMedica International falsely advertised its SeroVital® supplement as clinically tested to provide a 682 percent increase in human growth hormone (HGH) levels. *Kwan v. SanMedica Int'l, LLC*, No. 14-3287 (U.S. Dist. Ct., N.D. Cal., order entered October 30, 2014).

The court rejected the plaintiff's argument that SanMedica advertised its product as providing "youthful skin integrity, lean musculature, elevated energy production [and] adipose tissue distribution," finding instead that the SeroVital® advertising "merely states that peak growth hormone levels are associated with those benefits," so the study underlying the advertising did not need to test for the alleged benefits. The court also rejected the plaintiff's contention that the clinical study did not support the advertising claims, agreeing with SanMedica that the argument supported a substantiation claim but not a false-advertising claim.

Assessing the complaint as a whole to determine its sufficiency, the court examined other arguments that may support the false-advertising claim. It found fault with the studies the plaintiff cited, including *New England Journal of Medicine* articles about HGH, because some statements were at least 11 years old while others were undated, so the court "has no way of knowing whether the alleged statements were made before SeroVital was in testing or on the market. If these statements were made before SeroVital was created, then these statements may well be irrelevant because they refer to a world in which this product did not exist."

Montana High Court Allows Retrial in Nail-Product Defect Suit

The Montana Supreme Court has reversed a jury verdict in favor of a company that repackaged and distributed a liquid acrylic nail product, finding trial court error during the trial of product-liability claims filed by a nail salon operator who alleged permanent injury from using the product in her business. *Kenser v. Premium Nail Concepts, Inc.*, No. DA 13-0499 (Mont., decided October 21, 2014).

The trial court had granted the plaintiff's motion for partial summary judgment before trial, ruling that the defendant would not be permitted to argue to the jury that the plaintiff misused the product or assumed the risk of such alleged misuse, because the company had expressly acknowledged that it was foreseeable that consumers would get the product on their skin. The plaintiff had allegedly developed contact dermatitis from exposure to the ethyl methacrylate in the product, as well as asthma from inhaling it, and apparently experiences allergic reactions when exposed to any chemical in the acrylate family.

Despite its pre-trial ruling, the trial court then (i) allowed the defendant to introduce evidence indicating that the chemical was "safe as used, when skin contact is avoided," (ii) did not allow the plaintiff to cross-examine witnesses who testified to this effect, (iii) failed to instruct the jury that it was foreseeable to the company that nail technicians would get the product on their skin and inhale the vapors, and (iv) instructed the jury that "safe as used" means the incorporation of a specific ingredient into a product, but does not refer to how the consumer uses the product. The Montana Supreme Court found that each of these rulings was erroneous and that their cumulative effect resulted in an unfair trial. The court determined that repeated references to "safe as used, when skin contact is avoided" was confusing to the jury, allowing it to conclude that users could avoid skin contact and those users who did not do so were "misusing" the product.

It also found that the trial court's "definition of 'safe as used' makes little sense in the context of a products liability claim in which the concepts of use and misuse apply to the *user or consumer*, and not to the manner in which the seller might incorporate a component into its allegedly defective product. By introducing 'safe as used' into evidence and its instructions in the manner which the court did, the court erroneously injected a misuse defense back into the case after it had previously and correctly ruled that misuse was not a defense available to [the defendant]." The court declined to rule on the defendant's cross-appeal regarding the denial of its motion for a directed verdict as to the plaintiff's request for punitive damages.

Appeals Court Dismisses Spam Suit Against Guthy-Renker

A California appeals court has dismissed a putative class action alleging that Guthy-Renker LLC violated state anti-spam laws by sending the plaintiffs emails from nonexistent entities with subject lines that seemed to offer free gifts. *Rosolowski v. Guthy-Renker LLC*, No. B250951 (Cal. Ct. App., 2nd Dist., Div. 3, order entered October 29, 2014). So ruling, the court agreed with the lower court that the plaintiffs failed to state sufficient facts to allege a violation of the law.

The plaintiffs had claimed that Guthy violated the state's anti-spam law because Guthy sent them "email advertisements purporting to be from 'Proactiv Special Offer,' 'Wen Hair Care,' 'Proactiv Special Bonus Deal,' 'Proactiv Bonus Gift,' and 'Proactiv: Special Offer,' which are not names or registered fictitious business names of existing entities, and are not traceable to Guthy via a WHOIS database search." They also alleged that the emails "asserted the recipient was entitled to a free or complimentary gift, without mentioning the gift was contingent upon a purchase."

The court assessed the allegations under *Kleffman v. Vonage Holdings Corp.*, 232 P.3d 625 (Cal. 2010), and *Balsam v. Trancos, Inc.*, 203 Cal. App. 4th 1083

(2012). In *Kleffman*, the California Supreme Court determined that the use of 11 different domain names that could all be traced to Vonage's marketing agent did not violate the anti-spam statute. "An e-mail with an accurate and traceable domain name makes no *affirmative* representation or statement of fact that is false . . . [and] . . . cannot reasonably be understood to be an implied assertion that the source of that e-mail is different from the source of another e-mail containing a different domain name."

Noting that *Kleffman* did not specify "what is meant by a traceable domain name," the court found that Guthy did not use domain names that were traceable to the company. The court also compared the instant case to *Balsam*, in which the domain names were deliberately falsified and untraceable to affirmatively and falsely represent that the apparent sender had no connection to the actual sender. According to the court, "*Balsam* concluded *Kleffman* should be 'read . . . commonsensically . . . to mean that a domain name is "traceable" to the sender if the recipient of an e-mail could ascertain the sender's identity and physical address through the use of a publically available database such as WHOIS.'"

The court found that "[a]lthough the identity of the sender of the subject emails in the 'from' line could not be ascertained through the use of a publicly available database such as WHOIS, the body of the emails was sufficient to enable the recipient to identify Guthy as the sender" because the emails were advertisements for Guthy's brands, linked to Guthy's Website and provided an unsubscribe notice and physical address. "Plaintiffs cannot plausibly allege that Guthy attempted to conceal its [identity], as the clear purpose of emails was to drive traffic to Guthy's website."

Considering Guthy's subject lines, the court found that "the subject lines were not likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message. [] The email advertisements plainly and conspicuously stated the conditional nature of the offer." The court reasoned, "[W]e view an email's subject line in conjunction with the body of the email, rather than in isolation. We conclude the subject lines' offer of a free gift was not likely to mislead a recipient, acting reasonably under the circumstances, about a material fact [], because the email advertisements made it clear that a free gift was conditional upon a purchase."

Herbalife Agrees to Pay $15 Million to Settle Pyramid Scheme Claims

Herbalife has reached a settlement in a class action alleging that the company violated California's endless chain scheme law and the Racketeer Influenced and Corrupt Organizations Act based on its organizational structure, according to a motion for preliminary approval of the class action settlement. *Bostick v. Herbalife Int'l of Am., Inc.*, No. 13-2488 (U.S. Dist. Ct., C.D. Cal., W. Div., motion filed October 31, 2014).

Under the agreement, Herbalife would pay $15 million into a settlement fund, which would then be distributed to class members depending on the types of claims they file. Only "legitimate Business Opportunity Claimants," or "those Class Members who joined Herbalife primarily to pursue a business opportunity (and not primarily for personal and/or family consumption of Herbalife products)," would be allotted a portion of the fund. In addition, "higher levels of Herbalife distributors/members (i.e. GET Team and above) are not part of the Class and thus are not eligible for any cash award to reduce conflicts between the class."

Members who purchased at least $750 worth of qualified products would receive a pro rata award—full compensation for the estimated total loss of those products or half of the price paid for the products, because "[g]enerally speaking, the claimants who purchased larger amounts of product are those more likely to have invested significant funds (possibly borrowed funds) in the purchase of product in order to obtain a higher distributor/member level. . . . The $750 threshold was selected because it would have been physically difficult, if not impossible, for someone purchasing that amount to have self-consumed it in a year."

Class members who purchased less than the threshold would be entitled to a $20 flat rate award from the fund, with total flat rate awards capped at $3 million. If filed claims exceed $3 million, the amount of the flat rate award would be adjusted proportionally, or if any funds are left over from the $3 million, they would be available for distribution pro rata. Any remaining funds would be donated *cy pres* to the Consumer Federation of America. Herbalife would also make up to $2.5 million in funds available to buy back products that were purchased more than one year before the deadline for submitting claim forms because Herbalife already allows for the return of unsold products within one year.

"All Natural" Suit Filed Against Diet Bar Maker

A Florida resident has filed a putative nationwide class action against a company that makes "appetite regulator bars" advertised as "100% Natural" and "All Natural" despite allegedly containing "unnatural, synthetic, and/or artificial ingredients," such as maltodextrin, potato maltodextrin, soy protein concentrate, soy protein isolate, and/or soy lecithin. *Livingston v. Fullbar, LLC*, No. 14-62430 (U.S. Dist. Ct., S.D. Fla., Fort Lauderdale Div., filed October 23, 2014). The plaintiff claims that the products are misbranded and falsely advertised, and that class members paid a price premium for "All Natural" products that are not 100 percent natural. The flavor varieties named in the complaint are chocolate peanut butter, double chocolate, peanut butter crunch, cranberry almond, and chocolate caramel.

Alleging violations of Florida's Deceptive and Unfair Trade Practices Act, negligent misrepresentation, breach of express warranty, violation of the Magnuson-Moss Warranty Act, and unjust enrichment, the plaintiff seeks declaratory and equitable relief, restitution, disgorgement, actual damages, attorney's fees, and costs.

Giant Sports Alleged to Spike its Protein Powder with Amino Acids

A plaintiff has filed a putative class action in California federal court alleging that Giant Sports Products, LLC "adds cheaper free form amino acids and non-protein ingredients to increase the nitrogen content" of its Giant Sports Delicious Protein® powder product. *Rodriguez v. Giant Sports Products, LLC*, No. 14-8378 (U.S. Dist. Ct., C.D. Cal., filed October 29, 2014).

According to the complaint, Giant Sports enriches its whey protein powder supplement with amino acids to increase the amount of nitrogen, which in turn apparently leads to inflated results when tested for protein. The complaint presents the supplement facts panel of the protein powder, noting that the first ingredient listed, "Giant Delicious Protein Blend," parenthetically includes several ingredients that are not protein, such as taurine and betaine. The complaint also asserts that laboratory testing revealed 3.926 g per serving of L-Glycine, which is not listed in the supplement facts panel. This omission makes the protein powder misbranded, the complaint claims, under federal and California law. Alleging violations of California's Consumers Legal Remedies Act, False Advertising Law and Unfair Competition Act, as well as unjust enrichment and breach of express warranty, the plaintiff seeks national and California class certification, declaratory judgments, an injunction, restitution, and attorney's fees.

Vemma Hit with False Ad Putative Class Action, Negative Media Coverage

A putative class action filed in New York federal court alleges that Vemma Nutrition Co. falsely advertises its products—including Vemma Mangosteen with Essential Minerals®, Vemma Renew® and Vemma Verve®—as "clinically studied" and "doctor formulated" despite "no credible studies that 'prove' any of Defendants' claims and the consensus of published research confirms that Defendants' claims are false." *Horanzy v. Vemma Nutrition Co.*, No. 14-1296 (U.S. Dist. Ct., N.D.N.Y., filed October 22, 2014).

Vemma—or "Vitamins Essential Minerals Mangosteen Aloe," according to the complaint—sells the products as vitamin-enhanced beverages, and allegedly advertises them as "tested to the highest standard of critical research" to enhance immunity and overall health and increase vitamins and antioxidants in the blood. The complaint also alleges that the company advertises Vemma products as increasing oxygen radical absorbance capacity (ORAC), with an associated clinical study, despite that the U.S. Department of Agriculture

(USDA) "has established that ORAC values have absolutely no relation to human health and that a manufacturer's use of such claims in highly misleading."

The plaintiff identifies several alleged flaws in both studies that Vemma cites in its advertising, claiming that the researchers failed to employ an error rate adjustment or obtain a proper number of participants. Alleging violations of the Magnuson-Moss Warranty Act and New York false advertising and deceptive business practices statutes as well as unjust enrichment, fraud, breach of warranty, and negligent misrepresentation, the plaintiff seeks class certification, attorney's fees and compensatory, treble and punitive damages.

Vemma has also been targeted in recent *Rolling Stone* and *Al Jazeera America* features. The articles claim that Vemma exploits young people in its multi-level-marketing organization. According to *Rolling Stone*, Vemma founder BK Boreyko started the company after the U.S. Federal Trade Commission (FTC) sanctioned his previous company, New Vision International, for claiming that "a regimen of its pills, collectively known as 'God's Recipe,' could cure children of attention-deficit disorder."

Vemma apparently targets young people in college—and, until recently, children as young as 14 in high school—by encouraging Vemma affiliates to bring friends, or "prospects," to a meeting without clarifying what the meeting is about beforehand to avoid giving the prospects time to learn more about the company. New recruits reportedly buy $500 Affiliate Starter Packs to be eligible to become one of the 300 affiliates or so—out of hundreds of thousands—who have earned a company luxury car. *Rolling Stone* alleges that, even then, the car's lease is in the affiliate's name because "if you don't hit your sales goals, then you get stuck with the bill." Al Jazeera reports that few former affiliates have attempted to recoup their losses from the company in court because "to become an affiliate, kids must sign an agreement promising to never speak out against the company or anyone involved in the company and agreeing not to bring a class-action lawsuit." *See Al Jazeera*, October 14, 2014; *Rolling Stone*, October 30, 2014.

Putative Class Alleges Nature's Bounty Exaggerated Gingko Biloba Effects

A California resident has filed a putative class action in state court alleging that Nature's Bounty Inc. falsely advertised its gingko biloba supplements as memory boosters to prey upon the elderly's fear of permanent memory loss. *Wilson v. Nature's Bounty Inc.*, No. BC561527 (Super. Ct. Cal., Los Angeles Cnty., filed October 22, 2014). The complaint alleges that "the promise of enhanced mental acuity and prevention of memory loss is nothing but a sham," citing clinical studies that apparently found ginkgo biloba supplements to be "ineffective in improving memory or cognitive function." The complaint further claims that Nature's Bounty targeted the elderly by labeling their products

with the statement "[g]inkgo helps support brain function and can help improve memory, especially the occasional mild memory problems associated with aging." The plaintiff alleges that Nature's Bounty's advertising was unlawful, unfair, fraudulent, false, and misleading under California law; she seeks class certification, an injunction, restitution, and attorney's fees.

NAD Finds Flaws in Studies of Neo40® Nitric Oxide Supplement

Responding to a Council for Responsible Nutrition challenge, the National Advertising Division (NAD) of the Council of Better Business Bureaus has investigated Neogenesis Laboratories, LLC's advertising for nitric oxide (NO) supplement Neo40® and found that while its claims about NO have scientific support, claims about Neo40's purported benefits are unsupported. In advertising Neo40®, Neogenesis claims that "[n]itric oxide is involved in virtually every organ system within our body but is known primarily for maintaining normal blood pressure and blood flow to tissues" and that the "endothelium (inner lining) of blood vessels uses Nitric Oxide to signal the surrounding smooth muscle to relax, thus resulting in vasodilation and increasing blood flow and oxygen delivery."

Neogenesis argued that NO is a well-studied molecule supported by more than 1,000 papers published since its discovery in 1989, according to an October 28, 2014, NAD press release. NAD agreed that Neogenesis had a reasonable basis for its NO advertising. Claims that Neo40® is "proven to help the body naturally increase its nitric oxide level," "helps maintain circulation" and "helps maintain healthy blood pressure" were, in contrast, found to be unsupported by "competent and reliable scientific evidence."

Neogenesis reportedly submitted several studies, including a case study and "a description of a study that purported to look at blood pressure and arterial stiffness in thirty-one people up to one hour after ingesting Neo40 Daily supplements." In NAD's view, "that evidence did not rise to the level of competent and reliable scientific evidence because of methodological flaws in the studies and/or the results from the trials did not support the advertiser's claims." Neogenesis has indicated that it would appeal the decision because NAD failed "to appreciate the clinical relevance of the clinical evidence provided, which includes four clinical trials, opinions from five experts in the relevant field, and a wealth of case studies and other research demonstrating the clinically relevant benefits of the product."

INTERNATIONAL DEVELOPMENTS

ECHA Calls for Evidence on D4, D5

The European Chemicals Agency (ECHA) has issued a call for evidence on documents that the United Kingdom's Competent Authority (CA) has submitted regarding concerns over the purported persistent, bioaccumulative, toxic (PBT) or very persistent, very bioaccumulative (vPvB) properties of D4 and D5. The submission deadline is November 29, 2014. According to ECHA, this is the first time that its executive director has asked the member state committee (MSC) to give an opinion on PBT and vPvB properties under REACH Article 77(3), but the procedure will ensure consistency between the MSC and risk assessment committee (RAC) deliberations. The RAC will apparently be asked to consider a UK-CA restriction proposal for octamethylcyclotetrasiloxane (D4) and decamethylcyclopentasiloxane (D5).

These substances have not been identified through the REACH Article 59 process, although some studies have apparently shown that they resist degradation and accumulate in the environment, particularly in the bodies of animals. D4 and D5 are used in cosmetics and personal care products such as sunblock, deodorant, hair spray, hair conditioner, lipstick, and lotion. The United Kingdom will reportedly submit restriction proposals in January 2015 to limit concentrations to 0.1 percent by weight of D4 and D5 in personal care products that are typically washed off when used. *See Cosmeticsdesign-Europe.com*, October 23, 2014.

EMERGING TRENDS

N.Y. Juice Company to Launch Drinks with Skin-Care Ingredients

A New York-based juice company reportedly plans to launch a Beauty Bombs® line of beverages that contain ingredients, such as detoxifying clays, pore-refining charcoal and hydrating rosewater, typically found in skin-care products. With its entry into the nutricosmetics market, Juice Generation joins other companies that claim ingesting these elements enhances the complexion. The product line will contain two shots priced at $3.95 each — Pure Earth and Le Détox—that contain clay, and three juices priced at $9.95 each—Activated Lemonade, Activated Greens and Activated Protein—with charcoal. A makeup artist who reportedly tested the products claimed, "I feel energized immediately after drinking these and I notice when I juice daily, my skin glows." Juice Generation CEO and founder Eric Helms said, "Juicing as a whole is being looked at in more ways than just weight loss. More people, especially women, look to juicing as part of their beauty regimen." *See The New York Times Style Magazine and Women's Wear Daily*, October 24, 2014.

Korean Skin-Care Products Find Market in United States

U.S. consumers have reportedly become even more interested in South Korean multistep skin-care regimens and now an array of products from that country are making their way into a marketplace long dominated by innovative European companies. The trend apparently began with the introduction of poplar BB creams imported in 2011. *The New York Times* reports that while American women are unlikely to spend the time that South Korean women devote to skin-care routines—up to a half-hour to massage five different creams into their faces—they are curious about and will try new products. Some South Korean beauty-product importers have found their sales nearly double in recent months. South Korean overnight facial masks and peel-off lip stains at affordable prices have apparently piqued customer interest, a trend that has not gone unnoticed by U.S. and European companies that are creating their own high-tech versions. *See The New York Times*, October 29, 2014.

SCIENTIFIC/TECHNICAL DEVELOPMENTS

Researchers Retract Study of Green Coffee Bean Extract Touted by Dr. Oz

Lead researchers have retracted a 2012 *Diabetes, Metabolic Syndrome and Obesity: Targets and Therapy* study which supposedly found that green coffee bean extract helped participants lose 18 pounds over 22 weeks on average. Mehmet Oz promoted the diet supplement, Green Coffee Antioxidant, on his show, *The Dr. Oz Show*, and was later questioned about the product during a Senate hearing.

Earlier this year, the U.S. Federal Trade Commission (FTC) settled charges against supplement manufacturer Applied Food Sciences (AFS), alleging that the company used the results of a flawed study to make baseless weight-loss claims about its product. In the complaint, FTC alleged that AFS funded an Indian researcher to conduct the study, then hired other researchers to rewrite the results.

The latter researchers have now retracted the study in a short statement in the publishing journal: "The sponsors of this study cannot assure the validity of the data so we, Joe Vinson and Bryan Burnham, are retracting the paper." In a later joint statement, the researchers reportedly said, "We retracted the paper because of an error in one of (the) data points on the BMI graph and because, as the FTC pointed out to us, there was inadequate disclosure of diet restrictions on the subjects and inadequate disclosure of the blinding procedures for the supplements given the subjects." Among other allegations, FTC had argued that the rewriting researchers never reviewed the raw data despite noting several discrepancies in the data sets they received. Further details about the FTC settlement appear in Issue 32 of this Report. *See CNN*, October 24, 2014.

LEGAL TRENDS REPORT

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UPCOMING CONFERENCES AND SEMINARS

The 12th annual Perfumes & Cosmetics Congress will be held November 19-20, 2014, in Chartres, France, and for the first time will be simultaneously translated in English.

Intended for corporate executives as well as all those involved in developing, manufacturing and promoting perfumes and cosmetics, the event will give participants the opportunity to remain current with regulatory changes, network with peers and meet with regulatory authorities. Among other items on the agenda are sessions on raw material safety, cosmetics packaging safety, allergens, ingredients and advertising.

OFFICE LOCATIONS

Denver, Colorado
+1-303-285-5300

Geneva, Switzerland
+41-22-787-2000

Houston, Texas
+1-713-227-8008

Irvine, California
+1-949-475-1500

Kansas City, Missouri
+1-816-474-6550

London, England
+44-207-332-4500

Miami, Florida
+1-305-358-5171

Philadelphia, Pennsylvania
+1-215-278-2555

San Francisco, California
+1-415-544-1900

Seattle, Washington
+1-206-344-7600

Tampa, Florida
+1-813-202-7100

Washington, D.C.
+1-202-783-8400

LEGAL TRENDS REPORT

Shook, Hardy & Bacon attorneys counsel consumer product manufacturers on FDA, USDA and FTC regulatory compliance and risk management issues, ranging from recalls and antitrust matters to facility inspections, labeling, marketing, advertising, and consumer safety. The firm helps these industries develop early legal risk assessments to evaluate potential liability and develop appropriate policies and responses to threats of litigation or product disparagement. The firm's lawyers also counsel manufacturers on labeling audits and a full range of legal matters such as U.S. and foreign patent procurement; licensing and technology transfer; venture capital and private financing arrangements; joint venture agreements; patent portfolio management; research and development; risk assessment and management; records and information management issues and regulations; and employment matters, including confidentiality and non-compete agreements.

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