

IN THE MATTER OF
NUTRI/SYSTEM, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3474. Complaint, Dec. 22, 1993--Decision, Dec. 22, 1993

This consent order prohibits, among other things, a Pennsylvania diet program company from misrepresenting the performance or safety of any weight-loss program it offers in the future; requires it to have competent and reliable scientific evidence to back up future claims it makes about weight loss and maintenance; requires it to include, in conjunction with maintenance success claims, the statement "For many dieters, weight loss is temporary"; requires it to disclose to its customers that failure to eat all of the food recommended in the program may put their health at risk; requires it to disclose, if it makes price representations, either all mandatory fees or a list of the additional products or services consumers will need to purchase; and requires it to disclose all material connections between its program and any entity that endorses or evaluates it.

Appearances

For the Commission: *Richard Kelly and Matthew Daynard.*

For the respondent: *Judith L. Oldham, Collier, Shannon, Scott & Rill, Washington, D.C. Margaret S. Woodruff, Philadelphia, PA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Nutri/System, Inc., a corporation ("Nutri/System" or "respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Nutri/System, Inc., is a Pennsylvania corporation, with its office and principal place of business located at 380 Sentry Parkway, Blue Bell, Pennsylvania.

PAR. 2. Respondent advertises, offers for sale, sells, and otherwise promotes throughout the United States weight loss and weight maintenance services, and products, and makes them available to consumers at its numerous “Nutri/System Weight Loss Centers” nationwide. These products include “food” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act. Through franchised and company-owned centers, respondent is engaged, and has been engaged, in the sale and offering for sale of 1000 to 1500 calorie-a-day weight loss programs to consumers.

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

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements for the Nutri/System Weight Loss Program, including but not necessarily limited to the attached Exhibits A through V.

PAR. 5. The advertisements referred to in paragraph four, including but not necessarily limited to attached Exhibits A-K, contain the following statements:

- A. “With Nutri/System I lost 88 lbs. and maintained it.” (Exhibit A)
- B. “When I lost 64 lbs. with Nutri/System I started wearing a size 10. Two years later, I still do.” (Exhibit B)
- C. “With Nutri/System, I permanently lowered my weight 126 lbs.” (Exhibit C)
- D. “With Nutri/System, I said goodbye to 50 lbs. forever.” (Exhibit D)
- E. “I lost 110 lbs., and I really feel good about myself. I will stay this way the rest of my life. Thanks to Nutri/System, thanks to everybody who has supported me.” (Exhibit E)
- F. “FOR THE FIRST TIME IN MY LIFE I WAS ABLE TO LOSE WEIGHT AND KEEP IT OFF. THEY DIDN’T PUT ME ON A DIET, THEY CHANGED MY WAY OF EATING FOR LIFE. NOW I’M 50 POUNDS LIGHTER, AND I FEEL REAL GOOD. NUTRI SYSTEM[.] WE SUCCEED WHERE DIETS FAIL YA.” (Exhibit F)
- G. “AND I’LL TELL YOU WHAT, TAKE YOUR TEN POUNDS, YOUR TWENTY, YOUR THIRTY, FORTY, FIFTY, WHATEVER IT IS, AND GO TO A NUTRI/SYSTEM WEIGHT LOSS CENTER. THEY’LL PICK ‘EM UP AND CARRY ‘EM FOR YA, AND YOU’LL NEVER SEE ‘EM AGAIN.” (Exhibit G)

H. "THE NUTRI/SYSTEM Program Helps You Succeed! You can succeed on the NUTRI/SYSTEM Weight Loss Program even if diets have failed you in the past - because we know what you need to succeed!...YOU'LL KEEP THE WEIGHT OFF -- FOR GOOD! We'll help you lose weight and keep it off with our Maintenance Program." (Exhibit H)

I. "If you've ever tried to lose weight, you know what it's like to be frustrated and discouraged. Our commitment here at Nutri/System is to help you eliminate these feelings and keep you on the road to successful, permanent weight loss. You're about to see for yourself why we proudly say, 'We Succeed Where Diets Fail You'." (Exhibit I)

J. "Since losing 45 lbs. with Nutri/System, staying thin is as easy as getting thin. At Nutri/System, I learned that being active not only helps you lose weight faster, it helps you keep the weight off. Nutri/System should know. They've got an activity program designed especially for people who want to lose weight -- permanently." (Exhibit J)

K. "I lost 30 lbs. in 3 months and I feel fabulous. I'm going to stay like this the rest of my life. If there is a way I can help one person or a million of people, I want to tell them try Nutri/System because it does work." (Exhibit K)

PAR. 6. Through the use of the statements contained in the advertisements referred to in paragraph five, including but not necessarily limited to the statements in the advertisements attached as Exhibits A-K, respondent has represented, directly or by implication, that:

A. Nutri/System customers typically are successful in reaching their weight loss goals and maintaining their weight loss either long-term or permanently

B. Nutri/System customers typically are successful in maintaining their weight loss achieved under the Nutri/System diet program.

C. Nutri/System customers typically are successful in reaching their weight loss goals.

PAR. 7. Through the use of the statements contained in the advertisements referred to in paragraph five, including but not necessarily limited to the statements in the advertisements attached as Exhibits A-K, respondent has represented, directly or by implication, that at the time it made the representations set forth in para-

graph six, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 8. In truth and in fact, at the time respondent made the representations set forth in paragraph six, it did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, respondent's representation as set forth in paragraph seven was and is false and misleading.

PAR. 9. The advertisements referred to in paragraph four, including but not necessarily limited to the attached Exhibits L-N and U, contain the following statements:

- A. "Lose All The Weight You Can For Only \$79." (Exhibit L)
- B. Announcer: "Now, lose all the weight you can at Nutri/System for only \$199. Don't wait, call now." (Exhibit M)
- C. "Lose all the weight you can at Nutri/System and pay only \$1 per pound." (Exhibit N)
- D. "3 BIG DAYS...Right now you've got three big days to save big on the best weight loss program around...ONLY \$19.50...½ OFF OUR INTRODUCTORY PROGRAM." (Exhibit U)

PAR. 10. Through the use of the statements contained in the advertisements referred to in paragraph nine, including but not necessarily limited to the statements in the advertisements attached as Exhibits L-N and U, respondent has represented, directly or by implication, that the advertised price is the only cost associated with losing weight on the Nutri/System Weight Loss Program.

PAR. 11. In truth and in fact, the advertised price is not the only cost associated with losing weight on the Nutri/System Weight Loss Program. There are substantial additional mandatory expenses associated with participation in the Nutri/System program that far exceed the advertised price. Therefore, the representation set forth in paragraph ten was, and is, false and misleading.

PAR. 12. In its advertising and sale of the Nutri/System Weight Loss Program, respondent has represented that the advertised price is the only cost associated with losing weight on the Nutri/System Weight Loss Program. Respondent has failed to disclose adequately to consumers the existence and amount of all mandatory expenses

es associated with participation in the Nutri/System program. This fact would be material to consumers in their purchase decisions regarding the program. The failure to disclose this fact, in light of the representation made, was, and is, a deceptive practice.

PAR. 13. In the routine course and conduct of its business, respondent states during initial sales presentations that consumers will typically reach their desired weight loss goal within the time frame set by respondent's "Nutri/Data" computer program .

PAR. 14. Through the use of the statements described in paragraph thirteen, respondent has represented, directly or by implication, that at the time it made the representation set forth in paragraph thirteen, respondent possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 15. In truth and in fact, at the time respondent made the representation set forth in paragraph thirteen, it did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in paragraph fourteen was, and is, false and misleading.

PAR. 16. The advertisements referred to in paragraph four, including but not necessarily limited to the attached Exhibits O and P, contain the following statements:

A. "Now, results from a national survey of 2,000 dieters proves Nutri/System is your best choice for weight-loss success. Nutri/System clients report an average weight-loss of 29% more than dieters on other weight-loss programs." (Exhibit O)

B. "Results. Nutri/System. Nutri/System clients report they lose 29% more weight than dieters in other weight-loss programs." (Exhibit P)

PAR. 17. Through the use of the statements contained in the advertisements referred to in paragraph sixteen, including but not necessarily limited to the statements in the advertisements attached as Exhibits O and P, respondent has represented, directly or by implication, that competent and reliable studies or surveys show that Nutri/System customers lose at least 29% more weight than dieters on other weight loss programs.

PAR. 18. In truth and in fact, competent and reliable studies or surveys do not show that Nutri/System customers lose at least 29% more weight than dieters on other weight loss programs. Therefore, the representation set forth in paragraph seventeen was, and is, false and misleading.

PAR. 19. The advertisements referred to in paragraph four, including but not necessarily limited to the attached Exhibit Q, contain the following statements:

A. "Nutri/System Professionals Have What It Takes To Help You Succeed!...A specially trained and certified Nutri/System Nutritional Specialist will give you the one-on-one personal attention you need. She'll listen to your weight loss problems...help you understand them...and give you the assistance you need to reach your weight loss goal." (Exhibit Q)

PAR. 20. In the routine course and conduct of its business, respondent provides or causes to be provided certain employees of Nutri/System Weight Loss Centers with credentials including badges to place on their uniforms that identify them to customers and potential customers as "Certified Nutritional Specialists."

PAR. 21. Through the use of the statements contained in the advertisement referred to in paragraph nineteen, including but not necessarily limited to the statements in the advertisements attached as Exhibit Q, and by the conduct described in paragraph twenty, respondent has represented, directly or by implication, that Nutri/System "Nutritional Specialists" have been certified as specialists in nutrition through an objective determination of their competence in the field of nutrition.

PAR. 22. In truth and in fact, the "certification" procedure used by respondent fails to test or evaluate the Nutri/System "Nutritional Specialist's" competence in applying the basic principles of nutrition. Accordingly, Nutri/System "Nutritional Specialists" have not undergone an objective determination of their competence in the field of nutrition. Therefore, respondent's representation as set forth in paragraph twenty-one was and is false and misleading.

PAR. 23. In the course and conduct of its business, respondent provides its customers with diet protocols that require said custom-

ers, *inter alia*, to come in to one of respondent's weight-loss centers once a week for monitoring of their progress, including weighing in. In the course of regularly ascertaining weight loss progress, respondent, in some instances, is presented with weight loss results indicating that customers are losing weight significantly in excess of their projected goals, which is an indication that they may not be consuming all of the food prescribed by their diet protocol. Such conduct could, if not corrected promptly, result in health complications.

PAR. 24. When presented with the weight loss results described in paragraph twenty-three, respondent on many occasions has not disclosed to the customers that failing to follow the diet protocol and consume all of the food prescribed could result in health complications. This fact would be material to consumers in their purchase and use decisions regarding the diet program. In light of respondent's practice of monitoring people on the program, said failure to disclose was, and is, a deceptive practice.

PAR. 25. The advertisements referred to in paragraph four, including but not necessarily limited to attached Exhibits R and S, contain the following statements:

A. "The Nutri/System Weight Loss Program IS a comprehensive program that has all the essential elements as suggested by the American Medical Association's Council on Scientific Affairs..." (Exhibit R)

B. "Nutri/System includes a 1,000-1500 calories per day eat plan, and provides a comprehensive approach to weight loss that meets the guidelines of the American Medical Association and the Nutritional Standards of the American Heart Association, as well as the principles of the American Dietetic Association..." (Exhibit S)

PAR. 26. Through the use of the statements set forth in paragraph twenty-five, including but not necessarily limited to the statements in the advertisements attached as Exhibits R and S, respondent has represented, directly or by implication, that the Nutri/System Weight Loss Program complies with guidelines for a comprehensive weight loss program issued by the American

Medical Association, the American Heart Association, and the American Dietetic Association.

PAR. 27. In truth and in fact, the Nutri/System Weight Loss Program does not comply with all of the specific elements of a comprehensive weight loss program issued by the American Medical Association, the American Heart Association and the American Dietetic Association. Therefore, respondent's representation set forth in paragraph twenty-six was and is false and misleading.

PAR. 28. The advertisements referred to in paragraph four, including but not necessarily limited to Exhibits T, U and V, contain the following statements:

A. "As seen in *Healthline Magazine* - STANFORD FACULTY MEMBERS RATE NUTRI/SYSTEM #1. Faculty members at Stanford University evaluated America's most popular diets on ten essential components." (Exhibit T)

B. "3 BIG DAYS. Right now you've got three big days to save big on the best weight loss program around. Says who? Says Healthline, a magazine written in collaboration with Stanford Center for Research in Disease Prevention." (Exhibit U)

C. "NUTRI/SYSTEM RATED #1. 100%. A perfect score. Number 1. In a recent comparison of 16 popular diets, that's how Healthline Magazine saw Nutri/System...and only Nutri/System." (Exhibit V)

PAR. 29. Through the use of the statements set forth in paragraphs twenty-eight A and B, including but not necessarily limited to the statements in the advertisements attached as Exhibits T, U and V, respondent has represented, directly or by implication, that the evaluation any rating of the diet programs appearing in the May 1991 issue of *Healthline Magazine*, in the article entitled "Rating the Diets," were conducted or written in collaboration with, and the results thereof approved by, Stanford University, the faculty of Stanford University, and the Center for Research in Disease Prevention of the Stanford University School of Medicine.

PAR. 30. In truth and in fact, the evaluation and rating appearing in the *Healthline* "Rating the Diets" article were not conducted or written in collaboration with, or the results thereof approved by, Stanford University, its faculty, or its Center for Research in Dis-

ease Prevention. Therefore, respondent's representation as set forth in paragraph twenty-nine was and is false and misleading.

PAR. 31. Through the use of the statements set forth in paragraph twenty-eight, including but not necessarily limited to the statements in the advertisements attached as Exhibits T, U and V, respondent has represented, directly or by implication, that respondent had no material connection with the publication of the rating of the diet programs appearing in the May 1991 issue of Healthline Magazine, in the article entitled "Rating the Diets."

PAR. 32. In truth and in fact, respondent did have a connection with the publication of the rating of the diet programs appearing in the May 1991 issue of Healthline Magazine. Prior to publication of the article, respondent paid a sponsorship fee to Healthline for promotion and distribution of the magazine, and received and exercised a right of prior review of the article evaluating diet programs. In advertising the article and rating referred to in paragraph twenty-nine, respondent failed to disclose these facts. These facts would be material to consumers in their purchase decisions regarding the diet program. The failure to disclose these facts, in light of the representation made, was, and is, a deceptive practice.

PAR. 33. In providing advertisements and promotional materials referred to in paragraph four to its individual franchised stores for the purpose of inducing consumers to purchase its weight loss services and products, respondent has furnished the means and instrumentalities to those stores to engage in the acts and practices alleged in paragraphs five through thirty-two.

PAR. 34. The acts and practices of respondent as alleged in this complaint constitute deceptive acts or practices in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

EXHIBIT A

"With Nutri/System I lost 88 lbs. and maintained it."



"For the first time in my life I was able to maintain my weight loss. I couldn't have done it without Nutri/System. In fact, without them I couldn't have lost weight at all. They showed me why I had trouble in the past: Social situations always upset me — as soon as I was under pressure I binged. Once I understood the problem I was able to lose weight easily. And I've kept it off for 6 months now. Now I'm confident and comfortable around people. I go out at the time I'm a regular social butterfly."

Sharon Dehn

The Nutri/System® Weight Loss Program includes a variety of delicious meals and snacks, nutritional and behavioral counseling, light activity, and weight maintenance.

Don't Wait, Call Today.

Our client Sharon Dehn lost 88 lbs.



We Succeed Where Diets Fail You!

nutri/system
weight loss centers

EXHIBIT A

nutri/system
weight loss centers

ONE-QUARTER PAGE 3 COL. X 10 1/2" (10 7/16" X 10 7/8")
USAGE OF THIS AD EXPIRES MARCH 1, 1991

Complaint

116 F.T.C.

EXHIBIT B

**I started wearing a size 40.
Two years later, I still do."**



"I'd be back in oversized dresses if it wasn't for the wonderful maintenance program at Nutri/System. The counselors were like family to me. Caring and supportive. Always there when I needed them. Thanks to them I'm a perfect 10 now. And I'm staying one."

Tammy Gens

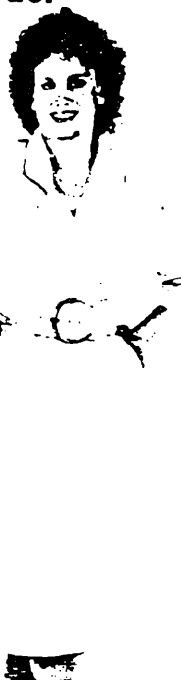
Try the Nutri/System®
Crave-Free™ Weight Loss
Program that includes a
variety of delicious meals
and Crave-Free™ control
snacks, nutritional and
behavioral counseling and
light activity and weight
maintenance.

**Don't Wait,
Call Today.**

Call over
Tammy Gens
1031 64 103

**We Succeed
Where Diets Fail You.™**

nutri/system
weight loss centers




ONE QUARTER PRICE
USACB OF THIS AD EXPIRES JUNE 1, 1991

Form area with dashed border containing a barcode and the text "EXHIBIT B" and "nutri/system".

EXHIBIT C

**"I permanently lowered my weight 126 lbs.
I lowered my cholesterol, too."**



The great thing about Nutri/System is its emphasis on good nutrition and maintenance. They taught me to eat right, so I not only lost weight, I've been able to maintain my weight loss for a year now. Dishes like Chicken Polynesian, Beef Tacos and Thick Crust Pizza aren't just delicious, they're low in cholesterol, as well. Now I feel better. And my doctor says my cholesterol has never been lower. It's added years to my life.

Tom Lindenmeyer

The Nutri/System® Weight Loss Program includes a variety of delicious meals and snacks, nutritional and behavioral counseling, light activity, and weight maintenance.

**Don't Wait,
Call Today.**

*Our client,
Tom Lindenmeyer
lost 126 lbs.*

**We Succeed
Where Diets
Fail You.®**

ONE QUARTER PAGE
USAGE OF THIS AD EXPIRES MARCH 1, 1991

nutri/system
weight loss centers

EXHIBIT C

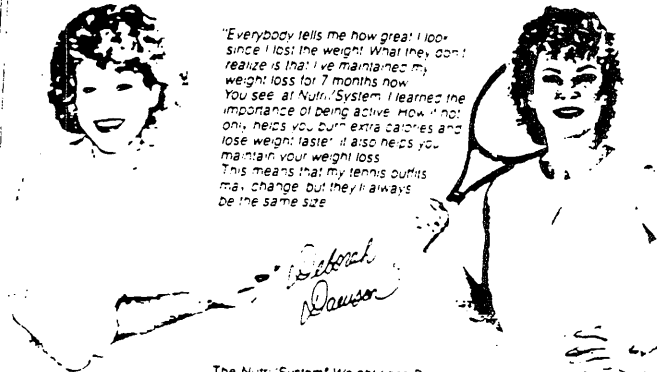
nutri/system
WEIGHT LOSS CENTERS

Complaint

116 F.T.C.

EXHIBIT D

"With Nutri/System, goodbye to 50 lbs. forever!"



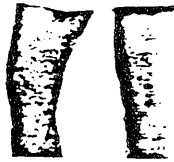
"Everybody tells me how great I look since I lost the weight. What they don't realize is that I've maintained my weight loss for 7 months now. You see at Nutri/System, I learned the importance of being active. How it not only helps you burn extra calories and lose weight faster, it also helps you maintain your weight loss. This means that my tennis outfits may change, but they'll always be the same size."

The Nutri/System® Weight Loss Program includes a variety of delicious meals and snacks, nutritional and behavioral counseling, light activity and weight maintenance.

**Don't Wait,
Call Today.**

*Our client
Deborah Dawson
lost 50 lbs.*

**We Succeed
Where Diets
Fail You!**



nutri/system
weight loss centers

F 0004847

EXHIBIT D

nutri/system
weight loss centers

ONE-QUARTER 1/4
 USAGE OF THIS AD
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 PIPRES MARCH 1, 1991

1408

Complaint

EXHIBIT E

nutri/system Nancy/Candid "THANKS" - 30 SEC. TV



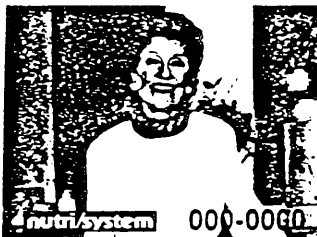
VO
This is me, Nancy Mecozzi, before Nutri/System.



LIVE
And this is me now. I lost 110 lbs., and I really feel good about myself.



I will stay this way the rest of my life.



Thanks to Nutri/System, thanks to everybody who has supported me.



I promise that.



TIME AVAILABLE FOR LOCAL TAG 7 seconds

USE OF THIS COMMERCIAL EXPIRES JUNE 1, 1991

Complaint

116 F.T.C.

EXHIBIT F

"Live-On-Tape" Spring 1990

Starring Rita Bodine



Rita Bodine adds a new flare to Nutri/System radio. Her humorous charm moves people to the phone by creating visual real life pictures.

Rita Bodine is currently a DJ in the Richmond, Virginia area. She has successfully generated leads for corporate markets for over 2 years.

Ideal for country music formats or for a new twist for current live-on-tape stations.

Here's a sample spot:

RTA BODINE - SPOT #21

HI, THIS IS RITA BODINE FOR NUTRI/SYSTEM. EVERYBODY NEEDS A NICE VACATION AND WE ARE NO EXCEPTION. SO EVERY SUMMER WE TAKE THE FAMILY TO THE LAKE. THIS WILL BE THE FIRST YEAR WE'LL HAVE TO TAKE A BEACH UMBRELLA WITH US. SEE, MY BABIES ARE FAIR SKINNED SO I NEED A PLACE TO KEEP 'EM OUT OF THE SUN? UP UNTIL THIS YEAR, I'D JUST LAY ON MY SIDE AND THE ENTIRE FAMILY COULD USE MY SHADE. COURSE MY BACK ALWAYS LOOKED LIKE A LOBSTER AFTER. BUT THAT'S JUST ONE OF LIFE'S LITTLE SACRIFICES MOM'S MAKE. THIS YEAR, I'M NOT EVEN THROWIN ENOUGH SHADE FOR THE SAND FLEAS TO TAKE A FIESTA IN. NOT ONLY THAT, I MADE A BEACH BAG OUT OF MY OLE BATHIN SUIT WITH A SKIRT. AND GOT ONE THAT'S CUT UP REAL HIGH? AND I LOOK GOOD IN IT, I TAKE THAT BACK, I LOOK GREAT IN IT. AND I OWE IT ALL TO NUTRI/SYSTEM. FOR THE FIRST TIME IN MY LIFE I WAS ABLE TO LOSE WEIGHT AND KEEP IT OFF. THEY DIDNT PUT ME ON A DIET, THEY CHANGED MY WAY OF EATING FOR LIFE. NOW I'M 50 POUNDS LIGHTER, AND I FEEL REAL GOOD. NUTRI SYSTEM WE SUCCEED WHERE DIETS FAIL YA.

P 000000

EXHIBIT F

CONFIDENTIAL
© Nutri/System, Inc. 1992

1408

Complaint

EXHIBIT G

"Live-On-Tape" Spring 1990

Starring Harve Allen



Harve Allen has been working with Nutri/System radio for over four years. First as an account executive for a leading Seattle radio station, and then as an on-air spokesman.

Harve knows what it takes to make the phones ring — and keep in on those elements with every spot.

Here's a sample spot:

HARVE ALLEN - SPOT #36

THIS IS HARVE ALLEN WITH A NUTRI/SYSTEM UPDATE FOR YOU. NOW PICTURE THIS. YOU'RE IN THE STORE BUYING GROCERIES. RIGHT? YOU GET OUT INTO THE PARKING LOT AND YOU'RE CARRYING A 20 POUND SACK OF POTATOES AND YOU'RE GOING. GEEZ. THIS THING'S VERY HEAVY. SOMEBODY COMES UP AND SAYS, "HERE, LET ME CARRY THOSE FOR YOU". YOU GO WOW, THANKS. AND YOU FEEL A LOT BETTER. DON'T YA? YOU BET. NOW, IF YOU WANT TO LOSE 20 POUNDS OFF YOUR BODY. YOU GO TO A NUTRI/SYSTEM WEIGHT LOSS CENTER. AND THEY'RE GONNA SAY, "HERE, WE'LL TAKE THOSE FOR YA", AND YOU'RE GONNA GO. GEEZ. THANKS. I FEEL A LOT BETTER. YOU WILL. IN SIX WEEKS. I LOST 25 POUNDS ON THE NUTRI/SYSTEM WEIGHT LOSS PROGRAM. OH. AND I LOOK BETTER. I FEEL BETTER. IT GIVES YOU A WHOLE NEW OUTLOOK ON LIFE. AND I'LL TELL YOU WHAT, TAKE YOUR TEN POUNDS. YOUR TWENTY. YOUR THIRTY. FORTY. FIFTY. WHATEVER IT IS. AND GO TO A NUTRI/SYSTEM WEIGHT LOSS CENTER. THEY'LL PICK 'EM UP AND CARRY 'EM FOR YA. AND YOU'LL NEVER SEE 'EM AGAIN.

F 0000000

Complaint

116 F.T.C.

EXHIBIT H

since I lost 92 lbs. with Nutri/System."

THE NUTRI/SYSTEM'S

Program Helps You Succeed! You can succeed on the NUTRI/SYSTEM Weight Loss Program even if diets have failed you in the past - because we know what you need to succeed! We offer you a comprehensive program of professionally supervised, calorie-controlled meals, personalized counseling and support, and mild activity - plus a maintenance plan to help you keep the weight off for good.

You'll Receive Nutrition and Behavior Counseling

Do you overeat when you're angry and depressed? The NUTRI/SYSTEM Program features Behavior Breakthrough classes that provide continuing encouragement and support to combat overeating. Our Behavior Breakthrough Counselors will help you identify bad eating habits and learn healthier new ones.

You'll Enjoy Delicious, Slimming Meals

The NUTRI/SYSTEM high-flavor meal plan offers you foods that are high in flavor and texture and nutritionally



Our client, Theresa Turner, lost 92 lbs. "I never thought I could wear tight jeans, short skirts or anything similar. But thanks to Nutri/System I can! They did more than help me lose weight; they helped me develop a positive attitude. They gave me ego & real life. Now I not only have the body I want, but I also have the confidence."

Theresa Turner

balanced. You'll enjoy three full meals a day, plus three snacks—including dishes like Lasagna, Thick-Crust Pizza,

Beef Stroganoff and many other desserts! You'll never feel hungry or deprived.

You'll Benefit From Easy Light Activity

Light activity helps you firm and tone your body, lose weight faster and maintain your weight.

You'll Keep The Weight Off For Good!

We'll help you lose weight - and keep it off with our Maintenance Program.

Get A Free, No-Obligation Weight Loss Analysis Today!

Stop by today for your free, no-obligation weight loss consultation. Bring a coupon below and receive a free NUTRI/DATA! Computerized Weight Loss Analysis. Find out your ideal weight - and how soon you can expect to reach it. And ask how the NUTRI/SYSTEM Weight Loss Program can help you lose weight now - for good!

We Succeed

Where Diets Fail You

As people say, "It does an individual's weight."

© 1990 Nutri/System, Inc.

nutri/system
weight loss center

CONFIDENTIAL
POD40787

nutri/system
weight loss center

EXHIBIT H

nutri/system

*Welcome
to the
Nutri/System
Program*



CONFIDENTIAL
POC23602

"We Succeed Where Diets Fail You."

EXHIBIT I-2

them off and lead a happier, healthier life. If you've ever tried to lose weight, you know what it's like to be frustrated and discouraged. Our commitment here at Nutri System is to help you eliminate these feelings and keep you on the road to successful, permanent weight loss. You're about to see for yourself why we proudly say, "We Succeed Where Diets Fail You."

Welcome to the Nutri System Family, the largest, most successful professionally supervised weight loss program in the world. We know that losing weight isn't easy. But you couldn't have picked a more understanding partner to help you achieve success. Since 1971, Nutri System has helped millions like you to lose unwanted pounds. And we'll stay with you to help you keep



Complaint

EXHIBIT J

"Since losing 45 lbs. with Nutri/System, staying thin is as easy as getting thin."



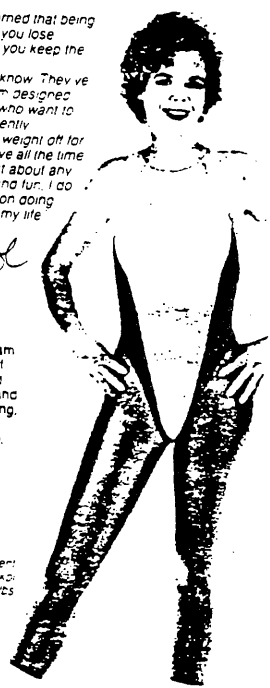
"At Nutri/System, I learned that being active not only helps you lose weight faster, it helps you keep the weight off. Nutri/System should know. They've got an activity program designed especially for people who want to lose weight — permanently. Because I've kept the weight off for 7 months now, I'm active all the time walking, swimming, just about any activity that's healthy and fun. I do. And I'm going to keep on doing them for the rest of my life.

Lynn Sokol

The Nutri/System® Weight Loss Program includes a variety of delicious meals and snacks, nutritional and behavioral counseling, light activity, and weight maintenance.

Don't Wait, Call Today.

Our client
Lynn Sokol
lost 45 lbs.



We Succeed Where Diets Fail You.

USAGE OF THIS AD EXPIRES MARCH 1, 1991

nutri/system
weight loss centers

EXHIBIT J

nutri/system
weight loss centers

Complaint

116 F.T.C.

EXHIBIT K

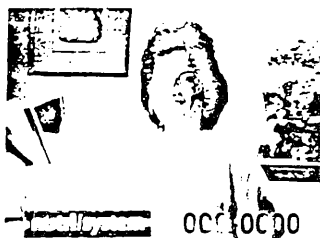
nutri/system. Cindy/Candid "MILLION" 30 SEC. TV



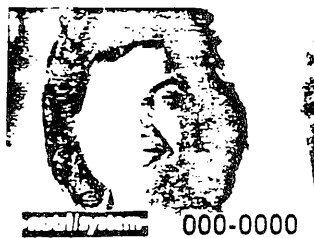
VO
This is me Cindy Atvan before Nutri-System.



LIVE
And this is me now. I lost 30 lbs. in 3 months and I feel fabulous.



I'm going to stay like this the rest of my life.



If there is a way I can help one person or a million people, I want to tell them try Nutri-System because it does work.



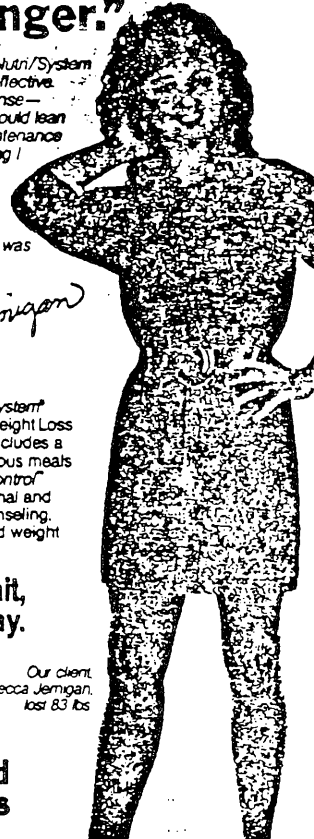
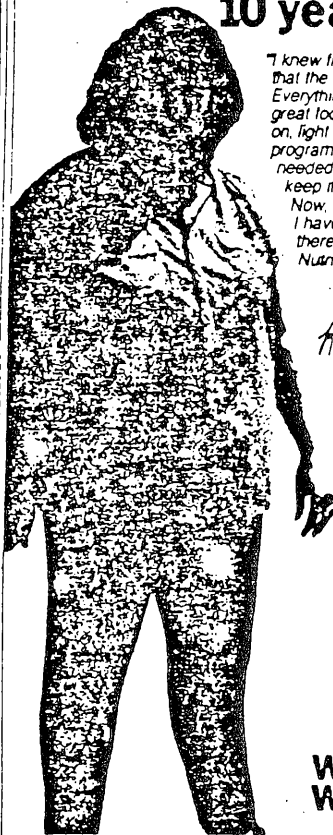
VO
Don't Wait-Call Today.
VO
NUTRI/SYSTEM.
WE SUCCEED WHERE DIETS FAIL YOU.

USAGE OF THIS COMMERCIAL EXPIRES AUGUST 31, 1990

CONFIDENTIAL
F.T.C. FILE # 100-100000

EXHIBIT L

to lose weight. I lost 83 lbs. and feel 10 years younger."



"I knew from my first visit to Nutri/System that the program would be effective. Everything about it made sense — great food, caring people I could lean on, light activity, even a maintenance program. They had everything I needed to lose weight and keep it off. Now, I feel younger than I have in years. If ever there was a sure thing, it was Nutri/System."

Rebecca Jermigan

Try the Nutri/System® Crave-Free™ Weight Loss Program that includes a variety of delicious meals and Craving Control® snacks, nutritional and behavioral counseling, light activity, and weight maintenance.

Don't Wait, Call Today.

Our client, Rebecca Jermigan, lost 83 lbs.

We Succeed Where Diets Fail You.®

All people vary, so does an individual's weight loss.

© 1992 Nutri/System, Inc.

nutri/system

weight loss centers

LOSE ALL THE WEIGHT YOU CAN FOR ONLY

\$79*

*Within the time frame set by the Nutri/System® computer program for your weight loss goal. Special offer does not include the cost of NUTRI/SYSTEM foods, maintenance or Body Breakthrough® Activity Plan, and cannot be combined with other offers. Valid only with the purchase of a program by new clients at a participating center. One discount per person.

BEAVERTON 643-6800	GRESHAM 669-7516	LAKE OSWEGO 639-0313	McMINNVILLE 434-7266	TUALATIN 691-1220
CLACKAMAS 653-8424	HILLSBORO 693-1144	LLOYD 238-5585	TOWER 295-2908	VANCOUVER 254-2010

Coupon expires 8/15/90
Over 1700 Centers in the United States.

EXHIBIT L

nutri/system
weight loss center

Complaint

116 F.T.C.

EXHIBIT M

3408 WISCONSIN AVE E. N. W. WASHINGTON, D. C. 20007 244-1900	
PROGRAM (COMMERCIAL)	DATE MARCH 14, 1990
STATION OR NETWORK WRC TELEVISION	TIME 9:45 AM, EDT

NUTRI/SYSTEM COMMERCIAL

(FILM SHOWN)

(VOICEOVER): This is me, Rene Griffith before Nutri/System. And this is me now. I lost 65 pounds, and it feels great to wear a bathing suit.

I feel like Cinderella at the ball; it's like, I've got a new hairdo, I can wear the clothes I want to wear now. It's just wonderful. There's no way that I'll ever go back to where I was before. The clock is never going to strike twelve and Cinderella will never turn into a pumpkin again.

(END OF FILM)

(ANNOUNCER): Now, lose all the weight you can at Nutri/System for only \$199. Don't wait, call now.

(END)

CONFIDENTIAL

nutri/system
weight loss centers

NOW!

Lose All the Weight You Can Lose with Nutri/System for Only \$1 per pound*

Lose 10 lbs., Pay \$10
Lose 30 lbs., Pay \$30.

*Within the time frame set by the NutriData® computer program for your weight loss goal. Special program for NUTRI/SYSTEM program services only. Does not include the cost of NUTRI/SYSTEM foods, maintenance or Body Breakthrough® Activity Plan, and cannot be combined with other offers. Valid only with purchase of a program by new clients at a participating center. One discount per person. Offer expires 12/15/90.

"I lost 80 lbs. with Nutri/System. I looked so good, 15 of my friends signed up!"



They say actions speak louder than words. That's certainly true in my case. When my friends all were late for work after I went to Nutri/System, they signed up too. I feel good about that. I also feel good about the fact that I've

been able to keep the weight off for over a year now. My friends can't wait to feel as great as I do. And I'm loving it!

Janice R.

Don't Wait, Call Today. There's A Right Way To Lose Weight.™

G000841

nutri/system
weight loss centers

1-800-344-THIN

BROWARD
Coral Springs - D
P. Lauderhale - Ho
Lauderhale - Palm
Pompano Beach - P

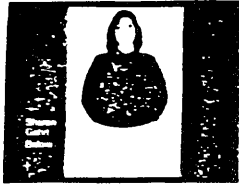
DADE

PALM BEACH
West Palm Beach - B
Boca Raton - B
Deltona - B
Fort Lauderdale - W
Gainesville - M
Lakeland - B

EXHIBIT N

EXHIBIT O

nutri/system Carmen Flowers "RESULTS-SHARON GEHRT" - 30 SEC. TV



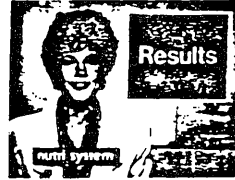
SHARON
This is me Sharon Gehrt, before
Nutri/System.



And this is me now I lost 88 lbs., and I feel
terrific.



CARMEN
You already know Nutri/System works



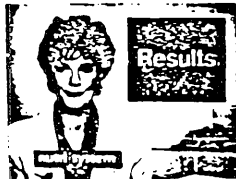
Now, results from a national survey of
2,000 dieters proves Nutri/System is your



best choice for weight-loss success.
Nutri/System clients report an average
weight-loss of



29% more than dieters on other weight-
loss programs.



You get results with Nutri/System



Don't Wait, Call Today Nutri/System.
We Succeed Where Diets Fail You.

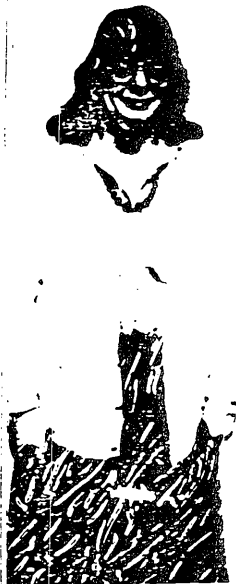
TIME AVAILABLE FOR LOCAL TAG

USAGE OF THIS COMMERCIAL EXPIRES MARCH 1, 1991

EXHIBIT P

Results. Nutri/System.

Nutri/System clients report they lose **29%** more weight than dieters in other weight-loss programs.*



"I lost 103 lbs. with Nutri/System. That's more than I've ever lost on any other program. Since my weight loss, I'm full of energy and in terrific shape. I can walk up hills now without getting out of breath. And I feel so good about myself. I'm ready to take on any challenge that comes my way. I've never been happier or healthier."

Peggy Zoner

The Nutri/System® Weight Loss Program includes a variety of delicious meals and snacks, nutritional and behavioral counseling, light activity, and weight maintenance.

Don't Wait, Call Today.

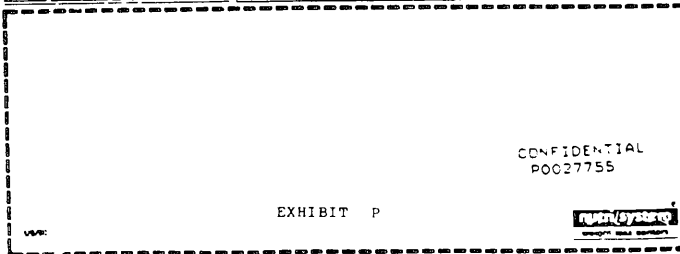
Our client
Peggy Zoner
lost 103 lbs.

We Succeed Where Diets Fail You.



*Based on a 2 year study comparing Nutri/System to 21 other diets. Nutri/System clients lost 29% more weight than dieters in other weight-loss programs. © 1990 Nutri/System, Inc.

As shown here, we show an individual's "before" and "after" photos. © 1990 Nutri/System, Inc.



ONE QUARTER PAGE 3 COL. X 10 1/2" (€7/16" X 10 1/2")
USAGE OF THIS AD EXPIRES AUGUST 31, 1990

CONFIDENTIAL
P0027755

EXHIBIT P

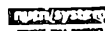


EXHIBIT Q

Nutri/System Professionals Have What It Takes To Help You Succeed!

What makes the Nutri/System® Program different from all the other weight loss programs? An important part is the personal attention you get from the professionals in your local Nutri/System Center. Each is dedicated to helping you reach your weight loss goal.

Nutritional Specialists

A specially trained and certified Nutri/System Nutritional Specialist will give you the one-on-one personal attention you need. She'll listen to your weight loss problems... help you understand them... and give you the assistance you need to reach your weight loss goal.



Behavior Breakthrough Counselors

Losing weight isn't easy, so our Behavior Breakthrough™ Counselors provide continuing encouragement and support. From our exclusive Personalized Weight Loss Profile questionnaire, our counselors identify bad eating habits and help you establish healthy new ones.

A whole team of professionals is waiting to help you now... at your local Nutri/System Center.



Nobody Helps You Take Weight Off Like Nutri/System!

Every day, 160,000 Americans look to the Nutri/System Weight Loss Program for weight loss success. We recently opened our 1,400th center. And we've been helping people lose weight for over 18 years.

The reason is simple. The Nutri/System Weight Loss Program works. Because it includes everything you need to reach your weight loss goal.

Delicious, Low-Calorie Meals

Low-calorie Nu System Cuisine® foods are delicious, high in flavor and texture and nutritionally-balanced. You'll get three meals a day and three snacks - including dishes like Beef Stroganoff, Thick-Crust Pizza, pates, yogurts, and tempting desserts.

Light Activity

Our new Body Breakthrough™ Activity Plan is the first activity plan designed exclusively for people losing weight. It's a three-part program that helps you lose up to 25% more weight by being more active.*

Weight Maintenance

We'll help you lose weight - and keep it off with our Maintenance Program. With the support of Nutri/System professionals, you will begin your healthy new life confident of permanent weight control.

Free Consultation

Don't wait. There's a Nutri/System Center near you. Call now for a free no-obligation consultation, to learn how our professionals can help you meet your weight loss goal. You'll find out your ideal weight... how quickly you'll reach it... and how the Nutri/System Program will work for you.

Don't Wait. Call Today!



Our client Cheryl Miller lost 115 pounds!

**We Succeed
Where Diets Fail You!**

*This is based on comparison of 12 different diets. See the Nutri/System Weight Loss Program for details. © 1998 Nutri/System, Inc.

© 1998 Nutri/System, Inc. All rights reserved.



EXHIBIT R

LET'S CLEAR THE AIR ABOUT THE NUTRI/SYSTEM WEIGHT LOSS PROGRAM.

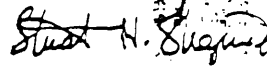
It's important to understand exactly what the Nutri/System Program is—and what it is NOT:

The Nutri/System Program is **NOT** a liquid diet...and it is **NOT** a quick weight loss* scheme.

The Nutri/System Weight Loss Program **IS** a comprehensive program that has all the essential elements as suggested by the American Medical Association's Council on Scientific Affairs:

- Behavior education
- Nutritional instruction
- An exercise program—the only exercise program designed specifically for the overweight adult in the process of losing weight
- A nutritionally-balanced, calorie-controlled meal plan
- Weight maintenance for one year after achieving your goal weight

The Nutri/System Weight Loss Program is safe, effective, and of the highest quality!



Stuart H. Shapiro, M.D., M.P.H.
Vice-President, Health Care Systems,
National Medical Director

*The Nutri/System Program is designed to provide a healthy and safe average weight loss of from 10 to 2 pounds per week.

**The Nutri/System Meal Plan offers daily caloric levels of from 1,000 to 1,500 calories as individually determined to meet each client's personal needs.

nutri/system

Complaint

116 F.T.C.

EXHIBIT S

**WHAT YOU SHOULD KNOW ABOUT
GALL BLADDER DISEASE AND OBESITY...**

A lot of conflicting information has been in the news recently regarding gall bladder disease and its link to obesity and weight loss.

Obesity is a serious national health problem that is a contributing factor to coronary heart disease, diabetes, increased cholesterol levels, high blood pressure, strokes, some types of cancer — and gall bladder disease. In fact, if you are obese (20% or more above your ideal weight) your risk for coronary disease and heart attacks increases 40%, ... your risk for diabetes increases 10 times, ... your risk for hypercholesterolemia is 2-3 times higher, ... your risk for hypertension is as much as 6 times greater, ... and your risk for gall stone formation is 3-4 times greater than in non-obese individuals.

There is absolutely no question that healthy weight loss and weight control will improve your health and well-being.

Extraordinarily rapid weight loss on very low-calorie (500 calories per day) high-protein liquid diets, however, has been associated with an increased risk of gall stones and other health problems. The Nutri/System Weight Loss Program is not classified as a very low-calorie high-protein liquid diet. Nutri/System includes a 1,000 - 1,500 calories per day meal plan, and provides a comprehensive approach to weight loss that meets the guidelines of the American Medical Association and the nutritional standards of the American Heart Association, as well as the stated principles of the American Dietetic Association and the National Cancer Institute.

News reports regarding gall bladder disease and weight loss frequently fail to mention the following important facts:

1. Obesity is a major health problem in the United States, with some 68 million adults being over weight (20% or more above their ideal weight).
2. Ten percent of all adult Americans — approximately 18 million people — have cholesterol gall stones.
3. The incidence of gall bladder disease in obese adults (20% or more over the ideal weight) is as high as four in every 10 individuals.
4. In 1989, a report in the New England Journal of Medicine based on a study of 88,000 women concluded that even moderately overweight individuals have a risk of gall bladder disease.

Nutri/System is interested in only one thing: Your Health. Any concerns you have about gall bladder disease should be discussed with your physician.

Complaint

EXHIBIT T

CONFIDENTIAL
Q 000 10 34 5

Share the News

You deserve only the best — that's why you chose Nutri/System®. You know that Nutri/System offers the most comprehensive, thorough approach to weight loss. And faculty members at the Stanford University School of Medicine support your decision by rating Nutri/System the number one weight-loss program in the May issue of *Healthline* magazine. Nutri/System is the preferred way to lose weight.

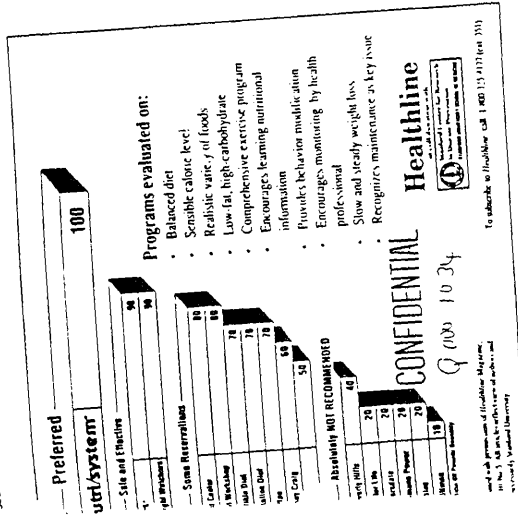
Share these facts with your friends and family. Help make a difference in the lives of people you love. Show them There's A Right Way To Lose Weight™ with Nutri/System.

Ask us about our referral program!



TANFORD FACULTY MEMBERS
RATE NUTRI/SYSTEM #1

Faculty members at Stanford University evaluated America's most popular diets on ten essential components. Only one weight-loss program scores 100% — Nutri/System. It's the preferred weight-loss program.



THERE'S A RIGHT WAY TO LOSE WEIGHT.™

Complaint

116 F.T.C.

EXHIBIT U

3 BIG DAYS

Right now you've got three big days to save big on the best weight loss program around.

Says Who? Says *Healthline*, a magazine written in collaboration with Stanford Center for Research in Disease Prevention.

Of the 16 popular diets rated, only Nutri/System received 100%. A perfect score. The others? Well, Weight Watchers didn't do that well. And Jenny Craig only got a 60.

What can we tell you... other than to call now!

Healthline Magazine is published in collaboration with Stanford University Center for Research and Disease Prevention. All articles reflect views of authors and not necessarily Stanford University. * Healthline Magazine, Vol. 10, No. 5.

© 1991 NUTRI/SYSTEM INC.

MONDAY

TUESDAY

WEDNESDAY

ONLY \$19⁵⁰

1/2 OFF OUR INTRODUCTORY PROGRAM

Does not include the cost of foods, maintenance or activity plan. Cannot be combined with other offers. Valid only for new programs at participating centers. One offer per person. Offer valid: 8/3/91 - 8/5/91 only.

1-800-321-THIN™ **nutri/system®**


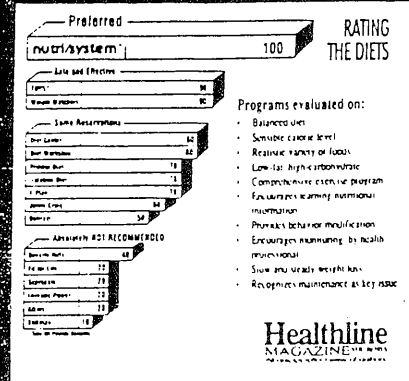
EXHIBIT V

100%. A perfect score. Number 1.

In a recent comparison of 16 popular diets, that's how Healthline Magazine saw Nutri/System... and only Nutri/System.

The other most popular diets? Well, Weight Watchers didn't do that well, and Jenny Craig only got a 60.

You be the judge. But if Healthline calls us #1, shouldn't you just call us?

RATING THE DIETS

Program	Rating
nutri/system	100
Eat and Pray	85
Low Carb	60
Weight Watchers	55
Jenny Craig	40
Other Diets	30-50

Programs evaluated on:

- Balanced diet
- Sustained calorie level
- Realistic variety of foods
- Low fat, high carbohydrate
- Comprehensive exercise program
- Extensive personal nutritional information
- Practical behavior modification
- Encourages maintaining health improvements
- Stays on track weight loss
- Recognizes maintenance as key issue

Healthline MAGAZINE

Deborah Dawson
Deborah Dawson
lost 50 lbs. 18 months ago.

INTRODUCING OUR NEWEST CENTER—CRYSTAL CITY

50% OFF

OUR FULL SERVICE PROGRAM

Special offer does not include the cost of Nutri/System foods and initial evaluation fee, and cannot be combined with other offers. Valid only with the purchase of a new program at a participating center. One discount per person. See center for details. Offer expires 5/22/01.

1-800-321-THIN™

RATED #1 HEALTHLINE MAGAZINE

nutri/system

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent had violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Nutri/System, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the state of Pennsylvania, with its offices and principal place of business at 380 Sentry Parkway, Blue Bell, Pennsylvania.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

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

A. “*Competent and reliable scientific evidence*” shall mean those tests, analyses, research, studies, surveys, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession or science to yield accurate and reliable results;

B. “*Weight loss program*” shall mean any program designed to aid consumers in weight loss or weight maintenance;

C. “*Material connection*” shall mean any relationship between the respondent and a third party, which relationship might materially affect the weight or credibility of any endorsement, evaluation or test and which relationship would not reasonably be expected by consumers;

D. “*Broadcast medium*” shall mean any radio or television broadcast, cablecast, home video, or theatrical release.

E. For any order-required disclosure in a print medium to be made “clearly and prominently,” or in a “clear and prominent” manner, it must be given both in the same type style and in: (1) twelve point type where the representation that triggers the disclosure is given in twelve point or larger type; or (2) the same type size as the representation that triggers the disclosure where that representation is given in a type size that is smaller than twelve point type. For any order-required disclosure given orally in a broadcast medium to be made “clearly and prominently,” or in a “clear and prominent” manner, the disclosure must be given at the same volume and in the same cadence as the representation that triggers the disclosure.

F. “*Short broadcast advertisement*” shall mean any advertisement of thirty seconds or less duration made in a broadcast medium.

I.

It is ordered, That respondent Nutri/System, Inc., a corporation, its successors and assigns, and respondent's officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, including franchisees or licensees, in connection with the advertising, promotion, offering for sale, or sale of any weight loss program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, about the success of participants on any weight loss program in achieving or maintaining weight loss or weight control unless, at the time of making any such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation, *provided, further*, that for any representation that:

(1) Any weight loss achieved or maintained through the weight loss program is typical or representative of all or any subset of participants of respondent's program, said evidence shall, at a minimum, be based on a representative sample of:

(a) All participants who have entered the program, where the representation relates to such persons; *provided, however*, that the required sample may exclude those participants who dropped out of the program within two weeks of their entrance or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(b) All participants who have completed a particular phase of the program or the entire program, where the representation only relates to such persons;

(2) Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of at least two years from their

completion of the active maintenance phase of respondent's program or earlier termination, as applicable; and

(3) Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of time after completing the program that is either:

(a) Generally recognized by experts in the field of treating obesity as being of sufficient length for predicting that weight loss will be permanent, or

(b) Demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

B. Representing, directly or by implication, except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in close proximity to such representation, the statement: "For many dieters, weight loss is temporary."; *provided, further*, that respondent shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondent's weight loss program; *provided, however*, that a mere statement about the existence, design, or content of a maintenance program shall not, without more, be considered a representation that participants of any weight loss program have successfully maintained weight loss.

C. Representing, directly or by implication, except through short broadcast advertisements referred to in paragraph I.D. herein, and except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in close proximity to such representation, the following information:

(1) The average percentage of weight loss maintained by those participants;

(2) The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, *provided, further*, that if any portion of the time period covered includes participation in a maintenance program(s) that follows active weight loss, such fact must also be disclosed; and

(3) If the participant population referred to is not representative of the general participant population for respondent's programs:

(a) The proportion of the total participant population in respondent's programs that those participants represent, expressed in terms of a percentage or actual numbers of participants, or

(b) The statement: "Nutri/System makes no claim that this [these] result[s] is [are] representative of all participants in the Nutri/System program."

provided, further, that compliance with the obligations of this paragraph I.C. in no way relieves respondent of the requirement under paragraph I.A. of this order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss.

D. Representing, directly or by implication, in short broadcast advertisements, that participants of any weight loss program have successfully maintained weight loss, unless respondent:

(1) Includes, clearly and prominently, and in immediate conjunction with such representation, the statement: "Check at our centers for details about our maintenance record.";

(2) For a period of time beginning with the date of the first broadcast of any such advertisement and ending no sooner than thirty days after the last broadcast of such advertisement, complies with the following procedures upon the first presentation of any form asking for information from a potential client, but in any event before such person has entered into any agreement with respondent:

(a) Give to each potential client a separate document entitled "Maintenance Information," which shall include all the information required by paragraph I.B. and subparagraphs I.C.(1)-(3) of this order and shall be formatted in the exact type size and style as the example form below, and shall include the heading (Helvetica 14 pt. bold), lead-in (Times Roman 12 pt.), disclosures (Helvetica 14 pt. bold), acknowledgment language (Times Roman 12 pt.) and signature block therein; *provided, further* that no information in addition to that required to be included in the document required by this subparagraph I.D.(2) shall be included therein:

MAINTENANCE INFORMATION

You may have seen our recent ad about maintenance success. Here's some additional information about our maintenance record.

[Disclosure of maintenance statistics goes here
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX]

For many dieters, weight loss is temporary.

I have read this notice.

(Client Signature) (Date)

- (b) Requires each potential client to sign such document; and
- (c) Gives each client a copy of such document; and

provided, however, that if any potential participant who does not then participate in the program refuses to sign or accept a copy of such document, respondent shall so indicate on such document and shall not, for that reason alone, be found in breach of this subparagraph I.D.(2); and

(3) Retains in each client file a copy of the signed maintenance notice required by this paragraph;

provided, further, that: (1) compliance with the obligations of this paragraph I.D. in no way relieves respondent of the requirement under paragraph I.A. of this order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss; and (2) respondent must comply with both paragraph I.D. and paragraph I.C. of this order if respondent includes in any such short broadcast advertisement a representation about maintenance success that states a number or percentage, or uses descriptive terms that convey a quantitative measure such as “most of our customers maintain their weight loss long-term”;

provided, however, that the provisions of paragraph I.D shall not apply to endorsements or testimonials referred to in paragraph I.E. herein.

E. Using any advertisement containing an endorsement or testimonial about weight loss success or weight loss maintenance success by a participant or participants of respondent’s weight loss program if the weight loss success or weight loss maintenance success depicted in the advertisement is not representative of what participants of respondent’s weight loss programs generally achieve, unless respondent discloses, clearly and prominently, and in close proximity to the endorser’s statement of his or her weight loss success or weight loss maintenance success:

(1) What the generally expected success would be for Nutri/System customers in losing weight or maintaining achieved weight loss; *provided, however*, that in determining the generally expected success for Nutri/System customers, respondent may exclude those customers who dropped out of the program within two weeks of their entrance or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(2) One of the following statements:

- (a) “You should not expect to experience these results.”
- (b) “This result is not typical. You may not do as well.”
- (c) “This result is not typical. You may be less successful.”

- (d) “_____’s success is not typical. You may not do as well.”
- (e) “_____’s experience is not typical. You may achieve less.”
- (f) “Results not typical.”
- (g) “Results not typical of program participants.”

provided, further, that if endorsements or testimonials covered by this paragraph are made in a broadcast medium, any disclosure required by this paragraph must be communicated in a clear and prominent manner and in immediate conjunction with the representation that triggers the disclosure.

provided, however, that:

(1) For endorsements or testimonials about weight loss success, respondent can satisfy the requirements of subparagraph I.E.(1) by accurately disclosing the generally expected success in the following phrase: “Nutri/System clients lose an average of _____ pounds over an average _____ - week treatment period”; and

(2) If the weight loss success or weight loss maintenance success depicted in the advertisement is representative of what participants of a group or subset clearly defined in the advertisement generally achieve, then, in lieu of the disclosures required in either subparagraph I.E.(1) or (2) herein, respondent may substitute a clear and prominent disclosure of the percentage of all of respondent’s customers that the group or subset defined in the advertisement represents.

F. Representing, directly or by implication, that the price at which any weight loss program can be purchased is the only cost associated with losing weight on that program, unless such is the case.

G. Representing, directly or by implication, the price at which any weight loss program can be purchased, unless respondent discloses, clearly and prominently, either:

(1) In close proximity to such representation, the existence and amount of all mandatory costs or fees associated with the program offered; or

(2) In immediate conjunction with such representation, one of the following statements:

(a) "Plus the cost of [list of products or service that participants must purchase at additional cost]."

(b) "Purchase of [list of products or services that participants must purchase at additional cost] required."

provided, further, that in broadcast media, if the representation that triggers any disclosure required by this paragraph is oral, the required disclosure must also be made orally.

H. Failing to disclose over the telephone, for a period of time beginning with the date of any advertisement of the price at which any weight loss program can be purchased and ending no sooner than 180 days after the last dissemination of any such advertisement, to consumers who inquire about the cost of any weight loss program, or are told about the cost of any weight loss program, the existence and amount of any mandatory costs or fees associated with participation in the program; *provided, however*, that respondent may satisfy this requirement by directing its weight loss centers to, disclose the information, by providing the center personnel with suggested language to be used when responding to phone inquiries and by making its best efforts to ensure compliance with its directive to disclose price information over the telephone.

I. Representing, directly or by implication, that prospective participants in respondent's weight loss program will reach a specified weight within a specified time period, unless at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

J. Making comparisons between the efficacy of respondent's weight loss program and the efficacy of any other weight loss and/or diet program(s), unless at the time of making such represen-

tation, respondent possesses and relies upon a competent and reliable scientific study or survey substantiating the representation.

K. Representing, directly or by implication, that any of respondent's employees or any of the employees of any of respondent's franchisees, has been certified or trained as a specialist in nutrition or nutrition science unless respondent has determined through some objective means that the employee is in fact competent in that particular field or discipline, or otherwise misrepresenting the competence, skill, training, credentials or expertise of any of respondent's employees or any of the employees of respondent's franchisees.

L. Failing to disclose, clearly and prominently, in writing to all participants when they enter the program, that failure to follow the program protocol and eat all of the food recommended may involve the risk of developing serious health complications.

M. Representing, directly or by implication, that any weight loss program is endorsed by, complies with, or meets standards or guidelines for weight loss established by any professional or governmental organization or association, unless such is the case.

N. Making any representation, directly or by implication that any organization, institution or publication has conducted or collaborated in, or endorsed the results of, any evaluation, survey, study, or report concerning any diet program unless such is the case.

O. Failing to disclose, clearly and prominently, the nature of any material connection, where one exists, between an endorser, evaluator, or tester of any diet program and the respondent, or otherwise misrepresenting the nature of any material relationship between respondent and any third party endorser, evaluator or tester.

P. Misrepresenting, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

Q. Misrepresenting, directly or by implication, the performance, efficacy, or safety of any weight loss program.

II.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this order.

III.

It is further ordered, That respondent shall maintain for a period of three (3) years after the date the representation was last made and upon request make available to the Federal Trade Commission staff for inspection and copying, all materials possessed and relied upon to substantiate any representation covered by this order, and all test reports, studies, surveys or other information in its possession or control that contradict, qualify or call into question any such representation.

IV.

It is further ordered, That respondent shall distribute a copy of this order to each of its officers, agents, representatives, independent contractors and employees who is involved in the preparation and placement of advertisements or promotional materials or who has any responsibilities with respect to the subject matter of this order; and, for a period of five (5) years from the date of entry of this order, distribute same to all future such officers, agents, representatives, independent contractors and employees.

V.

It is further ordered, That :

A. Respondent shall distribute a copy of this order to each of its franchisees and licensees and shall contractually bind them to comply with the prohibitions and affirmative requirements of this order; respondent may satisfy this contractual requirement by incorporating such order requirements into its current Operations Manual; and

B. Respondent shall further make reasonable efforts to monitor its franchisees' and licensees' compliance with the order provisions; respondent may satisfy this requirement by: (1) taking reasonable steps to notify promptly any franchisee or licensee that respondent determines is failing materially or repeatedly to comply with any order provision; (2) providing the Federal Trade Commission with the name and address of the franchisee or licensee and the nature of the noncompliance if the franchisee or licensee fails to comply promptly with the relevant order provision after being so notified; and (3) in cases where that franchisee's or licensee's conduct constitutes a material or repeated violation of the order, diligently pursuing reasonable and appropriate remedies available under its franchise or license agreement and applicable state law to bring about a cessation of that conduct by the franchisee or licensee.

VI.

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Commissioner Owen dissenting as to the exception requiring full numerical disclosures involving quantitative weight loss maintenance claims in short radio and television advertisements.

STATEMENT OF COMMISSIONER DEBORAH K. OWEN
CONCURRING IN PART AND DISSENTING IN PART

The Commission's decision to approve and issue consent orders with these three major marketers of low calories diets represents an important, and largely appropriate, next step in the Commission's efforts to address allegations of false and unsubstantiated advertising claims in the diet industry. However, I must dissent on one aspect of the remedies in these matters.

In the earlier very low calorie diet cases, I took the position that the mandated weight loss maintenance disclosures were likely to be too complex to enlighten consumers if made during short radio or TV ads.¹ I recommended requiring more concise disclosures for such broadcast ads, which would be supplemented by full disclosure at the point of sale. The relief in the present three matters adopts much of this approach, and, as such, represents a significant improvement over the very low calorie diet consents. However, this improvement would not apply where a broadcast maintenance claim includes a number, percentage, or other descriptive term to convey a quantitative measure. I am concerned that this proviso will significantly reduce, if not eliminate, the incidence of shorter, more understandable broadcast ad disclosures, without providing sufficiently compensating gains in preventing deception. Furthermore, the proviso's language regarding descriptive terms conveying a quantitative measure is vague. Appropriate, non-deceptive claims may be inadvertently chilled as a result, and vexing compliance questions may arise as respondents attempt to conform to the requirements of the orders. Accordingly, I dissent with respect to inclusion of this proviso in these consent orders.

¹ See Statement Concurring in Part and Dissenting in Part in Jason Pharmaceuticals, Inc., File No. 902-3337, National Center for Nutrition, Inc., File No. 912-3024, and Sandoz Nutrition Corporation, File No. 912-3023 (Aug. 10, 1992).

IN THE MATTER OF

DIET CENTER, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3475. Complaint, Dec. 22, 1993--Decision, Dec. 22, 1993*

This consent order prohibits, among other things, a Pennsylvania diet program company from misrepresenting the performance or safety of any weight-loss program it offers in the future; requires it to have competent and reliable scientific evidence to back up future claims it makes about weight loss and maintenance; requires it to include in conjunction with maintenance success claims, the statement "For many dieters, weight loss is temporary"; and requires it to disclose to its customers that failure to eat all of the food recommended in the program may put their health at risk.

*Appearances*For the Commission: *Kathryn C. Nielsen and Richard Kelly.*For the respondent: *Christopher Smith and Lewis Rose, Arent, Fox, Kintner, Plotkin & Kahn, Washington, D.C.*

COMPLAINT

The Federal Trade Commission having reason to believe that Diet Center, Inc., a corporation ("Diet Center" or "respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Diet Center, Inc., is an Idaho corporation with its principal office or place of business at 921 Penn Avenue, Pittsburgh, Pennsylvania.

PAR. 2. Respondent has advertised, offered for sale, and sold weight loss and weight maintenance services and products, including 950 to 1200 calorie-a-day weight loss programs, and

makes them available to consumers at its numerous franchised "Diet Center" outlets nationwide. These products include "food" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

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

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements for the Diet Center Program, including but not necessarily limited to the attached Exhibits A through J.

PAR. 5. The advertisements referred to in paragraph four, including but not necessarily limited to the attached Exhibits A through E, contain the following statements:

- a) "Temporary weight loss is usually followed by weight gain. The only effective weight-loss program is one that produces a safe and permanent result. The Diet Center Program provides the perfect solution." (Exhibit A)
- b) "The Diet Center Program is much more than just a diet. It is truly the last weight-control program an individual will ever need." (Exhibit B)
- c) "Peggy Duman lost 53 pounds and has kept it off for six years." (Exhibit C)
- d) "Diet Center has worked for millions. It's one of the most successful weight loss programs in the world." (Exhibit D)
- e) "Your own success will motivate you all the way to your ideal weight." (Exhibit E)

PAR. 6. Through the use of the statements contained in the advertisements referred to in paragraph five, including but not necessarily limited to the statements in the advertisements attached as Exhibits A through E, respondent has represented, directly or by implication, that:

- a) Diet Center customers typically are successful in reaching their weight loss goals and maintaining their weight loss either long-term or permanently.
- b) Diet Center customers typically are successful in maintaining their weight loss achieved under the Diet Center Program; and

c) Diet Center customers typically are successful in reaching their weight loss goals.

PAR. 7. Through the use of the statements contained in the advertisements referred to in paragraph five, including but not necessarily limited to the statements in the advertisements attached as Exhibits A through E, respondent has represented, directly or by implication, that at the time it made the representations set forth in paragraph six, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 8. In truth and in fact, at the time it made the representations set forth in paragraph six, respondent did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. The advertisements referred to in paragraph four, including but not necessarily limited to the attached Exhibits A and F through I, contain the following statements:

a) "Average female dieters lose 10 pounds in two weeks and 17 to 25 pounds in just six weeks. This rate of weight loss can be safely continued indefinitely." (Exhibit A)

b) "What is Diet Center? An individually supervised weight loss program where you eat foods you buy at a supermarket and yet lose 3 to 7 lbs. per week." (Exhibit F)

c) "Candy Capek took off 143 pounds in 30 weeks." (Exhibit G)

d) "Kris McKenzie Clarke can't believe she lost 28 pounds in just 5 weeks." (Exhibit H)

e) "'I lost 55 pounds in two months at Diet Center. I was never hungry - I actually ate more than usual while I was losing weight.' Bryan Clarke." (Exhibit I)

PAR. 10. Through the use of the statements contained in the advertisements referred to in paragraph nine, including but not necessarily limited to the statements in the advertisements attached as Exhibits A and F through I, respondent has represented, directly or by implication, that:

- a) The average rate of weight loss for female participants in the Diet Center Program is ten pounds in two weeks; and
- b) Consumers following the Diet Center Program typically lose weight at a rate of three to seven pounds per week.

PAR. 11. Through the use of the statements contained in the advertisements referred to in paragraph nine, including but not necessarily limited to the statements in the advertisements attached as Exhibits A and F through I, respondent has represented, directly or by implication, that at the time it made the representations set forth in paragraph ten, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 12. In truth and in fact, at the time it made the representations set forth in paragraph ten, respondent did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph eleven was, and is, false and misleading.

PAR. 13. In the course and conduct of its business, respondent provides its customers with diet protocols that require these customers, *inter alia*, to come in to a Diet Center franchise regularly for monitoring of their progress, including weighing in. In the course of regularly ascertaining weight loss progress, Diet Center franchises, in some instances, are presented with weight loss results indicating that customers may not be adhering to their diet protocol in that they fail to eat all of the food prescribed by their diet protocol. As a result, some customers may be losing weight at a rate faster than called for under the diet protocol, which, if it continued, may, under certain circumstances, impact their health.

PAR. 14. When presented with the weight loss results described in paragraph thirteen, Diet Center franchises, in some instances, have not disclosed to customers that failure to adhere to the diet protocol by not eating all of the food prescribed by their diet protocol and losing weight at a rate faster than called for under the diet protocol may, if it continued, under certain circumstances, impact their health. This fact would be material to such customers in their food consumption decisions while on respondent's pro-

gram. In light of respondent's practice of requiring Diet Center franchises to monitor customers on the program, said failure to disclose was, and is, a deceptive practice.

PAR. 15. The advertisements referred to in paragraph four, including but not necessarily limited to the attached Exhibit I, contain the following statement:

"Lose fat, not muscle." (Exhibit I)

PAR. 16. Through the use of the statement contained in the advertisements referred to in paragraph fifteen, including but not necessarily limited to the statement in the advertisement attached as Exhibit I, respondent has represented, directly or by implication, that consumers who follow the Diet Center Program lose only fat and no muscle.

PAR. 17. In truth and in fact, consumers who follow the Diet Center Program do not lose only fat and no muscle. Therefore, the representation set forth in paragraph sixteen was, and is, false and misleading.

PAR. 18. The advertisements referred to in paragraph four, including but not necessarily limited to the attached Exhibit J, contain the following statement:

"Lose fat, not muscle. Research shows 92% of the weight lost on the Diet Center program is excess fat, not water or lean body mass." (Exhibit J)

PAR. 19. Through the use of the statement contained in the advertisements referred to in paragraph eighteen, including but not necessarily limited to the statement in the advertisement attached as Exhibit J, respondent has represented, directly or by implication, that competent and reliable evidence shows that 92% of weight lost on the Diet Center Program is fat, not water or lean body mass.

PAR. 20. In truth and in fact, competent and reliable evidence does not show that 92% of weight lost on the Diet Center Program is fat, not water or lean body mass. Therefore, the representation set forth in paragraph nineteen was, and is, false and misleading.

PAR. 21. In providing advertisements and promotional materials referred to in paragraph four to its individual franchised stores for the purpose of inducing consumers to purchase its weight loss services and products, respondent has furnished the means and instrumentalities to those stores to engage in the acts and practices alleged in paragraphs four through twenty.

PAR. 22. The acts and practices of respondent as alleged in this complaint constitute deceptive acts or practices in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

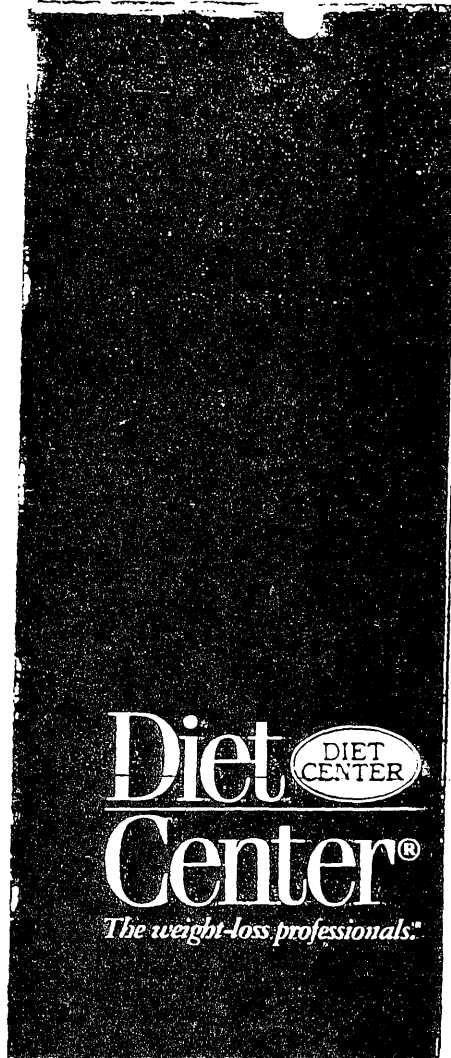
DIET CENTER, INC.

1459

1453

Complaint

EXHIBIT A



Complaint

116 F.T.C.

EXHIBIT A

The Diet Center Program

The conditions of overweight and obesity have detrimental physical, psychological and social effects. "Fad" dieting, often perceived as an easy solution, simply aggravates these problems. Temporary weight loss is usually followed by weight gain. The only effective weight-loss program is one that produces a safe and permanent result.

The Diet Center Program provides the perfect solution. Combining the principles of sound nutrition, the motivation of private, daily counseling and the effects of long-term behavior modification into a five-phase program, Diet Center offers the most complete approach to weight management available today.

Losing weight is only part of the emphasis at Diet Center. Dieters learn to look beyond their immediate goal, weight reduction, to a permanent long-term objective, lifelong weight maintenance. Each dieter is individually guided through all five phases by a professionally trained Diet Center counselor.

EXHIBIT A

Working With The Medical Community

Diet Center counselors are typically not medical doctors, and what is more important, they do not profess to be. They concentrate on maintaining a close working relationship with dieters' physicians and rely on their recommendations. It is this relationship that makes Diet Center unique. With involvement from the dieter's personal physician, counselors can adjust the program to meet dieters' individual health needs.

Diet Center offers the overweight or obese individual rapid, yet safe and permanent weight loss. Average female dieters lose 10 pounds in two weeks and 17 to 25 pounds in just six weeks. This rate of weight loss can be safely continued indefinitely. Male dieters can lose up to one pound per day. Diet Center surveys show that all dieters experience an *inch-loss (overall body measurement) of one inch per pound lost*. Documented case histories demonstrate additional health benefits such as reductions in serum cholesterol, triglycerides and blood pressure levels, and also improvements in diabetics.



EXHIBIT B

Diet Center Life Management Program™**Overview****Introduction**

Since its inception in 1971, the Diet Center Program has helped over four million men, women and children to lose weight; and more important, they have learned how to keep it off. As a result of this phenomenal success, Diet Center has grown to over 2300 locations across the United States and Canada.

The Diet Center Program is both safe and effective. Consisting of five phases, it combines the principles of sound nutrition, the motivation of private, daily counseling, and the effects of long-term behavior modification.

The Diet Center Program is much more than just a diet. It is truly the last weight-control program an individual will ever need.

Safe Weight Loss

When dieters take full advantage of the Diet Center Program, they lose an average of 17 to 25 pounds in just six weeks. This rate of weight loss can be continued safely until ideal weight is reached.

Documented case histories indicate additional health benefits beyond those of weight loss. High serum cholesterol, serum triglyceride and blood pressure levels have been

lowered. And among diabetic dieters, insulin needs have been reduced or eliminated.

Private, Daily Counseling

The Diet Center counselor's primary role is to offer support and encouragement to dieters while guiding them through a structured, nutritionally balanced weight-loss program. During the Reducing Phase, counselors meet with dieters privately as often as six days per week. During these consultations, dieters are weighed, losses are charted, the previous day's progress is reviewed, and individual goals are established.

Diet Center counselors never diagnose health conditions or prescribe treatment. Should any questions arise concerning dieters' health, Diet Center counselors refer them immediately to the dieters' personal physicians.

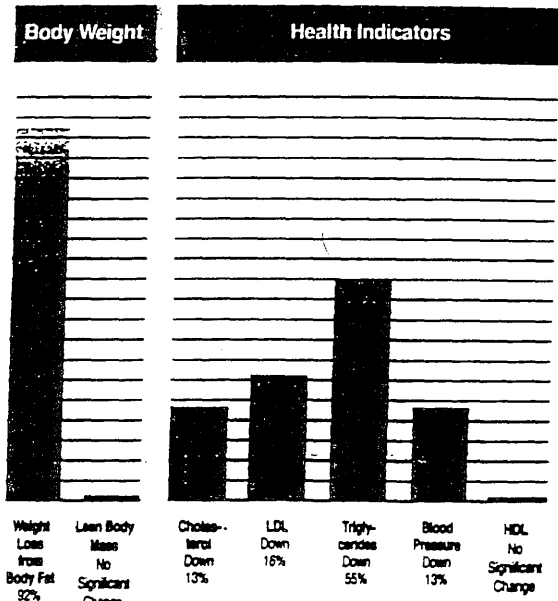
Physician Involvement

Diet Center counselors work closely with each dieter's personal physician. If a dieter needs to lose 50 pounds or more, or if there are any preexisting health conditions, a doctor's approval is required before the Program can be started. At each 40-pound weight-loss interval, the doctor's permission is required before the Program can be continued.

EXHIBIT B

Overview

A recent evaluation study of the Diet Center Program shows the dramatic effects the Reducing Program has on decreasing several health risks associated with obesity. In just eight weeks, 15 dieters not only lost body fat, but they also saw overall health improvements when they participated in a study conducted by the Utah Valley Regional Medical Center.



A copy of the complete study reports may be obtained from your local Diet Center.

Complaint

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EXHIBIT C

Susan Sarandon
Diet Center success story

**Get serious.
Call Diet Center
NOW!**

- **Get fast results.** Lose 10 pounds in 2 weeks, up to 25 pounds in just 6 weeks
- **A diet breakthrough.** Research shows 92% of weight lost at Diet Center is fat, not water or muscle.
- **More choices.** Unlike other diets, packaged foods are not required.

Diet Center
The weight loss professionals

Peggy Damari lost 53 pounds and has kept it off for 16 years.

© 1998 Diet Center, Inc.
Weight loss and speed of loss vary with each individual.

Name & location go here Name & location go here Name & location go here Name & location go here Name & location go here

"I'll never be fat again."

Learn how you can lose weight — and keep it off — without prepackaged foods, gimmicks or contracts. Diet Center has worked for millions. It's one of the largest, most successful weight loss programs in the world.



"Diet Center changed the way I think about food. I lost 28 pounds in five weeks, and I'll keep it off forever!"
Kris McKenzie

(YOUR SPECIAL OFFER HERE)

Diet 
Center[®]

The weight-loss professionals.[®]

Weight loss and speed of loss will vary with individual. © 1989 Diet Center, Inc.

EXHIBIT E

LOSE WEIGHT FAST

and *Energize* your body



LOST 48 LBS.

AT DIET CENTER

Unlike some of the other weight-loss programs, research shows that 92 percent of the weight lost on the Diet Center Program is from excess fat . . . not water or lean body mass. You'll lose pounds and inches right where you want to!

- LOSE FAT, NOT MUSCLE
- EAT REAL FOOD
- SIGN NO CONTRACTS

You won't be obligated by contract to stick with the Diet Center Program; you'll want to because it works! Your own success will motivate you all the way to your ideal weight.



LOST 36 LBS.

Call today for a free introductory consultation!

NOW THRU JANUARY 31st

50% OFF

PROGRAM REGISTRATION FEES



The weight-loss professionals.


Exhibit E

WHAT IS DIET CENTER?


An individually supervised weight loss program where you eat foods you buy at supermarket and yet lose from 3 to 7 lbs. per week.

"For years my thinking was restricted to losing weight. I never used to think about the hardest part — keeping it off. Thank you Diet Center for teaching me new eating habits. I have now kept my weight off for over a year." Lillia Acimovic

BEFORE
Lillia lost 37 lbs. in first 9 weeks. On program



AFTER
Lillia lost a total of 55 1/2 lbs.



FREE CONSULTATION, WE QUOTE PRICE ON THE PHONE

LYNDHURST 5001 Maple Rd 381-1800	ROCKY RIVER 2245 Center Ridge Rd 356-7546	MAPLE HTS. Sudipore Medical Bldg 2100 Sudipore Park Blvd 475-7211	EUCLID 26300 Euclid Ave 281-3180
PARMA 5510 Plain Rd 845-8805	COLON 2200 S.O.M. Center Rd 349-4836	Diet Center The weight-loss professionals	

Over 19 years in business, over 2,000 Centers nationwide.

As people vary so does their weight loss

SEPTEMBER 16, 1990 THE PLAIN DEALER TV WEEK

Complaint


116 F.T.C.

EXHIBIT G

20TH ANNIV. NEWSPAPER

CANDY CAPEK, 143 LBS. -
30 WKS.

The Diet Center Difference



Candy Capek took off 143 pounds in 30 weeks.

MAKING A REAL DIFFERENCE
20 Years

See the difference for yourself!

You'll be amazed at how easily the pounds melt off at Diet Center. With our healthy diet of real food choices and the personal support of your counselor, you'll discover how to achieve the lasting results that make Diet Center truly different. Call us today!

\$00


Your Offer and Disclaimers Here...

The difference is real.

Diet Center
The weight-loss professionals.

© 1998 Diet Center, Inc. Weight loss speed of this advertisement is not representative of all participants.

The Diet Center Difference



See the difference for yourself!

You'll be amazed at how easily the pounds melt off at Diet Center. With our healthy diet of real food choices and the personal support of your counselor, you'll discover how to achieve the lasting results that make Diet Center truly different. Call us today!

The difference is real.

Diet Center
The weight-loss professionals.

© 1998 Diet Center, Inc. Weight loss speed of this advertisement is not representative of all participants.

To set your own type, use these specifications:


- 2 col. x 6 7/8" Heads/26 point Clearface Bold Cond. (20%) Body copy/10 point Clearface Reg.
- 1 col. x 6 1/4" Heads/19 point Clearface Bold Cond. (20%) Body copy/11 point Clearface Reg.

Exhibit G

DCC0657

EXHIBIT H

"I recommend Diet Center to all my friends."



Susan Saint James
Susan Saint James, actress, mother and Diet Center success story:

When I needed to lose weight, I didn't have time to fly off to a fancy spa. Between my TV show and two small children, I needed something close to home. That's why I went to Diet Center. Their program works fast and it fits my busy lifestyle. There are a lot of diets out there, but here's why I think Diet Center's the best:

- **Lose fat, not muscle.** Research shows 92% of the weight lost on the Diet Center program is excess fat, not water or lean body mass.
- **Eat real food.** No expensive prepackaged meals required.
- **No contracts.** You'll stick with Diet Center because it works.

You'll feel the difference."

Diet DIET CENTER
Center[®]
The weight-loss professionals.

Special Offer

© 1999 Diet Center, Inc.

Drs. McKenzie Clatter can't believe she lost 28 pounds in just 5 weeks.




EXHIBIT I



Lose fat, not muscle.

Unlike trendy diets, the nutritious Diet Center program helps you lose fat, not muscle. We've helped millions lose weight—and keep it off—without prepackaged foods, gimmicks or contracts.




"I lost 55 pounds in two months at Diet Center. I was never hungry—I actually ate more than usual while I was losing weight."
Bryan Clarke

(YOUR SPECIAL OFFER HERE)

Diet DIE I CENTER
Center[®]
The weight-loss professionals.

Weight loss and related loss will vary with individual. © 1999 Diet Center, Inc.



"Turn extra pounds into extra energy at Diet Center."

Susan Saint James, actress, mother and Diet Center success story.

The most amazing thing to me about the Diet Center program is the tremendous energy you have while you're losing weight. You feel like you can do anything.


Lose fat, not muscle. Research shows 92% of the

weight lost on the Diet Center program is excess fat, not water or lean body mass.

Eat real food. No expensive prepackaged meals required.

Get fast results. Energize your body while pounds and inches melt away.

Patricia Johnson lost 60 pounds and has kept it off for three years.



Diet Center DIET CENTER

Center[®]

The weight-loss professionals.

Special Offer

Weight loss and speed of loss vary with each individual. © 1999 Diet Center, Inc.

Name & location goes here Name & location goes here Name & location goes here

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent had violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Diet Center, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the state of Idaho, with its offices and principal place of business at 921 Penn Avenue, Pittsburgh, Pennsylvania.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

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

A. “*Competent and reliable scientific evidence*” shall mean tests, analyses, research, studies, surveys, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession or science to yield accurate and reliable results;

B. “*Weight loss program*” shall mean any program designed to aid consumers in weight loss or weight maintenance;

C. “*Broadcast medium*” shall mean any radio or television broadcast, cablecast, home video or theatrical release.

D. For any order-required disclosure in a print medium to be made “clearly and prominently,” or in a “clear and prominent” manner, it must be given both in the same type style and in: (1) twelve point type where the representation that triggers the disclosure is given in twelve point or larger type; or (2) the same type size as the representation that triggers the disclosure where that representation is given in a type size that is smaller than twelve point type. For any order-required disclosure given orally in a broadcast medium to be made “clearly and prominently,” or in a “clear and prominent” manner, the disclosure must be given at the same volume and in the same cadence as the representation that triggers the disclosure.

E. “*Short broadcast advertisement*” shall mean any advertisement of thirty seconds or less duration made in a broadcast medium.

I.

It is ordered, That respondent Diet Center, Inc., a corporation, its successors and assigns, and respondent’s officers, representatives, agents, and employees, directly or through any corporation,

subsidiary, division, or other device, including franchisees or licensees, in connection with the advertising, promotion, offering for sale, or sale of any weight loss program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, about the success of participants on any weight loss program in achieving or maintaining weight loss or weight control unless, at the time of making any such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation; provided, further, that for any representation that:

1) Any weight loss achieved or maintained through the weight loss program is typical or representative of all or any subset of participants of respondent's program, said evidence shall, at a minimum, be based on a representative sample of:

a) All participants who have entered the program, where the representation relates to such persons; *provided, however*, that the required sample may exclude those participants who dropped out of the program within two weeks of their entrance or who were unable to complete the program due to illness, pregnancy or change of residence; or

b) All participants who have completed a particular phase of the program or the entire program, where the representation only relates to such persons;

2) Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of at least two years from their completion of the active maintenance phase of respondent's program or earlier termination, as applicable; and

3) Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of participants

who were followed for a period of time after completing the program that is either:

- a) Generally recognized by experts in the field of treating obesity as being of sufficient length for predicting that weight loss will be permanent; or
- b) Demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

B. Representing, directly or by implication, except through endorsements or testimonials referred to in paragraph I.E., that participants of any weight loss program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in close proximity to such representation, the statement: "For many dieters, weight loss is temporary"; *provided further*, that respondent shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondent's weight loss program *provided, however*, that a mere statement about the existence, design or content of a maintenance program shall not, without more, be considered a representation that participants on any weight loss program have successfully maintained weight loss.

C. Representing, directly or by implication, except through short broadcast advertisements referred to in paragraph I.D., and except through endorsements or testimonials referred to in paragraph I.E., that participants on any weight loss program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in close proximity to such representation the following information:

- 1) The average percentage of weight loss maintained by those participants;
- 2) The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program; provided, further, that if any portion of the time period covered includes participation in a maintenance

program(s) that follows active weight loss, such fact must also be disclosed; and

3) If the participant population referred to is not representative of the general participant population for respondent's programs:

a) The proportion of the total participant population in respondent's programs that those participants represent, expressed in terms of a percentage or actual numbers of participants; or

b) The statement: "Diet Center makes no claim that this [these] result[s] is [are] representative of all participants in the Diet Center Program."

provided, further, that compliance with the obligations of this paragraph I.C. in no way relieves respondent of the requirement under paragraph I.A. of the order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss.

D. Representing, directly or by implication, in short broadcast advertisements that participants of any weight loss program have successfully maintained weight loss unless respondent:

1) Includes, clearly and prominently, and in immediate conjunction with such representation, the statement: "Check at our outlets for details about our maintenance record";

2) For a period of time beginning with the date of the first broadcast of any such advertisement and ending no sooner than thirty days after the last broadcast of such advertisement, complies with the following procedures upon the first presentation of any form asking for information from a potential customer, but in any event before such person has entered into any agreement with respondent:

a) Gives to each potential client a separate document entitled "Maintenance Information," which shall include all the information required by paragraph I.B. and subparagraphs I.C.(1)-(3) of this order and shall be formatted in the exact type size and style as the

under paragraph I.A. of this order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss; and (2) respondent must comply with both paragraphs I.D. and I.C. of this order if respondent includes in any such short broadcast advertisement a representation about maintenance success that states a number or percentage, or uses descriptive terms that convey a quantitative measure such as "most of our customers maintain their weight loss long-term;" *provided, however*, that the provisions of paragraph I.D. shall not apply to endorsements or testimonials referred to in paragraph I.E.

E. Using any advertisement containing an endorsement or testimonial about weight loss success or weight loss maintenance success by a participant or participants on respondent's weight loss program if the weight loss success or weight loss maintenance success depicted in the advertisement is not representative of what participants on respondent's weight loss programs generally achieve, unless respondent discloses, clearly and prominently, and in close proximity to the endorser's statement of his or her weight loss success or weight loss maintenance success:

1) What the generally expected success would be for Diet Center customers in losing weight or maintaining achieved weight loss; *provided, however*, in determining the generally expected success for Diet Center customers, respondent may exclude those customers who dropped out of the program within two weeks of their entrance or who were unable to complete the program due to illness, pregnancy or change of residence; or

2) One of the following statements:

- a) "You should not expect to experience these results."
- b) "This result is not typical. You may not do as well."
- c) "This result is not typical. You may be less successful."
- d) "_____ 's success is not typical. You may not do as well."
- e) "_____ 's experience is not typical. You may achieve less."
- f) "Results not typical."
- g) "Results not typical of program participants;"

provided, further, that if endorsements or testimonials covered by this paragraph I.E. are made in a broadcast medium, any disclosure required by this paragraph must be communicated in a clear and prominent manner and in immediate conjunction with the representation that triggers the disclosure.

Provided, however, that:

(1) For endorsements or testimonials about weight loss success, respondent can satisfy the requirements of subparagraph I.E.(1) by accurately disclosing the generally expected success in the following phrase: "Diet Center clients lose an average of ___ pounds over an average ___ - week treatment period;" and

(2) If the weight loss success or weight loss maintenance success depicted in the advertisement is representative of what participants of a group or subset clearly defined in the advertisement generally achieve, then, in lieu of the disclosures required in either subparagraph I.E.(1) or (2) herein, respondent may substitute a clear and prominent disclosure of the percentage of all of respondent's customers that the group or subset defined in the advertisement represents;

F. Representing, directly or by implication, the typical rate or speed at which any participant on any weight loss program has experienced or will experience weight loss unless, at the time of making any such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

G. Failing to disclose, clearly and prominently, either:

(1) To each participant who, after the first two weeks on the program, is experiencing average weekly weight loss that exceeds two percent (2.0%) of said participant's initial body weight, or three pounds (whichever is less), for at least two consecutive weeks; or

(2) In writing to all participants, when they enter the program, that failure to follow the program protocol and eat all of the

varieties and amounts of food recommended may involve the risk of developing serious health complications.

H. Representing, directly or by implication, that participants on respondent's weight loss program will lose only fat and no lean body tissue.

I. Making any representation, directly or by implication, about the loss of fat or the loss of lean body tissue that participants on respondent's weight loss program will experience unless, at the time of making any such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

J. Misrepresenting, directly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test or study.

K. Misrepresenting, directly or by implication, the performance, efficacy or safety of any weight loss program.

II.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment or sale resulting from the emergence of a successor corporation(s), the creation or dissolution of subsidiaries or any other change in the corporation(s) that may affect compliance obligations arising out of this order; *provided, however,* that nothing in this order shall be interpreted to require respondent to notify the Commission regarding the addition or termination of franchisees or licensees.

III.

It is further ordered, That respondent shall maintain for a period of three (3) years after the date the representation was last made, and upon request make available to the Federal Trade

Commission staff for inspection and copying, all materials possessed and relied upon to substantiate any representation covered by this order, and all test reports, studies, surveys or other information in its possession or control that contradicts, qualifies or calls into question any such representation, including complaints from consumers.

IV.

It is further ordered, That respondent shall distribute a copy of this order to each of its officers, agents, representatives, independent contractors and employees who is involved in the preparation and placement of advertisements or promotional materials or who has any responsibilities with respect to the subject matter of this order; and, for a period of five (5) years from the date of entry of this order, distribute same to all future such officers, agents, representatives, independent contractors and employees.

V.

It is further ordered, That:

A. Respondent shall distribute a copy of this order to each of its franchisees and licensees and shall contractually bind them to comply with the prohibitions and affirmative requirements of this order; respondent may satisfy this contractual requirement by incorporating such order requirements into its current Operations Manual; and

B. Respondent shall further make reasonable efforts to monitor its franchisees' and licensees' compliance with the order provisions; respondent may satisfy this requirement by: (1) taking reasonable steps to notify promptly any franchisee or licensee that respondent determines is failing materially or repeatedly to comply with any order provision; (2) providing the Federal Trade Commission with the name and address of the franchisee or licensee and the nature of the noncompliance if the franchisee or licensee fails to

comply promptly with the relevant order provision after being so notified; and (3) in cases where that franchisee's or licensee's conduct constitutes a material or repeated violation of the order, diligently pursuing reasonable and appropriate remedies available under its franchise or license agreement and applicable state law to bring about a cessation of that conduct by the franchisee or licensee;

provided, however, that respondent's compliance with this Part shall constitute an affirmative defense to any civil penalty action arising from an act or practice of one of respondent's franchisees or licensees that violates this order where respondent: a) has not authorized, approved or ratified that conduct; b) has reported that conduct promptly to the Federal Trade Commission under this part; and c) in cases where that franchisee's or licensee's conduct constitutes a material or repeated violation of the order, has diligently pursued reasonable and appropriate remedies available under its franchise or license agreement and applicable state law to bring about a cessation of that conduct by the franchisee or licensee.

VI.

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Commissioner Owen dissenting as to the exception requiring full numerical disclosures involving quantitative weight loss maintenance claims in short radio and television advertisements.

STATEMENT OF COMMISSIONER DEBORAH K. OWEN
CONCURRING IN PART AND DISSENTING IN PART

The Commission's decision to approve and issue consent orders with these three major marketers of low calories diets represents an important, and largely appropriate, next step in the Commission's efforts to address allegations of false and unsubstantiated advertising claims in the diet industry. However, I must dissent on one aspect of the remedies in these matters.

In the earlier very low calorie diet cases, I took the position that the mandated weight loss maintenance disclosures were likely to be too complex, to enlighten consumers if made during short radio or TV ads.¹ I recommended requiring more concise disclosures for such broadcast ads, which would be supplemented by full disclosure at the point of sale. The relief in the present three matters adopts much of this approach, and, as such, represents a significant improvement over the very low calorie diet consents. However, this improvement would not apply where a broadcast maintenance claim includes a number, percentage, or other descriptive term to convey a quantitative measure. I am concerned that this proviso will significantly reduce, if not eliminate, the incidence of shorter, more understandable broadcast ad disclosures, without providing sufficiently compensating gains in preventing deception. Furthermore, the proviso's language regarding descriptive terms conveying a quantitative measure is vague. Appropriate, non-deceptive claims may be inadvertently chilled as a result, and vexing compliance questions may arise as respondents attempt to conform to the requirements of the orders. Accordingly, I dissent with respect to inclusion of this proviso in these consent orders.

¹ See Statement Concurring in Part and Dissenting in Part in Jason Pharmaceuticals, Inc., File No. 902-3337, National Center for Nutrition, Inc., File No. 912-3024, and Sandoz Nutrition Corporation, File No. 912-3023 (Aug. 10, 1992)