

February 27, 2012

#### VIA OVERNIGHT COURIER

Steve Van Andel Chairman, Office of the Chief Executive Amway Corp. 7575 Fulton Street East Ada, MI 49355

Re: Amway's deceptive trade practices based on unsubstantiated and illegal claims for Nutrilite "fruits & vegetables 2GO" Twist Tubes and Immunity Twist Tubes dietary supplements

Dear Mr. Van Andel:

The Center for Science in the Public Interest ("CSPI") has identified deceptive practices in the marketing and sale of Amway's Nutrilite Twist Tubes dietary supplements. This letter details CSPI's findings and offers to discuss resolution before CSPI takes further legal action. Ultimately, if litigation became necessary, CSPI would seek an injunction prohibiting Amway from expressly or implicitly (1) making deceptive claims for its dietary supplement products; and (2) representing that any of its dietary supplement products can be used in the diagnosis, cure, mitigation, treatment, or prevention of disease. CSPI may also seek corrective advertising, restitution, damages, disgorgement, and attorneys' fees.

#### Facts Giving Rise to Amway's Liability

Amway markets Nutrilite Twist Tubes with a variety of claims. The two types of claims that concern CSPI (discussed in detail below) are:

- Amway's claim that its "fruits & vegetables 2GO" product line has "2 servings of FRUITS & VEGETABLES" in each twist tube. This claim is deceptive and misleading because dietary supplements simply do not provide the same health benefits as a diet rich in whole fruits and vegetables.
- Amway's claim that its "Immunity Twist Tube" product line is an "immune system booster." This claim is unlawful because it is a claim of disease prevention, it lacks prior substantiation, and it is deceptive.

# 1. Nutrilite "fruits & vegetables 2GO" dietary supplement

Amway markets its "fruits & vegetables 2GO" dietary supplement as a quick fix for the busy consumer ("Too busy to eat right? Give yourself a TWIST."). Amway claims that "fruits & vegetables 2GO" contains "2 servings of fruits & vegetables" ("1 tube = 2 servings of fruits and vegetables"), and "the antioxidant equivalent of two of the 9-13 daily servings of fruits and vegetables your body needs in a convenient, squeezable tube." A print ad proclaims that the Twist Tubes "have natural antioxidants that help protect cells" and "contain no artificial colors, flavors, preservatives, or ingredients." 1

The health benefits of fruits and vegetables are substantiated by studies involving the consumption of whole fruits and vegetables.<sup>2</sup> The conclusions of qualified professionals are that dietary supplements do not have the same health benefits as a diet rich in fruits and vegetables because, taken alone, the individual antioxidants studied in clinical trials do not appear to have consistent preventive effects.<sup>3</sup>

There are approximately 8,000 phytochemicals present in whole foods.<sup>4</sup> The additive and synergistic effects of phytochemicals in fruits and vegetables may be responsible for their putative antioxidant and anticancer

<sup>&</sup>lt;sup>1</sup> Amway Nutrilite Fruits & Vegetables, 2GO Twist Tubes, see attached print ad. Also *available at* www.amway.com/Shop/Product/Product. aspx?itemno=110538.

<sup>&</sup>lt;sup>2</sup> See, e.g., Penny M. Kris-Etherton et al., *Bioactive Compounds in Foods: Their Role in the Prevention of Cardiovascular Disease and Cancer*, 113 Am. J. MED. 71S, 71S-88S (2002) ("Numerous epidemiologic studies indicate that an increase in the consumption of fruits and vegetables is associated with a decrease in the incidence of cardiovascular disease (CVD), CHD, and stroke."), Y. Kelly et al., *Nutrition and Respiratory Health in Adults: Findings from the Health Survey for Scotland*, 21 EUROPEAN RESPIRATORY J. 664, 664-671 (2003), ("[T]he active agent(s), or the most beneficial combinations of dietary components are contained within whole foods. It may be that improving the diet, by increasing the consumption of fresh fruit, vegetables and fish, rather than consumption of vitamin supplements, will be beneficial in helping to protect against airway disease."), Manuela Blasa et al., *Fruit and Vegetable Antioxidants in Health, in Bioactive Foods Promoting Health: Fruits and Vegetables* 37, 37-58 (Ronald Ross Watson & Victor R. Preedy eds., 2010) ("The synergy among phytochemicals is one of the reasons that nutritional guidelines insist on varying the foods in one's diet, particularly fruits and vegetables.").

<sup>&</sup>lt;sup>3</sup> Rui Hai Liu, *Health Benefits of Fruit and Vegetables are from Additive and Synergistic Combinations of Phytochemicals*, 78 Am. J. CLINICAL NUTRITION 517S, 517S-20S, at 518S (2003).

<sup>&</sup>lt;sup>4</sup> *Id.*. at 519S.

activities. That large number of phytochemicals may partially explain why no single antioxidant can replace the combination of natural phytochemicals in fruits and vegetables in achieving possible health benefits. Supplements in the form of pills, tablets, or extracts simply cannot mimic that combination of phytochemicals (and vitamins, minerals, and other substances) naturally present in fruit and vegetables.<sup>5</sup>

Thus, stating that "fruits & vegetables 2GO" is a substitute for eating whole pomegranates, cranberries, blueberries, cherries, carrots, or beets is false and misleading. "[F]ruits & vegetables 2GO" contains neither the nutritional equivalent of two servings of fruits and vegetables nor other benefits associated with eating whole fruits and vegetables.

Contrary to the representation made by Amway, drinking Twist Tubes does not "encourage increased dietary intake of fruits, vegetables." It encourages the opposite. By substituting a Twist Tube for whole fruits and vegetables, consumers may fill their diets with less healthful foods.

Amway claims that "60 mg of vitamin C from NUTRILITE Acerola Cherry Concentrate [provides] the natural vitamin C equivalent of about one mango or ½ cup of cooked broccoli" and "5 mg of Beta carotene from the algae plant . . . [provides] the natural betacarotene equivalent of about one medium carrot or one cup of cantaloupe." These claims suggest that the ingestion of isolated vitamins or antioxidants have the same benefit as the ingestion of whole foods such as mango, broccoli, carrots, or cantaloupe that contain those vitamins and antioxidants. This is not the case, and suggesting as much is deceptive to consumers.

The inclusion of added vitamin C and beta-carotene as part of the antioxidant equivalent of "2 servings of fruits and vegetables" is deceptive and misleading because vitamins account for only a small fraction of the antioxidant activity in fruit. An asterisk leading to an inconspicuous disclaimer in tiny print stating, "Contains the antioxidant equivalent of 2 servings" does not excuse this deceptive claim.

Finally, while Amway's print ad (attached as Exhibit 1) for "fruits & vegetables 2GO" proclaims that the product contains "no artificial colors, flavors, preservatives, or ingredients," the ingredient list includes sucralose, an artificial sweetener, rendering the claim false and misleading.

<sup>&</sup>lt;sup>5</sup> See, e.g., id. at 518S.

<sup>&</sup>lt;sup>6</sup> Email from Heather, Amway Customer Service Representative, to Alison Brown, Research Associate, Center for Science in the Public Interest (August, 26, 2011, 05:50:00 p.m. ET).

<sup>&</sup>lt;sup>7</sup> *Id*.

<sup>8</sup> *Id*.

# 2. Nutrilite "Immunity Twist Tubes" Dietary Supplement

Amway markets its strawberry-kiwi-flavored "Immunity Twist Tube," which claims to contain vitamins C, B1, B2, B3, and B6, as an "immune system booster" that will support "your body's natural defenses," and "protect your cells," by simply taking "bland water and turn[ing] it into a tasty strawberry kiwi flavored supplement that supports your bodies natural defenses."



These claims imply, to the average consumer, that Twist Tubes' purported health benefits have been scientifically established; therefore, Amway's claims must satisfy the Federal Trade Commission's ("FTC") requirements for substantiation in order to be lawful. The FTC requires a higher standard of proof for companies making deceptive health-related claims:

[A]t the time of making such representation, [the company] 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 . . . [C]ompetent and reliable scientific evidence means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by

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qualified persons and are generally accepted in the profession to yield accurate and reliable results.9

In addition, the FTC prohibits companies from "mispresent[ing], in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research." Claims that fail to satisfy the FTC's requirements – such as Amway's, here – are considered deceptive and are thus unlawful under state consumer protection laws.

Consumers equate "immunity" with disease prevention. A claim of disease prevention is unlawful. Each Immunity Twist Tube contains 1,000 mg of vitamin C, but there is little evidence that 1,000 mg of vitamin C will be an "immune system booster" for most people. Generally, tissues are saturated with vitamin C at about 400 mg per day and any excess is excreted. Amway's claim that 1,000 mg (or even 400 mg or other amount) of vitamin C will boost the immune system and the body's defenses is unsubstantiated. As measured by the number or length of illnesses, even taking multivitamins does not affect immunity. Therefore, this claim is unlawful because it is a claim of disease prevention, it lacks prior substantiation, and it is deceptive.

### **Amway's Violations of State Consumer Protection Laws**

Amway's claims regarding Nutrilite Twist Tubes (1) are generally false, misleading, and deceptive; (2) are illegal claims of disease prevention; and (3) lack prior substantiation. As such, these claims violate state consumer protection laws, such as Massachusetts G.L. c. 93A, Texas Business & Professions Code § 17.41 et seq., District of Columbia Code § 28-3905 et seq., New Jersey Statutes Ann. 56:8-1 et seq., California Business & Professions Code §§ 17200 & 17500, and California Civil Code §§ 1770(a)(5) & 1770(a)(14).

Further, Amway's misrepresentations render Nutrilite Twist Tubes

<sup>&</sup>lt;sup>9</sup> Order to Show Cause and Order Modifying Order, *In the matter of Kellogg Company*, No. C-4262 (Federal Trade Commission May 28, 2010), *available at* www.ftc.gov/os/caselist/0823145/100602kelloggorder.pdf (emphasis added).

<sup>&</sup>lt;sup>10</sup> Order Containing Consent Agreement *In the matter of Kellogg Company*, No. 08-23145 (Federal Trade Commission April 2009), *available at* www.ftc.gov/os/caselist/0823145/090420kelloggagree.pdf).

<sup>&</sup>lt;sup>11</sup> Mark Levine et al., *Vitamin C Pharmacokinetics in Healthy Volunteers: Evidence for a Recommended Dietary Allowance*, 93 Proc. Nat'l Acad. Sci. USA 3704, 3708 (Apr. 1996).

<sup>&</sup>lt;sup>12</sup> DAVID SCHARDT, CLAIMS ADJUSTMENT, NUTRITION ACTION HEALTHLETTER, CENTER FOR SCIENCE IN THE PUBLIC INTEREST 10 (July/Aug. 2010) (internal citations omitted).

misbranded in violation of state food and drug laws, such as California's Sherman Food, Drug, and Cosmetic Law.<sup>13</sup>

As the manufacturer and distributor of Nutrilite Twist Tubes, Amway is responsible for the injuries caused by its actions. Consumer injury occurs each time a consumer sees marketing for or purchases one of these products. Each occurrence is a separate injury.<sup>14</sup>

#### **Settlement Demand**

In light of the foregoing, CSPI invites Amway to resolve these instances of illegal and deceptive advertising in order to avoid further legal action. CSPI seeks to prevent Amway from deceptively advertising unsubstantiated health benefits in association with "fruits & vegetables 2GO" Twist Tubes and from making claims about Immunity Twist Tubes' disease-preventative benefits. And, of course, adhering to honest marketing practices will only benefit Amway and its consumers in the long run.

Should Amway choose not to respond to CSPI's findings, CSPI will pursue litigation to seek the following:

- Entry of a permanent injunction that prohibits Amway from representing that its dietary supplement products provide any number of servings of fruits and vegetables or the antioxidant equivalent of any number of fruits and vegetables.
- Entry of a permanent injunction that prohibits Amway from representing that any of its dietary supplement products can be used in the diagnosis, cure, mitigation, treatment, or prevention of disease.
- Entry of a permanent injunction that mandates a series of corrective advertisements to correct Amway's prior consumer deception with respect to the benefits of its "fruits & vegetables 2GO" Twist Tubes and its Immunity Twist Tubes.
- Disgorgement of Amway's profits from the sale of its "fruits & vegetables 2GO" Twist Tubes and its Immunity Twist Tubes.

<sup>&</sup>lt;sup>13</sup> California Health and Safety Code § 110660 ("Any food is misbranded if its labeling is false or misleading in any particular.").

<sup>&</sup>lt;sup>14</sup> E.g., Aspinall v. Philip Morris Companies, Inc., 813 N.E.2d 476 (Mass. 2004).

If Amway is willing to discuss a settlement or requires additional information about the claims documented herein, we welcome contact from counsel.

Yours truly,

Stephen Gardner Litigation Director

Seema Rattan Litigation Staff Attorney

By:

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cc: Michael F. Jacobson, Ph.D., Executive Director

