

Complaint

IN THE MATTER OF

WACOAL AMERICA, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTIONS 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4496; File No. 132 3095**Complaint, November 6, 2014 – Decision, November 6, 2014*

This consent order addresses Wacoal America, Inc.'s advertising, marketing, and sale by respondent of iPants, women's undergarments that are infused with microencapsulated caffeine and other ingredients. The complaint alleges that respondent represented that wearing iPants garments eliminates or substantially reduces cellulite; causes a substantial reduction in the wearer's thigh measurements; and that iPants garments contain caffeine that causes the destruction of fat cells and results in substantial slimming. The consent order requires respondent to pay one million three hundred thousand dollars (\$1,300,000) to the Commission to be used for equitable relief, including restitution, and any attendant expenses for the administration of such equitable relief. The order also prohibits respondent from claiming that any garment that contains any drug or cosmetic or any drug or cosmetic causes substantial weight or fat loss or a substantial reduction in unclad body size.

Participants

For the *Commission*: Eric Edmondson and David M. Newman.

For the *Respondent*: D. Reed Freeman, Morrison & Foerster;
Sherman W. Kahn, Mauriel Kapouytian Woods.

COMPLAINT

The Federal Trade Commission, having reason to believe that Wacoal America, Inc. ("Respondent") has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a Delaware corporation with its principal office or place of business at One Wacoal Plaza, Lyndhurst, New Jersey.
2. Respondent advertises, offers for sale, sells and distributes women's undergarments under the brand name iPants, including bike shorts, tights and leggings (collectively the "Garments"),

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which incorporate microcapsules containing caffeine and other ingredients in the fabric. The Garments are “devices” and the encapsulated caffeine and other ingredients are a “drug” and/or “cosmetic” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

4. The retail price of the Garments ranges from \$44 to \$85, depending on the style. Respondent promotes the Garments as able to slim the body and reduce cellulite.

5. Beginning not later than April 2011, Respondent has disseminated or has caused the dissemination of promotional materials for the Garments, including, but not limited to, print advertisements, point-of-sale displays and videos and online and mail order catalogs in the attached Exhibits A to G. These promotional materials contain the following statements and depictions:

a. (Exhibit A – print ad)

NEW

Anti-Cellulite Hi-Waist iPant

b. (Exhibit B – product hangtags)

Novarel Slim microfiber incorporates microcapsules containing **caffeine**, retinol, ceramides and other **active principles** that improve skin’s appearance and control cellulite. The caffeine activates **microcirculation** and speeds up the breakdown of fat. The active principles are released during the garment’s use, providing a permanent anti-cellulite effect.

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After 28 days of use of this garment:

- 76% Slimming efficiency*
- 72% Users feel lighter*
- 63% State orange peel reduction*

*Clinical and sensorial trial carried out by an independent laboratory.

- c. (Exhibit C – Wacoal-sponsored Facebook post, 1/28/11)

Wacoal Debuts Revolutionary iPant New shapewear that works with your body to eliminate cellulite

- d. (Exhibit D – product hangtag)

HOW IT WORKS

It is recommended to wear the iPant 8 hours a day, 7 days a week for 28 days.

Novarel Slim® test results show most women reported improved appearance, a reduction in thigh measurement and that their clothes felt less tight.

- e. (Exhibit E – point-of-sale video script)

Introducing, the revolutionary new anti-cellulite iPant from Wacoal. Superior comfort and smoothing, with amazing cosmetic benefits that fight cellulite. Made with Novarel Slim® nylon microfibers, embedded microcapsules combine the best selection of active ingredients: caffeine, retinol, ceramides, vitamin E, fatty acids and aloe vera. Caffeine is a renowned active slimming agent that promotes fat destruction.

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- f. (Exhibit F – print ad, appeared in *Glamour*, September 2011, and incorporated in point-of-sales poster)

iPant Anti-Cellulite Shapewear

Wacoal's new iPant offers superior comfort and smoothing along with amazing cosmetic benefits. The iPant is constructed of Novarel Slim® nylon microfibers with embedded microcapsules containing caffeine to promote fat destruction, vitamin E to prevent the effects of aging, ceramides to restore and maintain the skin's smoothness, and retinol and aloe vera to moisturize and increase the firmness of the skin.

- g. (Exhibit G – Wacoal-sponsored blog post, 8/18/11)

My iPant and I, a perfect pair

As national spokesperson for Wacoal, I always have to look my best, which, for me, means slipping into a shaper as often as possible. I know that when I'm wearing Wacoal shapewear, I'll always have a great silhouette. So in January when Wacoal introduced the revolutionary new iPant – with microfibers containing caffeine to promote fat destruction; vitamin E to prevent the effects of aging; ceramides to restore and maintain the skin's smoothness; and retinol and aloe vera to moisturize and increase the firmness of the skin – I couldn't have been more delighted. It was a love affair at first sight (or sit!).

Efficacy Claims

6. Through the means described in Paragraph 5, Respondent has represented, expressly or by implication, that

- a. the Garments eliminate or substantially reduce cellulite;
- b. the Garments cause a substantial reduction in the wearer's thigh measurement; and

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- c. the Garments contain caffeine, which causes the destruction of fat cells and results in substantial slimming.

7. Through the means described in Paragraph 5, Respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 6 at the time the representations were made.

8. In truth and in fact, Respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 6, at the time the representations were made. Therefore, the representation set forth in Paragraph 7 was, and is, false or misleading.

Establishment Claims

9. Through the means described in Paragraph 5, Respondent has represented, expressly or by implication, that

- a. scientific tests prove that most iPant wearers achieve a substantial reduction in thigh measurement; and
- b. scientific tests prove that wearing the Garments for eight hours a day for 28 days will substantially reduce a wearer's thigh measurement.

10. In truth and in fact,

- a. scientific evidence does not prove that most iPant wearers achieve a substantial reduction in thigh measurement; and
- b. scientific tests do not prove that wearing the Garments for eight hours a day for thirty days will substantially reduce a wearer's thigh measurement.

Among other things, the evidence relied on by Respondent for its representations concerning the Garments consisted primarily of results from two unblinded, uncontrolled clinical trials with significant methodological flaws. Moreover, Respondent

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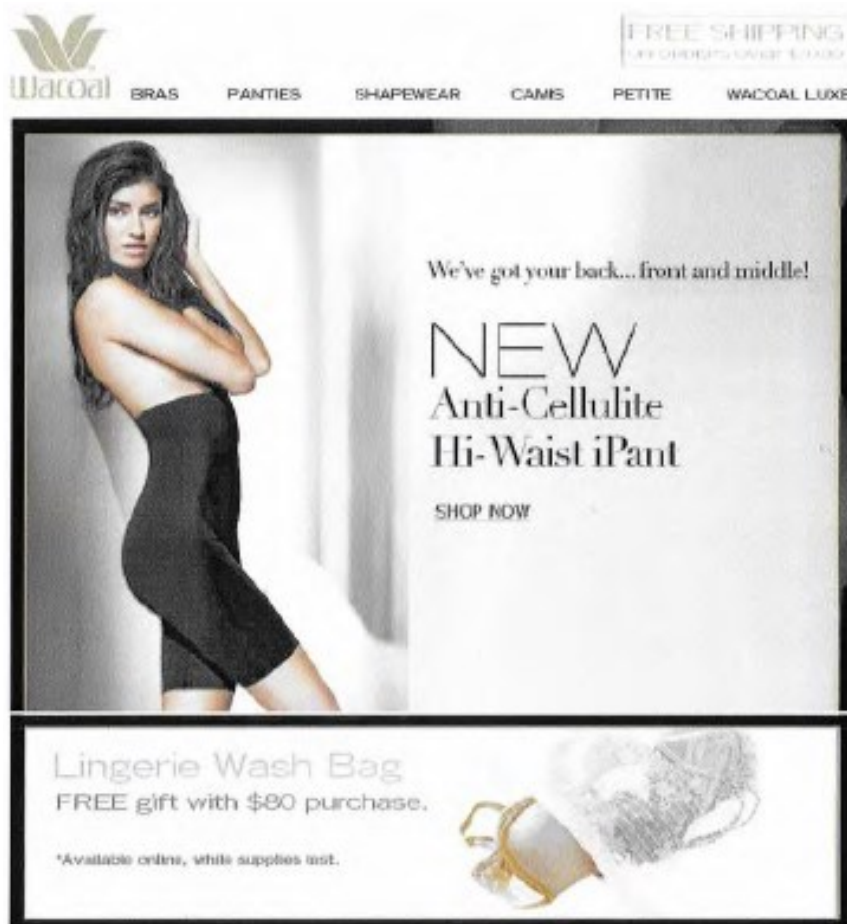
exaggerated the results of the studies: the average reported reduction in hip circumference was less than one-fourth of an inch and the average reported reduction in thigh measurement was less than one-sixth of an inch. Therefore, the representations set forth in Paragraph 9 were, and are, false and misleading.

11. The acts and practices of Respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this sixth day of November, 2014, has issued this complaint against Respondent.

By the Commission.

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Exhibit A

The image shows a screenshot of the Wacoal website. At the top left is the Wacoal logo, a stylized green leaf. To its right is a navigation menu with links: BRAS, PANTIES, SHAPEWEAR, CAMIS, PETITE, and WACOAL LUXE. In the top right corner, a box says "FREE SHIPPING" with "OFF ORDERS OVER \$100" below it. The main banner features a woman in a black, form-fitting, high-waisted panty. To her right, the text reads: "We've got your back...front and middle!", "NEW Anti-Cellulite Hi-Waist iPant", and "SHOP NOW". Below the banner is a promotional section for a "Lingerie Wash Bag" as a "FREE gift with \$80 purchase." It includes a small image of the wash bag and a note: "*Available online, while supplies last."

Wacoal

BRAS PANTIES SHAPEWEAR CAMIS PETITE WACOAL LUXE

FREE SHIPPING
OFF ORDERS OVER \$100

We've got your back...front and middle!

NEW
Anti-Cellulite
Hi-Waist iPant

SHOP NOW

Lingerie Wash Bag
FREE gift with \$80 purchase.

*Available online, while supplies last.

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Exhibit B

Novarel Slim microfibers incorporate microcapsules containing caffeine, retinol, ceramides and other active principles that improve skin appearance and combat cellulite. The caffeine stimulates circulation and speeds up the lymphatic flow, providing a permanent anti-cellulite effect.

After 28 days of use on the garment:

- 76% Slendering efficiency *
- 72% Waist line lighter *
- 63% Skin pringle post-reduction *

* Data and statistical analysis by an independent scientific laboratory on 100 female subjects.

La membrane de Novarel Slim incorpore microcapsules qui contiennent Caffeine, Retinol, Ceramides et autres principes actifs qui agissent pour améliorer l'apparence de la peau. La Caffeine active la microcirculation, accélère le drainage du système lymphatique et stimule la circulation sanguine, procurant un effet anti-cellulite permanent.

Après 28 jours de usage du vêtement:

- 76% Réduction de la silhouette *
- 72% Taille plus légère *
- 63% Réduction des rides de la peau *

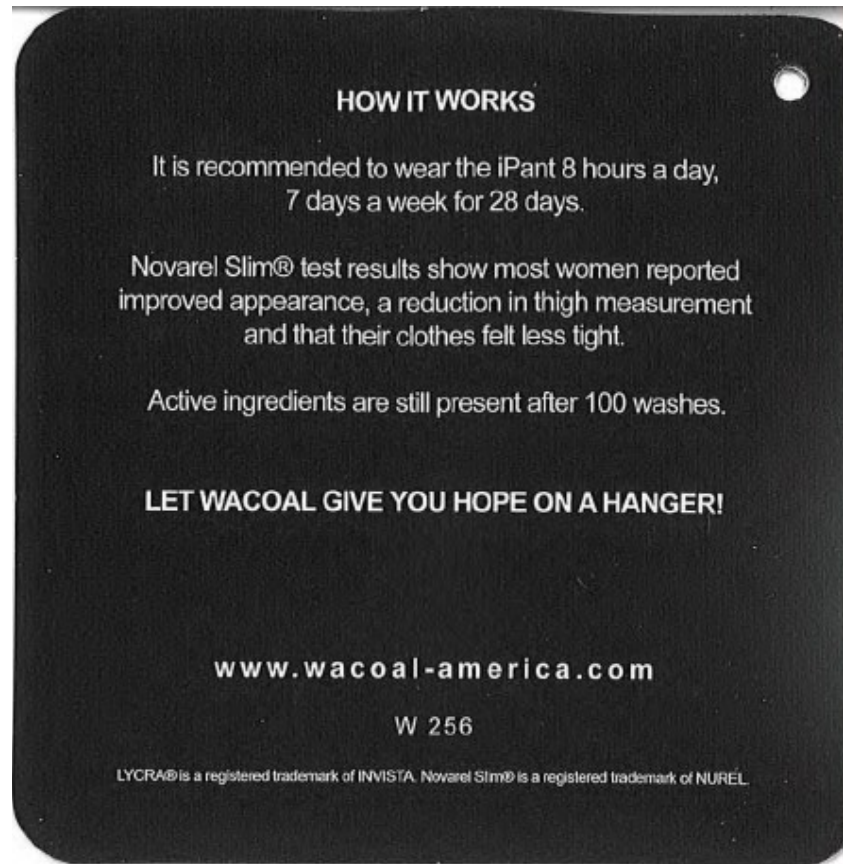
* Test réalisé par un laboratoire indépendant sur 100 femmes volontaires.



Exhibit C



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Exhibit D

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ExhibitE

iPant Video Script

Length: 52 seconds

Distribution: YouTube; in-store videos for Belk, Bloomingdales, Bon-Ton, Dillards, Lord and Taylor, Macy's, Neiman Marcus, Nordstrom, The Bay, Von Maur

VOICE OVER

Introducing, the revolutionary new anti-cellulite iPant, from Wacoal.

Superior comfort and smoothing, with amazing cosmetic benefits that fight cellulite.

Made with Novarel Slim® nylon microfibers, embedded microcapsules combine the best selections of active ingredients: caffeine, retinol, ceramides, vitamin E, fatty acids and aloe vera. Caffeine is a renowned active slimming agent that promotes fat destruction.

The iPant, with Lycra Beauty Fabric shapes and sculpts as it releases these ingredients into your skin, while you move throughout the day.

The anti-cellulite iPant; let Wacoal give you hope on a hanger.

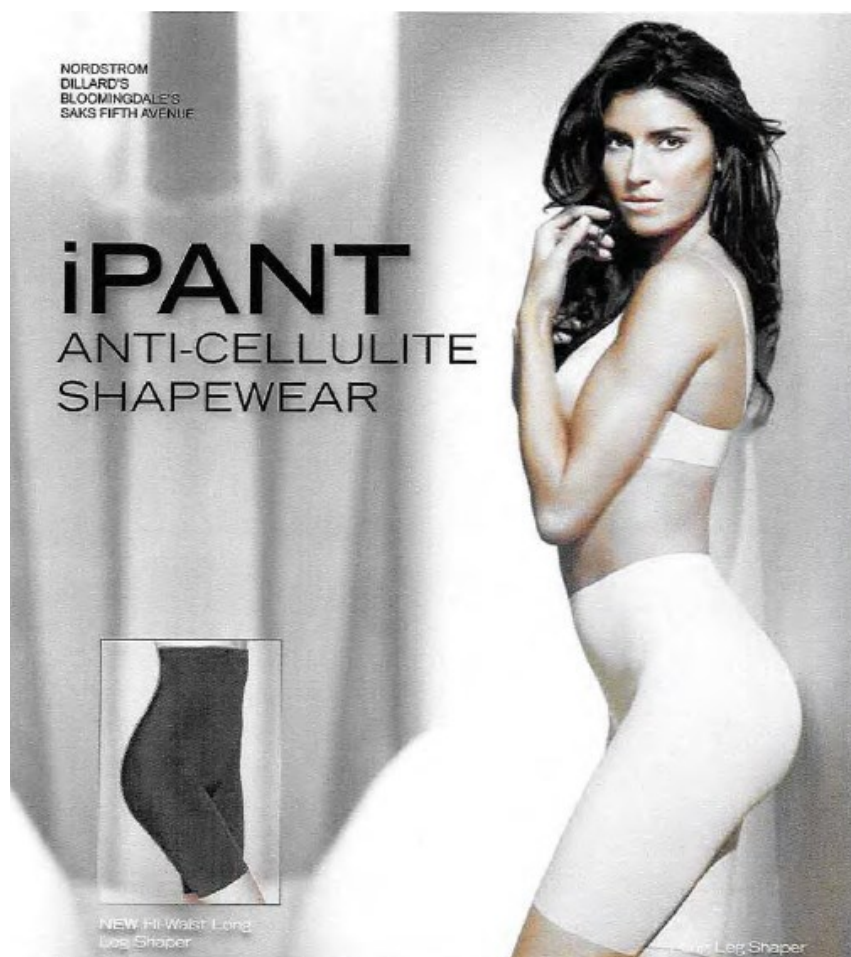
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Exhibit F

NORDSTROM
DILLARD'S
BLOOMINGDALE'S
SAKS FIFTH AVENUE

iPANT

ANTI-CELLULITE
SHAPEWEAR



NEW Hi-Waist Long
Leg Shaper

Wacoal's new iPant offers superior comfort and smoothing along with amazing cosmetic benefits. The iPant is constructed of Novarel Slim® nylon microfibers with embedded microcapsules containing caffeine to promote fat destruction; vitamin E to prevent the effects of aging; ceramides to restore and maintain the skin's smoothness; and retinol and aloe vera to moisturize and increase the firmness of the skin. The iPant with LYCRA® beauty fabric shapes and sculpts as it releases ingredients into your skin while you move throughout the day.

Novarel Slim® is a registered trademark of Wacoal.
LYCRA® is a registered trademark of LYCRA.

Wacoal
LYCRA
beauty

EXHIBIT F

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Exhibit G



Best,
Liz

Post by Liz Smith at 12 October 2011

Label(s) : Breast Cancer Awareness, Awareness Bra, Embrace Lace Bra, Fit For The Cure, Support the Girls

[facebook](#) [Tweet](#) [Pinterest](#)

My iPant and I, a Perfect Pair

As national spokesperson for Wacoal, I always have to look my best, which, for me, means slipping into a shaper as often as possible. I know that when I'm wearing Wacoal shapewear, I'll always have a great silhouette. So in January when Wacoal introduced the revolutionary new iPant—with microfibers containing caffeine to promote fat destruction; vitamin E to prevent the effects of aging; ceramides to restore and maintain the skin's smoothness; and retinol and aloe vera to moisturize and increase the firmness of the skin—I couldn't have been more delighted. It was a love affair at first sight (or sit!).

Seasons passed and my iPant collection began to grow. I wanted a pair for every day of the week because I noticed that after wearing them regularly—28 days straight, eight to ten hours a day—my thighs and hips started to look and feel smoother. Even better, (okay, maybe just as good) I discovered that wearing the iPant is ultra comfortable. There have been days when I've had my iPant Long Leg Shaper on from 6:00 a.m. until midnight and never experienced a single tug, roll, or pinch. Who can beat that when you have to be on a flight all night long or at a Little League game that goes into extra (extra!) innings?

Recently, we added a new iPant Hi-Waist Long Leg Shaper to our collection. Try one style or try them both and use the "review" feature on our website to let us know what you think of your iPant. I hope you and your iPant are a "perfect pair" too!

I look forward to seeing you at a fitting, in a store, or online soon.

Liz

Post by Liz Smith at 18 August 2011

Label(s) :

[facebook](#) [Tweet](#) [Pinterest](#)

<http://m.wacoal-america.com/blogger.html>

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DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of certain acts and practices of Wacoal America, Inc., a corporation, hereinafter sometimes referred to as "Respondent," and Respondent having been furnished with a copy of a draft of complaint which the Western Region-San Francisco proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of the Federal Trade Commission Act, 15 U.S.C. §§ 45 and 52; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having thereupon accept the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and enters the following Decision and Order:

1. Respondent Wacoal America, Inc., is a Delaware corporation with its principal office or place of business at One Wacoal Plaza, Lyndhurst, New Jersey 07071.
2. The Federal Trade Commission has jurisdiction of the subject matter of the proceeding and of the

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Respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

For purposes of this order, the following definitions shall apply:

- A. Unless otherwise specified, “Respondent” shall mean Wacoal America, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees.
- B. “Adequate and well-controlled human clinical study” means a human clinical study that is randomized, double-blind, placebo controlled, and conducted by persons qualified by training and experience to conduct such study.
- C. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
- D. “Covered Product” means any garment containing a drug or cosmetic.
- E. “Drug” and “cosmetic” mean as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.
- F. “Reliably Reported,” for a human clinical test or study (“test”), means a report of the test has been published in a peer-reviewed journal, and such published report provides sufficient information about the test for experts in the relevant field to assess the reliability of the results.

I.

IT IS ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling,

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advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, that use of such product causes substantial weight or fat loss or a substantial reduction in unclad body size.

II.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product or any drug or cosmetic, in or affecting commerce, shall not make any representation, other than representations covered under Part I of this order, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, that use of such product causes weight or fat loss or a reduction in unclad body size, unless the representation is non-misleading, and, at the time it is made, Respondent possesses and relies upon competent and reliable scientific evidence that substantiates that the representation is true. For purposes of this Part, competent and reliable scientific evidence shall consist of at least two adequate and well-controlled human clinical studies of the Covered Product, conducted by different researchers, independently of each other, that conform to acceptable designs and protocols and whose results, when considered in light of the entire body of relevant and reliable scientific evidence, are sufficient to substantiate that the representation is true.

III.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product or any drug or cosmetic, in or affecting commerce, shall not make any representation, other than representations covered under Parts I and II of this order, in any manner, expressly or by implication, including through the use of

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a product name, endorsement, depiction, or illustration, that use of such product reduces or eliminates cellulite, unless the representation is non-misleading, and, at the time of making such representation, Respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Part, competent and reliable scientific evidence means tests, analyses, research, or studies (1) that have been conducted and evaluated in an objective manner by qualified persons; (2) that are generally accepted in the profession to yield accurate and reliable results; and (3) as to which, when they are human clinical tests or studies, all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of such testing as set forth in Part IX of this Order are available for inspection and production to the Commission.

IV.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, shall not misrepresent, or assist others in misrepresenting, in any manner, expressly or by implication, including through the use of any product name or endorsement:

- A. The existence, contents, validity, results, conclusions, or interpretations of any test, study, or research; or
- B. That the benefits of the product are scientifically proven.

V.

IT IS FURTHER ORDERED that

- A. Nothing in this order shall prohibit Respondent from making any representation for any product that is

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specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990 or permitted under Sections 303-304 of the Food and Drug Administration Modernization Act of 1997; and

- B. Nothing in this order shall prohibit Respondent from making any representation for any product that is permitted in the labeling for such product under any tentative final or final monograph promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

VI.

IT IS FURTHER ORDERED that Respondent shall, within thirty (30) days after the date of entry of this order, provide to the Commission a searchable electronic file containing the name and contact information of all consumers who purchased any Covered Product from January 1, 2011, through the date of entry of this order, to the extent it has such information in its possession or control, including information available upon request from franchisees or others. Such file: (1) shall include each consumer's name and address, the product(s) purchased, the total amount of moneys paid less any amount credited for returns or refunds, the date(s) of purchase, and, if available, the consumer's telephone number and email address; (2) shall be updated through the National Change of Address database; and (3) shall be accompanied by a sworn affidavit attesting to its accuracy.

VII.

IT IS FURTHER ORDERED that Respondent shall pay to the Federal Trade Commission the sum of one million three hundred thousand dollars (\$1,300,000). This payment shall be made in the following manner:

- A. The payment shall be made by electronic funds transfer within ten (10) days after the date that this order becomes final and in accordance with

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instructions provided by a representative of the Federal Trade Commission.

- B. In the event of default on any obligation to make payment under this order, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment. In the event such default continues for ten (10) calendar days beyond the date that payment is due, the entire amount shall immediately become due and payable.
- C. All funds paid to the Commission pursuant to this order shall be deposited into an account administered by the Commission or its agents to be used for equitable relief, including restitution, and any attendant expenses for the administration of such equitable relief. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after the redress to consumers (which shall be the first priority for dispensing the funds set forth above) is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Respondent's practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited in the United States Treasury as disgorgement. Respondent shall be notified as to how the funds are distributed, but shall have no right to challenge the Commission's choice of remedies under this Part. Respondent shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payment under this Part shall be deemed a payment of any fine, penalty, or punitive assessment.
- D. Respondent relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Respondent shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.

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- E. Respondent agrees that the facts as alleged in the complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this order, including but not limited to a nondischargeability complaint in any bankruptcy case. Respondent further agrees that the facts alleged in the complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this order shall have collateral estoppel effect for such purposes.
- F. In accordance with 31 U.S.C. § 7701, Respondent is hereby required, unless it has done so already, to furnish to the Commission its taxpayer identifying number, which shall be used for the purposes of collecting and reporting on any delinquent amount arising out of Respondent's relationship with the government.
- G. Proceedings instituted under this Part are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this order.

VIII.

IT IS FURTHER ORDERED that Respondent shall comply with Paragraphs II and III of Appendix A to this order and shall also provide reasonable cooperation to the Commission with respect to the administration of the Consumer Redress Program and other Consumer Redress Requirements as described in Appendix A to this order, hereby incorporated into this order.

IX.

IT IS FURTHER ORDERED that, with regard to any human clinical test or study ("test") upon which Respondent relies to substantiate any claim covered by this Order, Respondent shall

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secure and preserve all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of the test, including, but not necessarily limited to:

- A. All protocols and protocol amendments, reports, articles, write-ups, or other accounts of the results of the test, and drafts of such documents reviewed by the test sponsor or any other person not employed by the research entity;
- B. All documents referring or relating to recruitment; randomization; instructions, including oral instructions, to participants; and participant compliance;
- C. Documents sufficient to identify all test participants, including any participants who did not complete the test, and all communications with any participants relating to the test; all raw data collected from participants enrolled in the test, including any participants who did not complete the test; source documents for such data; any data dictionaries; and any case report forms;
- D. All documents referring or relating to any statistical analysis of any test data, including, but not limited to, any pretest analysis, intent-to-treat analysis, or between-group analysis performed on any test data; and
- E. All documents referring or relating to the sponsorship of the test, including all contracts and communications between any sponsor and the test's researchers.

Provided, however, the preceding preservation requirement shall not apply to a Reliably Reported test, unless the test was conducted, controlled, or sponsored, in whole or in part by (1) any Respondent; (2) any other person or entity in active concert or participation with any Respondent; (3) any person or entity affiliated with or acting on behalf of any Respondent; (4) any supplier of any ingredient contained in the product at issue to any

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of the foregoing or to the product's manufacturer; or (5) the supplier or manufacturer of such product.

For any test conducted, controlled, or sponsored, in whole or in part, by Respondent, Respondent must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of any personal information collected from or about participants. These procedures shall be documented in writing and shall contain administrative, technical, and physical safeguards appropriate to Respondent's size and complexity, the nature and scope of Respondent's activities, and the sensitivity of the personal information collected from or about the participants.

X.

IT IS FURTHER ORDERED that Respondent Wacoal America, Inc., and its successors and assigns shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and, upon reasonable notice and request, make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

XI.

IT IS FURTHER ORDERED that Respondent Wacoal America, Inc., and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents and

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representatives having primary responsibilities with respect to the advertising subject to the terms of Parts I-IV of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent and its successors and assigns shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying all acknowledgements of receipt of this order obtained pursuant to this Part.

XII.

IT IS FURTHER ORDERED that Respondent Wacoal America, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: "In the Matter of Wacoal America, Inc., FTC File Number 132-3095."

XIII.

IT IS FURTHER ORDERED that Respondent Wacoal America, Inc., and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the

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Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit additional true and accurate written reports.

XIV.

This order will terminate on November 6, 2034, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

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APPENDIX A**CONSUMER REDRESS PROGRAM**

The Commission shall apply funds received from Respondent pursuant to this order to a consumer redress program. Any funds required to administer the consumer redress program shall be taken from the sum provided by Respondent in Part VII of this order.

Within thirty days (30 days) of the date of service of this order, Respondent shall purchase: (A) no fewer than 6,300,000 online advertising impressions to run over a thirty-day (30-day) period on digital properties of Women's Health, Elle, Real Simple, and Glamour, some of which impressions may include advertisements in one or more of the properties' respective digital newsletters; and (B) a print advertising campaign in *USA Today* comprised of two (2) one-quarter page insertions in Marketplace Classifieds.

The notices associated with A and B, above, shall, respectively, be in the forms set out in Exhibit 1 (with the understanding that banner ads will not contain the full text of the notice).

Within thirty (30) days of the date of service of this order, Respondent shall send a notice in form substantially identical to Exhibit 3 (a) by email to all persons identified in the file provided in compliance with Part VI of this Order for whom Respondent has an email address and (b) by United States Mail to all persons identified in the file provided in compliance with Part VI of this order for whom Respondent does not have an email address, but does have a street address. Said notice shall contain no information other than that set forth in Exhibit 3, nor shall any other material be transmitted therewith.

The Commission shall, consistent with the provisions otherwise set out herein, have full discretion to (1) review and approve the procedures used to identify those consumers who meet the criteria for redress; (2) determine the application of the criteria for participation in any redress program and identify those consumers entitled to relief in any redress program implemented pursuant to this order; (3) determine the manner and timing of the sending to consumers of the forms attached hereto as Exhibits 2, 4 and 5; and

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(4) delegate any and all tasks connected with such redress program to any individuals, partnerships, or corporations of its choice and to pay the fees, salaries, and expenses incurred thereby from the payments made by Respondent pursuant to Part VII of this order. The FTC or its designated agent shall send directly to consumers the forms attached hereto as Exhibits 2, 4 and 5.

The award under this redress program shall be a pro rata share, with respect to each covered product purchased by the consumer (allocated by price and style), to each consumer who qualifies for the redress program, not to exceed the total purchase price of the Covered Products purchased by the consumer.

Any applicant who does not submit a Claim Form within sixty (60) days of the last online notice or publication of the *USA Today* notice described in Paragraph II shall not be eligible for any award under this redress program.

Following the completion of the redress program described in Part VII of this Order and in this Appendix A, the Commission or its designated agent shall provide to Respondent a report containing the name and address of each consumer to whom redress was paid pursuant to this Order and, for each consumer, the Covered Product(s) for which such claim was made, the total dollar volume of such claim and the redress paid. Respondent shall have no right to contest the validity of any claim submitted pursuant to the redress program.

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EXHIBIT 1 – [USA Today Notice]**Did you buy a Wacoal iPant product? You may be eligible for a refund.**

The Federal Trade Commission (FTC), the nation's consumer protection agency, sued Wacoal, alleging that Wacoal's advertising about iPant products was not adequately supported by scientific data. The FTC says Wacoal made misleading claims that wearing iPant products would reduce cellulite and reduce thigh size.

To settle the lawsuit, the company is offering money back to people who bought iPant products since January 1, 2011. You don't need your receipt and you don't have to send the product back.

There are two ways to apply for a refund:

- 1) Call [toll-free number] and request a claim form; complete the form and mail it back by [date certain -- sixty (60) days after the last online notice or publication of the *USA Today* notice], **or**
- 2) Apply online at [URL] by [date certain-- sixty (60) days after the last online notice or publication of the *USA Today* notice].

How much you get back will depend on how many people apply.

If you have questions, visit [URL] or call [toll-free number].

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EXHIBIT 2 -- REFUND APPLICATION**[sent to consumers who request a claim form]**

I bought the following Wacoal iPant product(s) since January 1, 2011.

- _____ Cupless Camisole (Style No. 802171)
- _____ Legging (Style No. 804171)
- _____ Mid-Thigh Shaper (Style No. 804271)
- _____ Hi-Waist Long Leg Shaper (Style No. 805171)
- _____ Brief (Style No. 808171)
- _____ Long Leg Shaper (Style No. 809171)

(If you bought more than one, please say how many.)

If I'm eligible to get money back as part of the FTC's lawsuit against Wacoal, send my refund to:

NAME: _____

ADDRESS: _____

CITY _____ AND _____ STATE: _____

ZIP CODE: _____

- Mail this form to [address] by [date certain -- sixty (60) days after the last online notice or publication of the *USA Today* notice].
- You don't need your receipt and you don't have to send the product(s) back.
- For more information, visit [URL] or call [toll-free number].

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EXHIBIT 3 – [Email or letter to online buyers]

[date]

Name of Consumer

Address

City/State/ZIP

RE: Refunds for people who bought Wacoal iPant products

Dear Consumer:

We're writing because according to the records of Wacoal America, you bought iPant product(s) from the company's website. The Federal Trade Commission (FTC), the nation's consumer protection agency, sued Wacoal, alleging that Wacoal's advertising about iPant products was not adequately supported by scientific data. The FTC says Wacoal made misleading claims that wearing iPant products would reduce cellulite and reduce thigh size.

To settle the lawsuit, the company is offering money back to people who bought iPant products since January 1, 2011. You don't need your receipt and you don't have to send the product back.

There are two ways to apply for a refund:

- 1) Complete the attached form and mail it back by [date certain-- sixty (60) days after the last online notice or publication of the *USA Today* notice], or
- 2) Apply online at [URL] by [date certain-- sixty (60) days after the last online notice or publication of the *USA Today* notice].

How much you get back will depend on how many people apply.

If you have questions, visit [URL] or call [toll-free number].

Sincerely,

[name]

[Attach same Refund Application form.]

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REFUND APPLICATION**[Attachment to letter to people who bought from Wacoal's
website]**

I bought the following Wacoal iPant product(s) since January 1, 2011. .

_____ Cupless Camisole (Style No. 802171)
_____ Legging (Style No. 804171)
_____ Mid-Thigh Shaper (Style No. 804271)
_____ Hi-Waist Long Leg Shaper (Style No. 805171)
_____ Brief (Style No. 808171)
_____ Long Leg Shaper (Style No. 809171)

(If you bought more than one, please say how many.)

If I'm eligible to get money back as part of the FTC's lawsuit against Wacoal, send my refund to:

NAME: _____
ADDRESS: _____
CITY AND STATE: _____
ZIP CODE: _____

- Mail this form to [address] by [date certain -- sixty (60) days after the last online notice or publication of the *USA Today* notice].
- You don't need your receipt and you don't have to send the product(s) back.
- For more information, visit [URL] or call [toll-free number].

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EXHIBIT 4 – [Letter to accompany redress payment]

[date]

Name of Consumer

Address

City/State/ZIP

RE: Refunds for people who bought Wacoal iPant products

Dear Consumer:

You applied for a refund as part of the Federal Trade Commission's lawsuit against Wacoal America for deceptive advertising about iPant products. A check for your part of the settlement is enclosed. Please cash it by [date certain]. After that, the check won't be good.

If you have questions, please call the FTC [or name] at [toll-free number].

For consumer information about evaluating advertising claims for products like this, visit the FTC's Health & Fitness page, <http://www.consumer.ftc.gov/topics/health-fitness>.

Sincerely,

[name]

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EXHIBIT 5 – [Letter to ineligible consumers]

[date]

Name of Consumer

Address

City/State/ZIP

RE: Refunds for people who bought Wacoal iPant products

Dear Consumer:

You applied for a refund as part of the Federal Trade Commission's lawsuit against Wacoal America for deceptive advertising of iPant products. We reviewed the information you sent. Unfortunately, your purchase isn't covered by the settlement, and you don't qualify for a refund.

If you have questions, please call the FTC [or name] at [toll-free number].

For consumer information about evaluating advertising claims for products like this, visit the FTC's Health & Fitness page, <http://www.consumer.ftc.gov/topics/health-fitness>.

Sincerely,

[name]

Analysis to Aid Public Comment

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order from Wacoal America, Inc. (“respondent”). The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

This matter involves the advertising, marketing, and sale by respondent of iPants, women’s undergarments that are infused with microencapsulated caffeine and other ingredients. Respondent has marketed the iPants garments to consumers through third-party retailers and through its website. According to the FTC complaint, respondent claimed the iPants garments would slim and reshape the body and reduce cellulite.

Specifically, the FTC complaint alleges that respondent represented that wearing iPants garments eliminates or substantially reduces cellulite; causes a substantial reduction in the wearer’s thigh measurements; and that iPants garments contain caffeine that causes the destruction of fat cells and results in substantial slimming. The complaint alleges that these claims are unsubstantiated and thus violate the FTC Act. The complaint also alleges that respondent represented that scientific tests prove that most iPant wearers achieve a substantial reduction in thigh measurement and that scientific tests prove that wearing the iPants garments for eight hours a day for 28 days will substantially reduce a wearer’s thigh measurement. The complaint alleges that these claims are false and thus violate the FTC Act.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts or practices in the future. Specifically, Parts I-III address the unsubstantiated claims alleged in the complaint. Part I prohibits respondent from claiming that any Covered Product – *i.e.*, a garment that contains any drug or cosmetic – causes substantial weight or fat loss or a

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substantial reduction in unclad body size. The Commission has publicly advised that any claim that a product worn on the body causes substantial weight loss is always false.

Part II covers any representation, other than representations covered under Part I, that any Covered Product or any drug or cosmetic causes weight or fat loss or a reduction in unclad body size. Part II prohibits respondent from making such representations unless the representation is non-misleading, and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates that the representation is true. For purposes of Part II, the proposed order defines “competent and reliable scientific evidence” as at least two randomized, double-blind, placebo-controlled human clinical studies that are conducted by independent, qualified researchers and that conform to acceptable designs and protocols, and whose results, when considered in light of the entire body of relevant and reliable scientific evidence, are sufficient to substantiate that the representation is true.

Part III of the proposed order prohibits respondent from making any representation, other than representations covered under Parts I or II, that use of a Covered Product or a drug or cosmetic reduces or eliminates cellulite, unless the representation is non-misleading, and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of Part III, the proposed order defines “competent and reliable scientific evidence” as tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, and that are generally accepted in the profession to yield accurate and reliable results.

Part IV of the proposed order addresses the allegedly false claims that scientific tests prove that wearing iPants garments result in reduction of the wearer’s thigh measurement. Part IV prohibits respondent, when advertising any product, from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research, or

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misrepresenting that the benefits of the product are scientifically proven.

Part V of the proposed order provides a safe harbor for representations that are permitted in labeling for that drug under any tentative or final standard promulgated by the Food and Drug Administration (“FDA”), any new drug application approved by the FDA, or FDA regulations pursuant to the Nutrition Labeling and Education Act of 1990 or the FDA Modernization Act of 1997.

Part VII of the proposed order requires respondent to pay one million three hundred thousand dollars (\$1,300,000) to the Commission to be used for equitable relief, including restitution, and any attendant expenses for the administration of such equitable relief. To facilitate the payment of redress, Part VI of the proposed order requires Wacoal America to provide to the Commission a searchable electronic file containing the name and contact information of all consumers who purchased the iPants garments directly from respondent from January 1, 2011, through the date of entry of the order. Part VIII of the proposed order requires respondent to comply with the provisions of Appendix A to the order, which sets out the methods for notifying consumers who may be entitled to file a claim for consumer redress.

Part IX of the proposed order is triggered whenever the human clinical testing requirement in either Part II or Part III applies. Part IX of the proposed order requires the company to secure and preserve all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of the test. There is an exception for a “Reliably Reported” test defined as a test published in a peer-reviewed journal that was not conducted, controlled, or sponsored by any proposed respondent or supplier. Also, the published report must provide sufficient information about the test for experts in the relevant field to assess the reliability of the results.

Part X of the proposed order contains recordkeeping requirements for advertisements and substantiation relevant to any representation covered by the proposed order. Parts XI, XII and XIII of the proposed order require respondent to provide copies of the order to its personnel; to notify the Commission of changes in

Analysis to Aid Public Comment

corporate structure that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part XIV provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the complaint or and proposed order or to modify the proposed order's terms in any way.

Complaint

IN THE MATTER OF

MADE IN THE USA BRAND, LLCCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4497; File No. 142 3121**Complaint, November 10, 2014 – Decision, November 10, 2014*

This consent order addresses Made in the USA Brand, LLC's marketing, sale, and distribution of licenses to use its "Made in USA" certification mark to companies wishing to make U.S.-origin claims for their products. The complaint alleges that Respondent represented that products and entities using Respondent's certification mark were independently and objectively evaluated for compliance with Respondent's accreditation standard. The complaint further alleges that Respondent did not possess and rely upon a reasonable basis to substantiate its claims that entities promoted on its website sold products that are all or virtually all made in the United States. The consent order prohibits Respondent from representing, expressly or by implication, that covered entities meet Respondent's accreditation standard, unless: (1) an entity with no material connection to that covered entity conducted an independent and objective evaluation to confirm that the accreditation standard was met; or (2) Respondent's mark and marketing materials prominently disclose that the accreditation standard may be met through self-certification.

Participants

For the *Commission*: *Julia Solomon Ensor*.

For the *Respondent*: *Robert Cochran, Ice Miller LLP*.

COMPLAINT

The Federal Trade Commission, having reason to believe that Made in the USA Brand, LLC, a limited liability company ("Respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Made in the USA Brand, LLC ("MUSA Brand") is an Ohio limited liability company with its principal office or place of business at 1398 Goodale Boulevard, Columbus, Ohio 43212.