

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)
2943174 Canada Inc., also doing)
business as UNITED RESEARCH CENTER, INC.))
a corporation, and)
PATRICE RUNNER,)
individually and as an officer)
of the corporation.)

FILE NO. 962 3224
AGREEMENT CONTAINING
CONSENT ORDER

The Federal Trade Commission has conducted an investigation of certain acts and practices of 2943174 Canada Inc., also doing business as UNITED RESEARCH CENTER, INC., a corporation, and Patrice Runner, individually and as an officer of the corporation ("proposed respondents"). Proposed respondents, having been represented by counsel, are willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between 2943174 Canada Inc., by its duly authorized officers, and Patrice Runner, individually and as an officer of the corporation, and counsel for the Federal Trade Commission that:

- 1.a. Proposed respondent 2943174 Canada Inc. is a Canadian corporation with its principal office or place of business at 1414 Place Bonaventure, Montreal, Quebec, H5A 1H3.
- 1.b. Proposed respondent Patrice Runner is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs or controls the policies, acts, or practices of the corporation. His principal office or place of business is the same as that of 2943174 Canada Inc.
2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint.

3. Proposed respondents waive:
 - a. Any further procedural steps;
 - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of sixty (60) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondents by any means specified in Section 4.4 of the Commission's Rules shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in

the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the draft complaint and consent order. They understand that they may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

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

1. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

2. Unless otherwise specified, "respondents" shall mean 2943174 Canada Inc., a corporation, also doing business as UNITED RESEARCH CENTER, INC., its successors and assigns and its officers; Patrice Runner, individually and as an officer of the corporation; and each of the above's agents, representatives and employees.

3. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product or program in or affecting commerce, shall not make any representation, in any manner, expressly or by implication that such product:

- A. Controls appetite;
- B. Increases human metabolism;

- C. Reduces body fat;
- D. Causes weight loss;
- E. Causes long-term or permanent weight loss;
- F. Reduces cholesterol levels; or
- G. Provides any weight loss, fat loss, weight regulation, weight control, or weight maintenance benefit,

unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Svelt-PATCH, or any other "drug" or "device" as "drug" and "device" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the health benefits, performance, or efficacy of such product, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any dietary supplement, food, drug, or device, as "food," "drug" and "device" are defined in Section 15 of the Federal Trade Commission Act, weight loss or weight maintenance product or program, or any product or program designed or used to lower serum cholesterol, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test, study, or research.

IV.

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

V.

IT IS FURTHER ORDERED that respondents shall pay to the Commission as consumer redress the sum of three hundred and seventy-five thousand dollars (\$375,000) no later than January 15, 1997. Such payment shall be deposited into an escrow account, to be established by the Commission for the purpose of receiving payment due under this order.

The funds paid by respondents shall, in the direction of the Commission, be used by the Commission to provide direct redress to purchasers of Svelt-PATCH in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission.

At any time after this Order becomes final, the Commission may direct the escrow agent to transfer the funds from the escrow account to the Commission to be distributed as herein provided. The Commission, or its representative, shall, in its sole discretion, select the escrow agent.

Respondents relinquish all dominion, control and title to the funds paid into the escrow account, and all legal and equitable title to the funds vests in the Treasurer of the United States and in the designated consumers. Respondents shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondents, respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

Respondents shall assist the Commission, and its agents, in locating and producing all records necessary to conduct any redress made under this paragraph, including, but not limited to, records identifying the names, addresses, and telephone numbers

of consumers who paid for goods since January 1, 1994, and the amount the consumer paid including shipping and handling.

VI.

IT IS FURTHER ORDERED that respondent 2943174 Canada Inc., and its successors and assigns, and respondent Patrice Runner shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon 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;
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their 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; and
- D. All records needed to effectuate any redress made pursuant to paragraph V. herein.

VII.

IT IS FURTHER ORDERED that respondent 2943174 Canada Inc., and its successors and assigns, and respondent Patrice Runner, 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 representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents 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.

VIII.

IT IS FURTHER ORDERED that respondent 2943174 Canada 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 corporation; 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. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

IX.

IT IS FURTHER ORDERED that respondent Patrice Runner, for a period of five (5) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment relating to the sale of any dietary supplement, drug, or device, as "drug" and "device" are defined in Section 15 of the Federal Trade Commission Act, weight loss or weight maintenance product or program, or any product or program designed or used to lower serum cholesterol, for which any health, weight loss, weight maintenance, or cholesterol reduction claim is made. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

X.

IT IS FURTHER ORDERED that respondent 2943174 Canada Inc., and its successors and assigns, and respondent Patrice Runner shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing,

setting forth in detail the manner and form in which they have complied with this order.

XI.

This order will terminate twenty (20) years from the date of its issuance, 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.

Signed this _____ day of _____, 19__

2943174 CANADA INC.

By: _____

PATRICE RUNNER
President

PATRICE RUNNER, individually
and as an officer of the
corporation

JEFFREY S. EDELSTEIN
Hall Dickler Kent Friedman &
Wood
Attorney for respondents

RONALD L. WALDMAN
Counsel for the Federal Trade
Commission

DONALD G. D'AMATO
Counsel for the Federal Trade
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APPROVED:

MICHAEL JOEL BLOOM
Director
New York Regional Office

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)
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)
)
2943174 Canada Inc., also doing)
business as UNITED RESEARCH CENTER, INC.,)
a corporation, and) DOCKET NO.
)
PATRICE RUNNER,)
individually and as an officer)
of the corporation.)
)

COMPLAINT

The Federal Trade Commission, having reason to believe that 2943174 Canada Inc., a corporation, and Patrice Runner, individually and as an officer of the corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

8. Respondent 2943174 Canada Inc. is a Canadian corporation with its principal office or place of business at 1414 Place Bonaventure, Montreal, Quebec, H5A 1H3.

9. Respondent Patrice Runner is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, participates in, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of 2943174 Canada Inc.

10. Respondents have advertised, offered for sale, sold, and distributed products to the public, including "Svelt-PATCH," a skin patch that purports to melt away body fat. The Svelt-PATCH is a "drug" or "device" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act. Advertisements for Svelt-

PATCH have appeared in numerous publications, including but not limited to: TV Guide, Woman's Day, Cosmopolitan, Red Book Magazine, Woman's World, American Woman, McCalls, Complete Woman, Family Magazine, Ladies Home Journal, Women's Own, The National Enquirer, The Star, USAir, World Traveler, Luxury Lifestyle, Farm Magazine, Hemisphere, Soap Opera Digest, Dell Puzzle, Sterling Woman's Group, Low Fat Meals, Black Group, Grit, Destination, Hairdo Ideas, Harris Hairdo, Lose Weight Stay Fit, All Around Kentucky, Mother Earth News, True Story Plus, The Globe, The Examiner, The Sun, San Antonio, The Denver Post, The New York Daily News, The Weekly World News, The LA Daily News, The Chicago Sun Times, The Boston Globe, Newsday, The Topeka News, The New York Post, and have been distributed as free standing inserts through Valassis FSI.

11. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

12. Respondents have disseminated or have caused to be disseminated advertisements for Svelt-PATCH, including but not necessarily limited to the attached Exhibit A (a newspaper advertisement). These advertisements contain the following statements:

"LOSING WEIGHT:

'Amazing Skin Patch Melts Away Body Fat'

Results of a study conducted for the United Research Center by G. Fleming

- **Clinically tested in the United States**

. . . .

Weight-loss patches have been scientifically tested in the USA and are used in European hospitals and clinics.

In the United States, Dr. Marvin Kaplan recently tested the weight-loss patch on 100 individuals.

. . . [H]ere are the results:

- The measured effectiveness of the weight-loss patch was 100%: absolutely *all* participants lost weight.

- Fifty-six percent of the participants lost *at least* 20 pounds in 2 months (between 20 and 71 pounds in only 2 months).

- Average weight losses [sic] in women was 4.9 pounds the first week, 12.8 pounds the first month, and 21.9 pounds in 2 months.
- Average weight loss in men was 4.7 pounds the first week, 15.7 pounds the first month, and 25.1 pounds in 2 months.

. . . .

Svelt PATCHES contain concentrated fucus. In contrast with most weight-loss products--which only work for a few hours following their consumption--*SveltPATCH* fucus is absorbed by your body, through the skin, *the entire* day and while you sleep--up to 24 hours per day.

. . . .

How fucus helps your body

- Controls your appetite.**
- Stimulates your metabolism**
- Maintains weight loss . . .**
- Reduces cholesterol**

(Exhibit A)

13. Through the means described in Paragraph 5, respondents have represented, expressly or by implication, that:

- A. Svelt-PATCH controls appetite.
- B. Svelt-PATCH significantly increases human metabolism.
- C. Svelt-PATCH significantly reduces body fat.
- D. Svelt-PATCH causes significant weight loss.
- E. Svelt-PATCH causes long-term or permanent weight loss.
- F. Svelt-PATCH lowers serum cholesterol levels.

14. Through the means described in Paragraph 5, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 6 at the time the representations were made.

15. In truth and in fact, respondents 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.

16. Through the means described in Paragraph 5, respondents have represented, expressly or by implication, that clinical evidence prove that Svelt-PATCH causes significant weight loss.

17. In truth and in fact, clinical evidence does not prove that Svelt-PATCH causes significant weight loss. Therefore, the representation set forth in Paragraph 9 was, and is, false or misleading.

18. The acts and practices of respondents 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 day of
, , has issued this complaint against respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL:

[Exhibit A attached to paper copies of complaint, but not available in electronic form.]

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed Consent Order ("proposed order") from 2943174 Canada Inc., also doing business as United Research Center, Inc., and its principal, Patrice Runner.

The proposed order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns print advertisements for proposed respondents' Svelt-PATCH, a purported weight loss product. The Commission's complaint alleges that proposed respondents engaged in deceptive advertising in violation of Sections 5 and 12 of the FTC Act by making unsubstantiated claims that: (1) Svelt-PATCH controls appetite; (2) Svelt-PATCH significantly increases human metabolism; (3) Svelt-PATCH significantly reduces body fat; (4) Svelt-PATCH causes significant weight loss; (5) Svelt-PATCH causes long-term or permanent weight loss; and (6) Svelt-PATCH lowers serum cholesterol levels.

The complaint further alleges that proposed respondents made a false claim that clinical evidence proves that Svelt-PATCH causes users to lose weight.

The proposed order contains provisions designed to remedy the violations charged and to prevent proposed respondents from engaging in similar acts in the future.

Paragraph I of the proposed order prohibits proposed respondents from claiming that Svelt-PATCH or any other product or program: (1) controls appetite; (2) increases human metabolism; (3) reduces body fat; (4) causes weight loss; (5) causes long-term or permanent weight loss; and (6) reduces cholesterol; (7) provides any weight loss, fat loss, weight regulation, weight control, or weight maintenance benefit, unless, at the time the representation is made, proposed respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph II of the proposed order prohibits proposed respondents from making any representation for Svelt-PATCH, or any other drug or device, about the health benefits, performance, or efficacy of such product unless, at the time the representation is made, proposed respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph III of the proposed order prohibits proposed respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or study.

Paragraphs IV of the proposed order provides that nothing in this order shall prohibit proposed respondents from making any representation permitted by the Food and Drug Administration.

Paragraph V of the proposed order requires proposed respondents to pay three hundred and seventy-five thousand dollars (\$375,000) in consumer redress, or if consumer redress is impracticable or unwarranted, said money shall be payable to the United States Treasury.

Paragraph VI of the proposed order contains recordkeeping requirements for materials that substantiate, qualify, or contradict covered claims and requires the proposed respondents to keep and maintain all advertisements and promotional materials containing any representation covered by the proposed order. In addition, paragraph VII requires distribution of a copy of the consent decree to current and future officers and agents. Further, paragraph VIII provides for Commission notification upon a change in the corporate respondent. Paragraph IX requires proposed respondent Patrice Runner to notify the Commission when he discontinues his current business or employment and of his affiliation with certain new businesses or employment. The proposed order also requires the filing of a compliance report (Paragraph X).

Finally, paragraph XI of the proposed order provides for the termination of the order after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.