

Tab 89

Metabolife International, Inc.

**5070 Santa Fe Street
San Diego, CA 92109
(619) 490-5222**

December 2, 1997

Via Federal Express

Docket's Management Branch (HFA-305)
Food and Drug Administration
12410 Parklawn Drive, Room 1-23
Rockville, MD 20857

COMMENT ON PROPOSED RULE

Via Fax

Mr. Edwin V. Dutra, Jr. (HF-26)
5600 Fisher Lane, Room 12A17
Rockville, MD 20857

Re: Docket No. 95N-0304 (Proposed Rule Regarding
Dietary Supplements Containing Ephedrine Alkaloids
(62 Fed. Reg. 30678 (June 4, 1997)))

To Whom It May Concern:

Metabolife International, Inc. ["Metabolife"] now responds to the above-referenced proposed rule. Throughout these Comments, our use of the phrase "ephedrine alkaloid-containing dietary supplements" or similar language always means and includes only naturally occurring ephedrine alkaloids.

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[1] Our company is located at 5070 Santa Fe Street, San Diego, California, 92109. Our telephone number is 1-619-490-5222.

[2] I am the president of Metabolife and am one of its founders. Metabolife is a privately held California corporation. Metabolife markets and sells dietary supplements; the manufacturing of its dietary supplements is outsourced. Metabolife distributes its products through a system of independent contractors; it is a direct selling organization, also called a MLM. Throughout the balance of these Comments, when I refer to "the Company" or use a pronoun such as "we", "us", or "our", I mean Metabolife.

[3] Metabolife began its business operations in August of 1995. Metabolife 356 is the Company's dietary supplement product which contains both ephedra and guarana. Metabolife 356 is sold in the form of a caplet. Its conditions of use are a suggested usage of 2 caplets per serving, not to exceed 4 servings daily. Each caplet is formulated to contain 12 mg. of ephedrine alkaloids and 40 mg. of caffeine; therefore, the maximum suggested intake each day is 96 mg. of ephedrine alkaloids and 320 mg. of caffeine. I note that there are between 100-150 mg. of caffeine in each cup of coffee.

[4] We sell approximately 20,000,000 caplets per month of Metabolife 356; at 2 caplets per serving, this amounts to 10,000,000 servings or, from a consumer's perspective, 10,000,000 "takings" per month. 240,000,000 caplets of Metabolife 356 are consumed annually, assuming that all caplets sold are ingested. Metabolife is purchased and consumed by persons throughout the United States.

[5] We would not promote, distribute or sell Metabolife 356 unless we believed it provides benefits to consumers. Consumers, especially repeat customers, would not buy Metabolife 356 if they did not believe it was providing benefits to them. The benefits which our customers get from Metabolife 356 are (1) effective

weight management, including weight loss (2) an overall sense of well-being or feeling good and (3) a sense of empowerment or self-control over their bodies and lives.

[6] Metabolife never has received one notice from a consumer of any serious adverse event which has been asserted to be associated with the ingestion of Metabolife 356. This claims-free history exists notwithstanding the pervasive media attention since early 1994 about dietary supplement products which contain ephedra. Much of that attention was generated by the FDA and the Texas Department of Health.

[7] Metabolife has comprehensive safety monitoring procedures in place. Each label of each bottle of Metabolife 356 has a telephone number on it; when that number is called, a customer service representative carefully listens to the caller's message, manually records its principal points, and, if that call includes a medical-type complaint, refers it internally to a nurse practitioner for further review and processing. If the complaint appears to present a concern other than one of a temporary, non-serious nature or requests information about the interaction of Metabolife 356 with a prescription or OTC drug, the customer service representative is to recommend that the caller seek professional health assistance immediately. We take the health of our potential and actual customers very seriously.

[8] We have devoted a significant amount of time, energy and money to fulfill our commitment to sell only safe and effective products. Among other things, we have done the following:

- (A) We were one of two companies which spent approximately \$200,000 on animal studies in 1994. The herbal compound tested was comprised of ephedra and guarana. This testing was the precursor to the key safety study identified in paragraph

[B] (C). The report of that testing is attached as Exhibit 1.

- (B) In 1997, we engaged ACERIS, a non-profit, private certification company, to review the ingredients and label of Metabolife 356 from the standpoint of safety. As a result of that review, we received a valuable quality assurance certification from ACERIS.

An integral portion of that review process requires ACERIS to review the manufacturing plant of the business which manufactures Metabolife 356. The Chemins Company, Inc. of Colorado Springs, the manufacturer of Metabolife 356, already had received an ACERIS GMP certification so that wasn't necessary.

- (C) We are funding a portion of the significant human study contracted for by The Ephedra Research Foundation and being carried out, through ST&T, at two hospitals which are affiliated with major universities.
- (D) We are a charter member of DSSSC. As an active member of DSSSC, we strongly insisted that ACERIS engage top clinical scientists in the United States to study the methodology and other factors relied on by the FDA in arriving at the proposed rule. That report is already a part of this docket.

- (E) We have sponsored a recently completed human clinical study on Metabolife 356 at Vanderbilt University Medical Center. A brief description of the protocol of that study and the preliminary results of that study are attached to this document as Exhibit 2. The principal purpose of this study was to determine the efficacy of this protocol for weight loss. The report was prepared by Dr. Harry E. Gwirtsman and is dated October 24, 1997.

The preliminary conclusions of this study are:

- [1] Metabolife #356 causes an increase in energy expenditure in obese subjects which is independent of physical activity; in essence, this finding corroborates Metabolife's position that this product is effective for weight management purposes.
- [2] No adverse effects were observed or measured that affected the health of the subjects in the study.

When the final report of the study is available, it will be sent to the Agency for inclusion in the docket of this matter. We expect the final report by the end of 1997.

- (F) We are sponsoring a third human clinical study. This one will be finished in

November 26, 1997

Page 6

February, 1998. It is in progress at St. Luke's Roosevelt Hospital which is affiliated with Columbia University. This is a randomized, double blind, placebo study of approximately 75 subjects; its protocol has been primarily designed to measure the efficacy of a compound which includes ephedra and guarana. Of course, any side effects or adverse events will be reported. As soon as reliable results are available, they, along with a detailed description of the parameters of the study, will be forwarded to the FDA for inclusion in this Docket.

[9] We vigorously disagree with the FDA's statement in column 3 on page 30704 of the June 4, 1997, Federal Register that "there are no demonstrated benefits for ephedrine alkaloids." The fact that the FDA's Food Advisory Committee members "were unable to identify a benefit for ephedrine alkaloids in terms of supplementing the diet" (see page 30704, middle column) does not mean such benefits do not exist.

We suggest to the FDA that neither itself nor the Food Advisory Committee is a reflection of a significant segment of the American consumer who apparently wants dietary supplements which contain ephedrine alkaloids. Do not ignore the fact that DSHEA does not prohibit the promotion or use of a dietary supplement for weight control or weight loss -- it only prohibits the promotion of a dietary supplement for (1) the prevention, diagnosis, treatment, mitigation, and cure of a disease and (2) without satisfying the FDA's provisions and the related regulations, making claims which characterize the relationship between an ingredient or supplement and a health-related condition. Assuming, for the purposes of this paragraph that obesity is a disease, a dietary supplement cannot be promoted as

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a benefit for obese people. We at Metabolife do not promote Metabolife 356 for any therapeutic effect or other effect relative to obesity.

The terrific consumer demand for Metabolife 356, along with the preliminary results of the metabolic chamber tests described in paragraph [8](E) above, demonstrates that this product is effective for weight management purposes. Although we acknowledge that the FDA states, at page 30688 (first column), that "in this document, the agency makes no evaluation or judgment of the effectiveness of the use of ephedrine in the treatment of obesity," it should now acknowledge, at a minimum, that American consumers perceive that weight management, including weight loss, is a benefit they derive from the ingestion of dietary supplements which contain ephedrine alkaloids. The control over their lives which these consumers acquire due to the weight management benefit they receive is a discrete, valuable benefit as well.

The other benefit which I have identified, "a sense of well-being," is a benefit recognized by the Congress and inserted into Sec. 6 of DSHEA. Sec. 403(r)(6)(A) of the FDCA provides that a structure-function statement is permitted to describe "general well-being" from consumption of a nutrient or dietary ingredient. The Congress did not restrict this state of "general well-being" to an ingredient which has caloric value. Consumers often describe this feeling as having increased energy. It sounds absurd to argue that a consumer has a right to feel good. Feeling good in this context does not mean a high from a drug. I can understand how certain members of the Food Advisory Committee believe there is no recognizable benefit when that conclusion is based on traditional notions of drugs and foods. But, the DSHEA has specifically made room for these benefits.

[10] Metabolife objects to the use of the word "death" in proposed rule 21 C.F.R. § 111.100 (f)(1) for the same reasons expressed by those who commented on the proposed rule for

iron-containing supplements and drugs. See 62 Federal Register 2218, 2221 (January 15, 1996). There the FDA substituted the word "fatal" for "death" and should do the same here. Metabolife, however, objects to the inclusion of the warning statement set out in that subsection for these reasons: (1) there is no differentiation of levels of excessive consumption [e.g., one extra caplet per day or eight extra per day] and therefore such a warning would be misleading; and (2) the FDA's comments do not reflect any competent evidence that (a) most producers of ephedrine-containing dietary supplements encourage more than the recommended usage of those supplements, (b) these supplements are more frequently used in an excessive manner than OTC drug products which contain ephedrine and (c) that consumers, for some clearly identified reason, regularly consume more than the recommended per serving size or the recommended daily usage.

[11] We believe that the proposed rule must be significantly modified if dietary supplements which contain ephedra are to remain available as a dietary supplement option for consumers. In addition, if the rule were to be promulgated in this form, a company which continues to sell such products conceivably could be subject to a misbranded charge since "effectiveness" probably couldn't be obtained at the use levels set out in the rule. Based on our knowledge and experience in this industry, we can predict that the sales of ephedrine alkaloid-containing products will plummet and soon disappear if the rule, without significant modification, is promulgated. In our judgment, therefore, this proposed rule amounts to a de facto prohibition and seizure of ephedra products. We believe that the FDA has an important regulatory role in this industry; however, the FDA has an obligation to be a responsible regulator as well.

This responsibility includes an obligation to comply with and implement Congress' recognition of the public's demand for dietary supplements and not to eviscerate Congress' comprehensive manifesto (i.e. the DSHEA) concerning such supplements. The Congress wanted safe dietary supplements left on the market; to:

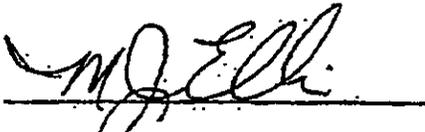
FDA Dockets Management Branch
November 26, 1997
Page 9

ensure that the FDA did not attempt to interfere unwisely with that marketplace, the Congress enacted Sec. 4 of the DSHEA. Its many provisions which are designed to protect the public's access to dietary supplements must be honored. This proposed rule's overall design and its particular provisions do not do this.

In conclusion, we strongly urge the FDA to modify its proposed rule by [1] withdrawing proposed provisions 21 C.F.R. 511.100 (a) (1), (b), and (c) which contain use restrictions and substituting a provision which would prohibit label or labeling of more than 25 mg. per serving and 100 mg. per day of ephedrine alkaloids, [2] withdrawing proposed 21 C.F.R. 111.100 (d) [prohibition against certain combination products] and (e) and [3] significantly modifying the warning set out in (g) (1) since it, as prepared, is so consumer unfriendly that it is unlikely that one consumer will read it and [D] including a prohibition against illegitimate promotion of dietary supplements which contain ephedrine alkaloids. Please refer to DSSSC's Comments to the proposed rule for the exact language we support.

I am ready, willing and able to discuss this letter with you or meet with you at your convenience.

Yours very truly,
Metabolife International, Inc.

By: 

Michael J. Ellis, President