

The FTC Has Announced a Weight Loss Settlement ... But Wait, Keep Reading

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That the FTC has announced another weight loss settlement is no news at all. The FTC averages about six new weight loss orders per year. The new [settlement](#), nevertheless, is notable as a reminder of the following points.

The FTC has the power to impose bans. The Order against the marketers of Double Shot diet pills “permanently restrain[s] and enjoin[s]” them from advertising or selling “any weight-loss product.” The FTC does not frequently impose bans in weight loss cases, but bans have been used before in similar instances where extreme Gut Check claims (discussed below) have been made.

Any FTC orders requiring “competent and reliable scientific evidence” will likely now include record-keeping provisions for clinical studies. For any future health-related claims – other than weight loss claims – the Order requires the Double Shot marketers to possess “competent and reliable scientific evidence.” The Order further requires the parties to obtain or maintain data and other records from any clinical study relied upon for claims. A narrow exception is made only for certain “reliably reported” studies that were conducted independently of the parties. This is the third FTC order to include such record-keeping provisions. We discussed the first two orders [here](#) and [here](#).

“Gut Check” claims will always raise the risk of FTC scrutiny. In its [Gut Check](#) guide, the FTC identifies seven weight loss claims that it considers *de facto* deceptive. The Gut Check claims include, among others, claims that a product will work for all consumers and claims that consumers will lose weight no matter what or how much they eat. Extreme, clear-cut Gut Check claims, such as the following, abounded in the Double Shot advertising: “The BLUE capsule targets and burns the fat you already stored as if you had exercised one hour per day, but in reality you need not get out of your chair”; “The RED capsule eliminates up to 90% of the calories you absorb, just as if you were following a strict diet”; and “Yes, you read it right! Lose 20 lbs, in 7 days max, while eating your favorite meals and doing no exercise.”

The FTC treats direct response advertising like any other type of advertising. According to the FTC, the Double Shot marketers used direct mail as their primary (or maybe even *only*) means of advertising. The FTC somehow obtained copies of the mailers – perhaps through consumer complaints logged on [Sentinel](#) – and pursued enforcement action as it would in any other case.

The FTC expects marketers to conduct their own independent review of claims and substantiation. The FTC acknowledges in its Complaint that the Double Shot marketers “relied upon [an] individual in France for all claims, the product formulation, and the creative aspects of the Double Shot advertising.” The FTC pursued enforcement action anyway.