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*lcras gB*

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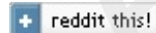
## The FTC Will Make You Safe

J U L Y by S1 .4 M, . 2 00 L1 10 V A

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The [Federal Trade Commission](#) will order Nestlé to cease making claims about the health benefits of a drink marketed to children. The FTC appears less concerned with protecting consumers from fraud than with protecting and expanding the federal government's monopoly over food-and-drug-related speech, as the Commission's own press release makes clear:










Under the proposed settlement, Nestlé HCN has agreed to stop claiming that BOOST Kid Essentials will reduce the risk of colds, flu, and other upper respiratory tract infections unless the claim is approved by the Food and Drug Administration. Although FDA approval of health claims generally is not required for compliance with the FTC Act, in this case, the FTC determined that requiring FDA pre-approval before Nestlé HCN makes claims that certain products prevent or reduce the risk of upper respiratory tract infections will provide clearer guidance. In turn, this will facilitate Nestlé HCN's compliance with the proposed settlement order and will make the order easier to enforce.

It's a nice sleight-of-hand: The law doesn't require FDA pre-approval, but the FTC does. This is important because the FTC wants to restrict all commercial speech to only those statements pre-approved by the

*ds*

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*R*

"Thing is, I CAN'T buy the road. It's not permissible (I would have to convince the government to let me operate the road) ..."

**J. Murray** on *Real Jobs, Fake Jobs*

government, with no outside check or balance. There's been a few roadblocks recently.

For example, last August a federal judge in New Jersey rejected the FTC's petition to hold Lane Labs-USA in violation of a prior FTC order related to marketing of the company's dietary supplements. Similar to the Nestlé case, the FTC censored Lane Labs's speech unless their claims were supported "competent and reliable scientific evidence." What the FTC means by this is, "evidence supported by FTC-paid experts." When Lane Labs produced its own expert reports in support of certain advertising claims, the FTC asked the court to hold the company in contempt — because the FTC-paid experts had a different opinion. The judge declined to issue a contempt finding (the FTC has appealed).

That's why the FTC pending order against Nestlé expressly states all claims must be pre-approved by the Food and Drug Administration, rather than simply require "reliable" evidence; this way there's no chance the company might find a scientist who disagrees with the government's official position.

It also bares repeating that despite labeling these cases as "consumer protection," the FTC need not ever allege, much less prove, any consumer injury. Indeed, the judge in the Lane Labs case noted there wasn't even an allegation of specific consumer harm — the issue was simply the FTC's disagreement with the company's speech. Nor did the FTC's complaint against Nestlé claim any consumer was injured because of misleading claims. The FTC merely substitutes its own judgment for that of consumers.

I feel obliged to emphasize this because of the recent trend of fake-libertarian groups cheerleading the FTC's "consumer protection" activities, including the [Competitive Enterprise Institute](#) and the [Progress and Freedom Foundation](#). Just today, PFF's [Berin Szoka](#) gushed about the benefits of FTC consumer protection, citing the agency's warning against a magazine not to sell its subscriber list. At best it's a breach of contract case; it certainly doesn't prove the need for a massive federal bureaucracy that routinely violates the civil rights of American citizens. More to the point, folks like Szoka are themselves actively deceiving the public about the true nature of the FTC's activities.

(Postscript: PFF is hardly pro-consumer given [its view](#) that people who download songs on the Internet should be subject to six-figure civil fines. In the minds of PFF scholars, companies like Google are criminal syndicates, while the FTC is a necessary agent for protecting consumers. And they call themselves "cyberlibertarians.")

"A better name would be Comrade ..."

**J. Murray** on [Real Jobs, Fake Jobs](#)

"Peter, Are you speaking in tongues, or something. Property rights allow owner to control all services that could be derived from his good. He ..."

**Sasha Radeta** on [Without Rejecting IP, Progress is Impossible](#)

"mpolzkill, ha ha....please don't encourage ..."

**Daniel Hewitt** on [Death Tax Musings](#)

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**Seattle** July 14, 2010 at 10:56 am



“Cyberlibertarians” are the usual pragmatists. The state should take from the rest of society and give to them, whether in the form of net neutrality laws or national broadband. All that separates them from the usual crowd are their particular interests. They support the FTC because they believe it somehow helps them as “the little guys.” And they back it all up with wide-eyed sentiments of “It makes our market freer!” But I’m sure you know fully well the state’s self-justifications.

By the way, I keep wanting to think you’re a woman for some reason. Why is that?

R E P L Y

**mpolzkill** July 14, 2010 at 11:06 am



I sincerely believe there may be nothing more damaging to liberty than these special interest pleaders who believe everyone \*else\* should be on their own; these “impure” libertarians.

R E P L Y

**Seattle** July 14, 2010 at 11:14 am



J

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T

[Ludwig von Mises](#): "Even knowledge of the laws of nature does not make action free. It is never able to attain more than definite, limited ends. It can never go beyond the insurmountable barriers set for it. And even within the sphere allowed to it, it must always reckon with the inroads of uncontrollable forces, with fate." - [Epistemological Problems of Economics](#)

**Monday, July 19** ▾

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**Tuesday, July 20**

[1754-Antonie Louis Claude Dest](#)

[1900- Gottfried von Haberler born](#)

**Wednesday, July 21**

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**Thursday, July 22**

I have a particular resentment for cyberlibertarians in particular... mostly because they're an insult to geekdom. A blight on the face of an otherwise nice subculture.



NASA-worshippers too.

R E P L Y

**JB McMunn, M.D.** July 14, 2010 at 11:21 am

Freedom of speech is not the same as freedom of lying to the public in order to sell potentially harmful (or perhaps totally ineffective) garbage.

The FTC is stepping up where the FDA has failed to. These “dietary supplements” work through a loophole in the law (which the industry purchased via the usual route – lobbying) whereby as long as they make no MEDICAL claims they can say anything they want. So they can't claim that ginkgo biloba improves memory deficits but they can make diffuse claims like “enhances mental function” or other such rot.

If I were chief of the FDA, every time I saw one of these claims advertised I'd give them 5 days to provide:

1. A definition of “enhances mental function”
2. Scientific proof for the claim, based on the above definition.

Otherwise you pull the ad. I think that's reasonable enough.

The loophole also classifies these substances as food, so there is no regulation as to purity or quality. It has long since been shown, for example, that commercial preparations of St John's Wort – claimed to help depression – vary widely in the concentration of hypericum extract.

Therefore, I can bag my grass clippings and sell them as “Dr. McMunn's Vitalizing Remedy” and there is nothing to stop me as long as I make no medical claims. I can just say “Enhances vitality!”. What else is in Dr. McMunn's Vitalizing Remedy besides grass clippings? Just the usual – dog urine and feces, pesticides, and fertilizer.

A few years ago I posted a fake ad on the Internet selling “reduced oxygen” for \$99.95 per liter, using all the

[1926-Friedrich von Wieser dies.](#)

**Saturday, July 24**

[1974-US Supreme Court rules th](#)

**Sunday, July 25**

[Mises University](#)

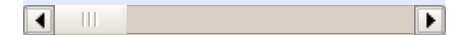
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**Monday, July 26**

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usual humbug claims. I actually got orders for . . . water.

R E P L Y

**mpolzkill** July 14, 2010 at 11:24 am 


Are you a libertarian, Doc?

R E P L Y

**Seattle** July 14, 2010 at 11:33 am 

I grant you that misleading (and at times fraudulent) claims are a very big problem that need to be dealt with. The FTC and the FDA, however, are not the solution and if anything their operation has only made such things worse.

R E P L Y

**S.M. Oliva** July 14, 2010 at 11:35 am 

Doctor —

It must be difficult to live in a world where people don't confine their public expression to only those statements with which you agree personally. It must be even harder to live in a world where "science" isn't the absolute domain of unelected government lawyers.

R E P L Y

**JB McMunn, M.D.** July 14, 2010 at 12:46 pm 

@ Oliva:

So this is what passes for discourse in the Mises world? A baseless ad hominem attack, in which the first sentence seems to apply to the writer more than it describes me. Your gratuitous insults demean the entire discussion.

R E P L Y

**mpolzkill** July 14, 2010 at 12:54 pm 

You don't need discussion right now, Doc, you need introductory or remedial courses first. Here's a possible intro into understanding the negative effects of interventionism that I happened to have read this morning:

<http://www.lewrockwell.com/rozeff/rozeff142.html>

R E P L Y

**Seattle** July 14, 2010 at 1:07 pm 

Mr. Oliva isn't the one advocating tighter state control of advertisements, while you do so quite explicitly in your post. His first sentence applied to you.

Furthermore, ultimately the "scientific proof" you want is going to be whatever the FDA decides it to be. What standard do you suggest be used to verify whether something is "proof" or not? One way or another it's going to come down to the arbitrary decision of some bureaucrat, and the system will be used to grant privilege to favored companies even more than the current system does. This is what he meant by his second statement.

R E P L Y

**Inquisitor** July 14, 2010 at 1:53 pm 

You didn't really provide much of an argument as opposed to expressing impulses to tyranny, to begin with. I'd say Oliva was civil with you. If you think you need a massive regulatory agency to do the job consumers should be doing themselves, passing its arbitrary judgement on what is and isn't "safe", you're going to have to offer a better case. The system you're up for basically entails what Oliva mentioned...

R E P L Y

**Old Mexican** July 14, 2010 at 5:13 pm



Re: JB McMunn,

Freedom of speech is not the same as freedom of lying to the public in order to sell potentially harmful (or perhaps totally ineffective) garbage.

That's what fraud laws are for.

The FTC is stepping up where the FDA has failed to.

Makes one wonder what else has the FDA "failed to do", and who watches the FTC as well.

If I were chief of the FDA, every time I saw one of these claims advertised I'd give them 5 days to provide:

1. A definition of "enhances mental function"
2. Scientific proof for the claim, based on the above definition.

Your request would be made null by the Supreme Court. It clearly would violate the law on 1st Amendment terms, since the advertised claim is not a concrete guarantee.

Otherwise you pull the ad. I think that's reasonable enough.

For authoritarian busybodies, it should sound reasonable.

R E P L Y

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**HL** July 14, 2010 at 12:47 pm



SM Olivia is truly doing great work. I've become quite the fan. FTC bureaucrats are like any other in the history of Mankind.

R E P L Y

**JB McMunn, M.D.** July 14, 2010 at 1:25 pm



I don't need your lectures. Until you've tried to practice medicine in this country you don't know what bureaucracy is. I live it every day, which is why I follow this site as well as Lew Rockwell on a daily basis.

In case you haven't noticed, the real world is impure, chaotic, and imperfect and requires realistic compromises.

The Austrian School is as close as I can get to an economic philosophy that I can live with but I'm not about to make it the centerpiece of my universe. If you take comfort in that, fine. Meanwhile, I'll take the things I agree with and take a pass on simplistic overly-broad approaches to complex problems.

R E P L Y

**S.M. Oliva** July 14, 2010 at 1:32 pm



Doctor —

I certainly respect the bureaucratic burden on physicians. Indeed, I've spent nearly a decade criticizing the FTC's campaign against physicians, which is why I'm amused you're rushing to the agency's defense. When it comes to the FTC, there are no "realistic compromises," only capitulation to authority.

R E P L Y

**mpolzkill** July 14, 2010 at 1:56 pm



Strange switcheroo. Who's tormenting you more, nutrition quacks or bureaucrats? You're saying as long as the government's harrassing you why don't they go ahead and quash the quacks?

All the dubious medical experts on Rockwell nearly every day must really be hard for you to take. Strange.

R E P L Y

**JB McMunn, M.D.** July 14, 2010 at 2:50 pm



The list of who ISN'T tormenting me is much shorter. You have regulation and

micromanagement on one side, and doctor wannabes on the other, and a bulls-eye painted on your back by the lawyers. Who was that guy from the Fed who argued that only trained economists were qualified to comment on economic issues? Welcome to my world.

And yet despite all that I can usually make it work for my patients. In the meantime, I make changes where I can but the inertia of the whole system is enormous. Mostly I have to settle for small victories and the occasional inevitable defeat. After all, in this business you always lose to your “ultimate” opponent so you have to be somewhat sanguine or go crazy.

R E P L Y

**mpolzkill** July 14, 2010 at 8:00 pm

It doesn't look like you picked “sanguine”, Doc.

Haha, I'm just busting your chops. No really, you're alright Doc, you're alright. But look at the big picture, please, won't you? It really \*is\* simple: gunmen, peasants, technicians. But you want to be pragmatic; that's understandable. You want to be pragmatic and not be a chump or a pig; that's understandable. And you go on being pragmatic if we peasants can't get our asses in gear. You're alright, Doc.

R E P L Y

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**G8R HED** July 14, 2010 at 1:40 pm

“I'll take the things I agree with and take a pass on simplistic overly-broad approaches to complex problems.”

This is why I support doctors who do not necessarily follow AMA-sanctioned dogma or prescribe FDA-approved drugs.

I could tell I was on the right track when my new doctor told me: “you do not have high cholesterol because you are lipitor deficient.” 😊

R E P L Y

**JB McMunn, M.D.** July 14, 2010 at 2:07 pm 

As an aside, less than 1/5 of doctors belong to the AMA. Most of us hate it. It really just pretends to be representing doctors. In reality the vast majority of its income derives from its monopoly on the CPT code book. This is worth tens of millions and is run by professional businessmen with 6-figure salaries. The clinical side is a facade they show the public. The AMA headquarters in Chicago would make Lloyd Blankfein jealous.

That is why the AMA bent over and spread 'em for BO. If the government pulls their monopoly on CPT coding they are out of business. Then BO was able to go out and announce to the country that America's doctors were on his side because so few people understand that over 80% of doctors are not AMA members.

R E P L Y

**JB McMunn, M.D.** July 14, 2010 at 2:15 pm 

Replying to my own reply so as to segregate comments. The "dogma" is not sanctioned by the AMA. It has no such power. Much of this is driven by the government and the malpractice lawyers. It's generally agreed that if you have a heart attack you should go home from the hospital on aspirin.

1. The government, as part of its hopelessly clueless "quality" measurement programs, looks at how many patients were or were not discharged home on aspirin for any given hospital and that goes into a public report card.
2. If you do not put your patient on aspirin when they go home and then they die, you can be sued for failing to follow the standard of care. Had you prescribed aspirin the patient would still be alive. I know this sounds insane, but it is how things work (in a loose sense of the word "work").

Interestingly, we have guidelines that end up with a patient on aspirin, a beta blocker, and a statin drug because all have been shown to reduce mortality. However, nobody knows if, for example, combining aspirin and a statin and a beta blocker cancel each other out, causes increased mortality or makes your teeth itch.

So your doctor is a courageous man. If you have a heart attack I just hope you don't sue him for failing to prescribe Lipitor. 😊

R E P L Y

**jerry** July 14, 2010 at 3:32 pm

earlier you said you wanted

“Scientific proof for the claim, based on the above definition.”

Sorry Doc but I'm not standing for this. The idea that stuff the medical professino does is scientifically proven and the “alternative” (or whatever word you want) treatments are not is hogwash, as in fact demonstrated very clearly by your comment later

“Interestingly, we have guidelines that end up with a patient on aspirin, a beta blocker, and a statin drug because all have been shown to reduce mortality. However, nobody knows if, for example, combining aspirin and a statin and a beta blocker cancel each other out, causes increased mortality or makes your teeth itch.”

You are indeed all over the place. I suggest you pay more respect to the point being put forward here to allow you to better critique it.

R E P L Y

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**JB McMunn, M.D.** July 14, 2010 at 2:02 pm

Again, I think these are gross oversimplifications. Let me give you an example from my own career. We have medical boards that decide who can and can't practice medicine.

One part of me says, “How dare they tell who can and can't do something?”. I have also seen paranoid ramblings on the net about how “the AMA” conspires with medical boards to restrict the number of doctors in this country (which it absolutely has no power over whatsoever) to keep fees up (so far that conspiracy has

been a complete flop).

In my state, Texas, they passed a law a few years ago that forces the Board to investigate each and every complaint. They have no discretion to decide a complaint is BS. How did they pay for that? They increased our licensing fees. Talk about getting it both holes.

Now here's the "however" part. I was asked to be a reviewer for the Board. The pay is less than my overhead but I decided to do it as a public service, if you will.

The cases I have reviewed have ranged from angry ex-wives filing bogus complaints to gross negligence. In many cases, the complaint was about something minor, but as I dug through the records I found gross fraud and/or incompetence.

Ok, so now I'm a semi-bureaucrat. I was not elected to this office. Other than the State, who says I am qualified to pass judgment? I suppose you could say that the State, through its elected officials, has been granted this power to validate me by the people of Texas. You could make the same argument for the FDA. It exists because elected officials made it possible and the elected officials were . . . elected by the citizenry from which all power theoretically derives.

OTOH, I am uncovering fraudulent and incompetent doctors and hopefully making medical care safer and less expensive. Do you want me to stop doing this? What would you replace it with?

Similarly the FDA, which frustrates me no end, did manage to ensure that not one case of thalidomide malformations happened in this country. OTOH, they have demonized drugs that we have used for decades and whose chances of killing you are less than being hit by lightning.

The problem I see you wrestling with on this type of issue is "who watches the watchers?", which was basically what killed Logical Positivism. It was a great philosophy until someone posed the question of "who validates the validators"? The Logical Positivists couldn't answer the question and I don't see an answer on the horizon.

Meanwhile, somebody has to drive the bus. "Amusing" or not, I still defend the FTC's actions in this instance. I don't have to agree with everything they do, but to say they are always wrong is not only simplistic but unverifiable. Is there anyone here who would encourage their loved ones to try a dose of Dr. McMunn's Vitalizing Remedy? I'm free to sell it to them.

R E P L Y

**mpolzkill** July 14, 2010 at 2:47 pm 

“Is there anyone here who would encourage their loved ones to try a dose of Dr. McMunn’s Vitalizing Remedy? I’m free to sell it to them.”

Try and sell me.

You’re all over the place, Doc, sorry.

R E P L Y

**JB McMunn, M.D.** July 14, 2010 at 2:51 pm 

I’ll wager that at some point someone has “sold” you already.

R E P L Y

**noah** July 15, 2010 at 12:21 am 

I’ll try a dose of Dr. McMunn’s Vitalizing Remedy. I assume you, as a doctor, have a pocketful of samples that you can hand out to random patients in the same manner as many doctors offer up virtually any FDA-approved drug a consumer desires, or a sales rep pushes, with the implicit promise of safety and effectiveness at whatever dose for whatever ailment the manufacturer has told the FDA without the FDA really knowing if that’s completely true. Will it treat run-on sentences?

At the very least, the suggestion of selling the benefits McMunn’s Vitalizing Remedy should prompt any consumer to research the product, and then to make his own informed decision. The internet has made this a thirty second process.

What the FTC and FDA and every other federal agency would like is to have a monopoly on the selling of any potential benefits (or hazards) of anything and everything. Coming from such all-knowing and reliable sources, consumer safety is certainly assured, and there is obviously no longer any need for the buyer to beware.

In selling the benefits of Uncle Sam's Vitalizing Remedy, the SEC has assured us Bernie Madoff will take care of our retirement funds; Fannie and Freddie have assured us we can afford a \$500k house working as a grocery bagger; Interior has assured us BP won't spill oil; Interior has assured us BP will properly clean up all the oil it won't spill; the EPA has assured us every breath we exhale is toxic but if each breath is taxed we will be able to save ourselves from ourselves and Goldman Sachs will only need a small percentage of the tax on every human breath to ensure the proper solution to such a "complex problem."

McMunn's Vitalizing Remedy may be useless, but I'm guessing it's relatively inexpensive, relatively harmless, and I'm free (emphasis on FREE) to toss the unused portion in the trash anytime I like and call it a learning experience. Uncle Sam's Vitalizing Remedy is expensive, harmful, and I'm forced to pay for it and have it shoved down my throat. Buyer beware.

R E P L Y

**mpolzkill** July 15, 2010 at 3:46 am 

Noah,

Awesome; and don't forget the State Department, FAA, CIA, FBI, TSA, Homeland Security and Pentagon protecting us from A-Rabs.

R E P L Y

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**Dave Albin** July 15, 2010 at 12:13 pm 

The good doctor is a little all over the place, maybe because he is trying to practice medicine in a nightmare regulatory and lawsuit-happy environment. Might I suggest something – get sick, go see the doctor. He voluntarily gives advice and performs tests that you agree beforehand to pay for at an agreed-upon price. You can choose to follow his advice or ignore it. BTW, anyone can be a doctor or medical professional and you can ask for their qualifications and patient history beforehand. If you choose to take a medicine from the doctor, the medicine is what you were told it was, and you have an adverse reaction (or it does not cure you), that is your fault, not the doctor's. While this seems straight forward to me, why are we

so far from this? (I really know why). Maybe the good doctor would not be so frustrated in this world?

R E P L Y

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**noah** July 15, 2010 at 2:01 pm

Horrors, a reality based on individual responsibility? Never! If the state can undermine the responsibility component, they've finished half their job.

R E P L Y

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**JD** July 15, 2010 at 5:53 pm

Because "Victimhood" has been feed to people for several generations.

With all due respect to the doctor, by letting any element of govt. burearcrtic coercion into the equation, (regarless of the good intent or results), you let the cancer in. Has it been contained like has been promised so many times before, not even mentioning the good intent of our Founding Fathers to contain govt. thus the political broo-ha-ha that results from it's expansion.

I don't see a retraction of State Power, do ya'll?

Why can't the medical community voluntarily organize ethical standards, something like UL has done for other industries? Sounds like a lot of excuses too me, and has we have seen on this site all a cover for multiple agendas.

What facility do you practice at in Texas Dr. McMunn?

R E P L Y

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**Richard Morrison** July 16, 2010 at 11:10 am

Regarding the Competitive Enterprise Institute's opinion of the FTC and the legitimacy of engaging

the agency's powers, please see this post: <http://bit.ly/bdo6zH>.

R E P L Y

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