

IN THE MATTER OF

HASBRO, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3447. Complaint, July 2, 1993--Decision, July 2, 1993*

This consent order prohibits, among other things, a Rhode Island-based toy corporation from misrepresenting any performance characteristic of any toy it manufactures or promotes. In addition, in any demonstrations or tests used in the packaging or advertising for the toys, the respondent is prohibited from falsely representing that the demonstration or test proves or confirms any material feature of the toy.

Appearances

For the Commission: *Rosemary Rosso and Toby M. Levin.*

For the respondent: *Michael N. Sohn, Arnold & Porter, Wash-
ington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Hasbro, Inc., a corporation ("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 is a Rhode Island corporation with its principal office or place of business at 1027 Newport Avenue, Pawtucket, Rhode Island.

PAR. 2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed toys and games, including the Battle Copter aircraft vehicle and Eco-Warriors action figures.

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 and packages for the Battle Copter aircraft vehicle, including but not necessarily limited to the attached Exhibits A and B. These advertisements and packages contain the following statements and depictions:

A. Exhibit A, a television advertisement, contains depictions of children launching and playing with toy Battle Copters and scenes of Battle Copters hovering and flying in the air, including the following scenes:

1. One sequence depicts two Battle Copters hovering together, approaching the viewer. The ad then cuts to a scene showing a boy launching a Battle Copter vertically up and out of view. The final scene in this sequence shows what appears to be the just-launched Battle Copter traveling toward the viewer. In this scene, the audio portion of the ad states that Battle Copters “really fly high.”

2. A second sequence depicts a boy launching a Battle Copter up and out of view. The sequence then cuts to a scene depicting two Battle Copters entering the screen from opposite sides of the frame and flying across the screen to the center where they collide.

3. A third sequence shows a boy launching a Battle Copter into the air. The segment then cuts to a fantasy scene showing two actors engaged in battle while they hover in life-sized helicopters, until one helicopter is hit and explodes. The sequence then returns to a non-fantasy scene showing two Battle Copters approaching each other and colliding in mid-air in the center of the screen.

B. The front and the back of the product packaging in Exhibit B depict a Battle Copter in mid-air. Copy on the packaging describes the toy with phrases such as:

1. “*zipcord activated flying/hovering action!;” and
2. “Cobra’s reached new heights in aerial terror! The Battle Copter’s aerodynamic design lets it fly in for fast, crushing, pinpoint attacks every time!”

PAR. 5. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit A, respondent has represented, directly or by implication, that the demonstrations in the television advertisements of the Battle Copter toys hovering and flying in the air were unaltered and the results shown accurately represent the performance of actual, unaltered Battle Copter toys under the depicted conditions.

PAR. 6. In truth and in fact, the demonstrations in the television advertisements of the Battle Copter toys hovering and flying in the air were not unaltered and the results shown did not accurately represent the performance of actual, unaltered Battle Copter toys under the depicted conditions. Among other things, the Battle Copter toys depicted in the advertisements were suspended from monofilament wire attached to poles, which were moved by humans to create the flying and hovering effect, and battery-operated motors were installed into the Battle Copter toys in order to make their rotors spin around while they were being held in place or moved along on the monofilament wire attached to poles. Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 7. Through the use of the statements and depictions contained in the advertisements and packages referred to in paragraph four, including but not necessarily limited to the advertisement and package attached as Exhibits A and B respondent has represented, directly or by implication, that the Battle Copter toys can hover and can fly in a sustained and directed manner.

PAR. 8. In truth and in fact, Battle Copter toys cannot hover and are not able to fly in a sustained and directed manner. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. Respondent has disseminated or has caused to be disseminated packages for the Eco-Warriors action figures, including but not necessarily limited to the attached Exhibit C. These packages contain the following statements and depictions:

A. Exhibit C bears the following in red on a yellow background: “Color-change battle damage!”

B. Exhibit C contains two side-by-side photographic depictions of the Toxo-Viper figure. In the left-side depiction, the figure is shown with a dark green torso and boots and dark purple arms and legs. The right-side depiction shows the same figure, with a bright yellow patch covering the area from the top of the figure’s head through the torso and belt to the upper legs. Immediately below the depictions is the following statement:

“BEFORE . . . AND AFTER COLOR CHANGE BATTLE DAMAGE!”

PAR. 10. Through the use of statements and depictions contained on the packages referred to in paragraph nine, including but not necessarily limited to the package attached as Exhibit C, respondent has represented, directly or by implication, that the depiction of the Toxo-Viper figure bearing a large patch of bright yellow color extending from the top of the figure’s head, through the torso and belt and covering the upper legs is an unaltered depiction that accurately represents the color change that results when the Toxo-Viper figure is squirted with or dipped into water.

PAR. 11. In truth and in fact, the depiction of the Toxo-Viper figure bearing a large patch of bright yellow color extending from the top of the figure’s head, through the torso and belt and covering the upper legs is not an unaltered depiction and does not accurately represent the color change that results when the Toxo-Viper figure is squirted with or dipped into water. Among other things, the color change depicted was achieved by painting a photograph of the Toxo-Viper figure with yellow paint that is significantly different in color and extensiveness of coverage than the “battle damage” color change that occurs for the Toxo-Viper figure after it is squirted with or dipped into water. Therefore, the representation set forth in paragraph ten was, and is, false and misleading.

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

Complaint

EXHIBIT A

C3447 B141476 *EXHIBIT A*

**RADIO
TV REPORTS**

41 East 42nd Street New York, NY 10017 (212) 309-1400

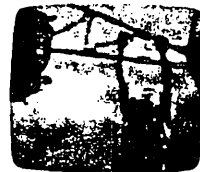
PRODUCT	C.I. JOE	91-01924
PROGRAM	THE JETSONS	2/18/91
		:30
WHD	(NEW YORK)	7:28AM



1 CHORUS: C.I. Joe.



2 [MUSIC] MAN: Need a lift Duke!



3 DUKE: Thanks.



4 Look, Cobra's got the plasmatox!



5 ANNCR: But here comes C.I. Joe Battle-Copters. Zip-rip copters that really fly high.



6 DUKE: Perfect for dropping. In unexpected. ANNCR: Watch out Duke!



7 Cobra's got Battle-Copters too!



8 ANNCR: Cobra and C.I. Joe Battle-Copters can work with any figure. CHORUS: C.I. Joe.



9 MAN SINGS: A real American hero. CHORUS: C.I. Joe.



10 ANNCR: C.I. Joe and Cobra Battle-Copter sold separately with figure.



11 DUKE: I hate when this happens!



12 CHORUS: Go Joe! [MUSIC OUT]

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

EXHIBIT B-1

C-3447 B14147c 2

BATTLE COPTER™
A COBRA™ COMMAND WEAPON

***COPTER WITH FIGURE REALLY FILES!**

SPINNING ROTOR BLADES

FIGURE CLIPS IN FOR SECURE FLIGHT

BATTLE COPTER PILOT

Cobra's reached new heights in aerial terror! The Battle Copter's aerodynamic, lightweight design lets it fly in for fast crushing, pinpoint attacks every time!

EASY-GRIP LAUNCHER

EASY-LOAD ZIPCORD

LIGHTWEIGHT BODY DESIGN

CONTAINS: BATTLE COPTER, "INTERROGATOR"™ FIGURE, LAUNCHER, ZIPCORD, WEAPONS, LABEL SHEET AND INSTRUCTIONS.

Colors may vary slightly from photograph.
Approximate size of Battle Copter is 10" L x 8" W x 5" H.

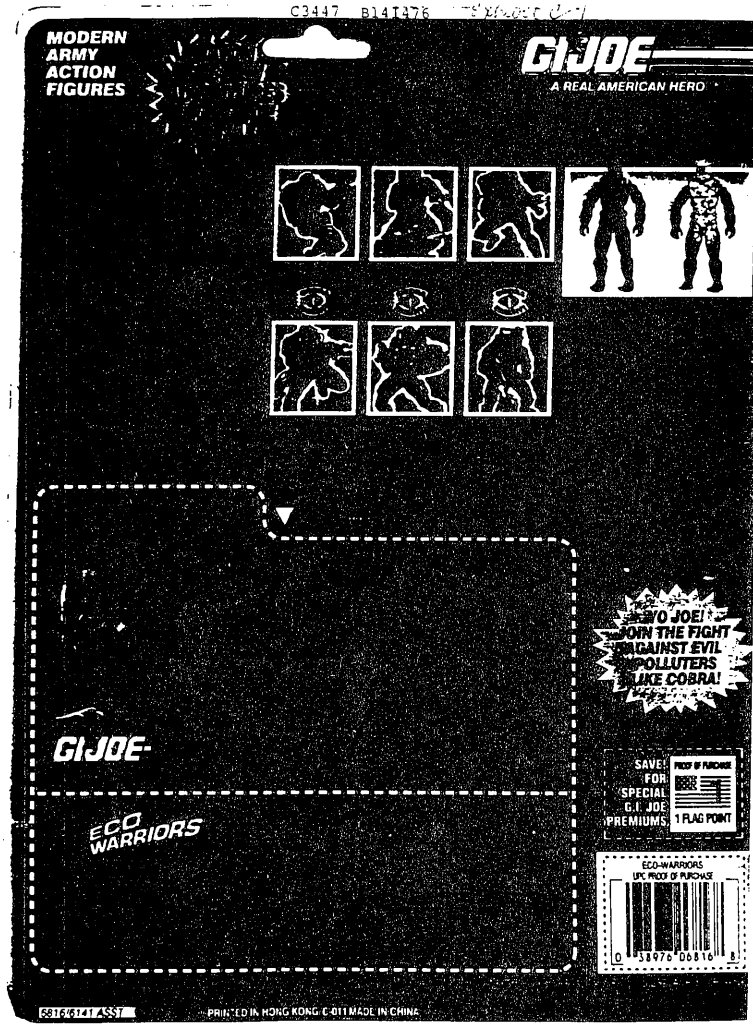
SAVE 2¢ PER FIGURE! SEE FOR DETAILS 2¢ VALUE POINTS

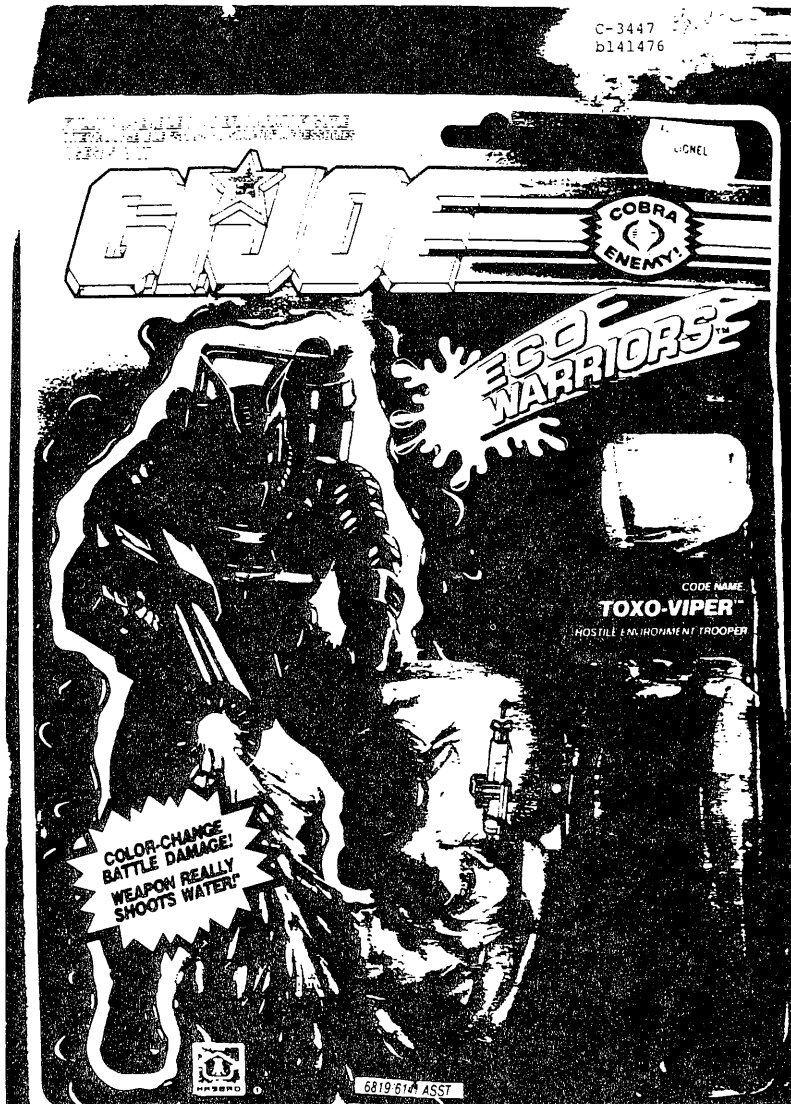
IMPORTANT: ENCLOSED ARE TOP-SECRET BLUE PRINTS OF AN ACTUAL "BATTLE COPTER." ADD THEM TO YOUR G.I. JOE COMMAND FILES!

Pull zipcord to send copter sky-high!



EXHIBIT C-1





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 attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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, or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules.

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has 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 Hasbro, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island with its office and principal place of business located at 1027 Newport Avenue, in the City of Pawtucket, State of Rhode Island;

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

I.

It is ordered, That respondent Hasbro, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any toy in or affecting commerce as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. In connection with any advertisement or package depicting a demonstration, experiment or test, making any representation, directly or by implication, that the demonstration, picture, experiment or test depicted in the advertisement or package proves, demonstrates or confirms any material quality, feature or merit of any toy when such demonstration, picture, experiment or test does not prove, demonstrate or confirm the representation for any reason, including but not limited to:

1. The undisclosed use or substitution of a material mock-up or prop;
2. The undisclosed material alteration in a material characteristic of the advertised toy or any other material prop or device depicted in the advertisement; or
3. The undisclosed use of a visual perspective or camera, film, audio or video technique;

that, in the context of the advertisement as a whole, materially misrepresents a material characteristic of the advertised toy or any other material aspect of the demonstration or depiction.

Provided, however, that notwithstanding the foregoing, nothing in this order shall be deemed to otherwise preclude the use of fantasy segments or prototypes which use otherwise is not deceptive.

B. Misrepresenting, directly or by implication, any performance characteristic of any Eco-Warriors action figure toy, Battle Copter toy or any other toy.

II.

It is further ordered, That respondent Hasbro, Inc. shall distribute a copy of this order to each of its operating divisions and to each officer, agent and personnel responsible for the preparation, review or placement of advertising, packaging or other materials covered by this order and shall secure from each such person a signed statement acknowledging receipt of this order.

III.

It is further ordered, That for three (3) years after the last date of dissemination of any representation covered by this order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation;

B. Any and all videotape, in complete as well as unedited form, and any and all still photographs taken during the production of any advertisement depicting a demonstration, experiment or test;

C. Any and all affidavits or certifications submitted by an employee, agent or representative of respondents to a television network or to any other individual or entity, which affidavit or certification affirms the accuracy or integrity of a demonstration or demonstration techniques contained in an advertisement; and

D. Any toy as well as the packaging for any toy involved in such representation.

In addition, for three (3) years after the date of service of this order, respondent, or its successors and assigns, shall maintain and,

within thirty (30) days of any written request, make available to the Federal Trade Commission for inspection and copying all signed statements obtained pursuant to section II above.

IV.

It is further ordered, That respondent Hasbro, Inc., shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its corporate structures, including but not limited to, dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, the planned filing of a bankruptcy petition, or any other corporate change that may affect compliance obligations arising out of this order.

V.

It is further ordered, That respondent Hasbro, Inc., shall, within sixty (60) days after service upon it of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth, in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

UNITED WEIGHT CONTROL CORP.

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

Docket C-3448. Complaint, July 2, 1993--Decision, July 2, 1993

This consent order prohibits, among other things, a New York-based marketer of very-low-calorie diet programs (rapid weight loss, modified fasting diets of 800 or fewer calories per day) from making false or unsubstantiated claims about health risks, tests, effectiveness compared to any other diet program, weight loss, or weight loss maintenance; and requires certain disclosures in conjunction with safety and weight loss maintenance claims.

Appearances

For the Commission: *Michael J. Bloom and Alice Au.*

For the respondent: *Nancy L. Buc, Weil, Gotshal & Manges,*
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that United Weight Control Corp., a corporation (hereinafter "UWCC" 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 United Weight Control Corp. is a Delaware corporation, with its corporate offices at 226 East 54 Street, New York, New York.

PAR. 2. Respondent is engaged, and has been engaged, in the sale and offering for sale of physician-supervised diet programs to the public in joint ventures with hospitals. During the weight loss phase, respondent puts some of its patients on a very-low-calorie

diet ("VLCD"). VLCDs are rapid weight-loss, modified fasting diets of 800 calories or less per day requiring medical supervision. The UWCC diet programs include "foods" or "drugs" within the meaning of Section 12 of the Federal Trade Commission Act, 15 U.S.C. 52.

PAR. 3. Respondent has created and placed advertisements in various periodicals that are in general circulation to the public to promote its diet programs to prospective patients. Respondent has disseminated or has caused to be disseminated advertisements for its diet programs, including, but not necessarily limited to, the exhibits entitled "YOU'VE WON A LOT OF BATTLES BUT YOU'VE NEVER WON THE WAR" and "MOST PEOPLE WHO LOSE WEIGHT GAIN IT BACK. BE THE PERSON WHO DOESN'T," attached hereto as Exhibits A-1 and A-8. Respondent further advertises its diet programs to the public by means of promotional articles which it provides to prospective patients. Respondent has disseminated or has caused to be disseminated promotional materials for its diet programs, including, but not necessarily limited to, the exhibit entitled, "IS PERMANENT WEIGHT LOSS JUST A DREAM TO YOU?," attached hereto as Exhibit B-1. Finally, respondent promotes its diet program to the public by means of orientation sessions for prospective patients.

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

SAFETY CLAIMS

PAR. 5. Respondent's advertising contains the following statements:

(a) "The Permanence Program delivers medically-proven safe, healthy weight loss and long-term weight control." (Exhibit A-1)

(b) "This is the first individualized, completely safe, medically-monitored nutrition education, behavior modification and physical exercise regimen." (Exhibit A-1)

(c) "For medically-proven safe weight control, CALL: 1-800-765-7475 OR: 1-212-697-8922." (Exhibit A-1)

(d) "The Program is advanced, medically-proven safe and long-term effective." (Exhibit A-2)

(e) "Experts from America's premier University Medical Centers have joined to develop the first program that would safely and effectively address the nation's obesity problems." (Exhibit A-3)

(f) "During the rapid fat loss phase, you will consume the nutritionally complete UWCC formula diet, individually prescribed for you by the program physician to permit you to continue to lose weight of high quality while being assured of the utmost safety." (Exhibit B-1 p. 5)

PAR. 6. By and through the use of the statements set forth in paragraph five, and other statements not specifically set forth herein of similar import and meaning, respondent represents, and has represented, directly or by implication, that the UWCC diet programs are unqualifiedly free of health risks. Respondent has failed to disclose that physician supervision is required to minimize the potential risk to patients of the development of health complications on very-low-calorie diets. In light of respondent's representation that UWCC diet programs are unqualifiedly free of health risks, the disclosure as to the requirement for medical supervision is necessary. Therefore, in light of respondent's failure to disclose, said representation was and is misleading.

PAR. 7. By and through the use of the statements set forth in subparagraphs (a), (c), and (d) of paragraph five, and other statements not specifically set forth herein of similar import and meaning, respondent represents, and has represented directly or by implication, that competent and reliable scientific evidence have proven that UWCC diet programs are unqualifiedly free of health risks.

PAR. 8. In truth and in fact, competent and reliable scientific evidence have not proven that the UWCC diet programs are unqualifiedly free of health risks. Therefore, the representation set forth in paragraph seven was and is false and misleading.

MAINTENANCE CLAIMS

PAR. 9. Respondent's advertising contains the following statements:

(a) "FINALLY, A WEIGHT LOSS PROGRAM THAT WORKS EVEN AFTER YOU GO OFF IT." (Exhibit A-4)

(b) "You can jump from one fad diet to the other or you can lose weight once. And forever." (Exhibit A-5)

(c) "You will lose weight quickly, safely, intelligently. More importantly, you'll keep it off." (Exhibit A-5)

(d) "It's a fact. Permanence Program research shows that patients who participate in the weight loss and maintenance program lose weight quickly and safely. More importantly, they keep it off." (Exhibit A-6)

(e) "With The Permanence Program, sustained weight loss, with lasting health benefits, is patient proven." (Exhibit A-1)

(f) "Proven long-term weight loss success." (Exhibit B-1 p.6)

PAR. 10. By and through the use of the statements referred to in paragraph nine, and others not specifically set forth herein of similar import and meaning, respondent represents, and has represented, directly or by implication, that:

(a) The UWCC diet programs are successful long-term or permanent treatments for obesity; and

(b) The typical UWCC patient is successful in maintaining achieved weight loss.

PAR. 11. By and through the statements and representations referred to in paragraphs nine and ten, respondent represents, and has represented, directly or by implication, that at the time respondent made those representations, respondent possessed and relied upon a reasonable basis for those representations.

PAR. 12. In truth and in fact, at the time respondent made the statements and representations referred to in paragraphs nine and ten, respondent did not possess and rely upon a reasonable basis for making those representations. Therefore, the representation as set forth in paragraph eleven was and is false and misleading.

PAR. 13. By and through the use of the statements set forth in subparagraphs (d), (e), and (f) of paragraph nine, and other statements not specifically set forth herein of similar import and meaning, respondent represents, and has represented, directly or by implication, that competent and reliable scientific evidence have proven

that UWCC diet programs are successful long-term or permanent treatments for obesity.

PAR. 14. In truth and in fact, competent and reliable scientific evidence have not proven that the UWCC diet programs are successful long-term or permanent treatments for obesity. Therefore, the representation set forth in paragraph thirteen was and is false and misleading.

COMPARATIVE PROGRAM CLAIMS

PAR. 15. Respondents advertising contains the following statements:

(a) "The Risk Reduction Program is the only weight control program developed to reduce the high incidence of heart attacks and other serious health problems among abdominally obese men." (Exhibit A-7)

(b) "FINALLY, A WEIGHT LOSS PROGRAM THAT WORKS EVEN AFTER YOU GO, OFF IT." (Exhibit A-4)

(c) "Most diets turn you into a yo-yo. Your weight goes down and up. The Permanence Program is different. . . . this may well be the most effective, most lasting, most medically sound weight loss program ever created." (Exhibit A-9)

(d) "The Permanence Program differs from other weight loss programs in many critical ways."

DIFFERENCE #1 PRESTIGIOUS TEACHING HOSPITAL AFFILIATIONS. The Permanence Program is the unique weight control program . . .

DIFFERENCE #2 COMPLETE MEDICAL SUPERVISION. Unlike other weight loss regimens, The Permanence Program is doctor-directed and monitored. . . .

DIFFERENCE #4 PROVEN LONG-TERM EFFECTIVENESS. It is no longer inevitable that you will gain back the weight you lose. You can join the many people who are successfully keeping it off with The Permanence Program. [INCLUDES THE CHART OF PP RESULTS OF SUSTAINED WEIGHT LOSS OVER A PERIOD OF 18 MONTHS, WITH AVERAGE WEIGHT LOSS OF 46.5 POUNDS & AVERAGE WEIGHT GAIN OF 4.5 POUNDS OVER 12 MONTHS.] (Exhibit A-8)

(e) "This is the first individualized, completely safe, medically-monitored nutrition education, behavior modification and physical exercise regimen. This unique and scientifically advanced program is affiliated with several of America's most prestigious private university teaching hospitals, as well as leading experts in obesity. . . .

With other diets and weight control programs, most people never really lose the weight. They just sort of misplace it for awhile. With the Permanence Program, the weight can be gone once and forever.” (Exhibit A-1)

(f) “[The Permanence Program] has provided thousands of patients who have been unsuccessful with other diet regimens with the opportunity to finally lose weight safely and rapidly, and keep it off.” (Exhibit A-8)

PAR. 16. By and through the use of the statements set forth in paragraph fifteen, and others not specifically set forth herein of similar import and meaning, respondent represents, and has represented, directly or by implication, that respondent’s diet programs are unique or superior to other diet programs in design and/or effectiveness in promoting weight loss or weight loss maintenance.

PAR. 17. By and through the statements and representations referred to in paragraphs fifteen and sixteen, and others not specifically set forth herein of similar import and meaning, respondent represents, and has represented, directly or by implication, that at the time respondent made those representations, respondent possessed and relied upon a reasonable basis for those representations.

PAR. 18. In truth and in fact, at the time respondent made the statements and representations referred to in paragraphs fifteen and sixteen, respondent did not possess and rely upon a reasonable basis for making those representations. Therefore, the representation as set forth in paragraph seventeen was and is false and misleading.

PAR. 19. The acts and practices of respondent alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce and “false advertisements” in violation of Sections 5(a) and 12 of the Federal Trade Commission Act, 15 U.S.C. 45(a) and 52.

EXHIBIT A-1

YOU'VE WON A LOT OF BATTLES, BUT YOU'VE NEVER WON THE WAR.

C3448
B141488

You've fought the good fight — lost all that weight — more times than you care to remember.

But, sadly, every weight loss program you've ever tried has ultimately failed you — left you defeated, your self-esteem shot. All those unwanted pounds marching crushingly home again.

(It's an age-old tale told by millions.)

Now, if you can marshal your energies for one last assault, we can assure that you will not only win your battle, but you will win your war.

The Permanence Program delivers medically-proven safe, healthy weight loss and long-term weight control.

There is no other program like it.

The Permanence Program is individually prescribed, doctor-monitored and metabolically designed for fat loss, not muscle loss.

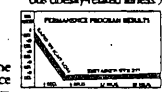
Medical research suggests that when you take off the right kind of weight — at least 75% fat — the chances that you will keep it off are significantly improved.



A team of doctors, registered dietitians and exercise physiologists starts with you and stays with you. Expect no shots and no pills.

Average sustained weight loss: 46.5 pounds. Average regain over 12 months: only 4.5 pounds.*

With The Permanence Program, sustained weight loss, with lasting health benefits, is patient-proven. For most patients, medical treatment is insurance-company approved. (After all, your insurance company would rather reimburse you for weight control than pay for a heart attack, high blood pressure or other serious obesity-related illness.)



The Permanence Program

is working for thousands of people. It will work for you.

With other diets and weight control programs, most people never really lose the weight. They just sort of misplace it for awhile. With the Permanence Program, the weight can be gone once and forever.

Schedule a free consultation at one of our offices. You're on your way, soldier. Victory is finally at hand.

Health Gains
BLOOD SUGAR DOWN 40%
CHOLESTEROL DOWN 11.5%
BLOOD PRESSURE DOWN 4.5%
GLUCOSE DOWN 34.8%

This is the first individualized, completely safe, medically-monitored nutrition education, behavior modification and physical exercise regimen.

This unique and scientifically advanced program is affiliated with several of America's most prestigious private university teaching hospitals, as well as leading experts in obesity.

Treatment is personal. Your individualized weight loss prescription is carefully adjusted on a weekly basis through both the weight loss and weight control phases.

WIN THE BATTLE. WIN THE WAR.

For medically-proven safe weight control,
CALL: 1-800-765-7475 OR: 1-212-697-8922

THE PERMANENCE PROGRAM

From United Weight Control in Allentown with ST. LUKE'S ROOSEVELT HOSPITAL CENTER

OFFICES IN: MANHATTAN EASTSIDE • MANHATTAN WESTSIDE • BROOKLYN HEIGHTS • NASSAU COUNTY • SUFFOLK COUNTY • ESSEX COUNTY NEW JERSEY
N.Y. Montefiore Apts Teaching Hospital Allentown St. Luke's Roosevelt Hospital Center, Long Island College Hospital, Wadsworth University Hospital

*Based on 27% weight loss. **The percent remaining in permanent phase. †12 months of follow-up. ‡In the last 60 days of follow-up. % In the last 90 days of follow-up.

EXHIBIT A-2

03446 814461

**A message
straight to the heart
of every overweight person.
We're your best hope.**

Two recent medical news reports significantly affect your life.

1. A study of 115,854 women (ages 30-55) reported in the prestigious New England Journal of Medicine indicates that being even slightly overweight significantly raises the risk of heart disease. The study also shows that women who carry 30% more weight than the ideal triple their risk of heart disease. In an accompanying editorial, Theodore B. Van Lathie, M.D., of St.

Health Gains	
BLOOD PRESSURE	DOWN 19.8%
CHOLESTEROL	DOWN 22.2%
TRIGLYCERIDES	DOWN 43.5%
GLUCOSE	DOWN 32.4%

Luke's-Roosevelt Hospital Center, in New York writes "... any remaining belief that some degree of obesity in women is safe is likely to be replaced by deep concern."

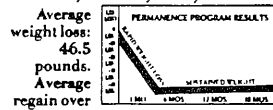
2. There is now a lot of debate about the effectiveness of many diet plans and weight approaches. In light of this publicity, experts agree that a physician-supervised, medically directed program with long-term nutrition education, behavior modification and exercise counselling is most effective.

You must lose the weight. And you must keep it off. But how do you deal with this new information?

The Permanence Program is the professional, doctor-supervised weight loss program.

The Program is advanced, medically-proven safe and long-term effective. It is individualized, doctor-directed, and metabolically designed for fat loss, not muscle loss.

The Program includes nutrition education, long-term behavior modification and exercise counseling. A team of doctors, exercise physiologists and registered dietitians starts with you and stays with you.



Average weight loss: **46.5 pounds.**
Average regain over 12 months: **only 4.5 pounds.****

For most patients, medical treatment is insurance company-covered. Obesity causes heart disease. Heart disease kills. Enroll in the professional weight control program that offers you an opportunity to lose weight safely and rapidly, and keep it off.

Listen to your heart and use your head.

Call for a free consultation.
1-800-765-7475 OR 1-516-772-8922

JOIN THE PERMANENCE PROGRAM
IN AFFILIATION WITH **WINTHROP UNIVERSITY HOSPITAL**

OFFICES IN: MANHATTAN EASTSIDE • MANHATTAN WESTSIDE • NASSAU COUNTY
SUFFOLK COUNTY • ESSEX COUNTY, NEW JERSEY • PHILADELPHIA • BOSTON

N.J. Metropolitan Area Teaching Hospital Affiliations: St. Luke's-Roosevelt Hospital Center, Long Island College Hospital, Winthrop University Hospital

*Based on 271-weight loss.
**To get your insurance or insurance carrier 12 months or longer who have been enrolled in the Permanence Program in affiliation with St. Luke's-Roosevelt Hospital Center in New York City.
In New York, N.J., Medical Services, P.A.; In New Jersey, West Jersey Health Services, P.A.
© 1988 United Weight Control Corp.

*Special financing plans also available.

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Complaint

EXHIBIT A-3

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COLOMBIA
 Guerrillas are trying to sabotage the pipeline to Coveñas.

But it is the guerrillas' petroleum pipeline pumping from Cali for vital oil to the north that has 80,000 barrels a day. The guerrillas' petroleum pipeline pumping from Cali for vital oil to the north that has 80,000 barrels a day. The guerrillas' petroleum pipeline pumping from Cali for vital oil to the north that has 80,000 barrels a day.

Foreign Companies Are on Two Oil Work is to start next year and a 300-mile pipeline is being built. The guerrillas' petroleum pipeline pumping from Cali for vital oil to the north that has 80,000 barrels a day.

Guerrillas are trying to sabotage the pipeline to Coveñas.

Doctors at

Medical Centers have joined to develop the first

program that would safely and effectively address the nation's obesity problems.

L. to R: Steven Peilan, M.D.; Arthur Frank, M.D.; Harold Solomon, M.D.



Doctors at
Medical Centers
announce a new approach

Exhibit A-3 (1 of 3pgs)

EXHIBIT A-3

C3448 B141488



**Doctors at
university medical centers
announce a new approach
to weight control.**

Recent medical advances have resulted in a unique and safe approach to weight loss and long-term weight control that focuses on significantly reducing health risk factors.

These new comprehensive United Weight Control Programs are offered in affiliation with some of America's finest University Medical Centers, and are staffed by physicians and health care professionals at those centers.

"Weight reduction diets should be tailored

ing Healthy Choice® entrees and ADJUST-A-CAL™ formula diet.

Programs are different for men and women. The goal of the Risk Reduction Program for men is to get rid of dangerous abdominal fat, and reduce risk of heart attack, stroke and diabetes. The Permanence Program addresses the problem of losing and regaining weight repeatedly.

More than just weight loss, health gains. Most patients experience significant lowering of blood pressure, cholesterol, triglyceride and glucose levels. Further, the programs are designed to preserve lean

Complaint

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EXHIBIT A-3

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stated by physicians and health care professionals at those centers.

"Weight reduction diets should be tailored to the individual needs of the patient; it makes no sense to offer the same diet to all overweight patients." — Theodore Van Itallie, M.D., St. Luke's-Roosevelt Hospital Center, Columbia College of Physicians and Surgeons.

regaining weight repeatedly. **More than just weight loss, health gains.** Most patients experience significant lowering of blood pressure, cholesterol, triglyceride and glucose levels. Further, the programs are designed to preserve lean muscle tissue—most of your weight loss should be fat loss. These university hospital affiliated United Weight Control Programs now make it easier to attain and maintain a healthy, attractive weight level. Medical treatment is usually covered by private health insurance. *Flexible, affordable payment plans are available.* If you have the will, this is the way.

Treatment is individualized, and features a new food/formula program. You get the medical supervision, calorie prescription, nutrition and exercise counseling that's right for your metabolism and your lifestyle. *Choose a menu that includes nutritious and appetiz-*

FOR A FREE CONSULTATION, CALL:
MANHATTAN EASTSIDE 212-697-8922
MANHATTAN WESTSIDE 212-956-8922
NASSAU COUNTY 516-742-8922

Steven R. Peikin, M.D.

Thomas Jefferson University Hospital
Assoc. Professor of Medicine
Jefferson Medical College

Arthur S. Jand, M.D.

George Washington University Hospital
Clin. Assoc. Professor of Medicine
George Washington University Medical Center

Janell Shuman, MD

Brigham and Women's Hospital
Asst. Clin. Professor of Medicine
Harvard Medical School

UNITED WEIGHT CONTROL PROGRAMS
ST. LUKE'S-ROOSEVELT HOSPITAL CENTER
in affiliation with

OTHER UNITED WEIGHT CONTROL PROGRAM OFFICES IN PHILADELPHIA AND BOSTON.

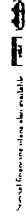


EXHIBIT A-4

FINALLY A WEIGHT LOSS PROGRAM THAT WORKS EVEN AFTER YOU GO OFF IT.

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This may well be the most medically sound weight loss program ever created, developed in affiliation with the esteemed St. Luke's-Roosevelt Hospital Center.

With it, you will lose weight quickly, safely, intelligently. And, if you adhere to our program, you will keep it off.

FREE CONSULTATION

Visit one of our offices and see how our health care professionals* test and monitor each individual.

Learn how they individualize your weight loss program. Each week, in fact, they customize the amount of formula diet prescribed for you—and then gradually introduce you to a nutritionally sound weight maintenance diet.

Listen to us explain why our program concentrates on the quality of weight you lose, ensuring you lose mostly fat, not lean tissue.

And, let us show you how the quality of the education and related behavior modification we provide will help you keep off the weight you lose.

MEDICAL INSURANCE COVERAGE

In most cases you will find that our program will qualify under your medical insurance.

THE FACTS:

477 POUNDS
AVERAGE
WEIGHT LOSS



ONLY 5.7
POUNDS
REGAINED!

This graph encompasses all current patients who have been through our weight loss program, and have participated in our maintenance program for at least four months. Program patients have lost 17-134 pounds. Average time in our maintenance program is 29.3 weeks.

That's because we're not a fad diet, not merely a formula diet given without proper medical supervision. This is a serious, professionally supervised program that has worked for thousands of others.

Our program's patients have experienced significant improvement in their blood pressure, cholesterol, triglyceride and glucose levels.

CALL

Call today. Schedule an appointment for a free consultation..

THE PERMANENCE PROGRAM

FROM UNITED WEIGHT CONTROL
IN AFFILIATION WITH ST. LUKE'S-ROOSEVELT HOSPITAL CENTER

NOW OPEN IN BROOKLYN: 718-858-8922 MANHATTAN: 212-956-8922 NASSAU: 516-742-8922
In Affiliation With Long Island College Hospital In Affiliation With St. Luke's-Cosgrove Hospital Center In Affiliation With Winthrop University Hospital
SUFFOLK: 516-366-0200 ESSEX COUNTY NEW JERSEY: 201-228-2388
In Affiliation With Community Hospital Of Western Suffolk In Affiliation With St. Luke's-Roosevelt Hospital Center
In New York: Morton H. Marwedel, M.D., F.C. In New Jersey: West Essex Health Services, PA

EXHIBIT A-5

C3448 B141488

FAD DIETS Vs. THE PERMANENCE PROGRAM

You can jump from one fad diet to the other or you can lose weight once. And forever.

The Permanence Program, developed in affiliation with the esteemed St. Luke's-Roosevelt Hospital Center may well be the most medically sound weight loss program ever created.

You will lose weight quickly, safely, intelligently. More importantly you'll keep it off.

Our individually prescribed weight loss and nutritionally sound weight maintenance programs are led by a highly qualified team of doctors, registered dietitians and exercise physiologists.

THE FACTS

473 POUNDS
AVERAGE
WEIGHT LOSS

ONLY 5.3
POUNDS
RE-GAINED!

This graph compares the average weight loss of patients who remain in the program for 12 months with the average weight loss of patients who drop out of the program after 12 weeks. The graph shows that patients who remain in the program for 12 months lose an average of 473 pounds, while patients who drop out of the program after 12 weeks lose an average of only 5.3 pounds.

A recent study indicates that patients who remain in the program lose an average of 473 pounds (from 17 to 134 pounds). They lose mostly fat, not lean tissue. Their blood pressure, cholesterol, glucose and triglyceride levels also improve.

Most patients are even reimbursed by their health insurance.

The Permanence Program has worked for thousands. It can work for you too.

Call today for your free consultation at one of our conveniently located out-patient offices. Convenient office hours available to meet your busy schedule.

THE PERMANENCE PROGRAM™
FROM UNITED WEIGHT CONTROL
IN AFFILIATION WITH ST. LUKE'S-ROOSEVELT HOSPITAL CENTER

AT NEARBY CONVENIENT LOCAL OFFICES

NASSAU: 516-742-8922 SUFFOLK: 516-366-0200 MANHATTAN: 212-956-8922
In Affiliation With Winthrop University Hospital In Affiliation With Connecticut Hospital Of Neurological In Affiliation With St. Luke's-Roosevelt Hospital Center

ESSEX COUNTY NEW JERSEY: 201-228-2388 NOW OPEN IN BROOKLYN: 718-858-8922
In Affiliation With St. Luke's-Roosevelt Hospital Center In Affiliation With Long Island College Hospital

In New York: Manhattan: H. Harwood, M.D., P.C. In New Jersey: West Coast Health Services, P.A.

Exhibit A-5

EXHIBIT A-6

C3448
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THE "LOVE NEW YORK" DIET
 THE SCARSDALE DIET
 THE BEVERLY HILLS DIET
 THE AIRLINE STEWARDESSES DIET
 THE FIT FOR LIFE DIET
 THE FAT TO WIN DIET
 THE BLOOMINGDALES AT HEALTHY DIET
 THE GRAPEFRUIT DIET
 THE WATER DIET
 THE DRINKING MAN'S DIET
 THE RICE DIET
 THE NUTRITECH DIET
 THE BANANA DIET
 THE WHITE DIET
 THE NEVER SAY DIET DIET
 THE SUNFAST DIET
 THE CIDER VINEGAR DIET
 THE WEB DIET
 THE CALIFORNIA DIET
 THE CAMBRIDGE DIET
 THE ACURON DIET
 THE TONE TABS DIET
 THE AIDS DIET
 THE HOLLYWOOD PINEAPPLE DIET
 THE RINKERS DIET
 THE LONG WEEKEND DIET
 THE BAHAMIAN DIET
 THE STEAK AND SALAD DIET
 THE BRAIN DIET
 THE NUTRISYSTEMS DIET
 THE L.A. DIET
 THE POPCORN DIET
 THE ROTATORS DIET
 THE WILD WEEKEND DIET
 THE UNDERBURNER'S DIET
 THE DIET CENTER DIET
 THE 7 DAY DIET
 THE DR. ATKINS DIET REVOLUTION DIET
 THE DIETS DON'T WORK DIET
 THE IMAGINE POWER DIET
 THE L.A. DIET FOR WOMEN
 THE PASTA DIET
 THE POST PREGNANCY DIET
 THE FACTOR DIET
 THE 7 WEEK VICTORY DIET
 THE NEW AMERICAN DIET
 THE DIET TYPE WEIGHT LOSS PROGRAM
 THE APPLE JARS
 THE JENNY CRAIG DIET

YOU CAN KEEP TRYING DIETS OR YOU CAN LOSE WEIGHT ONCE AND FOREVER.

THE PERMANENCE PROGRAM
 FROM UNITED WEIGHT CONTROL
 10000 UNIVERSITY BLVD. SUITE 1000
 BOSTON, MA 02116

MEMPHIS 712-971-9922
 BOSTON 617-447-9911
 BIRMINGHAM 205-342-9911
 BUREAU 1-800-368-9911
 CHARLOTTE 704-342-9911
 CHICAGO 312-342-9911
 CINCINNATI 513-342-9911
 CLEVELAND 216-342-9911
 DALLAS 214-342-9911
 DENVER 303-342-9911
 DETROIT 313-342-9911
 HOUSTON 713-342-9911
 LOS ANGELES 213-342-9911
 MIAMI 305-342-9911
 MINNEAPOLIS 612-342-9911
 NEW YORK 212-342-9911
 OMAHA 402-342-9911
 PHOENIX 602-342-9911
 PORTLAND 503-342-9911
 SAN ANTONIO 214-342-9911
 SAN DIEGO 619-342-9911
 SAN FRANCISCO 415-342-9911
 SEATTLE 206-342-9911
 TAMPA 813-342-9911
 WASHINGTON 202-342-9911
 WICHITA 316-342-9911

Exhibit A-6

EXHIBIT A-7

ONE OUT OF FOUR AMERICAN MEN IS SERIOUSLY OVERWEIGHT. THEY'RE JUST ASKING FOR A HEART ATTACK.

JOIN THE RISK REDUCTION PROGRAM In affiliation with ST. LUKE'S ROOSEVELT HOSPITAL CENTER

Medical research indicates that 25% of American men are dangerously overweight, and are at significantly increased risk of suffering a heart attack or stroke, developing diabetes, or even dying suddenly.

TAKE THIS 30-SECOND HEART ATTACK TEST
Take off your belt and use it as a measuring tape.
First, put it around your hips.
Next, put it around your waist. If your waist is bigger than your hips, you are a prime candidate for a heart attack.

The Risk Reduction Program is the only weight control program developed to reduce the high incidence of heart attacks and other serious health problems among abdominally obese men.

Many important features make it the only program of its kind.

**DIFFERENCE #1
PRESTIGIOUS TEACHING HOSPITAL AFFILIATIONS.**

The Risk Reduction Program is the unique, presently rapid and safe way to get

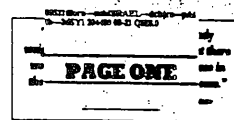
rid of dangerous abdominal fat and associated health risks. It was designed by leading cardiac and obesity experts in affiliation with America's most prestigious teaching hospitals. Treatment includes use of the most advanced knowledge in the fields of Nutrition Education, Behavior Modification, Exercise Counseling, and Stress Management.

**DIFFERENCE #2
COMPLETE MEDICAL SUPERVISION.**

The Risk Reduction Program is doctor-directed and monitored. A team of doctors, registered dietitians and exercise physiologists starts with you and stays with you.

**DIFFERENCE #3
EMPHASIS ON ELIMINATING ABDOMINAL FAT.**

This serious, medically supervised outpatient program is uniquely tailored to strip off twenty to thirty pounds of fat in just 12 weeks. Improvement occurs quickly. Patients experience significant lowering of blood pressure and cholesterol, triglyceride and glucose levels. An important point is that you need not go through this program more than once. You learn how to keep the weight off so health benefits can become permanent.



**DIFFERENCE #4
INDIVIDUALIZED FOR LIFESTYLE AND METABOLIC DIFFERENCES.**

The Risk Reduction is the only weight control approach that doesn't force the same standardized diet prescription on every patient. It recognizes that every patient has lifestyle and metabolic characteristics that require individualized treatment.

**DIFFERENCE 5
PROVEN LONG-TERM EFFECTIVENESS.**

Join the many men who have successfully utilized The Risk Reduction Program to markedly reduce the risk of heart attack by losing abdominal fat quickly. For most patients, medical treatment is insurance company covered.

**CALL FOR A FREE CONSULTATION.
1-800-765-RISK or 212-697-8922**

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**MOST PEOPLE
WHO LOSE WEIGHT
GAIN IT BACK.**

**BE THE PERSON
WHO DOESN'T.**

EXHIBIT A-8


JOIN THE PERMANENCE PROGRAM™
ST. LUKE'S ROOSEVELT HOSPITAL CENTER

The Permanence Program was developed to minimize the high incidence of weight regain associated with diet plans and weight loss regimens. It has provided thousands of patients who have been unsuccessful with other diet regimens with the opportunity to finally lose weight safely and rapidly, and keep it off.

The Permanence Program differs from other weight loss programs in many critical ways.

**DIFFERENCE #1
PRESTIGIOUS TEACHING HOSPITAL AFFILIATIONS.**

The Permanence Program is the unique weight control program designed by leading obesity experts in affiliation with America's most prestigious medical school teaching hospitals. Treatment utilizes the most advanced knowledge in the fields of Nutrition Education, Behavior

Modification and Exercise Counseling.

**DIFFERENCE #2
COMPLETE MEDICAL SUPERVISION.**

Unlike other weight loss regimens, The Permanence Program is doctor-directed and monitored. A team of doctors, registered dietitians and exercise physiologists starts with you and stays with you.

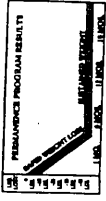
**DIFFERENCE #3
INDIVIDUALIZED FOR LIFESTYLE AND METABOLIC DIFFERENCES.**

The Permanence Program is the only medically directed weight control approach that doesn't force the same standardized diet prescription on every patient. It recognizes that every patient has lifestyle and metabolic differences that require individualized treatment. That's why, unlike other weight loss regimens, The Permanence Program can be metabolic.

ically designed to achieve primarily fat loss, not muscle loss.

**DIFFERENCE #4
PROVEN LONG-TERM EFFECTIVENESS.**

It is no longer inevitable that you will gain back the weight you lose. You can join the many people who are



successfully keeping it off with The Permanence Program.


For most patients, medical treatment is insurance company covered.

CALL FOR A FREE CONSULTATION.

MANHATTAN EASTSIDE 212-697-8922
 MANHATTAN WESTSIDE 212-956-8922
 NASSAU COUNTY ** 516-742-8922

OTHER PERMANENCE PROGRAM OFFICES IN PHILADELPHIA AND BOSTON

*Weight reduction resulting in maintenance phase 13 weeks or longer. / In New York, N.Y. Medical Services, P.C. / **In affiliation with Weill-Cornell University Hospital

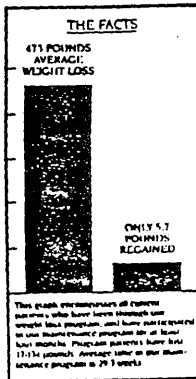
Special financing plans also available. 

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WITH THE PERMANENCE PROGRAM YOU ONLY HAVE TO LOSE WEIGHT ONCE.

Most diets turn you into yo-yo. Your weight goes down and up. The Permanence Program is different. Developed in affiliation with the esteemed St. Luke's-Roosevelt Hospital Center, and leading obesity experts, this may well be the most effective, most lasting, most medically sound weight loss program ever created. Our individually prescribed formula diet and nutritionally sound weight maintenance programs are led by a qualified team of doctors, registered dietitians and exercise physiologists. This isn't a diet factory. We're serious about helping you lose weight quickly, safely, intelligently.



More importantly, we're committed to helping you keep it off. A recent study indicates that patients who remain in the program lose an average of 473 pounds (from 17 to 134 pounds). They lose mostly fat, not lean tissue. Their blood pressure, cholesterol, glucose and triglyceride levels also improve. Most patients are even reimbursed by their health insurance. The Permanence Program has worked for thousands. It can work for you too. Call today for your free consultation at one of our conveniently located out-patient offices. Convenient office hours to meet your busy schedule.

THE PERMANENCE PROGRAM™

FROM UNITED WEIGHT CONTROL
IN AFFILIATION WITH ST. LUKE'S-ROOSEVELT HOSPITAL CENTER
AT NEARBY CONVENIENT LOCAL OFFICES

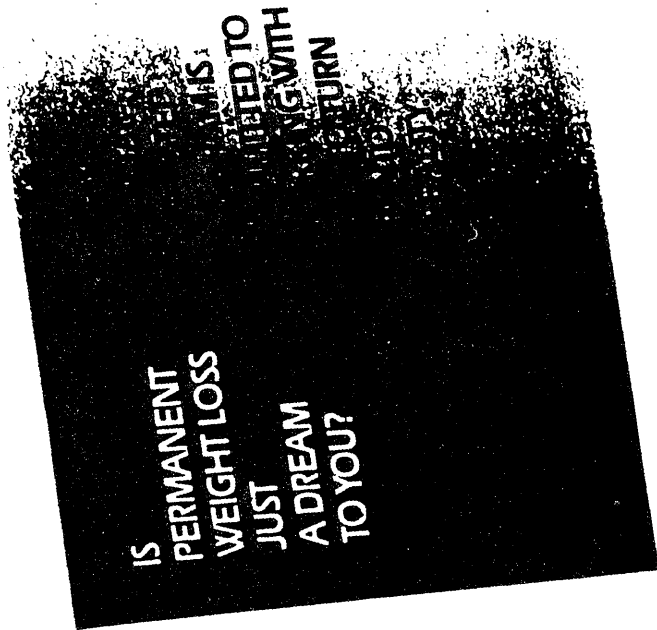
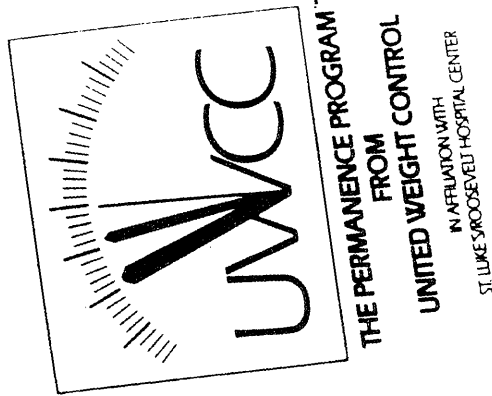
NEW YORK: 514-742-8922 SUFFOLK: 516-366-0200 MANHATTAN: 212-956-8922
 ALBANY: 518-486-2222 ALBANY: 518-486-2222 ALBANY: 518-486-2222
 ESSEX COUNTY NEW JERSEY: 201-228-2388 NOW OPEN IN BROOKLYN: 718-858-8922
In Affiliation With St. Luke's-Roosevelt Hospital Center In Affiliation With Long Island College Hospital
The New York, Manhattan 11 Madison St., M.D., P.C. In New Jersey: West Essex Health Services, PA.

NEWSDAY, TUESDAY, MAY 20, 1989

117

EXHIBIT B-1

B141488



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Complaint

EXHIBIT B-1

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For millions of Americans who are seriously overweight, life has turned into a heartbreaking chain of failed diets. The weight loss achieved today with such great effort is regained usually in a few short months.

If you are one of these people, discouraged with your inability to get control of your weight and worried about the health problems excessive weight may cause... there's a new hospital-affiliated out-patient program that may at last work with you for a permanent solution.

Now, United Weight Control (UWCC) has developed a comprehensive weight control program that we believe is the most advanced of any in existence. It is medically supervised from start to finish. Chief Medical Advisor to the United Weight Control Program is Dr. Theodore Van Itaille, of St. Luke's/Roosevelt Hospital Center, in New York City, a world renowned obesity specialist.

THE TWO SECRETS TO IMPROVING YOUR CHANCES FOR PERMANENT WEIGHT CONTROL

What makes this program so different from others is its focus on two principles of success which are easy to state but can only be carried out by our highly trained professional staff.*

- Medical Doctors
- Registered Dietitians
- Exercise Physiologists
- Registered Nurses
- Behavioral Counselors

*UWCC is a Medical Services Co. in N.Y. State (Even Health Services, Inc.)

Complaint

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EXHIBIT B-1

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B141488**PRINCIPLE ONE: LOSING FAT, NOT LEAN TISSUE**

For too many years, the treatment of obesity has been conducted in an unscientific, simplistic manner. Most programs assume all weight loss is good, the faster the better.

Such programs often sacrifice the quality of weight loss for quantity. Too much weight lost is valuable lean body mass (water, muscle and organ tissue) instead of fat. Medical research has shown this kind of poor quality weight loss can be dangerous and may contribute to the familiar "yo-yo syndrome" of rapidly regaining lost weight once the diet is over.

The UWCC Permanence Program has been designed to ensure that the weight you lose will be high quality (primarily fat). High quality weight loss is healthier and makes it easier for you to maintain your reduced weight for a long period of time.

PRINCIPLE TWO: INDIVIDUALIZED ATTENTION FROM START TO FINISH

Your weight control problem is as complex and unique as your fingerprint.

UWCC Permanence Program addresses your personal needs with an individualized program that is monitored weekly by our personal staff. You'll receive the precise amount of formula diet you need each week to lose fat fast. And our exercise physiologists are available to give you individualized exercise programs.

This individualized attention doesn't stop when you lose the weight...it continues throughout a maintenance phase. UWCC Permanence Program incorporated eating and exercise habits into your lifestyle that will allow you to keep your weight in control.

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Complaint

EXHIBIT B-1

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PROVEN SUCCESS

Of current patients who have completed the weight loss phase and have participated in the maintenance program for 4 or more months:

Average Weight Loss in Weight Loss Phase	47.3 LBS.
Average Weight Regained (Average 29.3 Weeks)	5.7 LBS.

Another survey of patients revealed that most of their weight loss was body fat.

Composition of Weight Loss 85-92% FAT

THE HEALTH BENEFITS

Obesity is associated with an increased risk of high blood pressure, diabetes, heart disease, cancer and even sudden death!

The UMCC Permanence Program specializes in the treatment of moderate to severe obesity which is often accompanied by obesity-related health problems. A recent study of the program's patients found that nearly 90% had obesity-related medical conditions when they began the program. After an average of 10 weeks in the weight loss program, these patients' health status had improved dramatically. The study found impressive reductions in blood pressure, cholesterol, blood sugar and other risk factors as patients lost their excess body fat.

In most cases you will find that our program will qualify under your medical insurance. That's because we're not a fad, not merely a diet given without proper medical supervision. This is a serious, professionally supervised program.

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HOW THE UWCC PERMANENCE PROGRAM WORKS

ACCEPTANCE PHASE

You will receive an obesity-oriented evaluation by a staff physician to determine your individual needs and treatment plan. After you are accepted into the program, a physician and registered dietitian will outline a plan tailored to meet your individual requirements.

WEIGHT LOSS PHASE

Once a week you will return to UWCC for monitoring by our program physicians, nurses, and registered dietitians to ensure the program is working. During your weekly visit you will attend group education sessions devoted to nutrition and exercise education as well as learning the behavioral skills and techniques necessary to provide you the best opportunity to lose excess fat rapidly, safely and permanently.

During the rapid fat loss phase, you will consume the number of complete UWCC formula diet, individually prescribed for you. Your program physician will permit you to continue to lose weight of quality while being assured of the utmost safety.

MAINTENANCE PHASE

Once you have achieved your goals in the weight loss phase of the program, you will advance to the maintenance phase. This consists of weekly group meetings and continuing education devoted to assisting you in setting and achieving new goals to increase the level of physical activity and fitness. Our commitment is to help you maintain your new weight for the rest of your life.

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Complaint

EXHIBIT B-1

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THE UWCC PERMANENCE PROGRAM:

- Unique emphasis on losing fat, not lean tissue
- Individualized program of diet, exercise and counseling
- Strict medical supervision
- Superior educational program
- Proven long-term weight loss success
- Wholly owned — not franchised
- Hospital-affiliated

HOW TO FIND OUT IF THE UWCC PERMANENCE PROGRAM IS FOR YOU.

The program is not for everybody. Casual dieters hoping to lose a few pounds will find it's not for them. But if you are serious about losing weight, if your health and self esteem are threatened by your weight problem, the United Weight Control Permanence Program may be perfect for you.

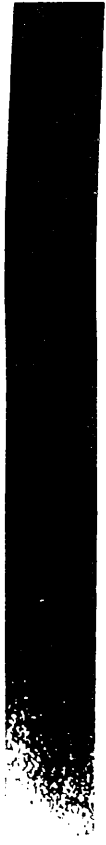
While you're in the program, we want to involve your own physician, keeping him or her informed throughout the process.

Here's what to do: just call the listed number and make an appointment to visit the United Weight Control Permanence Program nearest you for a free orientation.

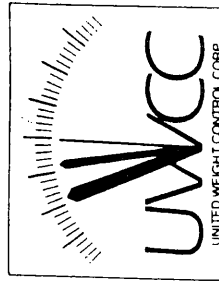
Remember, in most cases you will find that our program will qualify under your medical insurance.

EXHIBIT B-1

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THE PERMANENCE PROGRAM™
FROM
UNITED WEIGHT CONTROL
THE SCIENTIFIC WAY TO PERMANENT WEIGHT LOSS



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 New York Regional Office 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 has 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 United Weight Control Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 226 East 54 Street, New York, New York.

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

ORDER

DEFINITIONS

A. For purposes of the order, “*competent and reliable scientific evidence*” shall mean those tests, analyses, research, studies, 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.

I.

It is ordered, That respondent United Weight Control Corp., a corporation, its successors and assigns, officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, or sale of any weight loss or weight control product, service, or 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, regarding the safety of any very-low-calorie diet (“VLCD”) program (providing 800 calories or less per day), unless respondent clearly and prominently discloses in close proximity to any such representation that physician monitoring is required to minimize the potential for health risks, or otherwise misrepresenting any health risk of the program.

B. Misrepresenting, directly or by implication, the likelihood that patients in respondent’s diet program(s) will regain all or any portion of lost weight.

C. Making any representation, directly or by implication, about the success of patients of any diet program in achieving or maintaining weight loss or weight control, unless, at the time of making such representation, respondent possesses and relies upon a reasonable basis consisting of competent and reliable scientific evidence substantiating the representation; *provided, however*, that for any representation that:

1) Any weight loss achieved or maintained through any diet program is typical or representative of all or any subset of patients in the program, said evidence shall, at a minimum, be based on a representative sample of: (a) all patients who have entered the program, where the representation relates to such persons; or (b) all patients 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 patients who were followed for a period of at least two years after their completion of the respondent's program (including any periods of participation in respondent's maintenance program); and

3) Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of patients 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 to constitute a reasonable basis 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.

D. Representing, directly or by implication, that any patients of any diet program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in close proximity to such representation:

1) The following information:

(a) The average percentage of weight loss maintained by those patients,

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

(c) If the patient population referred to is not representative of the general patient population for that program, the proportion of the total patient population in respondent's programs that those patients represent, expressed in terms of a percentage or actual numbers of patients, or the statement: "United Weight Control Corp. makes no claim that this [these] result[s] is [are] representative of all patients in the United Weight Control Corp. program;" and

2) The statement :

"For many dieters, weight loss is temporary," *provided, however*, that, respondent shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondent's programs.

E. Making comparisons between the design, safety, or effectiveness of respondent's diet program or programs and the design, safety, or effectiveness of any other diet program or programs, unless at the time of making such representation, respondent possesses and relies upon a reasonable basis for making such representation. Such reasonable basis shall consist of competent and reliable scientific evidence substantiating the representation in terms of both the design, safety, or effectiveness of respondent's diet program or programs and the design, safety, or effectiveness of the other diet program or programs with which the comparison is made.

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

II.

It if 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(s) that may affect compliance obligations arising out of this order.

III.

It is further ordered, That respondent shall maintain for a period of five (5) years after the date the representation was last made, and make available to the Federal Trade Commission staff upon request for inspection and copying, all materials possessed and relied upon to substantiate any claim or representation covered by this order, and all test reports, studies, surveys or information in its possession or control or of which it has knowledge that contradict, qualify or call into question any such representation.

IV.

It is further ordered, That within 15 days after the service of this order on respondent, respondent and its successors or assigns, shall distribute a copy of this order to each of its officers, co-venturers, agents, representatives, independent contractors, and employees, including participating hospitals or clinics, that are engaged in the preparation and placement of advertisements or promotional materials, who communicate with patients or prospective patients, or who have any responsibilities with respect to the subject matter of this order; and, for a period of ten (10) years from the date of entry of this order, distribute same to all of respondent's future officers, agents, representatives, independent contractors and employees having said responsibilities.

V.

It is further ordered, That respondent and its successors or assigns shall, within thirty (30) days after service of this order, advise physicians, hospitals, and clinics using the United Weight Control Corp. diet programs that advertising and promotional materials previously furnished by respondent for their use and dissemination to patients and prospective patients, shall not be further used by those physicians, hospitals, and clinics where the advertising or promotional materials would violate this order; and respondent

further shall attempt to insure that such advertising or other materials shall not be further used by physicians, hospitals, and clinics using the United Weight Control Corp. diet programs.

VI.

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

SEPARATE STATEMENT OF COMMISSIONER MARY L. AZCUENAGA CONCURRING IN PART AND DISSENTING IN PART

I concur with the Commission's decision to accept the settlement but dissent as to the inclusion in the complaint of paragraph 15(a). Paragraph 15(a) recites United Weight Control's claim that its Risk Reduction Program is the "only" weight control program developed to "reduce the high incidence of heart attacks and other serious health problems among abdominally obese men." The claim conveys that there is a focus unique to the Risk Reduction Program, one of minimizing heart attack risk in obese men, in addition to the goal of achieving weight control.

It is not clear to me that we should challenge the claim of uniqueness in paragraph 15(a) for lack of substantiation, when there is at least some, albeit casual, substantiation to form a reasonable basis for the claim.¹ Considering the factors enunciated in *Pfizer, Inc.*, 81 FTC 23 (1972), that we weigh in determining the appropriate level of substantiation in a given case, a relatively low level of substantiation should be sufficient for the uniqueness claim in this

¹ Paragraph 15 of the complaint lists numerous statements that United Weight Control has made in its advertisements, and paragraph 16 characterizes the statements in paragraph 15 as representations of uniqueness or superiority "in design and/or effectiveness in promoting weight loss or weight loss maintenance." While the other claims recited in paragraph 15 do convey that United Weight Control's programs are unique or superior in promoting weight loss or weight control, I question whether the uniqueness claim in paragraph 15(a) falls within the scope of paragraph 16. The statement in paragraph 15(a) describes a uniqueness in qualities other than weight loss or weight control. As drafted, therefore, paragraph 15(a) appears to be outside the theory of the case pleaded in the complaint.

instance. In addition, if other competitors have the same, or similar, programs dealing with reduction of heart attack risks, those competitors could easily rebut United Weight Control's uniqueness claims by advertising the health risk reduction aspects of their own programs.² Indeed, consumers might benefit from this response.

In this instance, given the potential usefulness of the information to consumers, absent a showing of consumer injury from the claim,³ and with some evidence that the claim may be true, we would serve consumers better by leaving the claim unchallenged.

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

The consent order with this marketer of very low calorie diets appropriately addresses several concerns regarding its advertising of safety, efficacy and other claims. However, as explained below, I disagree with certain aspects of the remedy in this matter. I also conclude that there is insufficient evidence to support a reason to believe that United Weight Control's alleged comparative program claims have violated the Federal Trade Commission Act. Accordingly, I dissent in part from the Commission's decision to issue this consent order.

As my statement accompanying the Commission's decision on three previous very low calorie diet orders explains,¹ I believe that the disclosures required when weight-loss maintenance claims are made will likely be too complex to be effective in enlightening consumers during short radio or TV ads. Consequently, I continue to

² If such competitors choose the same advertising medium as United Weight Control, *i.e.*, local newspapers, they should be able to communicate their corrective, competitive claims relatively inexpensively.

³ The claim that the program focuses, in part, on reducing risk factors associated with heart attack is true. The issue is whether the program is sufficiently distinct from other diet programs to make it unique. If it is true that the Risk Reduction Program is substantially the same as other diet programs, the consumer is not necessarily injured by the selection of that program over others. Nevertheless, a consumer might be injured if he or she were persuaded to select the Risk Reduction Program over other programs that provided the same service at less cost.

¹ 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, August 10, 1992.

support an alternate approach to such disclosures in which a more concise disclosure would be permitted for broadcast ads, and supplemented with a requirement of full disclosure at point of sale.²

Concerning United Weight Control's comparative program claims, I particularly disagree with challenging the claim about its Risk Reduction Program, which is set out in paragraph 15(a) of the complaint.³ First, United Weight Control appeared to have some evidence to substantiate the claim that this program is unique in addressing cardiac health risks among men. Second, the comparative claims here are unlike those in some previous cases, which were fairly specific with respect to competing services or products, made use of quantitative data to purport a distinction between the advertiser and competitors,⁴ or invoked studies or tests.⁵ Requiring a higher level of substantiation for these kinds of stronger comparative claims may be appropriate. However, none of these conditions seems to apply very well to United Weight Control's comparative claims generally. Ultimately, of course, a claim's ability to deceive depends on consumers' interpretations and their expectations on substantiation. Unfortunately, in my view, there is insufficient information on actual consumer reactions to these claims. All in all, I conclude that the evidence is too weak to support challenging United Weight Control's comparative claims, and consequently I dissent from the

² While I agree that there is sufficient reason to believe that United Weight Control's weight-loss maintenance claims violate the FTC Act, it is worthy of note that some of these claims appear in a context that plausibly yields alternative interpretations. In particular, the ad shown in Exhibit A-4 contains not only the strong maintenance claim cited in paragraph 9(a) of the complaint ("Finally, a weight loss program that works even after you go off it."), but explicitly features a caveat that weight-loss maintenance is conditioned on adherence to the firm's program. This caveat, plus the ad's explicit reference to weight-loss maintenance results of patients who have participated in an United Weight Control "maintenance program," might suggest another interpretation that merely losing weight in an United Weight Control program does not constitute a permanent or long-term remedy of weight control problems. Without additional information on consumer reactions, however, it remains unclear how many, if any, consumers would hold such an interpretation.

³ In this regard, I am allied with Commissioner Azcuenaga's thoughtful statement.

⁴ See, e.g., claims involving quantitative efficacy comparisons with "commercial" weight loss programs in the proposed complaint in Health Management Resources, File No. 912-3303.

⁵ See, e.g., comparative efficacy and safety claims referring to supporting studies in the accompanying complaints in Sandoz Nutrition Corp., C-3394 (Aug. 10, 1992) and National Center for Nutrition, C-3393 (Aug. 10, 1992).

Commission's decision to allege a violation and seek relief in connection with these claims.

Finally, I am puzzled by, and therefore dissent with respect to the requirement in the order which requires United Weight Control to maintain relevant records for a period of five years. Previous orders with very low calorie diet marketers, and the now pending proposed order for Health Management Resources, require that records be maintained for only three years. I am not currently aware of any justification for imposing on United Weight Control, which happens to be one of the smaller marketers of very low calorie diets, a greater compliance burden than that placed on these other firms.

IN THE MATTER OF

AMERICAN INDUSTRIAL REAL
ESTATE ASSOCIATION, ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3449. Complaint, July 6, 1993--Decision, July 6, 1993*

This consent order prohibits, among other things, a Los Angeles area multiple listing service ("MLS") specializing in industrial properties from conditioning broker membership in the MLS on being primarily engaged in industrial real estate brokerage, or on the amount of industrial real estate experience the brokers have, or on the dollar volume of their business. In addition, the agreement prohibits the respondents from restricting any broker's offering or accepting any exclusive agency listing, or requiring disclosure of commissions that deviate from normal commission rates.

*Appearances*For the Commission: *Paul R. Roark.*For the respondents: *Eliot G. Disner, Shapiro, Posell, Rosenfeld & Close, Los Angeles, CA.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that American Industrial Real Estate Association ("A.I.R."), a corporation, and The Industrial Multiple ("Multiple"), a corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondents American Industrial Real Estate Association and The Industrial Multiple are corporations organized, existing, and doing business under and by virtue of the laws of the State of California. Respondents' principal office and place of business are at 345 Figueroa Street, Suite M1, Los Angeles, CA.

PAR. 2. Each respondent is now and has been at all times relevant herein a corporation organized in substantial part for the profit of its members within the meaning of Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

PAR. 3. Respondent A.I.R. controls the acts and practices of its wholly-owned subsidiary, respondent Multiple. Only members of the A.I.R. may be members of the Multiple. Respondents coordinate and act together in carrying out the business of the Multiple.

PAR. 4. Respondents are now, and since 1962 have been, providing a multiple listing service for their members, who are real estate brokers. Only member firms may participate in respondents' multiple listing service. Each member of the Multiple agrees to submit all of his or her firm's exclusive right to sell or lease listings of industrial properties of 5,000 or more square feet in the greater metropolitan Los Angeles area (the Multiple's "service area") for publication on respondents' multiple listing service to the entire membership of the Multiple, and, unless otherwise agreed in writing, to share any brokerage commissions due with any member whose firm successfully locates a purchaser or lessee for any property so listed. Exclusive right to sell or lease listings are those under which a property owner appoints a broker as exclusive agent for the sale or lease of the property and agrees to pay the broker an agreed commission if the property is sold or leased, regardless of who locates the purchaser or lessee. In contrast, exclusive agency listings are those under which the property seller or lessor appoints a broker as exclusive agent, but reserves the right to sell or lease the property personally to a purchaser or lessee that a broker did not find with no commission owed. Variable rate listings are those under which the property seller or lessor appoints a broker as exclusive agent, but where the broker agrees to accept a reduction in the total commis-

sion due where the property owner or lessor finds the purchaser or lessee.

PAR. 5. The Industrial Multiple is, in its service area, the sole MLS that distributes significant numbers of industrial property listings throughout the area, the sole MLS that specializes in industrial property listings, and the sole MLS to which the vast majority of major industrial brokerage firms in Los Angeles belong. The vast majority of real estate broker-assisted sales and leases of industrial properties in its service area go through the Multiple. In 1985 it was the clearinghouse for over 4,500 listings, disseminating information on more than 35,000,000 square feet of buildings and 60,000,000 square feet of land. In 1987 the Multiple had over 120 member firms.

PAR. 6. Publication of listings through respondents' MLS generally is considered by sellers, lessors, and their brokers to be the fastest and most effective means of obtaining the broadest market exposure for industrial property in the Multiple's service area.

PAR. 7. Membership in respondents' MLS provides valuable competitive advantages in the brokering of industrial properties in the Multiple's service area. Membership significantly increases the opportunities for brokerage firms to enter into listing agreements with industrial property sellers and lessors, and significantly reduces the costs of obtaining current and comprehensive information on industrial property listings and sales.

PAR. 8. In the course and conduct of their businesses, and through the policies, acts, and practices described below, the respondents and their members are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 9. Except to the extent that competition has been restrained as described herein, respondents' members are and have been in competition among themselves in the provision of industrial real estate brokerage services within the Multiple's service area.

PAR. 10. In adopting the policies and engaging in the practices described in paragraphs eleven through seventeen below, and in adopting and enforcing the rules and regulations of the Multiple dated November 30, 1982, and the by-laws of A.I.R. dated October

17, 1984, effective on December 1, 1984, respondents have been and are acting as a combination of their members, or in agreement with each other and with some of their members, to restrain trade in the provision of industrial real estate brokerage services within the Multiple's service area. The by-laws of A.I.R. indirectly apply to the members of the Multiple in that membership in A.I.R. is a prerequisite to membership in the Multiple.

PAR. 11. Respondents, through Multiple rule I.B.1.a., among other rules and regulations, have excluded from membership in the Multiple licensed brokers, otherwise qualified, who were not "primarily" engaged in industrial real estate. Respondents have excluded brokers who were actively engaged in industrial real estate brokerage but who were also engaged to a significant extent, as independent brokers, in selling and/or leasing properties that were not industrial properties.

PAR. 12. Respondents, through A.I.R. by-law II.A.1.(B), among other rules and regulations, have required applicants to have been involved in a minimum number of industrial property transactions, as established from time to time by the Board of Directors, in the two years prior to application to qualify for membership in the Multiple. From November 1984 through December 1986, respondents required applicants to have been involved in a minimum of sixteen transactions in the two years prior to application.

PAR. 13. Respondents, through A.I.R. by-law II.A.1.(B), among other rules and regulations, have required applicants to have been involved in a minimum dollar volume of industrial property transactions, as established from time to time by the Board of Directors, in the two years prior to application to qualify for membership in the Multiple. From November 1984 through December 1986, the minimum dollar volume required by respondents was \$4 million.

PAR. 14. Respondents, through A.I.R. by-law II.A.1.(B), among other rules and regulations, have required applicants to have four years experience selling industrial real estate as a licensed broker or salesperson to qualify for membership in the Multiple.

PAR. 15. Respondents have applied their rules and regulations in an unreasonably discriminatory fashion to deny access to the Multiple to qualified brokers whom respondents wanted for some reason to exclude. For example, in determining whether applicants have met the minimum number and dollar volume of industrial transactions, as required by A.I.R. by-law II.A.1.(B), respondents have determined that properties are not "industrial" for some applicants, and have thus excluded those applicants, when similar properties were found to be "industrial" and thus counted toward the minimum number and dollar volume requirements for other applicants.

PAR. 16. Respondents, through Multiple rule II.A.2.c., among other rules and regulations, have prohibited their members from accepting exclusive agency listings for any industrial property of 5,000 square feet or more within the Multiple's service area, and have refused to publish any exclusive agency listing through their multiple listing service, thus restricting the multiple listing service to exclusive right to sell or lease listings. In addition, although respondents' rules do not prohibit publication of variable rate listings, respondents have suppressed their acceptance and publication.

PAR. 17. Respondents have required that a listing broker disclose the total commission to which he or she has agreed, not just the commission that the listing broker is offering to cooperating brokers for procuring a buyer or lessee. In particular, Multiple rule III.A.6. requires that a member publicize to all other members any departure from the member firm's standard fee schedule.

PAR. 18. The purposes, effects, tendency, or capacity of the combination or agreement described in paragraphs eleven through seventeen above have been and are to restrain competition in one or more of the following ways, among others:

- a. By preventing the entry of brokers and brokerage firms into the Multiple based on rules and regulations not reasonably related to the efficient operation of the MLS, thereby depriving consumers of the advantages of competition that would result from the excluded brokers having access to the MLS;

b. By preventing brokers from accepting certain contractual terms, such as terms that allow the property seller or lessor to pay no commission if the seller or lessor sells or leases the property other than through the broker, thereby restraining competition among brokers based on their willingness to offer or accept different contract terms that may be attractive and beneficial to consumers;

c. By limiting the ability of property sellers and lessors to compete against real estate brokers in finding purchasers and lessees;

d. By reducing the likelihood of discounting or other price competition among members of the Multiple.

PAR. 19. The policies, acts, practices, and combinations or agreements described in paragraphs eleven through seventeen above constitute unfair methods of competition and unfair acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. These acts and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief herein requested.

DECISION AND ORDER

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

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 considered the matter and having determined that it had reason to believe that the respondents have 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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. Respondents American Industrial Real Estate Association and The Industrial Multiple are corporations organized, existing, and doing business under and by virtue of the laws of the State of California. Respondents' principal office and place of business are at 345 Figueroa Street, Suite M1, Los Angeles, CA.

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

ORDER

DEFINITIONS

The following definitions shall apply to this order:

1. "*Applicant*" shall mean any broker who is duly licensed by the State of California as a real estate broker within the State of California and who has applied on behalf of his or her firm for membership in respondents' multiple listing service.

2. "*Exclusive agency listing*" shall mean any listing under which the property seller or lessor appoints a broker as exclusive agent for the sale or lease of the property at an agreed commission,

but reserves the right to sell or lease the property personally to a direct purchaser or lessee (one not procured in any way through the efforts of any broker) with no commission owed.

3. "*Industrial property*" or "*industrial real estate*" shall mean land and/or buildings used for, or intended at the time of listing to be used for, such purposes as manufacturing, warehousing, distribution, research and development, data processing, and activities related to such industrial uses, rather than by businesses that deal primarily with the general public, and having a minimum area of 5,000 square feet.

4. "*Listing agreement*" or "*listing*" shall mean any agreement between a real estate broker and a property seller or lessor for the provision of real estate brokerage services.

5. "*Member*" shall mean any real estate brokerage firm that is entitled to participate in the multiple listing service offered by respondents.

6. "*Multiple listing service*" or "*MLS*" shall mean a clearinghouse through which member real estate brokerage firms exchange information on listings of real estate properties and share commissions with members who locate purchasers or lessees.

7. "*Variable rate listing*" shall mean any listing under which the property seller or lessor appoints a broker as exclusive agent for the sale or lease of the property, but where the broker agrees to accept a reduction in the total commission due where the property owner or lessor finds the purchaser or lessee.

I.

It is ordered, That each respondent, and its successors, assigns, directors, officers, committees, representatives, agents, or employees, directly, indirectly, or through any device, in or in connection with the operation of a multiple listing service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

A. Adopting, maintaining, or enforcing any by-law, rule, regulation, policy, agreement or understanding, or taking any other action that has the purpose, tendency, or effect of conditioning membership in The Industrial Multiple or use of respondents' MLS on:

1. An applicant: (a) being primarily engaged in industrial real estate brokerage, (b) receiving a specified percentage of income from industrial real estate commissions, or (c) having a specified percentage of his or her real estate transactions involve industrial property;

2. An applicant having completed, listed, or otherwise been involved with any minimum number or minimum dollar volume of industrial real estate sales or leases over any period of time;

3. An applicant having been engaged in industrial real estate brokerage for any period of time; or

4. Any criterion that is applied in an unreasonably discriminatory manner.

Provided, however, that nothing contained in this order shall prohibit respondents from adopting or enforcing any non-discriminatory policy to assure that its members are, and hold themselves out to the public as being, actively engaged in and competent in industrial real estate brokerage and that listings published on respondents' multiple listing service are adequately serviced.

B. Restricting or interfering with:

1. Any broker's offering or accepting any exclusive agency listing or variable rate listing;

2. The publication on respondents' MLS of any exclusive agency listing in any way other than by requiring designation of the listing as one granting an exclusive agency or by imposing terms applicable to all listings accepted for publication by respondents' MLS; or

3. The publication on respondents' MLS of any variable rate listing in any way other than by requiring designation of the listing as one granting a variable rate or by imposing terms applicable to all listings accepted for publication by respondents' MLS.

Provided, however, that nothing contained in this order shall prohibit respondents from adopting or enforcing reasonable and non-discriminatory rules requiring that exclusive agency listing contracts, as a condition for publication through The Industrial Multiple, contain clauses providing that any dispute between the parties of the contract over who was the procuring cause of a buyer or lessee for the listed property shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

C. Adopting, maintaining, or enforcing any policy or taking any other action that has the purpose, tendency, or effect of:

1. Requiring any broker that charges a commission that deviates from that broker's normal commission schedule to disclose the specific deviation or the fact of a deviation to other brokers or either of the respondents; or

2. Requiring that members disclose to other members or the respondents any information regarding the commission rates or fees to be paid by sellers or lessors.

Provided, however, that nothing contained in this subpart shall prohibit respondents from publishing or otherwise distributing to or among members of respondents' MLS the rate or amount of commission to be paid to a non-listing broker for a particular transaction.

II.

It is further ordered, That respondents shall:

A. Within thirty (30) days after this order becomes final, furnish a copy of this order to each of their members, and to each applicant who has been denied membership in respondents' MLS since January 1, 1984.

B. Within sixty (60) days after this order becomes final, amend their by-laws, rules and regulations, and all other of their materials to conform to the provisions of this order, and provide each member with a copy of the amended by-laws, rules and regulations, and other amended materials.

C. For a period of three (3) years after this order becomes final, furnish a copy of this order to each new member of A.I.R., to each new member of The Industrial Multiple, and to any person who inquires about, or who submits an application for, membership in A.I.R. or its MLS.

D. Within sixty (60) days after this order becomes final, submit a verified written report to the Federal Trade Commission setting forth in detail the manner and form in which respondents have complied and are complying with this order.

E. For a period of five (5) years after this order becomes final, maintain and make available to the Federal Trade Commission staff for inspection and copying, upon reasonable notice, all documents that relate to the manner and form in which respondents have complied with and are complying with this order.

F. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in either respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in either corporation that may affect compliance obligations arising out of this order.

Commissioners Azcuenaga and Starek concurring in part and dissenting in part.

SEPARATE STATEMENT OF COMMISSIONER MARY L. AZCUENAGA
CONCURRING IN PART AND DISSENTING IN PART

The Commission today issues a consent order that would, among other things, bar the multiple listing service of Industrial Multiple from requiring real estate brokers to disclose to other brokers the amount of commission that a property seller will pay when the property is sold. Order paragraph I.C. In light of comments received during the period for public comment on the order and additional economic analysis based on those comments, I am persuaded that the conduct challenged in paragraph I.C. of the order may help accomplish a legitimate purpose of the multiple listing service, that is, the efficient marketing of real estate.

The commission arrangement to which the listing broker and the property owner have agreed is information that is important for selling brokers to have in deciding how much effort to invest toward selling the listed property. The Commission partially credits this justification in the proposed order (and in previous orders of the Commission involving multiple listing services) when it permits the multiple listing service to designate listings in which the property owner may avoid or reduce the commission by making a direct sale. To the extent that other brokers are not informed about the commission terms between the listing broker and the property owner, over time, efforts on the part of brokers other than listing brokers to sell properties may decrease and the sales of properties may be adversely affected¹. Given this plausible efficiency rationale for the Industrial Multiple rule, and in the absence of demonstrable anticompetitive effects, I no longer can find reason to believe sufficient to challenge the rule under Section 5 of the Federal Trade Commission Act.

¹To the extent that disclosure is consistent with the listing broker's interest in eliciting the cooperation of other brokers in marketing the property, the order ban on disclosure by the multiple listing service may simply raise the cost of disseminating and obtaining the information.

I dissent from paragraph I.C. of the order and concur with the remainder of the order.

STATEMENT OF COMMISSIONER ROSCOE B. STAREK, III
CONCURRING IN PART AND DISSENTING IN PART

I concur with the decision of the Commission to accept the Consent Order with Industrial Multiple for final issuance, with the exception of paragraph I(C). I agree with the concerns expressed in Commissioner Azcuenaga's statement regarding this paragraph. The record contains very little evidence suggesting that I(C) is targeted at behavior that is likely to be anticompetitive, and an efficiency justification for the challenged conduct is at least plausible. Therefore, I cannot conclude, without a full rule of reason analysis, that the conduct challenged in paragraph I(C) of the Order violates Section 5 of the FTC Act.

Paragraph I(C) prevents Industrial Multiple from requiring that a listing agent disclose either the fact that the commission schedule of a real estate listing deviates from that agent's standard schedule or the amount by which the commission deviates. Disclosure of such information has at least the potential for anticompetitive effects, because it publicizes discounting practices and thereby may enable retaliatory measures against discounters. But we have almost no evidence regarding this anticompetitive potential.

My concerns are based, in significant part, on a comment submitted by the National Association of Realtors ("NAR") regarding the potential market impact of I(C). NAR argues that this order provision would prevent Industrial Multiple from requiring the disclosure of information to cooperative brokers that is material to their determination of the likelihood that they will earn a commission if they produce a buyer for a property. Cooperative brokers can more efficiently determine how to allocate their time and other resources if they are more fully informed about the potential risks and benefits of attempting to produce buyers for each property.

In a variable-rate listing, the total commission paid is lower when the seller, rather than a real estate agent, produces a buyer.¹ In the case of such listings, a co-op agent is at a competitive disadvantage. The seller would prefer an offer of a certain amount if it is received directly rather than through a co-op broker, because a lower total commission would have to be paid. The greater is the difference between the commission paid when the seller produces a buyer and the commission paid when a co-op agent produces a buyer, the greater is the risk that an offer presented by a co-op agent will be rejected. Co-op agents can better determine how to allocate their efforts the more fully informed they are about a listing's commission schedule and the incentives inherent in the listing for the listing agent, seller, and co-op agent. The required disclosure of information about a listing's commission schedule could enhance cooperation between listing agents and cooperative agents, and in so doing increase the efficiency of the market.

It may be necessary for Industrial Multiple to impose a requirement to disclose such information on listing agents in order to accomplish this efficiency, because the unilateral incentives of listing agents may not result in such disclosure. Listing agents sometimes may not want to announce certain information about variable rate listings, because they are aware that some co-op brokers would not pursue sales of those properties as vigorously. The proposition that requirements to disclose information can result in people making more well-informed choices, thereby enhancing the efficient operation of markets, is not foreign to the Commission.²

Accordingly, I dissent from the decision to accept paragraph I(C) of the order and concur with the decision to accept the remainder of the order.

¹In some instances, variable rate listings also provide for a reduced commission when the listing agent (rather than a co-op agent) produces a buyer.

²It is not clear from the evidence presented that Industrial Multiple's requirements here necessarily are efficient. However, the evidence does not suggest that an efficient result is any less likely than an anticompetitive outcome. Therefore, I do not have reason to believe that Industrial Multiple's required information disclosures are likely to be anticompetitive.

IN THE MATTER OF

NATURE'S CLEANSER, INC., ET AL.

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

Docket C-3450. Complaint, July 12, 1993--Decision, July 12, 1993

This consent order prohibits, among other things, a California-based corporation, that markets herbal products, and its officer from making the alleged false claims, and requires them to offer full refunds to all consumers who purchased the products. The order requires the respondents to have competent and reliable scientific evidence to substantiate any future claims regarding the performance, benefits or effectiveness of any food, drug or device.

Appearances

For the Commission: *Linda K. Badger and Matthew Gold.*

For the respondents: *Jeffrey A. Babener, Babener & Associates,*
Portland, OR.

COMPLAINT

The Federal Trade Commission, having reason to believe that Nature's Cleanser, Inc., a corporation, and Donald Douglas-Torry, individually and as an officer of said corporation ("respondents"), have 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. (a) Nature's Cleanser, Inc. is an Illinois corporation. It has its principal office and place of business at 345 North Maple Drive, Suite 385, Beverly Hills, California.

(b) Donald Douglas-Torry is an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and

practices alleged in this complaint. His principal office and place of business is the same as that of the corporate respondent.

(c) Respondents cooperate and act together in carrying out the acts and practices alleged in this complaint.

PAR. 2. Respondents are engaged in the promotion, offering for sale, sale, and distribution to the public of herbal tablets known as "Nature's Cleanser Weight Controlled Longevity Formula," "Nature's Cleanser Bowel Management Formula," and other products promoted to assist in cleansing or evacuating the eliminative organs, such as the colon (hereinafter collectively, referred to as "Nature's Cleanser"). Respondents also are engaged in the promotion, offering for sale, sale, and distribution to the public of herbal tablets known as "Lady's Comfort PMS/Menopause Formula" (hereinafter referred to as "Lady's Comfort"). As advertised, each of these products is a "drug" within the meaning of Section 12 of the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, respondents have disseminated and caused the dissemination of advertising and promotional materials, including, but not limited to, the advertising and promotional materials referred to herein, to promote the sale of Nature's Cleanser and Lady's Comfort.

PAR. 4. Respondents operate in various states of the United States and in the District of Columbia. Respondents' labeling, packaging, offering for sale, promoting, advertising, sale and distribution of Nature's Cleanser and Lady's Comfort constitute the maintenance of a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Respondents' advertisements and promotional materials for Nature's Cleanser include, but are not necessarily limited to, the advertisements and promotional materials attached hereto as Exhibits A through C. Specifically, these advertisements and promotional materials, as well as oral communications with consumers, have contained the following statements:

(a) "Rid your body of constipation forever by moving it on through. Eliminate the natural way after every meal." (Exhibit A)

(b) "Control your weight immediately without dieting or watching calories by eliminating waste such as fatty tissue, cellulite, toxins, mucus, hardened fecal matter and harmful drug residues." (Exhibit A)

(c) "Here are (unfortunately) the world's three best kept secrets to a weight controlled long life - follow them as your breath to life: 1) Waste elimination is weight elimination ... (Exhibit B)

(d) "Fennel [is] an appetite suppressant." (Exhibit B)

(e) "Psyllium Seed is the bulking agent that causes the sweeping effect, cleaning off the walls, floors and ceiling of the colon, although it is not itself an herbal laxative [sic]." (Exhibit B)

(f) "Cascara Sagrada returns the peristalsis action to the colon that causes us to eliminate. It is never habit forming." (Exhibit B)

(g) "If you wish to eliminate at a more rapid rate, more tablets can be taken without ill effect." (Exhibit B)

(h) "It was during this time, in the early sixties, that Mr. Douglas-Torry made his discovery. He found that certain combination of herbs, synergistically combined and balanced in a unique formula, reduced and controlled weight immediately without dieting or watching calories. The formula addressed the monumental problems of the elimination of body waste (fatty tissue, cellulite, mucus, toxins, hardened fecal matter) and how the eliminative organs (colon, lungs, skin, kidney, menstrual cycle in women) when eliminating this waste properly, reduce and control weight immediately." (Exhibit C)

(i) Nature's Cleanser is not a laxative. (Oral Statement)

PAR. 6. Through the use of the statements set forth in paragraph five, and other statements contained in advertisements and promotional materials, as well as through oral statements to consumers, not specifically set forth therein, respondents have represented, directly or by implication, that:

(a) Nature's Cleanser can be taken in any dosage without causing adverse health effects.

(b) Nature's Cleanser does not contain a laxative.

(c) Nature's Cleanser contains an appetite suppressant.

(d) Nature's Cleanser is effective in weight control.

(e) Nature's Cleanser is effective in weight loss.

(f) Nature's Cleanser is effective in weight loss or weight control without a decrease in caloric intake.

PAR. 7. In truth and in fact:

(a) Nature's Cleanser, at some dosage, can cause adverse health effects.

(b) Nature's Cleanser does contain a laxative, in that at least one ingredient is categorized as a laxative by the Food and Drug Administration.

(c) Nature's Cleanser does not contain an appetite suppressant.

(d) Nature's Cleanser is not effective in weight control.

(e) Nature's Cleanser is not effective in weight loss.

(f) Nature's Cleanser is not effective in weight loss or weight control without a decrease in caloric intake.

Therefore, the representations set forth in paragraph six were, and are, false and misleading.

PAR. 8. Respondents' advertisements and promotional materials for Lady's Comfort include, but are not necessarily limited to, the advertisements and promotional materials attached hereto as Exhibits D through F. Specifically, these advertisements and promotional materials have contained the following statements:

(a) "No woman should suffer from PMS or menstrual cramps. PMS and menstrual cramps are unnatural." (Exhibit D)

(b) "Stop the discomfort associated with menopause. Hot flashes, sweats, etc." (Exhibit D)

(c) "Prolong the period of fertility." (Exhibit D)

(d) "Relieve Pre Menstrual Tension!!! by balancing hormones in the body through a unique combination of herbs that are completely whole and natural. Nature's Cleanser P.M.S. Formula puts natural hormones back into the body." (Exhibit E)

(e) "Pre Menstrual Syndrome is unnatural and occurs solely because of body waste. Pre Menstrual Tension will be remedied by using Nature's Cleanser Pre Menstrual Tension formula. The Bowel Management and Tissue Cleansing, Weight Control Longevity, Herbal Maintenance Formula is a perfect complement for total body cleansing. These two formulae will rid the body of old cellulite and stop new cellulite buildup." (Exhibit F)

(f) "P.M.S. is literally extra waste trapped in the blood stream, shocking the entire body into a nervous fit. This waste cannot escape through the colon, because we are usually constipated. So the body has to wait for the menstrual cycle to come

around in order to relieve itself of this trapped waste. Meanwhile the body may try to send this extra waste through the skin. This is how pimples, warts, etc. are formed. But since the skin is not sufficient enough to rid the body of the large amount of waste we take in daily, drastic physical changes (cramps) and psychological reactions (mood swings) occur. Nature's Cleanser P.M.S./Menopause Formula puts natural hormones back into the body that have been offset through years of body abuse. It's simple - when you put the natural female hormones back balance is restored." (Exhibit F)

(g) "Nature's Cleanser P.M.S./Menopause Formula performs a myriad of functions, one of the most important being alleviating any discomfort associated with menopause (hot flashes, etc.); it also prolongs the period between fertility and change of life which should occur between the ages of sixty (60) to sixty-five (65). Nature's Cleanser Herbal Hormones is a natural alternative to the widely applied use of synthetic estrogen and progesterone." (Exhibit F)

PAR. 9. Through the use of the statements set forth in paragraph eight, and other statements contained in advertisements and promotional materials not specifically set forth therein, respondents have represented, directly or by implication, that Lady's Comfort:

- (a) Replaces hormones in the human body.
- (b) Is an effective alternative to synthetic hormones.
- (c) Prolongs a woman's period of fertility.
- (d) Helps remove cellulite and prevents the formation of new cellulite.

PAR. 10. In truth and in fact, Lady's Comfort:

- (a) Does not replace hormones in the human body.
- (b) Is not an effective alternative to synthetic hormones.
- (c) Does not prolong a woman's period of fertility.
- (d) Does not help remove cellulite or prevent the formation of new cellulite.

Therefore, the representations set forth in paragraph nine were, and are, false and misleading.

PAR. 11. Through the use of the statements set forth in paragraph eight, and other statements contained in advertisements and

promotional materials not specifically set forth therein, respondents have represented, directly or by implication, that Lady's Comfort:

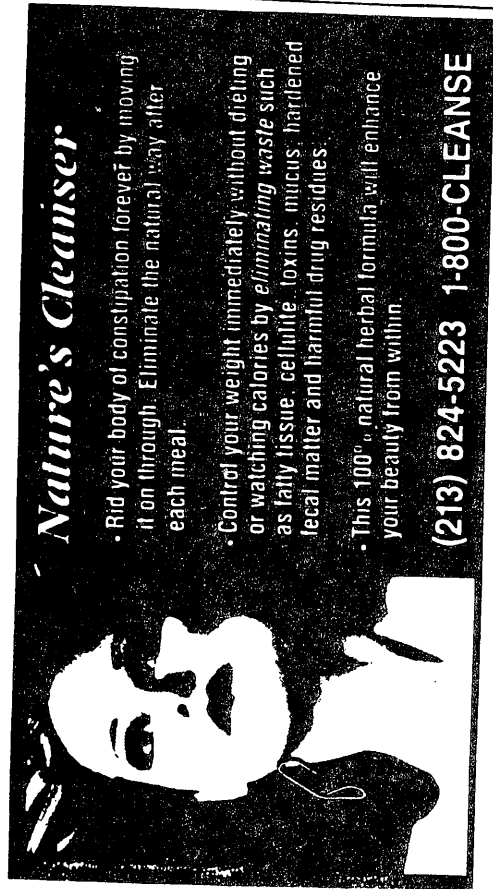
- (a) Relieves menstrual cramps and other discomfort associated with the menstrual cycle.
- (b) Relieves discomfort associated with menopause.

PAR. 12. Through the use of the statements set forth in paragraph five and paragraph eight, and other statements contained in advertisements and promotional materials not specifically set forth herein, respondents have represented, directly or by implication, that at the time of making the representations set forth in paragraph six, paragraph nine and paragraph eleven, they possessed and relied upon a reasonable basis for those representations.

PAR. 13. In truth and in fact, at the time of making the representations set forth in paragraph six, paragraph nine and paragraph eleven, respondents did not possess and rely upon a reasonable basis for making the representations. Therefore, the representation set forth in paragraph twelve was, and is, false and misleading.

PAR. 14. The aforesaid acts or practices of respondents were and are to the prejudice and injury of the public and constituted and now constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) and false advertisements in violation of Section 12 of the Federal Trade Commission Act.

EXHIBIT A



Nature's Cleanser

- Rid your body of constipation forever by moving it on through. Eliminate the natural way after each meal.
- Control your weight immediately without dieting or watching calories by *eliminating waste* such as fatty tissue, cellulite, toxins, mucus, hardened fecal matter and harmful drug residues.
- This 100% natural herbal formula will enhance your beauty from within.

(213) 824-5223 1-800-CLEANSE

EXHIBIT B

C-3450
B141971

EXHIBIT B



*'Waste Elimination
the
Ideal' Stimulators*

'Waste Elimination'

A major consideration of health that will help the body eliminate harmful
acid matter, means, have made women, beautiful, etc.

The formula used to make women feel like a woman with the
Waste Elimination Stimulating Formula

Consideration is the greatest reason being for our existence, if you do not
cleanse the system there is simply no way to improve health.

The Waste Elimination contains the following herbs:

Cassia (Sage) which is the principle active in the skin (the mineral
that causes us to eliminate). It stimulates skin to remove the waste in the
form of skin, it no longer needs the 'Cassia Sage' but will need by its
own action. It is a waste built formula.

Pythium (Sage) is the herb that causes the sweating effect, cleaning
off the waste from the surface of the skin, although it is not itself a waste builder.

There is an opposite action, like water, you, and a good formula
formula of all these.

Directions: Take one tablet in the morning before meals, but not 10 days
before, and one tablet in the evening before meals. Put on the oil bag.

If you want to eliminate all a more rapid rate, more tablets may be taken
without ill effect. The health information, call

'Nature's Cleanser'

1701 N. Coronado, Suite 1022

Beauty Hills, California 92010

(909) 487-2222

One Month Supply

NATURE'S CLEANSER, INC., ET AL.

Complaint

EXHIBIT C

kidney, menstrual cycle in women) when eliminating this waste properly, reduce and control weight immediately.

Donald took his knowledge a step further and began to work on every system in the body, and rid the body of waste on a cellular level. He perfected his formula, **The Herbal Maintenance Formula** - in 1967 it was his two years ago that he transformed his herbs from teas to tablet form. But it was in 1967 that Donald was first introduced to **Herbal Maintenance Formula** with diseased or fatigued body. He has since incorporated the body of accumulated waste, moderate liver juice fasting system in the system that weights and causes most of our health problems. The formula was first shared by Mr. Douglas-Torry with friends for almost 30 years in the form of teas, and almost 30 years passed before the technique made it possible to bind and balance together 28 herbs in a small tablet, making this formula available to you even more efficient and practical. It is actually the state-of-the-art in tissue cleansing. He also points out it's the waste in the body that causes skin to sag, thus one could gather all the herbs in **Nature's Cleanser** and put them together. This rich formulation is a blend of 28 different herbs, each rich in vitamins, minerals, and essential trace minerals, all in their complete organic form by anyone else. Donald has devoted much of his energy towards educating people about the healing power of herbs, ways to rid the body of accumulated waste, and purification of the bloodstream. When asked what his payoff is, for educating and coaching others, Donald always has the same response, "I feel deeply that people should have the quality of life they deserve and I just love helping people."

Donald Douglas-Torry

EXHIBIT C C3450 B141971



When big city movers and shakers want to clean up their act, lose weight and look younger, they turn to "Health Guru" DONALD DOUGLAS-TORRY. Donald has been a health advisor and coach to over 3,000 people including high profile models, television and movie stars, top industry execs and studio heads all over the world.

AS an international symphonic conductor with a Masters in Music from the University of Southern California, another Masters degree in Conducting from the Chigiana Music Academy in Siena, Italy and a Doctorate from the Royal Academy of Music in Stockholm, Sweden, Donald has spanned the globe sharing his musical talents and knowledge of herbs and the healing arts, they possess.

Born and raised in Stockholm, Sweden, Donald like his fellow Scandinavians, has always been accustomed to a healthy way of living. Scientifically, Swedes have long been known for their longevity. Today approaching his 69th year old, Donald looks nearly half his age, he's proof that taking care of your internal self pays off.

At the age of 17, after a near fatal bout with the mumps, and repeated attempts by doctors to cure him through penicillin, surgery and medication, Donald was fascinated by the complete and lasting effect that herbs alone had on his condition. From that point on, Donald devoted much of his energy to the study of Herbolology.

Donald's physician, Dr. Leander, a urologist and one of the foremost experts in the study of herbs in Sweden, Dr. Leander through herbs alone. Dr. Leander soon became a mentor who taught Donald how to bind and balance herbs synergistically. The elderly Dr. Leander, who was a distant relative of Carl Von Linné, the Swedish botanist, who originated our present classification and Latin naming of herbs, had the appearance and energy of a man in his forties.

The distinguished Dr. Leander entrusted many secrets to Donald, on the art and science of exercise, tone, and cleanse the body. The synergistic combination, in a unique combination of herbs, synergistically combined and balanced, in a unique formula, reduced and controlled weight immediately without dieting or watching calories. It was during this time, in the early 1960s, that Mr. Douglas-Torry made his discovery: found that certain controlled weight immediately without dieting or watching calories. The formula addressed the monumental problems of the elimination of body waste (faty tissue

Don't forget to...
 ...subscribe to Nature's Cleanser Magazine. The first and only one of its kind in America that deals exclusively with the serious issue of tissue cleansing of the entire body and the elimination of accumulated body waste.

EXHIBIT D



"Nature's Cleanser" Ladies Comfort

- No woman should suffer from PMS or menstrual cramps.
- PMS and menstrual cramps are unnatural.
- Stop the discomfort associated with menopause, hot flashes, sweats, etc.
- Prolong the period of fertility.
- A 100% natural formula.

MasterCard Visa AmEx Accepted
(800) CLEANSE

EXHIBIT E

C-1460
B141971

Contessa Regard de Rougemont

*Reduce Pimples! Acne! Skin Irritation!!!
by Rebalancing Skin-care in the body through a unique combination
of herbs that are completely natural and natural Nature's Cleanser
R.M.S. Formula has natural herbaceous base into the body.*

The P.M. Natural Toner formula contains the following herbs:
Dandelion
Bergamot
Blue Cohosh
Echinacea
Caraway Seeds
Sage
Dong Quai
Sage Root
Red Raspberry

*Contributes to the remedy of P.M. Natural Toner
These conditions can also be treated by using Nature's Cleanser
Skin Maintenance Program (Night Lotion, Toner Cream,
Lip, Lipgloss and Hand Management Formula)*

*Directions: Take two tablets twice a day or as needed. For severe cases
take two to four tablets three times a day.*

*Nature's Cleanser
270 N. Canon Dr., Suite 1055
Beverly Hills, California 90210
(818) 871-2222*

Nature's Cleanser products are food supplements. Not made in natural form.



EXHIBIT F

C-3450
R141971

Women have one extra channel of elimination - the uterus. Because of this extra waste-bearing eliminative organ, women should be purer than men. The eliminative capacity of the uterus is stunted, not only by accumulated waste stuck in the fallopian tubes, but also by excess waste locked in the transverse colon which collapses on top of the uterus and fallopian tubes, trapping parts of the menstrual cycle inside the body causing cellulite. Cellulite is nothing more than waste from unfinished menstrual cycles that falls below the uterus, right into the hips and buttocks area. Women can't lose cellulite because they don't have a menstrual cycle. Unfortunately, because of the stunted capacity of the uterus (an extra channel of elimination) to rid the body of enormous amounts of wastes once a month, women generally carry more waste in their bodies than men.

P.M.S. is literally extra waste trapped in the blood stream, shocking the entire body into a nervous fit. This waste cannot escape through the colon, because we are usually constipated. So the body has to wait for the menstrual cycle to come around in order to relieve itself of this trapped waste. Meanwhile the body may try to send this extra waste through the skin. This is how pimples, warts, etc. are formed. But since the skin is not sufficient enough to rid the body of the large amount of waste we take in daily, drastic physical changes (cramps) and psychological reactions (mood swings) occur.

Nature's Cleanse P.M.S. Menopausal Formula puts natural hormones back into the body that have been chafed through years of body abuse. Its simple - when you put the natural female hormones back balance is restored.

Nature's Cleanse P.M.S. Menopausal Formula performs a myriad of functions, one of the most important being alleviating any discomfort associated with menopause (hot flashes, etc.). It also prolongs the period between fertility and age of the which should occur between the ages of sixty (60) to sixty-five (65). *Nature's Cleanse Natural Hormones* is a natural alternative to the widely applied use of synthetic estrogen and progesterone.

Nature's Cleanse P.M.S. Menopausal Formula

For or two solid weeks prior to the Menstrual Cycle, the body dumps an extra load of waste into an already heavily taxed blood stream. The outcome is The Menstrual Syndrome.

The blood stream circulates through the body nine times a minute when we are awake and four to five times a minute when we are asleep. Excess waste is dumped into the blood stream during the two week prologue to the menstrual cycle. This excess waste joins up with an already toxic blood stream and now the new and old waste circulate the system nine times a minute, racing over the nervous system setting the nervous system on fire.

This extra load of toxic waste dumped into the blood stream is the result of a polluted body. The body becomes polluted as a result of the consumption of foods laced with chemicals, drugs we take, and waste leaking from a constantly seeping sewer into the blood stream. No woman should ever suffer from P.M.S. or Menstrual Syndrome. To rid your body of excess waste and toxic waste of body waste, the Menstrual Formula will be provided by *Nature's Cleanse P.M.S. Menopausal Formula*. The *Nature's Cleanse P.M.S. Menopausal Formula* is a perfect complement for total body cleansing. These two formulas will rid the body of old cellulite and stop new cellulite buildup.

DECISION AND ORDER

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

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have violated the said Act, and that the 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 Nature's Cleanser, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 345 North Maple Drive, Suite 385, Beverly Hills, California.

2. Respondent Donald Douglas-Torry is an officer of the corporate respondent. His principal office and place of business is the same as that of the corporate respondent.

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

ORDER

DEFINITIONS

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

A. The term “*Nature’s Cleanser*” means the herbal formulae known as “Weight Controlled Longevity Formula,” and “Nature’s Cleanser Bowel Management Formula,” as marketed by Nature’s Cleanser, Inc.

B. The term “*Lady’s Comfort*” means the herbal formula known as “Lady’s Comfort PMS/Menopause Formula,” as marketed by Nature’s Cleanser, Inc.

I.

It is ordered, That respondent Nature’s Cleanser, Inc., a corporation, its successors and assigns, and its officers, and respondent Donald Douglas-Torry, individually and as an officer of said corporation, and respondents’ representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of Nature’s Cleanser, or any product containing substantially similar ingredients, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

A. Such product can be taken in any dosage without causing adverse health effects;

B. Such product does not contain a laxative;

- C. Such product contains an appetite suppressant;
- D. Such product is effective in weight control;
- E. Such product is effective in weight loss; or
- F. Such product is effective in weight loss or weight control without a decrease in caloric intake.

II.

It is further ordered, That respondent Nature's Cleanser, Inc., a corporation, its successors and assigns, and its officers, and respondent Donald Douglas-Torry, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with advertising, promotion, offering for sale, sale or distribution of Lady's Comfort, or any product containing substantially similar ingredients, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that such product, or any ingredient of such product:

- A. Replaces hormones in the human body;
- B. Is an effective alternative to synthetic hormones;
- C. Prolongs a woman's period of fertility; or
- D. Helps remove cellulite or prevents the formation of new cellulite.

III.

It is further ordered, That respondent Nature's Cleanser, Inc., a corporation, its successors and assigns, and its officers, and respondent Donald Douglas-Torry, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any food, drug, or device, as

those terms are defined in Section 15 of the FTC Act, 15 U.S.C. 55, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, regarding the performance, benefits, efficacy or lack of adverse effects of any such product, unless at the time of making such representation respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purpose of this order, “competent and reliable scientific evidence” shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

Provided that, with respect to any drug products, if the Food and Drug Administration promulgates any final standard that establishes conditions under which such product is safe and effective under the Food, Drug and Cosmetic Act, then in lieu of the above, respondents may rely upon scientific evidence that fully conforms to such final standard as a reasonable basis for said representation.

IV.

It is further ordered, That respondents are jointly and severally liable for consumer redress to those consumers who purchased Nature’s Cleanser or Lady’s Comfort from respondents no later than May 25, 1992 (hereinafter referred to as “eligible consumers”), and shall within five (5) days from the date of service of this order, mail Exhibit 1, attached hereto, via first class mail, offering a full refund to each eligible consumer. No information other than that contained in Exhibit 1 shall be included or added, nor shall any other material be transmitted therewith. The outside of the envelope transmitting Exhibit 1 shall prominently and conspicuously display the words “REFUND OFFER ENCLOSED.” If, within forty-five (45) days from the date of service of this order, an eligible consumer requests a refund by returning the letter referenced in Exhibit 1, or by

otherwise communicating to respondents via mail, telephone, or in any other manner his or her request for a refund, respondents shall send a check for the full refund to the eligible consumer within sixty (60) days from the date of service of this order. Respondents shall pay all costs associated with administering this consumer redress, including, but not limited to, first class postage. If for any reason, an eligible consumer does not communicate his or her request for a refund within forty-five (45) days from the date of service of this order, then, in lieu of making direct consumer redress, the purchase amount attributed to the eligible consumer shall be paid by respondents to the United States Treasury within sixty (60) days from the date of service of this order. Furthermore, if for any reason, a copy of Exhibit 1 sent to any eligible consumer is returned to respondents as undeliverable, the purchase amount attributed to the eligible consumer shall be paid by respondents to the United States Treasury within sixty (60) days from the date of service of this order. All payments to the United States Treasury shall be by certified or cashiers check made payable to the Treasurer of the United States, and delivered to: The Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, D.C. for appropriate disposition. The respondents, or their successors and assigns, shall for a period of three (3) years from the date this order becomes final, maintain and make available upon request to the Federal Trade Commission for inspection and copying all records necessary to show compliance with this provision, including, but not limited to, the relevant customer lists, copies of Exhibit 1 sent to consumers, and evidence of payments made to eligible consumers or to the United States Treasury. No portion of the payment herein described shall be deemed a payment of any fine, penalty, or punitive assessment.

V.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondents, or their successors and assigns, shall maintain and upon

request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements, promotional materials, documents, or other materials relating to such representation;

B. All materials that were relied upon in disseminating such representation; and

C. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

VI.

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

VII.

It is further ordered, That the individual respondent shall, for a period of five (5) years after the date of service of this order upon him, promptly notify the Commission, in writing, of his discontinuance of his present business or employment and of his affiliation with a new business or employment. For each such new affiliation, the notice shall include the name and address of the new business or employment, a statement of the nature of the new business or employment, and a description of respondent's duties and responsibilities in connection with the new business or employment.

VIII.

It is further ordered, That respondents shall, within ten (10) days from the date of service of this order upon them, distribute a copy of this order to any individual or entity who is involved in the preparation and placement of advertisements or promotional materials, or communicates with customers or prospective customers regarding the efficacy of any product covered by this order.

IX.

It is further ordered, That, for five (5) years from the date of issuance of this order, the corporate respondent, its successors and assigns, and the individual respondent, shall cause a copy of Exhibit 2 to be distributed to each purchaser for resale of any product covered by this order, to each managerial employee of respondents, and to each salesperson of respondents' products, whether they are independent sales agents or employees of respondents.

X.

It is further ordered, That respondents shall, within sixty (60) days from the date of service of this order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

EXHIBIT 1

DATE

CUSTOMER NAME
CUSTOMER ADDRESS

Dear Mr./ Ms. Mrs.:

Our records indicate that you have purchased our Nature's Cleanser or Lady's Comfort herbal products. The Federal Trade Commission challenged as inaccurate or unsubstantiated the following advertising claims for these products:

1. that Nature's Cleanser is effective in weight loss or control, or contains an appetite suppressant;
2. that Nature's Cleanser does not contain ingredients with laxative properties;
3. that Nature's Cleanser will have no adverse health effects regardless of how much is consumed;
4. that Lady's Comfort prolongs fertility, is a substitute for hormones, or helps remove or prevent the formation of cellulite;
5. that Lady's Comfort relieves menstrual cramps and other discomforts associated with the menstrual cycle or relieves discomfort associated with menopause.

Nature's Cleanser denies the Federal Trade Commission's charges. But to settle the case, we have entered into an agreement with the FTC which does not admit of any liability on our part. We will send refunds to anyone who was not fully satisfied with the product.

Our records indicated product purchases of \$_____. If you wish a refund, please fill in the form below and return it to us in the enclosed stamped envelope. You do not need to return the products or a proof of purchase to receive a refund. We must receive your refund request by [date 45 days from service of the Order]. You should receive your refund by [date 70 days from service of the Order]. If you have any questions, please call us at [corporate respondent's phone number].

Sincerely

Donald Douglas-Torry
President

Please check one of the following:

_____ Please send my refund.

_____ I am a satisfied customer and do not wish a refund.

Customer's signature

EXHIBIT 2

Pursuant to a consent agreement with the Federal Trade Commission and in addition to other company policies regarding medical claims, it is a company policy that neither the company nor its distributors shall represent as to the following products, or one with substantially similar ingredients:

1. that Nature's Cleanser is effective in weight loss or control, or contains an appetite suppressant,
2. that Nature's Cleanser does not contain ingredients with laxative properties,
3. that Nature's Cleanser will have no adverse health effects regardless of how much is consumed,
4. that Lady's Comfort prolongs fertility, is a substitute for hormones, or helps remove or prevent the formation of cellulite.

Neither the company nor its distributors will make representations for products if they have no competent and reliable scientific basis for the representations.