

WRITTEN TESTIMONY OF DR. MEHMET OZ, M.D.

**HEARING ON
“PROTECTING CONSUMERS FROM FALSE AND DECEPTIVE ADVERTISING OF
WEIGHT-LOSS PRODUCTS”**

**U.S. SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
SUBCOMMITTEE ON CONSUMER PROTECTION, PRODUCT SAFETY, AND
INSURANCE
JUNE 17, 2014**

Good Morning. Chairwoman McCaskill, Ranking Member Heller, Members of the Subcommittee. Thank you for inviting me to testify before the committee today on this important issue. My name is Dr. Mehmet Oz and I am a cardiothoracic surgeon, Vice Chair and professor of Surgery of at New York Presbyterian Hospital at Columbia University. I have authored or co authored over 400 published academic papers and studies. I have performed over 5,000 surgeries and was part of the transplant team at New York Presbyterian, performing heart and lung transplants in my early surgery career. I hold several patents on surgical devices related to valves and left ventricular assistance. I completed medical school at the University of Pennsylvania and also attended the Wharton School of Business.

I am also a public figure as host of the nationally syndicated Dr. Oz Show, author of YOU the Owner’s Manual and the YOU Series of Books. I publish a magazine called Dr. Oz The Good Life with Hearst and I have a newspaper column which run in more than 110 newspapers across the country.

I am grateful for the opportunity to come before the committee in the interest of protecting the consumer. The “consumer” to whom we refer is a person. That person is my viewer and your constituent. They have placed a trust in both of us for different reasons. You to represent them in the Senate and me to provide them with information that is useful, accurate and on which they make decisions. I would venture to say we both hold this trust to be sacred. But we are here because that “consumer” is now being preyed upon at an alarming and uncontrolled rate, and its incumbent on all of us here to work together towards a solution. I have laid out the testimony I plan to provide in the sections that follow.

Background

In the late 1990’s and I was a surgeon at New York Presbyterian at Columbia in New York City. That morning I had performed a bypass on a woman who was 25 and obese. I had become accustomed to performing surgery on younger and younger patients who had advanced cardiovascular disease. There seemed to be more and more patients under the age of 30 whose obesity had caused life threatening disease.

The operation that morning was a success. I took solace in my usual post surgical reflection that I was a warrior in a medical field that had grown so adept at healing with steel and fixing hearts mechanically that there was little we could not do . I saw my department at New York Presbyterian Hospital at Columbia as the best in heart surgery and I could not have been more proud.

I went to check on my patient and although awake only a few hours, her family and she were celebrating with fast food – the very food that caused her heart disease. Then the thought struck me, No matter how many operations I performed, no matter how many hearts I fixed, nothing would really be impactful in reducing our nation’s number one killer unless people took responsibility for their part in prevention. Most of my patients could have avoided surgery by taking better care of themselves. But most were completely oblivious to what role they played in whether they lived a long healthy life or succumbed to heart disease.

That evening as I reflected on the day, a conversation with my wife contained a breakthrough. I needed to reach more people my wife suggested - perhaps writing for magazines, authoring books and emphasized that she thought I might do well on television. Her suggestions were exciting, but I had no idea where to start and even less energy.

I knew I had to reach people before adolescence where they are most impressionable. I also knew that fitness and nutrition were not getting the emphasis they should be getting in our schools. Lisa and I formed Healthcorps after a successful pilot program in New York City and modeled it after the Peace Corps. But instead of developing countries, we work in high need high schools. We raise money to fund coordinators in high schools to teach mental resilience, fitness and nutrition and serve as full time instructors for two years. Since its start in 2003, Healthcorps has grown to over 60 schools in 13 states and the District of Columbia. We have impacted 300,000 students and nearly 600,000 members of their communities.

As the days and weeks went on Lisa’s suggestions about television made more and more sense and we began to map out very practical steps. With a background in television production, she sketched out and produced a show that would explore topics in health and ignited interest by the Discovery Channel, who eventually decided to air our small startup talk show we called “Second Opinion” in 2003.

To launch “Second Opinion” we needed a big name guest and through a miracle of fate managed to book none other than Oprah Winfrey. Ms. Winfrey shared our concern that people needed to know more about their health and after her appearance on my show she invited me to appear on her talk show which was the number one talk show in the world. One appearance led to another and another and then a regular slot. Viewers were on fire with questions, emails, letters – all wanting to know what they could do to feel better, live longer, have more energy and most of all how to lose weight. We had hit a nerve. We had tapped into a collective thirst for information and inspiration about healthy living which really had no pop cultural thought leader. There were famous doctors, surgeons general, news correspondent M.D.s who were all excellent at their jobs. But while these predecessors did an fantastic job of reporting news, writing books and making policy, the public was looking for someone to also make health simple, fun, and less scary. We strategized that if we found a way add those elements, we might have a shot at engaging viewers enough to the point they change how they eat and live and move towards wellness rather than disease. The idea for The Dr. Oz Show was born in 2007 and development began.

History and Mission of The Dr. Oz Show

In fall 2009 we launched The Dr. Oz Show in the United States, it launched internationally in subsequent seasons and currently it is seen in 118 countries. The most succinct way to describe our mission was to make The Dr. Oz Show our national conversation on health. We wanted to provide information that viewers could act upon which would lead them to a healthy life. One thing I learned from Oprah Winfrey, television’s greatest teacher, was that people didn’t changed based on what they knew, they changed based on how they felt. This explained why my patients

still smoked cigarettes despite knowing it would kill them. It was a huge breakthrough for me when I internalized that lesson, and the creation of the Dr. Oz Show aimed to translate that idea into a practical television format.

To make the Dr. Oz Show succeed in its mission, we have to overcome certain obstacles I learned in years of conversations with patients. We have to simplify complicated information. We have to make the material seem interesting and focus on the “wow” factor. We have to let the audience touch a liver, a heart, a brain, a spleen – things they would never get to do in their own lives. We need to have fun, use humor, and show people that laughter is a part of being healthy. It should be apparent to anyone who has seen our show that we are deliberately unorthodox in how we produce our program. We seek out the unexpected demonstrations, costumes, dance routines. I have had various guests from circus performers to Surgeon Generals to real camels. I will go to any lengths to get people to think differently about health.

We also cover very serious topics. People need a filter for what they read in the news. They need interpretation that puts them at ease. They need information they can act on. They need to know how to care for loved ones. We cover cancer, diabetes, heart disease and all the major chronic diseases teaching basic prevention, how to be a smart patient, new and emerging research and alternative therapies. We see the show as the forum for a conversation on health that includes multiple points of view. While talk shows are designed to host debates, my medical training and each session of grand rounds at the hospital teaches that there are multiple ways to see a problem, and each point of view has its own value. Controversial issues like vaccines, mammograms, medical marijuana and many other topics are all part of our show. Viewer feedback is positive and our web site has close to 4 million page visits per month.

Our web site is the show’s 24/7 informational concierge. I knew when we launched that we would never fit everything we need to in an hour, and people would have to learn about topics at their own pace. www.doctoroz.com provides both a solution and a platform. We are able to offer limitless content, show episodes, articles, blogs, lists and charts that people can print out and bring to their doctor, family history charts, recipes, exercise instructions – its where the viewer can go and get information.

By far, the topic that we are asked about the most is weight loss. We cover it frequently with good reason – its an absolute absolute pandemic in America and the largest driver of chronic disease. People feel powerless, they need solutions, they must lose weight to regain their health. We cover the topic from a physiological, nutritional and emotional angle – from calories to body image and supplements to plastic surgery. These conversations are already taking place everywhere in in our country as people grapple with the nation’s weight problem. We are one of the very few – possibly sole media outlets whose mission includes dedication to the issue.

Editorial Coverage of Vitamins and Supplements

It is estimated that 150 million Americans – roughly 2/3 – take vitamins and supplements. Plain and simple these products alter body chemistry – ideally in a positive way. Up until we launched, there was no designated thought leader that deciphered the bottom line for consumers on what supplements were helpful and why. With nutritional supplements top of mind for our audience and the great risks and rewards that result from their consumption, we actively research new and emerging products and trends and news about products found in the average health food store. We look to published research, expert guests, our own testing that we do with third party laboratories and anecdotal testimony from audience members about people’s experience with the

various products with the goal of providing useful information. Our audience is already targeted by manufacturers and they need better information.

We have aired close to 900 shows in the five seasons since we launched, and while we cover the entire range of health topics, the vitamins and supplements, especially those for weight loss have generated a disproportionate amount of attention. Most of the time, the general public is hearing about a product on my show for the first time and there is genuine curiosity. Other times the market springs into action, often illicitly and a surge of ads appear every time you turn on a computer.

The general media covers a lot of what we do on the show in various ways, and I appear regularly on other programs to discuss news or other topics. More than once there has been criticism from some reporters who took exception to my use of colorful language in the supplement segments. They have expressed disagreement with my use of words like “miracle” and “groundbreaking”. We constantly reflect as a show on which words are the right ones to use and which adjectives we may want to retire. We are always self correcting, progressing, trying to make a better show. Do we miss the mark sometimes? Of course. But our work is affirmed by the millions of emails, testimonials, phone calls, from people who say they saw something on our show that made a difference in their lives and they are better off. Its affirmed by the 1.5 million people who signed up for season long Transformation Nation Program in Season 3 and lost 3 Million pounds through healthier behavior they learned from watching. Its affirmed by the two million people who downloaded our New Year’s diet plan this January and the 500,000 that printed out the family history chart to fill out and bring to their doctor. These are just a few examples, but they confirm for us that we are speaking in a language that resonates with our audience.

In 2012, we aired a show on a little known supplement called Green Coffee Extract. This is the supplement that is so prevalent in all the ads that are being exhibited today.

In this show I used the word “miracle” when referring to how green coffee could melt fat and I explored a new study on the supplement. I was enthusiastic that it could be a tool to assist people in losing weight and I knew the audience wanted and needed this information. After the show aired an explosion of ads and marketing followed along with criticism that our characterization went to far in describing green coffee. My way of dealing with it was to construct a second show and answer the criticism of our original segment. While we covered Green Coffee in the show, we devoted about half of the hour to me explaining to viewers that they are being duped by unscrupulous people who are illegally using my name in ads. The entire discussion of Green Coffee was prefaced with a warning to the viewer in the interest of protecting them.

Most importantly, in this show I spent an enormous portion of the broadcast demonstrating the false ads and how the various retail scams work – again trying to protect the viewer. I also re-explored green coffee this time using the audience to reveal their anecdotal experience after trying the supplement for two weeks. Some had lost weight, others had not. It seemed to help some people in their weight loss efforts. The internet lit up again, the illicit ads proliferated, and we faced additional criticism.

Because of the cause and effect that green coffee show had on the now burgeoning scams which were increasing completely unchecked, we took a long hard look at how we could minimize that effect and where our editorial could play a role, while simultaneously devising measures to protect the viewer and giving them a mechanism to report scams. After constantly reflecting on and refining our language, we broadcast a show in February 2014, two seasons later on a little known food called Yacon syrup, which is a sweetener made from a South American root

vegetable and has been in stores for decades. We were deliberately measured in our language. We didn't use the words "miracle" or "magic," we thoroughly listed the potential side effects such as it cause diarrhea in some of our audience members who tried it. But I did suggest that it was good alternative sweetener and could assist in weight loss efforts. But the same thing happened afterwards – the very next day Yacon syrup was the subject of countless ads, many with my name and face with the exact same motus operandi as every ad on every supplement that had come before it. This taught me that regardless of how much enthusiasm I show in a segment, and whether I use forceful words like "miracle," and "magic" or more conservative language like "breakthrough," or "promising" the result is the same – my viewers are still victims of fraud and false claims by a sophisticated, large scale organized criminal enterprise that is being allowed to operate fully and without any enforcement effort. This concerned me greatly.

Now completely confounded by this rampant problem, my next solution was to develop a show in which we found one of these perpetrators and confronted them. I thought if I made an example out of a company that was hard at work deceiving viewers that I would be protecting my audience and scaring others doing the same. We aired a show on May 2014 where I staked out and confronted a company in San Diego that was selling Garcinia Cambogia under the name "Miracle Garcinia". Sadly, this had little impact on the proliferation of the ad scams as well.

So I stand before you today as a someone who has done everything possible to try to protect my audience against those who attempt to hijack the conversation between viewer and doctor. I have collected close to 35,000 complaints, each one representing a real person - your constituents – who have been the victim of some type of fraud.

When we write a script, we need to generate enthusiasm and engage the viewer. Viewers do not watch our show because they are seeking our dry clinical language. Viewers watch because we use language that is familiar to them which they would use when speaking to friends and loved ones. We are a guest in their home every afternoon. To treat that privilege like an academic lecture in medical school would be a miscalculation. As a television show, unlike a scientific conference, we have both the luxury and necessity to use colloquialisms and vernacular that you probably won't hear at your doctor's office. This is the essence of why we break through to viewer – we meet them where they are instead of demand they traverse a river of dry, confusing terms that are sure to alienate them. Remember – people act on emotion and how they feel, so a main principle in building our scripts is to illicit a visceral, emotional reaction from the viewer.

Trademark Infringement and Illicit Advertising of Products Involving the Dr. Oz Show

Let me be very clear on the following: I do not endorse any products or receive any money from any products that are sold. I have never allowed my image to be used in any ad. If you see my name, face or show in any type of ad, email or other circumstance, its illegal.

I have been grappling with the problem of illicit use of my name connected to weight loss scams and other products since before The Dr. Oz Show even launched. In the years that I was a regular guest on The Oprah Winfrey Show, I covered two products – Acai Berry and Resveratrol, which lead to a tsunami of illegal banner ads on the internet. That began my long battle with this complicated and insidious problem. Below is a timeline and explanations on the effort the Dr. Oz Show has undertaken since that time.

9/12/2009: Dr. Oz and Oprah Winfrey [file civil suit](#) against merchants using their likeness to sell and promote acai berry.

Working with attorneys general from six states combined with our civil suit, we shut down 40 companies that were responsible for the false advertising. The effort received enormous news coverage. Sadly, after many were shut down, an equal amount re-appeared soon after and within a year the amount of perpetrators had more than tripled. In the five years since that lawsuit the amount of businesses responsible for the illicit scams is without measure.

9/03/2012: Dr. Oz Announces [Oz Watch](#) “If you see something, send something”

Stymied by the uncontrolled proliferation of internet scams involving our stolen trademark, we created a web based reporting system for viewers to turn in a URL, spam email, commercial, or any use of my likeness or of the show. We told the audience to share anything they find while reminding them never to purchase a product that uses my likeness or the show. Since its launch in 2012, we have collected 35,000 complaints. Many of the reports are viewers who are the victims of overt crimes and have had their credit cards billed repeatedly despite efforts to discontinue purchasing. These complaints are available to the committee today and to any state or federal agency that wishes to review them in order to take action.

9/12/2012: [“Dr. Oz Fights to Reclaim His Name” Show](#)

We devoted a show to explaining to the viewer the exact nature of how these scams work and how easy it is for the companies to operate. We used this broadcast time which otherwise would have been spent on useful health editorial content teaching the audience how to navigate what had become a treacherous environment as the illicit ads and scams continued to increase.

5/06/2013: Dr. Oz Announces the [“It’s Not Me” Campaign](#)

With the illicit ads and scams now at fever pitch and growing exponentially, we launched a very public campaign with various media outlets to remind the public not to buy any products using my likeness. The campaign devoted a portion of each broadcast to remind viewers that I sell no products and have no relationship with any vitamin, supplement or weight loss manufacturers and to NEVER buy anything they see using my name. That campaign is still underway and will continue in perpetuity as a consumer protection measure.

4/29/2014: [“Dr. Oz Takes Down the Scammers” Show](#)

Using the power of the show platform, and frustrated by the scale of the problem we developed a show that investigated, staked out and finally confronted a company that was an egregious example of the internet scams. This dramatic show can be reviewed on www.doctoroz.com and was an attempt to send a message to companies that if they choose to skirt the law, we will find them and we will expose them.

The breakdown of content collected in the Ozwatch effort is as follows:

Total Cases Reported to Oz Watch through 5/31/2014: 35,000+

- **“High Value” Targets (image/logo/video infringements) identified: 9,000+**
Many reported offenses (thousands) are duplicates. This number excludes social media.
- **C&Ds sent to date: 600 (not including YouTube and Facebook takedowns) to 450+ sites.**

Sites taken down + Infringements removed in response to C&D: 300+

C&Ds sent that produced no result: 78

Average Claims Submitted to Oz Watch Per Day: 50

Total YouTube Takedowns to Date: 4,700+ videos

Total SPAM Messages Reported: 28,000+

General breakdown by claim type (not exact):

- **Online: Website, Facebook, Amazon: 62%**

- **Email/Text: 28%**
- **Other (Television/Radio/Print): 9%**
- **In-store: 1 %**

Analysis of a Scam

The following are the types of scams and the mechanisms that we have identified:

ONLINE DIRECT MARKETING

Online direct marketers design and leverage unscrupulous business tactics that are intended to elicit an immediate response or action from prospective consumers.

To reach potential buyers, direct marketers employ a variety of proven tactics including: display/banner advertisements, targeted ad words (via Google/Facebook, etc), direct marketing via email and text message and traditional broadcast media. Each method typically features an unauthorized image or video of a celebrity and a number of trusted consumer facing brands that are intended to establish a sense of trust and familiarity in the prospective buyer.

ADVERTORIALS + FREE TRIALS:

The celebrity images and trusted brands are presented alongside consumer and celebrity “testimonials” on pages that are considered “Advertorial”. They display celebrity images and selectively edit trademarked media in the style of an editorial or objective journalistic article. To entice prospective buyers into purchasing a product, direct marketers present offers they bill as “free trials”. In order for a prospective buyer to receive a “free trial” they are required to submit their personal information and as well as credit card to handle “shipping and handling” of the free product they are expecting to receive.

DATA COLLECTION AND ORDER PROCESSING:

Once the consumer enters their personal and credit card information, the order is processed and sent to a fulfillment center for shipping. In addition to the standard \$4.95 shipping rate consumers believe they are paying for, they are typically auto-enrolled in a product subscription program wherein their credit card is billed monthly or until they contact the seller to cancel. Another malicious tactic used by sellers charges the consumers credit card for a 3-month supply of a product when the free-trial transaction is processed. The 3-month supply often exceeds \$150 in cost, which goes directly to the buyer’s credit card. In order to cancel the order, the consumer must contact the seller to dispute the charge. Some high volume sellers employ call centers whose sole responsibility is credit card disputes and mitigation. This is to ensure that their phone lines are not clogged when new customers phone in to process new product orders.

WHITE LABEL PRODUCTS AND FULFILLMENT

It is easy to create and distribute a unique brand of health supplements, as the industry is largely unregulated. There are a number of companies that manufacture health supplements to seller specification. The bottles can be prepared without labels and in any bottle the seller specifies. This means that sellers have tremendous flexibility with the offers they present. If one brand of product isn’t moving, they can simply change the name of the product and reprint new labels. The fulfillment companies that process the orders and ship the orders often ship from off-site UPS shipping centers. This is often the return address listed on the mailing labels used in place of any authentically registered business address.

TRUSTED PARTNERS AND AFFILIATED COMPANIES

This vicious and deceptive consumer cycle is perpetuated by people and companies that with innate knowledge of ongoing regulation efforts and a firm understanding of where the gaps in online governance and compliance are. Techniques and business models that prove lucrative quickly become industry standard. Competitors in the direct marketing space will blatantly steal the media and design elements that are successfully deceiving consumers and converting new buyers on competitive sites for use on their own landing pages and offers. Expert direct marketers easily identify which players and resources are essential to a product offer that is successful and lucrative.

When someone proves proficient or technically skilled in one element of the operation, they are revered and sought after. Their ideas become new standards for online direct marketers.

EVADING ENFORCEMENT

Marketers can register a fly-by-night LLC in Delaware, establish a drop shipment address at a UPS shipping center, update digital marketing materials, print new product labels and invest considerable financial resources into marketing a new product offer in a matter of days. The illegal aspect of their operation that first got our attention is unwarranted use of our trademark in their marketing materials, but we are most concerned with the consumer being misled. Most direct marketers will only leverage our trademark in the advertorial page that appears before a consumer submits their personal and credit card information. The advertorial pages are often hosted on “bulletproof” servers with private domain registration in place. Because marketers are able to evade enforcement by concealing their identity when a domain host sends a trademark claim to their attention, they simply repeat the process.

In summary, a direct marketer establishes a connection with a potential buyer via traditional advertising or direct marketing. When the potential buyer clicks a link, they are funneled into a conversion cycle that is laden with unauthorized trademarked material on advertorial pages designed to elicit an immediate action from the buyer. All links on the advertorial page link directly to a product landing page and data capture form.

Proposed Solutions and Suggestions

The uncontrolled proliferation of illicit advertising of weight loss scams on the internet is a large scale orchestrated criminal fraud that amounts to hundreds of million of dollars in illegal profits and a grave threat to the health of any person buying and ingesting products from a dishonest seller. There has been a paucity of enforcement of existing laws on the quality and safety of the products, the method of billing which results in fraud or theft by deception, and the rampant and constant trademark infringement. If ever there were an opportunity and an urgency to protect the consumer, this is it.

I believe that we have existing laws that allow for the enforcement of these scams. I believe the power of this committee is critical in shedding light on the situation and raising its level of priority with the appropriate enforcement agencies. I do not think additional regulation or oversight is necessary.

Here are my suggestions as a starting point to deal with this problem:

- Initiate greater intra-agency cooperation between the FTC, FDA, FBI, Congress and State Attorney General offices and the private sector companies (via trade organizations) to identify offenders and shut them down.
- Development of a “master list” of celebrity endorsements retained by the FTC for quick identification of violators. This would be of great assistance to the celebrities who have no practical recourse for trademark infringement and enable the FTC and law enforcement to look in the obvious places in an effort to protect the consumer.
- Web hosting and internet advertising platforms must bear some responsibility for hosting egregious and obvious false ads or criminal content. A master list would be a useful tool and if developed, ad hosting services could be expected to cross reference celebrity content and expected to refuse purchases for violators as well as report the purchaser.

It's my hope that we leave today with a commitment to cooperate in protecting the consumer. You have my absolute commitment to provide whatever I can that will be of assistance in any of your efforts or with any of the agencies you deem appropriate. I also will continue my earnest efforts to be a public advocate on this issue and use the power of my show and various media platforms to keep it in the public eye.

Thank you for the opportunity to testify.