

IN THE MATTER OF

NATIONAL DIETARY RESEARCH, INC., ET AL.

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

Docket 9263. Complaint, Nov. 9, 1993--Decision, Nov. 7, 1995

This consent order prohibits, among other things, two Florida-based corporations and their owner from making claims regarding weight loss, hunger reduction, calorie absorption, cholesterol reduction, effects on cellulite or body measurements, or any other health benefits of any product or program they advertise or sell, unless the respondents possess competent and reliable scientific evidence to substantiate the claims. Also, the consent order prohibits the respondents from misrepresenting test results, from representing that any advertisement is something other than a paid advertisement, and from representing that an endorsement is typical of the experience of consumers who use the product, unless the claim is substantiated. In addition, the consent order requires the respondents to pay \$100,000 to the Commission.

Appearances

For the Commission: *Joel Winston, Richard Cleland, C. Lee Peeler and Joan Bernstein.*

For the respondents: *Roger Furey, Arter & Hadden, Washington, D.C. and Donovan Conwell, Fowler, White, Gillen, Boggs, Villareal & Banker, Tampa, FL.*

COMPLAINT

The Federal Trade Commission, having reason to believe that National Dietary Research, a corporation, The William H. Morris Company, a corporation, and William H. Morris, individually and as the sole officer of said corporations ("respondents"), have violated Sections 5(a) and 12 of the Federal Trade Commission Act (15 U.S.C. 45 (a) and 52), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. (a) Respondent National Dietary Research is a Florida corporation, with its principal office or place of business located at 1377 K Street, N.W., Suite 553, Washington, D.C.

(b) Respondent William H. Morris Company is a Florida corporation, with its principal office or place of business located at 2804 Smither Road, Tampa, Florida.

(c) Respondent William H. Morris is the President of both National Dietary Research and the William H. Morris Company. Mr. Morris owns 100 percent of the capital stock of both corporations. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondents, including the acts and practices alleged in this complaint. His principal office or place of business is located at 2804 Smither Road, Tampa, Florida.

PAR. 2. Respondents have advertised, offered for sale, sold and distributed Food Source One, a compressed tablet made largely from plant fiber, as a weight loss product. Respondents have also advertised, offered for sale, sold and distributed Vancol 5000, a compressed tablet made from plant fiber and other substances, as a product that reduces serum cholesterol. Each of these products is a "food" and/or "drug" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

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

PAR. 4. Respondents have disseminated or have caused to be disseminated advertisements and promotional materials for Food Source One, including, but not necessarily limited to, the attached Exhibits A-F and J-L. These advertisements and promotional materials contain the following statements:

1. WEIGHT LOSS SURPRISES RESEARCHERS

WASHINGTON – A nutrition organization was hopeful that a nutritionally complete "hi-tech" food tablet would help erase world hunger problems, until a study revealed that one of the ingredients could cause significant weight loss without dieting! Researchers in Europe found that an ingredient in the aptly named product Food Source One actually caused people to lose weight, even though specifically instructed not to alter normal eating patterns, according to one study published in the prestigious British Journal of Nutrition. Researchers in an earlier study had speculated that the weight loss was due to a decrease in the intestinal absorption of calories.

While the development of Food Source One, a project of National Dietary Research, would not be used to successfully fulfill its original goal, the discovery has been a windfall for overweight people. A Daytona Beach, Florida woman fighting a weight battle for 12 years used the product on the recommendation of her physician and lost 30 pounds. She stated, "Not only have I lost 30 pounds but my

cholesterol has dropped from 232 to 143. I have two closets full of clothes which have not fit me in two years that I can now wear." In a separate report, a telephone interview revealed that a Wilmington, North Carolina pharmacist lost 14 pounds in 15 days on the product and was never hungry. (Exhibits A, J and L).

2. WEIGHT LOSS MYSTERY Baffles Scientists

WASHINGTON -- Scientists are baffled by a natural food ingredient that causes people to lose weight even though they don't change the way they normally eat.

A study published in *The British Journal of Nutrition* says that the ingredient, often used to thicken ice cream, can cause significant weight loss without dieting. Although several explanations for the weight loss are suggested, the most likely according to scientists in a Finnish study, is that the ingredient seems to decrease the intestinal absorption of calories.

National Dietary Research, an organization committed to the research and development of nutritional solutions to world-wide health problems, along with consulting scientists, have successfully isolated and incorporated the ingredient into an improved method that greatly enhances the potential for weight loss over the ingredient alone. Called Food Source One, the significant breakthrough in nutritional weight control provides a three-way scientifically designed method to help prevent calorie absorption.

The mechanism by which Food Source One works to decrease body weight is a complicated process called nutri-bonding. When chewed and swallowed immediately before meals, high calorie fats are replaced with lower calorie nutrients, thereby providing optimum nutrition and a minimum number of fat calories as explained in an instruction sheet that accompanies the tablets. The instruction sheet should be followed for optimum results.

....

Physicians and pharmacists are praising Food Source One as a natural, drug free alternative for the treatment of obesity. (Exhibits B and K).

3. WHAT IS FIBERSPAN?

Fiberspan is the trade name for a special formulation of soluble type fiber shown to be effective for weight loss.

....

HOW DOES SOLUBLE FIBER HELP ONE LOSE WEIGHT?

Studies published in respected scientific journals including the *American Journal of Clinical Nutrition* and *The British Journal of Nutrition* found that soluble fiber caused patients to lose weight. Part of the reason for the weight loss, according to scientists, is probably due to the appetite reduction properties. However, some studies have found that patients consuming soluble fiber lost weight without altering their normal eating patterns. The appetite reducing effects of the fiber cannot justify this phenomenon. Thus, scientists speculate that the fiber reduces intestinal absorption of a portion of the calories you consume leading to weight loss. The calories are trapped when the fiber forms a gel and are eliminated.

IS FS-1 MORE EFFECTIVE FOR WEIGHT LOSS THAN THE FIBER ALONE?

FS-1 provides a three way scientifically designed process for improved weight loss that fiber alone cannot provide. The human appetite is too complex to be tricked for any length of time by the placement of a non-nutritive substance in the stomach. This is why the nutritional portion of FS-1 is so important.

....

WHAT IS FOOD SOURCE ONE WITH FIBERSPAN?

Food Source One with Fiberspan, commonly referred to as FS-1, is a nutritionally concentrated food tablet with a high fiber content. FS-1 functions just like real food but without all the calories. When chewed, swallowed and followed with water FS-1 expands in the stomach like a sponge as it soaks up water. The nutritional components of the tablet are then released in the stomach so that they are available for absorption.

HOW DOES FS-1 CONTROL THE APPETITE?

The same way eating a six course meal would kill the appetite, with food. First, the fiber creates a temporary full feeling, then the nutritional portion of the tablet gives a gentle rise in blood sugar levels for prolonged appetite suppression, just like a meal. (Exhibit C).

4. Food Source One also contains a unique blend of natural food fiber called Fiberspan. Fiberspan expands in the stomach to many times its own size to help reduce hunger. Furthermore, scientists say that the fiber in Fiberspan helps you lose weight by preventing the absorption of a portion of the calories you consume from food.

.....

THE NO DIET DIET - Chew 3 to 5 FS-1 tablets followed by an 8 oz. glass of water, 30 minutes before each meal. FS-1 will reduce hunger so you will be satisfied with less food. You still enjoy all your favorite foods, but you will eat less. (Exhibit D).

5. ACCIDENTAL DISCOVERY MAY END OBESITY

WASHINGTON - Researchers may have discovered a way to end obesity--by accident!

In a study with a potential cholesterol lowering agent, scientists noted an unusual side effect. Instead of lower cholesterol levels, patients receiving a natural plant colloid lost weight while body weight in a control group remained constant.

The scientists say the mechanism behind the weight loss is not clear, but suggest it is partially due to a decrease in the intestinal absorption of calories. Scientists in another study published in the British Journal of Nutrition, found that patients consuming the same colloid lost weight in spite of being instructed not to alter normal eating patterns. Despite this evidence, other scientists may not agree on the weight loss benefits of colloids. Someday, pending further study, there could be universal agreement that colloids are helpful in confronting the problem of obesity. (Exhibit E).

6. WEIGHT LOSS SURPRISES RESEARCHERS

WASHINGTON -- A nutrition organization was hopeful that a nutritionally complete "hi-tech" food tablet would help erase world hunger problems, until a study revealed that one of the ingredients could cause significant weight loss.

Although other studies and scientists may not agree, researchers in Europe found that the ingredient, a natural plant colloid, actually caused people to lose weight, even though specifically instructed not to alter normal eating patterns, according to one study published in the prestigious British Journal of Nutrition. Researchers in an earlier study had speculated that the weight loss was due to a decrease in the intestinal absorption of calories.

While the development of the product called Food Source One, a project of National Dietary Research, would not be used to successfully fulfill its original goal, the formula which has since been improved with other natural colloids has

been a windfall for overweight people. A Daytona Beach, Florida woman fighting a weight battle for 12 years used the product on the recommendation of her physician and lost 30 pounds. She stated, "Not only have I lost 30 pounds but my cholesterol dropped from 232 to 143. I have two closets full of clothes which have not fit me in two years that I can now wear." In a separate report a telephone interview with a Wilmington, North Carolina pharmacist lost 14 pounds in 3 weeks on the product and was never hungry A variety of nutritionally sound diet plans are specially prepared by NDR, accompany each bottle and provide a natural, drug free alternative for confronting the problem of obesity. (Exhibit F)

PAR. 5. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A-F, and J-L, respondents have represented, directly or by implication, that:

- (a) Food Source One causes significant weight loss.
- (b) Food Source One causes significant weight loss without dieting or otherwise changing normal eating patterns.
- (c) Food Source One is an effective treatment for obesity.
- (d) Food Source One reduces hunger and is an effective appetite suppressant.
- (e) Food Source One decreases the intestinal absorption of calories.
- (f) Food Source One may significantly reduce serum cholesterol.

PAR. 6. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A-F, and J-L, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph five, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 7. In truth and in fact, at the time they made the representations set forth in paragraph five, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph six was, and is, false and misleading.

PAR. 8. Through the use of the statements contained in the advertisements and promotional materials set forth in paragraph four, including but not necessarily limited to the advertisements and

promotional materials attached as Exhibits A-F, and J-L, respondents have represented, directly or by implication, that:

(a) Scientific studies of certain ingredients contained in Food Source One, including studies published in the British Journal of Nutrition and the American Journal of Clinical Nutrition, demonstrate that Food Source One causes significant weight loss.

(b) Scientific studies of certain ingredients contained in Food Source One, including a study published in the British Journal of Nutrition, demonstrate that Food Source One causes significant weight loss without dieting.

(c) Food Source One has a high fiber content.

(d) National Dietary Research is a *bona fide*, independent research organization that has conducted research seeking nutritional solutions to world-wide health problems.

PAR. 9. In truth and in fact:

(a) Scientific studies of certain ingredients contained in Food Source One, including studies published in the British Journal of Nutrition and the American Journal of Clinical Nutrition, do not demonstrate that Food Source One causes significant weight loss.

(b) Scientific studies of certain ingredients contained in Food Source One, including a study published in the British Journal of Nutrition, do not demonstrate that Food Source One causes significant weight loss without dieting.

(c) Food Source One does not have a high fiber content.

(d) National Dietary Research is not a *bona fide*, independent research organization and has not conducted research seeking nutritional solutions to world wide health problems.

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

PAR. 10. Respondents have represented, directly or by implication, that certain of its advertisements for Food Source One, including, but not necessarily limited to, Exhibits B, J, K and L, are independent newspaper stories and not paid advertisements.

PAR. 11. In truth and in fact, the advertisements for Food Source One referred to in paragraph ten are paid commercial advertisements

and not independent newspaper stories. Therefore, the representation set forth in paragraph ten was, and is, false and misleading.

PAR. 12. Respondents have disseminated or have caused to be disseminated advertisements and promotional materials for Vancol 5000, including, but not necessarily limited to, the attached Exhibits G-I. These advertisements and promotional materials contain the following statements:

1. CHOLESTEROL DISCOVERY PASSES MOM'S TEST

WASHINGTON - The mother of a research scientist recently lowered her cholesterol more than 20% without changing her eating habits.

After a visit to her doctor, a Florida woman learned that her cholesterol level was an elevated 308 and she was encouraged to change her eating habits. When she returned 10 weeks later, the doctor was astounded that her cholesterol level has dropped to 243. Asked if she achieved the amazing results just by dieting she replied, "No I didn't diet at all, in fact I ate the things I shouldn't eat like bacon, sausage and ice cream. The only thing I did different was take some tablets my son gave me."

The woman's son is Dr. William Morris, director of research and development [at] National Dietary Research, an Organization dedicated to finding nutritional solutions to health problems.

....

Vancol 5000 is a chewable food tablet that contains extracts from foods known to lower cholesterol. According to the exclusive distributor for Vancol 5000, inquiries about the new product are being received from all over the country and has peaked [sic] the interest of doctors used to prescribing expensive cholesterol lowering drugs. (Exhibit G).

2. THE VANCOL 5000 CHOLESTEROL LOWERING PLAN GUARANTEE

A blood cholesterol level over 270 puts you at a high risk for heart disease. Have your cholesterol checked. If you need to lower your cholesterol, use Vancol 5000 as directed for 30 days. After 30 days, have it checked again. If your cholesterol has not been lowered significantly, bring your test results and empty bottle back for a FULL REFUND! LOWER YOUR CHOLESTEROL IN 30 DAYS OR YOUR MONEY BACK!

National Dietary Research - Washington, D.C. (Exhibit H).

3. Recent Scientific data suggests that the ingredients contained in Vancol 5000

have a beneficial effect on lowering total blood cholesterol levels, LDL cholesterol and may even increase HDL cholesterol. The Vancol 5000 Plan and the nutrients contained in the Vancol 5000 tablet were developed to lower cholesterol levels, improve overall health status and an individuals [sic] quality of life.

....

Beta Sitosterol has been shown experimentally to decrease elevated plasma cholesterol by interfering with the intestinal absorption [sic] of cholesterol.

....

Chromium picolinate supplementation has been shown to decrease LDL and total cholesterol levels and is effective in the treatment of hyperlipidemia.

....

Psyllium decreases absorption of cholesterol and lipids in the small intestines and causes the formation of short chain fatty acids, which are rapidly absorbed and may inhibit cholesterol synthesis.

.....

Calcium carbonate and magnesium stearate have been found to decrease cholesterol as explained in further detail on the following page.

.....

VANCOL 5000

Elevated Cholesterol Levels and Dietary Supplementation Chromium Picolinate
Experimental study: Supplementation with 50-200 mcg of chromium daily, improved blood cholesterol and triglyceride levels. The decrease was due to chromiums [sic] function in fat metabolism and sugar metabolism. (Anderson, Richard A. Agricultural Research, 10:14-16, 1990)

Experimental Double-blind Crossover Study: During a 42 day period, 28 subjects were given chromium tripicolinate (200 mcg) or a placebo daily. The subjects ingesting chromium had a significant decrease in total cholesterol, LDL cholesterol (10.5% decrease) and serum apolipoprotein B, (the principal protein of LDL cholesterol fraction) decreased. HDL cholesterol and apolipoprotein A increased. Subjects ingesting the placebo had elevated apolipoprotein B levels. (Press RI et al. The effect of chromium picolinate on serum cholesterol and apolipoprotein fractions in human subjects. West J. Med. 1990 Jan; 152:41-45)

Psyllium

Double-blind Placebo Controlled Study: 26 hypercholesterolemic men were treated with psyllium or a placebo for 8 weeks. The psyllium group showed a 14% decrease in total cholesterol, 14.8% decrease in LDL/HDL cholesterol ratio and 20% decrease in LDL cholesterol. The placebo group showed no significant changes. (Anderson, J.W. et al. Cholesterol lowering effect of psyllium for hypercholesterolemic men. Arch Intern Med. 148:292-296)

Double-blind Study: 96 subjects with hypercholesterolemia were given 5.1 gms of psyllium or a placebo twice daily for 16 weeks, while following a prudent diet. Psyllium decreased total cholesterol by 5.6% and LDL cholesterol by 8.6%. The levels in the placebo group were unchanged. (Levin, E.G. et al. Comparison of psyllium and cellulose as adjuncts to a prudent diet in the treatment of hypercholesterolemia. Arch Intern Med. 150: 1822-1827, 1990)

BETA SITOSTEROL

Experimental Study: A diet containing .5% cholesterol plus .5% sitosterol, resulted in a significant decrease of liver cholesterol, showing the inhibitory effect of sitosterol on cholesterol absorption [sic]. (Ikeda, I. et al. J. Nutr. Sci. Vitaminol 35:361-369, 1989)

QUINONES

Quinones are natural antioxidants that help control and minimize free radical reactions to help lower cholesterol.

Calcium Carbonate

Although the mechanism of action is unknown, calcium has been shown to decrease cholesterol. One physician, a former medical editor for a national magazine, has advanced his "hard water" theory as a possible answer. CaCO_3 is the most common substance in hard water. According to the doctor, just as body oils and detergents mix with CaCO_3 to form an insoluble "bathtub ring", it can also inhibit the intestinal absorption of fat and cholesterol.

Magnesium Stearate

Magnesium stearate is a by product of stearic acid. Scientific data has shown, that when stearic acid is used in place of other fats in the diet, there is a significant reduction of plasma levels of cholesterol and LDL cholesterol (total cholesterol decreased by an average of 14%).

NOTE: No statement contained in this publication shall be construed as a claim or representation that any product is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of any disease. This report is intended for professional use only. Certain persons considered experts may disagree with one or more of the statements and/or conclusions found in this report. Notwithstanding the above, this information is of current nutritional interest and is based upon sound and reliable authority. (Exhibit I).

PAR. 13. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph twelve, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits G-I, respondents have represented, directly or by implication, that:

- (a) Vancol 5000 significantly reduces serum cholesterol.
- (b) Vancol 5000 significantly reduces serum cholesterol without changes in diet or eating habits.

PAR. 14. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph twelve, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits G-I, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph thirteen, respondents possessed and relied upon a reasonable basis that substantiated such representations.

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

PAR. 16. Through the use of the statements contained in the advertisements and promotional materials set forth in paragraph twelve, including but not necessarily limited to the promotional materials attached as Exhibit I, respondents have represented, directly or by implication, that scientific studies of certain ingredients

contained in Vancol 5000 demonstrate that Vancol 5000 significantly reduces serum cholesterol.

PAR. 17. In truth and in fact, scientific studies of certain ingredients contained in Vancol 5000 do not demonstrate that Vancol 5000 significantly reduces serum cholesterol. Therefore, the representation set forth in paragraph sixteen was, and is, false and misleading.

PAR. 18. Through the use of the statements contained in the advertisements set forth in paragraphs four and twelve, including but not necessarily limited to the advertisements attached as Exhibits A, F, G, J and L, respondents have represented, directly or by implication, that testimonials from consumers appearing in advertisements for Food Source One and Vancol 5000 reflect the typical or ordinary experience of members of the public who have used the products.

PAR. 19. Through the use of the statements contained in the advertisements set forth in paragraphs four and twelve, including but not necessarily limited to the advertisements attached as Exhibits A, F, G, J and L, respondents have represented, directly or by implication, that at the time they made the representation set forth in paragraph eighteen, respondents possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 20. In truth and in fact, at the time they made the representation set forth in paragraph eighteen, respondents did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in paragraph nineteen was, and is, false and misleading.

PAR. 21. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

Complaint

EXHIBIT A

November 14, 1990

EXHIBIT A

Weight Loss Surprises Researchers

WASHINGTON — A nutrition organization was hopeful that a nutritionally complete "nutraceutical" would help erase world hunger problems until a study revealed that one of the ingredients could cause significant weight loss without dieting. Researchers in Europe found that an ingredient in the aptly named product Food Source One actually caused people to lose weight even though specifically instructed not to alter normal eating patterns according to one study published in the prestigious British Journal of Nutrition. Researchers in an earlier study had speculated that the weight loss was due to a decrease in the intestinal absorption of calories. While the development of Food Source One, a project of National Dietary Research, would not be used to successfully fulfill its original goal, the discovery has been a windfall for

overweight people. A Daytona Beach, Florida woman fighting a weight battle for 12 years used the product on the recommendation of her physician and lost 20 pounds in six weeks. "Not only have I lost 20 pounds but my cholesterol has dropped from 232 to 143. I have two closets full of clothes which have not fit me in two years that I can now wear." In a separate report, a telephone interview revealed that a Wilmington, North Carolina pharmacist lost 14 pounds in 15 days on the product and was never hungry. Food Source One is available through physicians and pharmacies without a prescription because it is not a drug and contains only natural ingredients already known to be safe. Copies of the referenced study are available free from National Dietary Research, Suite 553, 1377 K St., Washington, DC 20008, however please include \$2 postage & handling for each request.

ASK YOUR PHARMACIST

Food Source One is available at a pharmacy near you:

- | | | |
|--|---|---|
| Bridley Drug Co.
604 Hwy. 100
357-1122 | Bradshaw Drugs
4041 Hillsboro Rd.
385-3828 | Brooks Pharmacy
6701 Transdale Dr.
832-1647 |
| Drug Mart
2614 Old Lebanon Rd.
833-8515 | Health Care Plus
1613 Hillsboro Rd.
385-3861 | Hickory Park Pharmacy
2634 Old Lebanon Road
833-8813 |
| Mayfield Drug Co.
3302 Nolanville Rd. + Antioch Pike
832-1790 | Malone Drug Co.
2762 Lebanon Rd.
883-3298 | Marshallburg Rd.
2648 Marshallburg Rd.
385-4667 |
| Green Hills Prescription Shoppe
3900 Hillsboro Rd.
297-4086 | The Medicine Shoppe
1910 Church St.
329-2211 | Todd's Drug Store
2319 Dickerson Rd.
262-1911 |
| 601 Gallean Rd.
1113 Murfreesboro Rd.
Sewards Ferry Pike | J.P. Brown Drug Store
227-1101
361-5700
883-0131 | 3109 Dickerson Rd.
3637 Dickerson Rd.
865-0287 |
| Elders Pharmacy
210 Goodlettsville Plaza
856-1331 | McGee's Prescription Shoppe
842 Union Street
684-7936 | Portland Prescription Shoppe
105 Broadway
325-4141 |
| P & P Drugs
811 W. Main St.
824-1215 | Esperville Drug Center
Highway 41-A
274-4866 | Woodbury Drug Center
223 W. Main St.
363-2332 |
| Martin Retail Drugs
On The Square
973-7286 | Murfreesboro Drug Center
1703 Bradyville Rd.
1004 N. Highland
1115 Memorial Blvd.
893-6023
893-7413
896-9161 | |
| Pugh's Pharmacy Inc.
511 Gallean Rd. #8
866-3432 | The Medicine Shoppe
232 S. 4th Ave. N.
794-3070 | Memphis Drug
S. N. Water Ave.
482-3434 |

Complaint

120 F.T.C.

EXHIBIT B

**WEIGHT LOSS
MYSTERY
BAFFLES
SCIENTISTS**

WASHINGTON—Scientists are baffled by a natural food ingredient that causes people to lose weight even though they don't change the way they normally eat.

A study published in *The British Journal of Nutrition* says that the ingredient, often used to thicken ice cream, can cause significant weight loss without dieting. Although several explanations for the weight loss are suggested, the most likely according to scientists in a Finnish study, is that the ingredient seems to decrease the intestinal absorption of calories.

National Dietary Research, an organization committed to the research and development of nutritional solutions to world-wide health problems, along with consulting scientists, have successfully isolated and incorporated the ingredient into an improved method that greatly enhances the potential for weight loss over the ingredient alone. Called Food Source One, the significant breakthrough in nutritional weight control provides a sure-way scientifically designed method to help prevent calorie absorption.

The mechanism by which Food Source One works to decrease body weight is a complicated process called nutrient-bonding. When chewed and swallowed immediately before meals, high calorie fats are replaced with low-calorie nutrients, thereby providing optimum nutrition and a minimum number of fat calories as explained in an instruction sheet that accompanies the tablets. The instruction sheet should be followed for optimum results.

Food Source One is unlike any other product on the market and is available immediately because it is not a drug and only contains natural ingredients already known to be safe. Physicians and pharmacists are praising Food Source One as a natural, drug free alternative for the treatment of obesity.

© 1990 Dineon International
Food Source One is available at:
M Prescription Pharmacy
23 12th Avenue NW 223-0671
(Advertisement)

Ardmoreite
Ardmore, OK
December 9, 1990

19081

EXHIBIT C

EXHIBIT C Page One

QUESTIONS & ANSWERS ABOUT

FOOD SOURCE ONE

with **FIBERSPAN™**

Concentrated Food Tablets

WHAT IS A FOOD TABLET?

A food tablet is not just a vitamin tablet, because it packs the required nutrition of a meal into a compact tablet. Just as we get our required calories from food, a food tablet can provide the calories your body needs to function without the excess calories you would get from an average meal.

The concept for a food tablet probably began when the time space travel became a reality. The need for nutrition in outer space, yet in a convenient compact form led scientists in search of a solution. A food tablet packs optimum nutrition into the smallest possible form.

WHAT IS FOOD SOURCE ONE WITH FIBERSPAN?

Food Source One with Fiberspan, commonly referred to as FS-1, is a nutritionally concentrated food tablet with a high fiber content. FS-1 functions just like real food but without all the calories. When chewed, swallowed and followed with water, FS-1 expands in the stomach like a sponge as it soaks up water. The nutritional components of the tablet are then released in the stomach so that they are available for absorption.

HOW DOES FS-1 CONTROL THE APPETITE?

The same way eating a six course meal would kill the appetite, with food. First, the fiber creates a temporary full feeling, then the nutritional portion of the tablet gives a gentle rise in blood sugar levels for prolonged appetite suppression, just like a meal.

DOES FS-1 HAVE SIDE EFFECTS?

FS-1 is food and not a drug, so side effects are limited to those that might be experienced when one overeats. For example, some people become full after consuming a small amount of food whereas others require more food to become full. Therefore, some people will be satisfied with fewer FS-1 tablets, while others will require more tablets to become full. If you become "bloating" or experience an upset stomach when taking FS-1, reducing the number of tablets for the first few days will alleviate this feeling.

HOW MUCH DOES FS-1 COST?

The price of FS-1 is about 75 cents per serving which is easily offset by the reduction in food one would ordinarily consume. On a serving per serving basis, FS-1 is about the same price as the leading liquid weight loss formula.

CAN I EAT EVERYTHING I WANT WHEN TAKING FS-1?

Dieters often get discouraged when they are deprived of their favorite foods. Unfortunately, FS-1 will help you feel satisfied with less, but that's not a good thing.

FOOD SOURCE ONE WITH FIBERSPAN

Research and development by:
NATIONAL DIETARY RESEARCH
 SUITE 553, 1377 K STREET
 WASHINGTON, DC 20005

Distributed world wide by:
OMICRON INTERNATIONAL
 P.O. Box 270665
 Tampa, FL 33688

Complaint

120 F.T.C.

EXHIBIT C

patterns. The appetite reducing effects of the fiber cannot justify this, the respondent. Thus, scientists speculate that the fiber reduces the nutritional absorption of a portion of the calories you consume, leading to weight loss. The calories are trapped when the fiber forms a gel and are eliminated.

IS FS-1 MORE EFFECTIVE FOR WEIGHT LOSS THAN THE FIBER ALONE?

FS-1 provides a three way scientifically designed process for improved weight loss that fiber alone cannot provide. The human appetite is completely inhibited for any length of time by the placement of a non-nutritive substance in the stomach. This is why the nutritional portion of FS-1 is so important.

WHAT IS NUTRI-BONDING?

Nutri bonding is the process that makes the FS-1 tablet so unique. The nutritional portion of the tablet is bound to the fiber portion. When the tablet is consumed, the nutrients are released from the fiber so they can be absorbed into the body. Without nutri bonding the nutrients would be absorbed by the fiber and eliminated from the body without being absorbed.

IS CHEWING THE TABLETS IMPORTANT?

Yes, chewing the tablets is important but not absolutely essential. First, chewing retards the rate of caloric ingestion and secondly, chewing satisfies a psychological need for chewing often absent or decreased in persons on a weight reduction program. National Dietary Research, however, has formulated several delectable milk shake recipes using FS-1 as a base. These milk shakes are also effective in weight reduction. A powder form of FS-1 used with skim milk is also available. The powder form of FS-1 is also very popular.

IS FS-1 A DRUG?

No! FS-1 is a natural food substance with all ingredients previously recognized as safe by the FDA. Just as regular supermarket food is inspected, FS-1 is federally inspected by the FDA.

HOW DOES THIS HELP ONE LOSE WEIGHT?

Think of a six course meal which would contain many calories. FS-1 only contains a few calories per tablet. FS-1 satisfies your desire to eat, but with a minimum number of calories.

WHAT IS FIBERSPAN?

Fiber span is the trade name for a special formulation of soluble type fiber shown to be effective for weight loss.

WHAT IS SOLUBLE FIBER?

Fiber is the residue from plants that resists digestion in the gastrointestinal tract. Fiber is not absorbed and does not supply calories in the diet. Although there are five types of dietary fiber, generally fiber is classified as either soluble or insoluble. Soluble fiber is derived from various plant sources and when ingested takes on water to form a gel. Insoluble fiber is found mostly in cereal grains, and bran and does not take on water.

IS INSOLUBLE FIBER HELPFUL FOR WEIGHT LOSS?

No, only soluble type fiber has been shown to help in weight loss. Insoluble fiber's effect is generally limited to its ability to act as a laxative by increasing fecal bulk. Bran and grain fibers are being promoted by some companies for weight loss, however one should be cautioned that these fibers are virtually useless for weight loss.

HOW DOES SOLUBLE FIBER HELP ONE LOSE WEIGHT?

Studies published in respected scientific journals including the American Journal of Clinical Nutrition and the British Journal of Nutrition found that soluble fiber caused patients to lose weight. Part of the reason for weight loss, according to scientists, is probably due to the appetite reduction properties. However, some studies have found that patients consuming soluble fiber lost weight without altering their normal eating

EXHIBIT C Page 240

EXHIBIT D

EXHIBIT D Page One

NEW IMPROVED FORMULA - LESS FAT - FEWER CALORIES

NATURAL NUTRITIONAL

★ ★ ★ WEIGHT LOSS ★ ★ ★

with

FOOD SOURCE ONE

With

Fiberspan™

Concentrated Food Tablets

THE NO DIET DIET - Chew two FS-1 tablets, followed by an 8 oz. glass of water, 30 minutes before each meal. FS-1 will reduce hunger so you will be satisfied with less food. You still enjoy all your favorite foods, but you will eat less.

BUSINESSMAN'S DIET OR SALESMAN'S DELIGHT - This plan is designed for those people who must entertain clients for lunch. Substitute an FS-1 milkshake in place of breakfast and dinner. For lunch, chew 2 or 3 FS-1 tablets, followed by 8 oz. of water. 30 minutes before you eat, then enjoy your usual meal.

SNACKER'S DELIGHT - This plan is the answer for those individuals who don't eat a lot at mealtime, but are continually hungry and satisfied by hunger by nibbling. In place of candy bars, potato chips and other snack food, substitute 2 or 3 FS-1 tablets followed by an 8 oz. glass of water to satisfy hunger.

FASTING - For one or two days each week, eliminate all regular food and drink one FS-1 milkshake 3 times a day.

FAST START - For the first 3 days of your diet, eliminate all regular food in place of food, substitute one FS-1 milkshake 3 times a day. At the end of 3 days, continue by selecting one of the plans above.

Remember, when dieting be sure to drink 8 glasses of water or fluid daily. Restrictive diets containing less than 1,000 calories per day should not be continued for more than 6 consecutive weeks without a 2 week rest period. Food Source One is not intended to be the sole source of nutrition for more than 3 consecutive days or 3 days per week.

Research and development by:
NATIONAL DIETARY RESEARCH
Suite 553, 1377 K Street
Washington, DC 20005

Distributed world-wide by:
OMICRON INTERNATIONAL
P.O. Box 270465 Tampa, FL 33688

Food Source One with Fiberspan is a wholesome and nutritionally balanced dietary regimen in a pleasant tasting compact chewable tablet. Food Source One has the proper balance of the essential vitamins, minerals, protein, carbohydrates, fatty acids and fiber that would be contained in a well balanced meal, but with a minimum number of fat calories. Food Source One also contains a unique blend of natural food fiber called Fiberspan. Fiberspan expands in the stomach to many times its own size to help reduce hunger. Furthermore, scientists say that the fiber in Fiberspan helps you lose weight by preventing the absorption of a portion of the calories you consume from food.

The Food Source One program is truly a nutritional breakthrough for weight control. Scientifically designed, Food Source One nutritionally satisfies your whole body for a longer period of time.

EXHIBIT D

DINNER TIME - Substitute an FS-1 milk shake twice daily in place of breakfast and lunch. In the evening, chew 2 to 3 FS-1 tablets followed by an 8 oz. glass of water 30 minutes before enjoying your usual dinner meal.

DINNER TIME (MODIFIED) - Same as above, but in place of your usual evening meal create your dinner by selecting one item from each column. For dessert you may have one serving of flavored low calorie gelatin. You may also have diet sodas, coffee, tea, and artificial sweetener. Steak sauce, ketchup, lemon juice, vinegar and mustard should be used sparingly.

1	2	3	4	5
4 med. sliced whole wheat 2 tbsp. low cal dressing	8 oz. skim milk 8 oz. low fat yogurt	3/4 oz. broiled or baked fish 3/4 oz. broiled ground round or chuck 3/4 oz. chicken or turkey (skin removed)	1 cup of any of the following: spinach, broccoli, cabbage, brocol sprouts, beans, onions, spinach 2 cups cauliflower 12 asparagus spears	1 roll or pie crust with 1 pat low calorie margarine 1 slice whole wheat with 1 pat low calorie margarine 1 small baked potato with 1 pat low calorie margarine
1 sliced tomato with 1 tbsp. low cal dressing	4 oz. low fat fruit yogurt	3/4 oz. shrimp, lobster or crab		1/2 cup cooked pasta 1 cup veggie table or chicken noodle soup 1/2 cup cooked rice 1 small eat of corn with 1 pat low calorie margarine
2 raw carrots		3/4 oz. tuna (packed in water)		
1 8 oz. glass tomato juice				
1/2 cup apple-sauce				

EXHIBIT D Page Two

HOW TO USE FS-1

Here are 8 methods for living weight naturally and safely with FS-1, however always remember that you should be checked by a physician before starting any weight loss program to make sure you are in otherwise good physical condition. FS-1 level tablets can be taken before meals to reduce hunger and caloric intake or transformed into delicious milk shakes (see separate recipe brochure) as a meal replacement.

BREAKFAST CLUB - Studies indicate that individuals who consume two thirds of their daily calories before noon are less likely to be obese. Chew 2 or 3 FS-1 tablets 30 minutes before breakfast, followed by an 8 oz. glass of water. Then create and build your choice of breakfast by selecting one item from each column listed below. Drink an FS-1 milk shake in place of your other two meals. You may also have diet soft drinks, coffee, tea, and artificial sweeteners.

1	2	3	4
1 medium apple	8 oz. skim milk	1 oz. broiled salmon	2 slices whole wheat toast
1 medium orange	8 oz. low fat yogurt	1 oz. smoked ham (fat removed)	1 small bagel
6 oz. orange juice	4 oz. low fat fruit yogurt	1 oz. broiled ground round	1 small English muffin
1 large tomatoe		1 oz. chicken or turkey (skin removed) baked or steamed	2 biscuits
1/2 large grapefruit		1 oz. broiled or baked fish	2 plain donuts
4 bananas		1/2 cup low fat cottage cheese	1 pancake or waffle with 1 tbsp. hot syrup
10 grapes		1 egg scrambled with 2 egg whites (use no oil and 1 serving of one of the items above)	1 cup corn flakes
1 wedge cantaloupe			

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Complaint

EXHIBIT E

EXHIBIT E

Oakland Tribune
September 20, 1992

ADVERTISEMENT ADVERTISEMENT

Accidental discovery may end obesity

WASHINGTON—Researchers may have discovered a way to end obesity—by accident.

In a study with a potential cholesterol lowering agent, scientists noted an unusual side effect. Instead of lower cholesterol levels, patients receiving a natural plant colloid lost weight while body weight in a control group remained constant.

The scientists say the mechanism behind the weight loss is not clear, but suggest it is partially due to a decrease in the intestinal absorption of calories. Scientists in another study published in the *British Journal of Nutrition*, found that patients consuming the same colloid lost weight in spite of being instructed not to alter normal eating patterns. Despite this evidence, other scientists may not agree on the weight loss benefits of colloids. Someday, pending further study, there could be universal agreement that colloids are helpful in confronting the problem of obesity.

National Dietary Research, whose research topics have been the subject of articles published in recent medical and nutritional journals, has successfully incorporated a series of colloids into a chewable food tablet called FS-1. When used as directed, FS-1 replaces high calorie fats with lower calorie nutrients, thus providing optimum nutrition with a minimum number of fat calories. According to an article published in the *American Journal of Clinical Nutrition*, consciously limiting the amount of food one consumes is not necessary to lose weight, provided you limit the fat.

A Florida company has obtained exclusive distribution rights to FS-1, which is available through pharmacies and other health care professionals.

©1992 Quilora International
Food Source One is available at:
LINCOLN SQUARE PHARMACY
4100 Redwood Road 531-0602
MONTCLAIR PHARMACY
6123 Lasalle Ave 339-9393

EXHIBIT F

EXHIBIT F

Weight Loss Surprises Researchers

WASHINGTON — A Nutrition organization was hopeful that a nutritionally complete "hi-tech" food tablet would help erase world hunger problems, until a study revealed that one of the ingredients could cause significant weight loss.

Although other studies and scientists may not agree, researchers in Europe found that the ingredient, a natural plant colloid, actually caused people to lose weight, even though specifically instructed not to alter normal eating patterns.

According to one study published in the prestigious British Journal of Nutrition, researchers in an earlier study had speculated that weight loss was due to a decrease in the intestinal absorption of calories.

While the development of the product called Food Source One, a project of National Dietary Research, would not be used to successfully fulfill its original goal, the formula

which has since been improved with other natural colloids has been a windfall for overweight people. A Davtons Beach, Florida woman, fighting a weight battle for 12 years, used the product on the recommendation of her physician and lost 30 pounds. She stated, "Not only have I lost 30 pounds but my cholesterol dropped from 232 to 143. I have two closets full of clothes which have not fit me in two years that I can now wear." In a separate report a telephone interview with a Wilmington, North Carolina pharmacist lost 14 pounds in 3 weeks on the product and was never hungry.

Food Source One tablets are part of National Dietary Research's comprehensive plan to bring a rapid end to obesity in this country. A variety of nutritionally sound diet plans are specially prepared by NDR, accompany each bottle and provide a natural, drug free alternative for confronting the problem of obesity.

ASK YOUR PHARMACIST FOOD SOURCE ONE IS AVAILABLE AT:

- | | | |
|--|---|---|
| ALEXANDRIA
Pharmacia
1111 Washington St
Alexandria, VA 22304
703-461-1111 | CHERRY CHASE
Pharmacia
9511 University Ave
Cherry Chase, VA 22021
703-461-1111 | DC (Continued)
Pharmacia
4411 University Ave
Washington, DC 20015
703-461-1111 |
| ANNAPOLIS
Pharmacia
1111 University Ave
Annapolis, MD 21403
410-261-1111 | COLLEGE PARK
Pharmacia
1111 University Ave
College Park, MD 20740
301-470-1111 | FAIRFAX
Pharmacia
1111 University Ave
Fairfax, VA 22031
703-461-1111 |
| ARLINGTON
Pharmacia
1111 University Ave
Arlington, VA 22201
703-461-1111 | TARDUNA PARK
Pharmacia
1111 University Ave
Tarduna Park, VA 22181
703-461-1111 | FALLS CHURCH
Pharmacia
1111 University Ave
Falls Church, VA 22044
703-461-1111 |
| BETHESDA
Pharmacia
1111 University Ave
Bethesda, MD 20814
301-470-1111 | RESTON
Pharmacia
1111 University Ave
Reston, VA 20190
703-461-1111 | GREENBELT
Pharmacia
1111 University Ave
Greenbelt, MD 20861
301-470-1111 |
| BETHESDA
Pharmacia
1111 University Ave
Bethesda, MD 20814
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Pharmacia
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Roanoke, VA 24060
703-461-1111 | HYATTSVILLE
Pharmacia
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Hyattsville, MD 20885
301-470-1111 |
| BETHESDA
Pharmacia
1111 University Ave
Bethesda, MD 20814
301-470-1111 | STERLING
Pharmacia
1111 University Ave
Sterling, VA 20154
703-461-1111 | KENNESAW
Pharmacia
1111 University Ave
Kennesaw, GA 30144
404-426-1111 |
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Bethesda, MD 20814
301-470-1111 | WASHINGTON
Pharmacia
1111 University Ave
Washington, DC 20015
703-461-1111 | NEWPORT NEWS
Pharmacia
1111 University Ave
Newport News, VA 23601
804-251-1111 |
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Pharmacia
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Bethesda, MD 20814
301-470-1111 | WHEELING
Pharmacia
1111 University Ave
Wheeling, WV 26060
304-341-1111 | PHOENIX
Pharmacia
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Phoenix, AZ 85010
602-251-1111 |
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602-251-1111 |

Washington Post January 27, 1993

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Complaint

EXHIBIT G

Miami Herald
April/May 1992

ADVERTISING

Cholesterol Breakthrough Passes Mom's Test

WASHINGTON—The mother of a research scientist recently lowered her cholesterol more than 20% without changing her eating habits.

After a visit to her doctor in Florida, woman learned that her cholesterol level was an elevated 308 and she was encouraged to change her eating habits. When she returned 10 weeks later, the doctor was astounded that her cholesterol level had dropped to 213. Asked if she achieved the amazing results just by dieting, she replied, "No I didn't diet at all, in fact I ate the things I shouldn't eat like bacon, sausage and ice cream. The only thing I did different was take some tablets my son gave me."

The woman's son is Dr. William Morris, director of research and development National Dietary Research, an organization dedicated to finding

nutritional solutions to health problems. Dr. Morris admits that the Tablets called Varcel 5000 were designed as a dietary supplement to be used with a low fat diet plan. "She just wanted to put the tablets to the test," says Dr. Morris. "Of course I was pleased with the results she achieved, but now we're working on reducing some of the fat in her diet to lower her cholesterol even further."

Varcel 5000 is a cholesterol food tablet that contains extracts from foods known to lower cholesterol. According to the exclusive distributor for Varcel 5000, inquiries about the new products are being received from all over the country and has peaked the interest of doctors used to prescribing expensive cholesterol lowering drugs. A 30 day supply of the Varcel 5000 Cholesterol Lowering Plan is only \$29.95.

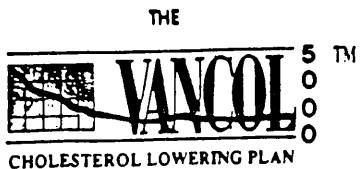
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<p>BAY HARBOR BAY HARBOR DRUGS 1001 KANE CONCOURSE 889-4746</p> <p>CAROL CITY CAROL PHARMACY 470 N.W. 187 STREET 534-7173</p> <p>LA PRODIGEAL PHARMACY 481 N.W. 182nd STREET 888-9113</p> <p>WHEELER'S PHARMACY 371 N.W. 107th STREET 884-1847</p> <p>COCONUT GROVE GODFREY BERRY PHARMACY 3283 GRAND AVE. 344-8841</p> <p>CORAL GABLES GABLES APOTHECARY 478 BILTING WAY 343-1833</p> <p>MAJORA DRUGS 180 PONCE DE LEON BLVD. 444-1737</p> <p>RIVERA PHARMACY 4720 LE JUANE RD. 851-2321</p> <p>SOUTH PARK PHARMACY 1833 MACAROLA AVE. 882-3221</p> <p>SUPER DRUGS PHARMACY 3513 SW 8th ST. 245-8292</p> <p>CORAL REEF RTV PHARMACY 12848 S. OCEAN HWY. 232-0474</p> <p>FLORIDA CITY NORTH PHARMACY & BECOST 380 WEST PALM DRIVE 246-8384</p> <p>MALDEN MALLACON PHARMACY 990 W. 4th AVE. 342-8881</p> <p>HOMESTEAD ROYAL PALM DRUGS 628 N. SPOKE AVE. 947-4249</p> <p>KEY BISCAYNE KEY PHARMACY 790 CHANDLER BLVD. 351-4348</p> <p>LEWISVILLE CITY LEWISVILLE CITY PHARMACY 20348 E.W. 182nd AVE. 345-4348</p> <p>MIAMI S&S MEDICAL SUPPLY 200 S.W. FIRST ST. 371-7287</p>	<p>1870 BISCAYNE PHARMACY 1875 S.W. 27th AVE. 884-7000</p> <p>CARROLLA PHARMACY 1530 N.W. 27th AVE. 639-4793</p> <p>CARDENAS PHARMACY 3838 CORAL WAY 882-0443</p> <p>CONTINENTAL PHARMACY 333 S.W. 8th ST. 884-8211</p> <p>CORAL BEACH PHARMACY 6880 S.W. 24th ST. 392-6177</p> <p>MARLAN BERRY PHARMACY 7400 N. HENDALL DR. 882-1140</p> <p>DOCTOR'S PHARMACY 1932 S.W. 29th ST. 645-6283</p> <p>GRACE'S PHARMACY 2841 S.W. 49th ST. 882-7771</p> <p>HLAS BODOLIZ PHARMACY 6236 S.W. 8th ST. 354-8388</p> <p>JORGE PHARMACY 1791 CORAL WAY 885-1380</p> <p>LEO'S PHARMACY 30380 OLD CUTLER RD. 232-9148</p> <p>LITTLE HARBOR DRUGS 1208 S.W. 8th ST. 884-1380</p> <p>MARCO DRUGS AND GIFTS 6942 S. Ocean Hwy. 882-4111</p> <p>MARCO DRUGS AND GIFTS 17288 S. OCEAN HWY. 332-7273</p> <p>OMEGA PHARMACY 9527 S.W. 12th ST. 274-9928</p> <p>PARCWAY PHARMACY 1280 S.W. 22nd ST. 884-8282</p> <p>RONDO PHARMACY BECOST 1822 N.W. 27th AVE. 882-6282</p> <p>RUJE PHARMACY 162 S.W. 27th AVE. 842-1824</p> <p>SEE PHARMACY OF SWENSON 3275 CORAL WAY 247-0000</p> <p>SHEDDY DRUGS 13277 N. HENDALL DR. 242-0202</p> <p>SHEDDY DRUGS 887 S.W. 12th ST. 371-8282</p> <p>STONE'S PHARMACY 11628 N.E. 2nd AVE. 752-3232</p>	<p>SUPER BISCAYNE PHARMACY 12856 S. OCEAN HWY. 332-7977</p> <p>THE BE BE BE BE BE BE BE BE BE 1520 N.W. 27th AVE. 882-4793</p> <p>WESTCHESER PHARMACY 3838 CORAL WAY 231-7281</p> <p>YOLE BISCAYNE PHARMACY 7523 CORAL WAY 321-7281</p> <p>MIAMI BISCAYNE LEE JUNG PHARMACY 688 THUNDERBOLT AVE. 884-4327</p> <p>METOWNS PHARMACY 321 APRIL BISCAYNE RD. 882-8127</p> <p>SWISS DRUG BISCAYNE 1674 MENDHAM AVE. 884-9802</p> <p>MOTEL PHARMACY 17326 COLLINS AVE. 947-4281</p> <p>STY BIKES BISCAYNE 1520 MENDHAM AVE. 884-9802</p> <p>SHOPPER'S PHARMACY 644 9th ST. 882-8282</p> <p>SLYV OUT BISCAYNE 1428 COLLINS AVE. 884-8282</p> <p>SOUTH BEACH PHARMACEUTICALS 688 N.E. 118th BL. 882-8282</p> <p>RELIABLE SUPER DRUGS 7408 SW 22nd ST. 882-8282</p> <p>TRACO DRUGS 1470 N.E. 162nd DR. 882-8282</p> <p>YOUR PHARMACY 624 S.W. 12th ST. 882-4348</p> <p>NORTH BISCAYNE PHARMACEUTICALS 882 N.E. 118th BL. 882-8282</p> <p>SUNSET BISCAYNE PHARMACEUTICALS 1910 N.E. 12th AVE. 882-8282</p> <p>SUNSET BISCAYNE PHARMACEUTICALS 1910 N.E. 12th AVE. 882-8282</p>
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Complaint

120 F.T.C.

EXHIBIT H



GUARANTEE

A blood cholesterol level over 270 puts you at a high risk for heart disease. Have your cholesterol checked. If you need to lower your cholesterol, use Vancol 5000 as directed for 30 days. After 30 days, have it checked again. If your cholesterol has not been lowered significantly, bring your test results and empty bottle back for a **FULL REFUND!**

**LOWER YOUR CHOLESTEROL IN 30 DAYS
OR YOUR MONEY BACK!**



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Complaint

EXHIBIT I

Technical Sheet

Research & Development by
NATIONAL DIETARY RESEARCH
 1377 K Street, Suite 663
 Washington, DC 20005

VANCOL 5000

Mini Flavored Chewable
 Tablets with Cholesterol
 Lowering Plan

Cholesterol Lowering Formula

Each Chewable Tablet Supplies:
 Beta Sitosterol 10 mg
 Psyllium 200 mg
 Chromium from picolinate 50 mcg
 with Natural quinone antioxidants in a base of
 Calcium carbonate & Magnesium stearate

VANCOL 5000 is composed of nutrients which research has shown to decrease LDL cholesterol levels. VANCOL 5000 is available in chewable tablet form and intended to be used with a cholesterol lowering diet as a drug free alternative for the problem of elevated blood cholesterol levels.

Recent scientific data suggests that the ingredients contained in Vancol 5000 have a beneficial effect on lowering total blood cholesterol levels, LDL cholesterol and may even increase HDL cholesterol. The Vancol 5000 Plan and the nutrients contained in the Vancol 5000 tablet were developed to lower cholesterol levels, improve overall health status and an individual's quality of life.

Beta Sitosterol has been shown experimentally to decrease elevated plasma cholesterol by interfering with the intestinal absorption of cholesterol.

Researchers have found that patients with coronary heart disease had lower concentrations of chromium in the blood than healthy patients. Picolinic acid is a natural chelating agent, which aids in trace mineral absorption. Chromium picolinate supplementation has been shown to decrease LDL and total cholesterol levels and is effective in the treat-

ment of hyperlipidemia.

Psyllium has been studied as a cholesterol reducing agent because it binds to bile acids in the gut preventing reabsorption. Psyllium decreases absorption of cholesterol and lipids in the small intestines and causes the formation of short chain fatty acids, which are rapidly absorbed and may inhibit cholesterol synthesis.

Calcium carbonate and magnesium stearate have been found to decrease cholesterol as explained in further detail on the following page. While quinones may lower cholesterol levels, they are natural antioxidants that prevent oxygen from combining with cholesterol to form plaque on arterial walls.

RECOMMENDATIONS: Chew 2 tablets with each meal.

Package Size: 180 tablets

Distributed by:

**OMICRON
 INTERNATIONAL**
1377 K Street, Suite 663
 Washington, DC 20005

1-800-634-2348

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120 F.T.C.

EXHIBIT I

EXHIBIT I page two

VANCOL 5000

Elevated Cholesterol Levels and Dietary Supplementation**Chromium picolinate**

Experimental study: Supplementation with 50-200 mcg of chromium daily, improved blood cholesterol and triglyceride levels. The decrease was due to chromiums function in fat metabolism and sugar metabolism. (Anderson, Richard A. Agricultural Research, 10: 14-16, 1990)

Experimental Double-blind Crossover Study: During a 42 day period, 28 subjects were given chromium picolinate (200 mcg) or a placebo daily. The subjects ingesting chromium had a significant decrease in total cholesterol, LDL cholesterol (10.5% decrease) and serum apolipoprotein B, (the principal protein of LDL cholesterol fraction) decreased. HDL cholesterol and apolipoprotein A increased. Subjects ingesting the placebo had elevated apolipoprotein B levels. (Press Rl et al. The effect of chromium picolinate on serum cholesterol and apolipoprotein fractions in human subjects. West J. Med. 1990 Jan; 152:41-45)

Psyllium

Double-blind Placebo Controlled Study: 26 hypercholesterolemic men were treated with psyllium or a placebo for 8 weeks. The psyllium group showed a 14% decrease in total cholesterol, 14.8% decrease in LDL/HDL cholesterol ratio and 20% decrease in LDL cholesterol. The placebo group showed no significant changes. (Anderson, JW et al. Cholesterol lowering effect of psyllium for hypercholesterolemic men. Arch Intern Med. 148:292-296)

Double-blind Study: 96 subjects with hypercholesterolemia were given 5.1 gms of psyllium or a placebo twice daily for 16 weeks, while following a prudent diet. Psyllium decreased total cholesterol by 5.6% and LDL cholesterol by 8.6%. The levels in the placebo group were unchanged. (Levin, EG et al. Comparison of psyllium and cellulose as adjuncts to a prudent diet in the treatment of hypercholesterolemia. Arch Intern Med. 150: 1822-1827, 1990)

BETA SITOSTEROL

Experimental Study: A diet containing .5% cholesterol plus .5% sitosterol, resulted in a significant decrease of liver cholesterol, showing the inhibitory effect of sitosterol on cholesterol absorption. (Ikeda J et al. J. Nutr. Sci. Vitaminol 35:361-369, 1989)

QUINONES

Quinones are natural antioxidants that help control and minimize free radical reactions to help lower cholesterol.

Calcium Carbonate

Although the mechanism of action is unknown, calcium has been shown to decrease cholesterol. One physician, a former medical editor for a national magazine, has advanced his "hard water" theory as a possible answer. CaCO₃ is the most common substance in hard water. According to the doctor, just as body oils and detergents mix with CaCO₃ to form an insoluble "bathtub ring", it can also inhibit the intestinal absorption of fat and cholesterol.

Magnesium Stearate

Magnesium stearate is a by product of stearic acid. Scientific data has shown, that when stearic acid is used in place of other fats in the diet, there is a significant reduction of plasma levels of cholesterol and LDL cholesterol (total cholesterol decreased by an average of 14%).

NOTE: No statement contained in this publication shall be construed as a claim or representation that any product is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of any disease. This report is intended for professional use only. Certain persons considered experts may disagree with one or more of the statements and/or conclusions found in this report. Notwithstanding the above, this information is of current nutritional interest and is based upon sound and reliable authority.

EXHIBIT J

Several months ago... Santa Cruz Island is slowly returning to the way it was

Santa Cruz Island is slowly returning to the way it was

EDITOR'S NOTE: The information for the information was... Santa Cruz Island is slowly returning to the way it was

By RICHARD BEANE Associated Press Writer

SANTA CRUZ ISLAND, Calif. (AP) — The Channel Islands are being restored to the way it was

The Santa Cruz Island National Park Service says it is restoring the island to the way it was

The Channel Islands National Park Service says it is restoring the island to the way it was

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Weight Loss Surprises Researchers

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'Twas the night before Christmas the neighborhood slept, no robberies or burglaries, not one single theft.

I was making my rounds, it's my job, name's McGruff, when people work together, crooks can't do their stuff.

I see you have deadbolts, and your windows are pinned. You've joined "Neighborhood Watch," and that's how you win.

When your neighbor goes traveling, keep an eye on his house, to keep creatures from stirring, except maybe a mouse.

You locked your car while shopping, and kept packages out of view, you double-checked your charge slips, and tore up the carbon ton.

Well—gotta run. I'm out of time, so happy holidays, and thanks for helping me...

TAKE A BITE OUT OF CRIME

Available in Keene at: KEENE PHARMACY 103 Old Ferry Rd. 642-1534



1995 F

Complaint

120 F.T.C.

EXHIBIT K

...the report had indicated that the...
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INDIANA COUNTY MAPS IN STATE BOOK
 A new complete set of Indiana county maps is available...
 ...the report had indicated that the...
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WEIGHT LOSS MYSTERY Baffles Scientists
 WASHINGTON - Scientists are baffled by a natural food...
 ...the report had indicated that the...
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882-8181

People Are Saying Good Things About Their Visit To Snider Chiropractic

Don't put off scheduling an appointment as a special checkup. Snider Chiropractic makes it easy and convenient to schedule a physical exam. It's a reasonable cost. Call us and start taking better care of yourself today.

882-1241

Genuine concern from Doctor and Staff

The therapy is helping - and it's better than taking pills

Dr. Snider is gentle & takes the time to listen

Sirloin Stockade Weekday Specials!

EVERY MONDAY & THURSDAY

Chopped Steak \$2.99

EVERY TUESDAY

Club Steak \$2.99

EVERY WEDNESDAY

Chicken Fried Steak \$2.99

DINNERS INCLUDE: Baked Potato or French Fries & Stockade Toast

1626 Willow Vincennes

A special workshop November 13, 1990 Vincennes University for farmers and families who are interested in transferring the farm planning for the future spouse and their children in preparing their will.

Please answer the following questions...

YES NO

Do you know the elementary concepts of documents effective?

Do you know how to write your own will?

Do you know what steps must be taken to create a trust?

Do you know what the responsibilities of a trustee are?

Do you know what a living trust is?

Do you know if there are pros and cons to trusts?

Do you know what an irrevocable trust agreement is?

Do you know what an irrevocable insurance trust agreement is?

Do you know what a marital deduction trust is?

If you've answered no to any of the above you have an opportunity to gain more insight into how to keep the family farm in the family.

ESTATE PLANNING FOR FARMERS
 NOVEMBER 13, 1990
 6:30 p.m. to 9:00 p.m.
 Shake Learning Resource Center - located at 2nd Street and Indianapolis Ave. (V.I.)

COST OF THIS SPECIAL WORKSHOP:
 \$25 per couple - space will be limited - Call your reservations in early. 885-4344

AMERICAN NATIONAL BANK
 FDIC

Co-sponsored by SBA

EXHIBIT K
 Vincennes, Indiana
 November 13, 1990

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Complaint

EXHIBIT L

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... and where they...

... 200 residents of...
... and at least 100...
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... The western half of...
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... Gardner's proclamation...
... Slaght, Stokowski...
... houses in local governments...

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... A damage estimate for...
... heavy will not be available...
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... Red Cross shelters housed...
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... a weekend in Slaght's...

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... Glacier.

Weight Loss Surprises Researchers

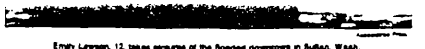
WASHINGTON—A...
... researchers...
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... While the...
... of Food...
... Dietary Research...

... Food Service...
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... a program because...

... Available at...
... LOCCS DRUG COMPANY...
... 225 E. 14th Street...



Emily Lawson, 12, takes pictures of the flooded downtown in Buffalo, W. Va.

Vinters' ad strikes back at critic

Winemakers toasted...
... by others who resent...
... sour (grapes) reviews

Parker is an East Coast...
... wine guru...
... who is so powerful...

He gave a humiliating...
... on his score of 100...
... Parker's language...

SAN FRANCISCO (AP)—...
... A 1988 Napa Valley...
... champion, subject...

The wine that is...
... causing all the...
... fuss is a \$18 Chateau...

The ad, which appears...
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Wine writers are...
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Rockport B.A.L.L.E. In Men's and Ladies' Styles. FOOTLOOSE. 347-4242

DISCOUNT STOCKBROKERS. 347-4242

ATTENTION HOME! Free Mortgage Reduction. In just 19 minutes you'll discover...



THIS WEIGHT LOSS PROGRAM COMES WITH ALL THE TRIMMINGS.

Getting trim and staying that way is no real feat. Optifast, the nation's most effective weight loss program, offers a proven combination. Weekly supervision by a medical doctor and a comprehensive program to help you lose weight for good.

So if you're ready to get healthy, and don't want the frustration of the usual weight loss roller-coaster, call us today. Or ask about our new Optifast program for smaller weight loss of 20 to 30 pounds. Both come with all the trimmings.

St. Mary's Hospital and Medical Center San Francisco

Carroll Communications is a Subsidiary of Sunning Your Health. Incorporated in the July of 1987.

EXHIBIT L

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; 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 complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 received, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent National Dietary Research, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 1377 K Street, N.W., Suite 553, in the District of Columbia.

2. Respondent The William H. Morris Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 2804 Smmitter Road, in the City of Tampa, State of Florida.

3. Respondent William H. Morris is an officer of said corporations. He formulates, directs, and controls the policies, acts, and practices of said corporations. His home address is at 2906 Smmitter Road, in the City of Tampa, State of Florida.

4. 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

I.

It is ordered, That respondents National Dietary Research, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, The William H. Morris Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, and William H. Morris, individually and as an officer of the corporate respondents, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that the product or program

- a. Provides any weight loss benefit;
- b. Is an effective treatment for obesity;
- c. Reduces hunger or is an effective appetite suppressant;
- d. Decreases the intestinal absorption of calories;
- e. Reduces, can reduce or helps reduce serum cholesterol;
- f. Provides, can provide or helps provide any other health benefit; or
- g. Has any effect on cellulite or on the user's body measurements,

unless, at the time they make such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes 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.

II.

It is further ordered, That respondents National Dietary Research, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, The William H. Morris Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, and William H. Morris, individually and as an officer of the corporate respondents, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication,

a. The existence, contents, validity, results, conclusions, or interpretations of any test or study;

b. The amount of fiber or any other nutrient or dietary constituent contained in or provided by the product or program, whether described in quantitative or qualitative terms;

c. That the product or program contains or provides a high, rich, excellent or superior source of fiber or any other nutrient or dietary constituent using those words or words of similar meaning; or

d. The research activities or other activities of National Dietary Research or any other organization affiliated with respondents.

III.

It is further ordered, That respondents National Dietary Research, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, The William H. Morris Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, and William H. Morris, individually and as officer of the corporate respondents, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from creating, producing, selling or disseminating any advertisement that

misrepresents, in any manner, directly or by implication, that it is not a paid advertisement.

IV.

It is further ordered, That respondents National Dietary Research, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, The William H. Morris Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, and William H. Morris, individually and as officer of the corporate respondents, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) of a product or program represents the typical or ordinary experience of members of the public who use the product or program, unless at the time of making such representation, the representation is true, and respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation, provided, however, respondents may use such endorsements if the statements or depictions that comprise the endorsements are true and accurate, and if respondents disclose clearly and prominently and in close proximity to the endorsement what the generally expected performance would be in the depicted circumstances or the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

V.

Nothing in this order shall prohibit respondents from making any representation that is specifically permitted in labeling for any product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

VI.

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

VII.

It is further ordered, That no later than the date that this order becomes final, respondents National Dietary Research, Inc., a corporation, its successors and assigns, The William H. Morris Company, a corporation, its successors and assigns, and William H. Morris, individually and as officer of the corporate respondents, shall deposit into an escrow account, to be established by the Commission for the purpose of receiving payment due under this order ("escrow account"), the sum of one hundred thousand dollars (\$100,000).

The funds paid by respondents, together with accrued interest, shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of Food Source One in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty, or punitive assessment.

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

Respondents relinquish all dominion, control and title to the funds paid into the escrow account, and all legal and equitable title to the funds vests in the Treasurer of the United States and in the designated consumers. Respondents shall make no claim to or demand for return

of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondents, respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

VIII.

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:

1. All materials that were relied upon to substantiate any representation covered by this order; and
2. All test reports, studies, surveys, demonstrations or other evidence in their possession or control, or of which they have knowledge, that contradict, qualify, or call into question such representation or the basis upon which respondents relied for such representation, including complaints from consumers.

IX.

It is further ordered, That the corporate respondents shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporations 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 corporations which may affect compliance obligations arising under this order.

X.

It is further ordered, That the corporate respondents shall distribute a copy of this order to each of their operating divisions and to each of their officers, agents, representatives, or employees engaged in the preparation or placement of advertisements, promotional materials, product labels or other such sales materials covered by this order.

XI.

It is further ordered, That the individual respondent shall, for a period of five (5) years from the date of issuance of this order, notify the Commission within thirty (30) days in the event of the discontinuance of his present business or employment, the activities of which include the advertising, offering for sale, sale, or distribution of consumer products, and of his affiliation with any new business or employment involving such activities. Each notice of affiliation with any new business or employment shall include respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

XII.

This order will terminate on November 7, 2015, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any paragraph in this order that terminates in less than twenty years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

XIII.

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

Set Aside Order

120 F.T.C.

IN THE MATTER OF

NATIONAL DAIRY PRODUCTS CORP.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION
OF SEC. 2 OF THE CLAYTON ACT*Docket 8548. Consent Order, June 28, 1967--Set Aside Order, Nov. 8, 1995*

This order reopens a 1967 consent order--which prohibited National Dairy Products Corp. and subsequently its successor, Kraft Foods, Inc., from engaging in territorial price discrimination in the sale of its jellies, preserves and other food products--and sets aside the consent order pursuant to the Commission's Sunset Policy Statement, under which the Commission presumes that the public interest requires terminating competition orders that are more than 20 years old.

ORDER REOPENING PROCEEDING
AND SETTING ASIDE ORDER

On July 13, 1995, Kraft Foods, Inc. ("Kraft"), as respondent and successor to National Dairy Product Corp., filed its Petition To Reopen and Set Aside ("Petition") in this matter. Kraft request that the Commission set aside the 1969 order, pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), Rule 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, and the Commission's Statement of Policy With Respect to Duration of Competition Orders and Statement of Intention to Solicit Public Comment With Respect to Duration of Consumer Protection Orders, issued on July 22, 1994, and published at 59 Fed. Reg. 45,286-92 (Sept. 1, 1994) ("Sunset Policy Statement"). In the Petition Kraft affirmatively states that it has complied with the requirements of the order. The Petition was placed on the public record for thirty days, and no comments were received.

The Commission in its Sunset Policy Statement said, in relevant part, that "effective immediately, the Commission will presume, in the context of petitions to reopen and modify existing orders, that the public interest requires setting aside orders in effect for more than twenty years."¹ The Commission's cease and desist order in Docket No. 8548, issued on June 28, 1967, affirmed as modified by the United States Court of Appeals for the Seventh Circuit on June 20,

¹ Sunset Policy Statement, 59 Fed. Reg. at 45,289.

1969, and modified in accordance with the direction of the court on October 2, 1969, has been in effect for more than twenty-five years. Consistent with the Commission's Sunset Policy Statement, the presumption is that the order should be terminated. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceeding and set aside the order in Docket No. 8548.

Accordingly, *It is ordered*, That this matter be, and it hereby is, reopened;

It is further ordered, That the Commission's order in Docket No. 8548 be, and it hereby is, set aside, as of the effective date of this order.

Chairman Pitofsky recused.

Complaint

120 F.T.C.

IN THE MATTER OF

SILICON GRAPHICS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3626. Complaint, Nov. 14, 1995--Decision, Nov. 14, 1995

This consent order, among other things, permits the California-based corporation to acquire two entertainment graphics software firms, and requires the respondent to take certain steps, such as requiring that the respondent enter into a Commission-approved porting agreement with a Commission-approved porting partner in order to ensure that other companies that develop and sell entertainment graphics software and hardware can compete.

Appearances

For the Commission: *Howard Morse, Rhett R. Krulla and Eric D. Rohlck.*

For the respondent: *Wayne D. Collins, Jessica Skapof and Jill Ross, Shearman & Sterling, New York, N.Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that respondent Silicon Graphics, Inc., a corporation, has agreed to acquire Alias Research Inc. and Wavefront Technologies, Inc., in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Silicon Graphics, Inc. ("SGI") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at 2011 North Shoreline Boulevard, Mountain View, California. SGI, which had total revenues of approximately \$1.4 billion in 1994, designs and supplies a family of workstation, server and supercomputer systems. SGI develops and markets, among other things, computer hardware incorporating interactive three-dimensional ("3D") graphics, digital media and multiprocessor supercomputing technologies.

II. ACQUIRED PARTIES

2. Alias Research Inc. ("Alias"), which had sales of approximately \$38 million in 1994, is a leading producer of workstation-based 3D and two-dimensional ("2D") computer graphics software for professional entertainment and industrial customers. Users of Alias' products in the entertainment industry create 3D computer graphic special effects, which may be output to a variety of media, including film and video for use in movies, television, interactive computer games, and other forms of presentation. Alias 3D products for the entertainment industry include Animator™ and PowerAnimator™.

3. Wavefront Technologies, Inc. ("Wavefront"), which had sales of approximately \$27.6 million in 1994, is a full-line producer of workstation-based 3D and 2D computer graphics software for professional entertainment and industrial customers. Users of Wavefront's products in the entertainment industry create 3D computer graphic special effects, which may be output to a variety of media, including film and video for use in movies, television, interactive computer games, and other forms of presentation. Wavefront's 3D products for the entertainment industry include, among others, Explore™, Kinemation™, and Dynamation™.

III. JURISDICTION

4. SGI is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in

or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

IV. THE PROPOSED ACQUISITIONS

5. SGI and Alias, and SGI and Wavefront, entered into agreements on or about February 6, 1995, pursuant to which SGI intends to acquire essentially all of the stock of Alias and Wavefront in exchange for SGI stock. At that time, the value of the Alias acquisition was approximately \$367 million, and the value of the Wavefront acquisition was approximately \$130 million. Each transaction is conditioned upon the closing of the other transaction.

V. THE RELEVANT MARKETS

6. One relevant line of commerce in which to analyze the effects of the proposed acquisitions is the development, production and sale of entertainment graphics workstations. Entertainment graphics workstations generally are UNIX-based computers with high-speed graphic capability and suitable for use with entertainment graphics software. Personal computers, including Intel-based PCs and Apple MacIntosh computers, are not adequate substitutes for entertainment graphics workstations as platforms for running entertainment graphics software.

7. Another relevant line of commerce in which to analyze the effects of the proposed acquisitions is the development, production and sale of entertainment graphics software. Entertainment graphics software consists of compatible modelling, animation, rendering, compositing and painting software tools for use on entertainment graphics workstations in the production of high-resolution, 2D and 3D digital images for film, video, electronic games, interactive programming, or other entertainment or educational, graphic media.

8. Two relevant geographic areas within which to analyze the likely effects of the Alias and Wavefront acquisitions are the United States and the world. There are no significant impediments to the import into the United States, or to the export from the United States, of entertainment graphics software.

VI. MARKET STRUCTURE

9. The entertainment graphics workstation market is extremely concentrated. SGI is the dominant provider of entertainment graphics workstations, with over 90% of the market. Although various other companies manufacture workstations, most entertainment graphics software was developed for use on SGI workstations and is available only for SGI workstations.

10. The entertainment graphics software market is highly concentrated and rapidly growing. Alias and Wavefront are two of the three leading developers and sellers of entertainment graphics software. Alias and Wavefront compete principally with SoftImage Inc., a subsidiary of Microsoft Corp. Other developers and producers of entertainment graphics software produce particular software tools that are used largely as complements rather than substitutes for the product suites offered by Alias, Wavefront and SoftImage, or produce software suites that have found limited customer acceptance relative to the entertainment graphics software offered by Alias, Wavefront and SoftImage.

11. Alias, Wavefront, and SoftImage compete for sales to sophisticated 3D graphics and animation professionals. Although other software developers make entertainment graphics software, Alias, Wavefront and SoftImage are the industry standards, and the ability to run Alias, Wavefront, or SoftImage entertainment graphics software is considered critical for any computer workstation manufacturer to compete successfully in the entertainment graphics workstation market.

12. Prior to the agreements described in paragraph five, Alias negotiated with manufacturers of workstations other than SGI to port its entertainment graphics software products to those manufacturers' workstation platforms. The effect of such agreements, if consummated, would be to enable such workstation manufacturers to compete in the entertainment graphics workstation market.

13. Prior to the acquisitions described in paragraph five, SGI maintained an open software interface for its entertainment graphics workstations, sponsored independent software developer programs, and shared with developers of entertainment graphics software advance information concerning new SGI products to facilitate and promote competitive development of entertainment graphics software.

VII. ENTRY CONDITIONS

14. Entry into the entertainment graphics workstation market would not be timely, likely, or sufficient in its magnitude, character, and scope to deter or counteract anticompetitive effects of the acquisitions in the entertainment graphics workstation market. Other manufacturers of computer workstations have graphic engines for their computers that are technically capable of running entertainment graphics software provided a version of the software is written for use with the workstation and its graphic engine. However, without the possibility of having Alias or Wavefront entertainment graphics software developed for those workstations, entry would be unlikely. Marketing a technically comparable or even an improved combination of non-SGI workstations with entertainment graphics software other than that of Alias or Wavefront would be difficult, time consuming and not likely to occur because of the extensive installed user base of SGI workstations with Alias, Wavefront and SoftImage entertainment graphics software.

15. Entry into the market for the development and sale of entertainment graphics software would not be timely, likely, or sufficient in its magnitude, character, and scope to deter or counteract anticompetitive effects of the acquisitions in the entertainment graphics software market. Developing an entertainment graphics software suite similar to those of Alias and Wavefront is time consuming and unlikely to occur because of extensive installed user bases trained on and using the Alias and Wavefront software programs on SGI entertainment graphics workstations. Combining smaller software developers' niche programs or making smaller producers of entertainment graphics software significant competitors to Alias and Wavefront would be difficult, time consuming and not likely to occur because of the extensive installed user base of SGI workstations with Alias, Wavefront and SoftImage entertainment graphics software.

VIII. COMPETITIVE EFFECTS OF THE PROPOSED ACQUISITIONS

16. The acquisitions described in paragraph five, if consummated, may, individually or in combination, substantially lessen competition and tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the FTC Act, 15 U.S.C. 45, in the following ways, among others:

a. They may foreclose workstation producers other than SGI from significant, independent sources of entertainment graphics software, reducing competition in the manufacture and sale of entertainment graphics workstations;

b. They may increase costs to workstation producers other than SGI for obtaining entertainment graphics software for their workstation platforms, reducing competition in the manufacture and sale of entertainment graphics workstations;

c. They will facilitate SGI's unilateral exercise of market power in entertainment graphics workstations through price discrimination;

d. They may enable SGI to gain proprietary, competitively sensitive information pertaining to other workstation producers if such workstation producers are able to get Alias or Wavefront entertainment graphics software ported to their workstations, reducing competition in the manufacture and sale of entertainment graphics workstations;

e. They will eliminate Alias and Wavefront as substantial independent competitors, eliminate actual, direct and substantial competition between Alias and Wavefront, and increase the level of concentration in the entertainment graphics software market;

f. They will increase barriers to entry into the relevant markets and make two-level entry necessary;

g. They may foreclose, or increase costs to, competitors to Alias and Wavefront in the entertainment graphics software market in developing software for use in connection with future entertainment graphics workstation products developed by SGI, reducing competition in the development, manufacture and sale of entertainment graphics software.

h. They may cause consumers to pay higher prices for entertainment graphics software and for entertainment graphics workstations;

i. They may reduce innovation competition among producers of entertainment graphics software and among producers of entertainment graphics workstations.

IX. VIOLATIONS CHARGED

17. The acquisition agreements described in paragraph five, individually or in combination, constitute a violation of Section 5 of the FTC Act, 15 U.S.C. 45.

18. The acquisitions described in paragraph five, if consummated, would, individually or in combination, constitute a violation of Section 7 of the Clayton Act, 15 U.S.C. 45, and Section 5 of the FTC Act, 15 U.S.C. 45.

Commissioners Azcuenaga and Starek dissenting.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acquisitions 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 Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18; and

The respondent, Silicon Graphics, Inc., 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 Acts, and that a 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, having duly considered the comments received, and having modified paragraph II of the order and paragraph six of the complaint in certain respects, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Silicon Graphics, Inc. ("SGI") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its headquarters and principal place of business located at 2011 North Shoreline Boulevard, Mountain View, California.

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

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*SGI*" means Silicon Graphics, Inc., its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by SGI; and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

B. "*Alias*" means Alias Research Inc.

C. "*Wavefront*" means Wavefront Technologies, Inc.

D. "*Respondent*" means SGI.

E. "*Entertainment products*" means the computer software ALIAS Animator™ and ALIAS PowerAnimator™ products sold as of May 1, 1995, including Additional Fonts and the Advanced Options for ALIAS PowerAnimator™, and any successor products or future versions or general releases of such products, including any additions, modifications, updates, and enhancements thereto released during such period as specified in the Porting Agreement.

F. "*Entertainment software*" means modelling, animation, rendering, compositing and painting software, as individual software programs or in combination, used in the production of two-dimensional or three-dimensional images for film, video, electronic games, interactive programming, or other entertainment or educational uses, that compete with entertainment products or with any component thereof.

G. "*Porting Agreement*" means an agreement between respondent and a Platform Partner, entered in good faith, to work together to port the entertainment products to be compatible with the Platform

Partner's computer systems in their supported configurations and with associated peripherals, which agreement shall provide, among other things, that respondent shall use reasonable best efforts to optimize the operation of the entertainment products in the context of the Platform Partner's computer systems; and which agreement shall provide that the porting shall occur as soon as reasonably practicable after the Porting Agreement is entered and receives the approval of the Commission; and which agreement shall state the method in which the ported entertainment products shall be sold and marketed on terms competitive with those applicable to entertainment products compatible with respondent's computers; and which agreement shall provide for protection from disclosure or improper use of non-public information.

H. "*ISV Programs*" means programs and other arrangements that respondent makes available generally to independent software developers that facilitate the development of software compatible with respondent's computers and operating systems.

I. "*Platform Partner*" means a company with which respondent has entered into a Porting Agreement pursuant to this order.

J. "*Non-public information*" means any information not in the public domain furnished by the Platform Partner to respondent in its capacity as porter of the entertainment products, and (1) if written information, designated in writing by the Platform Partner as proprietary information by an appropriate legend, marking, stamp, or positive written identification on the face thereof, or (2) if oral, visual or other information, identified as proprietary information in writing by the Platform Partner prior to the disclosure or within thirty (30) days after such disclosure. Non-public information shall not include: (1) information already known to respondent, (2) information which is within the public domain through no violation of this order by respondent, or (3) information which is known to respondent from a person other than the Platform Partner not in breach of a confidential disclosure agreement.

K. "*Acquisitions*" means the acquisitions of Alias and Wavefront by SGI.

L. "*Commission*" means the Federal Trade Commission.

II.

It is further ordered, That,

A. Not later than March 31, 1996, respondent shall enter into a Porting Agreement that receives the prior approval of the Commission with a company that receives the prior approval of the Commission. After such Commission approval, respondent shall port the entertainment products to the Platform Partner's computer systems as provided in the Porting Agreement.

Provided however, nothing in this order shall prohibit respondent from entering into additional porting agreements with one or more platform partners without the prior approval of the Commission.

B. The purpose of the Porting Agreement and the porting of the entertainment products, pursuant to the Porting Agreement, is to ensure that ported entertainment products compatible with the Platform Partner's computer system will be marketed and sold in competition with the entertainment products operating on respondent's computer systems, and to remedy the lessening of competition resulting from the proposed Acquisitions as alleged in the Commission's complaint.

III.

It is further ordered, That, absent the prior written consent of the proprietor of non-public information or unless expressly permitted by any Porting Agreement, (1) respondent shall use any non-public information only in porting the entertainment products pursuant to such porting agreement, and (2) any persons involved in porting the entertainment products shall not provide, disclose, or otherwise make available any non-public information to other employees of respondent.

IV.

It is further ordered, That respondent shall:

A. Establish and maintain an open architecture, and publish the Application Program Interfaces ("APIs"), for respondent's computers and operating systems in such manner that software developers and producers may develop and sell entertainment software, for use on respondent's computers, in competition with entertainment software offered by respondent; and

B. Respondent shall extend to developers of entertainment software the right to participate in ISV Programs on terms no less favorable to such developers than those terms applicable to developers of other software for use on respondent's computers and operating systems.

C. The purpose of this paragraph IV is to allow entertainment software developers and producers to develop and sell entertainment software for use on respondent's computers and operating systems in competition with respondent, and to remedy the lessening of competition resulting from the proposed Acquisitions as alleged in the Commission's complaint.

V.

It is further ordered, That, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondent has fully complied with the provisions of paragraph II of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with those provisions. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraph II of this order.

VI.

It is further ordered, That, one year from the date this order becomes final, annually thereafter for the next four (4) years, and at other times as the Commission may require, respondent shall file with the Commission verified written reports setting forth in detail the manner and form in which it has complied and is complying with paragraphs II, III and IV of this order.

VII.

It is further ordered, That, for the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice

to respondent, respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five (5) days notice to respondent, and without restraint or interference from respondent, to interview officers or employees of respondent, who may have counsel present, regarding such matters.

VIII.

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

IX.

It is further ordered, That this order shall expire five (5) years from the date it becomes final.

Commissioners Azcuenaga and Starek dissenting.

DISSENTING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

The complaint in this matter alleges that the two companies that Silicon Graphics proposes to acquire, Alias and Wavefront, are two of the three leading developers and sellers of entertainment graphics software in a highly concentrated market in which entry is difficult and time consuming.¹ The Commission alleges, and I agree, that the elimination of competition between Alias and Wavefront will substantially lessen competition in violation of Section 7 of the Clayton Act.² The evidence persuades me that the Commission has

¹ Complaint paragraphs ten, eleven and fifteen.

² Complaint paragraph 16e.

a strong case under Section 7 based on this horizontal combination, and the obvious course of action would be to challenge the acquisitions on this basis. Such a challenge, if successful, would leave either Alias or Wavefront free to contract to produce entertainment graphics software for other hardware manufacturers.

Instead, the Commission chooses to rely on vertical foreclosure theory to impose requirements that fail to preserve existing competition and that ultimately may create inefficiency and reduce competition. A number of legitimate concerns were raised during the public comment period that identified some but not all of the problems in the order. To the extent that any vertical problems should concern us, they would be resolved by stopping the horizontal transaction. The decision and order having failed to achieve straightforward relief for the real competitive problem, the combination of Alias and Waterfront, I dissent.

DISSENTING STATEMENT OF COMMISSIONER ROSCOE B. STAREK, III

I do not agree with the Commission's decision to issue its Final order in this matter. The complaint alleges anticompetitive effects arising from the vertical integration of the leading manufacturer of entertainment graphics workstation, Silicon Graphics, Inc. ("SGI"), with two leading suppliers of entertainment graphics software, Alias Research, Inc., and Wavefront Technologies, Inc.¹ I have not been persuaded that these vertical acquisitions are likely "substantially to lessen competition" in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. Moreover, even if one assumes the validity of the theories of anticompetitive effects, the Commission's order does not appear to prevent the alleged effects and may create inefficiency.

The Commission alleges, *inter alia*, that the acquisitions will reduce competition through two types of foreclosure: (i) nonintegrated software vendors will be excluded from the SGI platform; and (ii) rival hardware manufacturers will be denied access to Alias and Wavefront software, without which they cannot effectively compete against SGI.² Vertical foreclosure theories

¹ The Commission apparently finds that the horizontal combination of Alias and Wavefront is not anticompetitive on net: the order addresses alleged vertical problems only.

² Precedent for this "reciprocal foreclosure" analysis lies uncomfortably in *A.G. Spalding & Bros.*, 56 FTC 1125 (1960), in which the Commission rejected Spalding's acquisition of Rawlings Manufacturing Company. Before the acquisition, Spalding did not manufacture baseball gloves, but instead purchased them for resale; Rawlings manufactured baseball gloves and sold them to other resellers. The Commission found that, "by acquiring Rawlings, Spalding can not only prevent competitors from purchasing [gloves] from Rawlings but can also foreclose manufacturers of [gloves] from access to Spalding as a purchaser thereof." 56 FTC at 1169.

generally provide a weak basis for Section 7 enforcement,³ and this foreclosure scenario has particular problems, both logical and factual.

In general, the two types of foreclosure tend toward mutual exclusion. The very possibility of excluding independent software producers from the SGI platform suggests the means by which competing workstation producers will avoid foreclosure. The nonintegrated software producers surely have incentives to supply the "foreclosed" workstation producers, and each workstation producer has incentives to induce nonintegrated software suppliers to write for its platform. Otherwise, "we are left to imagine eager suppliers and hungry customers, unable to find each other, forever foreclosed and left to languish."⁴ This predicament is improbable in the dynamic markets at issue.

The acquisition does not appear likely to give rise to significant, anticompetitive foreclosure of nonintegrated software producers. Indeed, the description of the pre-merger state of competition in the Commission's complaint tends to exclude this possibility. The complaint alleges that software producers other than Alias, Wavefront, and Microsoft's SoftImage are either competitively insignificant or complementary, and that there is virtually no likelihood of entry by producers of substitutable SGI-compatible software owing to the entrenched positions of Alias and Wavefront. If both propositions are true, then the merger cannot appreciably foreclose software entry or expansion. Silicon Graphics' acquisition of Wavefront and Alias cannot be the cause of substantial post-merger foreclosure of competitively significant alternatives to the software of the two acquired firms if the posited software market was effectively foreclosed before the merger with SGI. In addition, SGI has strong incentives to induce expanded supply of SGI-compatible software: increasing the supply of compatible software (or of any complementary product) increases the demand for SGI's workstations.

It is perhaps more plausible that the transaction could result in reduced supplies of software, or higher costs of obtaining software,

³ For a critical discussion of pre- and post-Chicago theories of foreclosure, see David Reiffen & Michael Vita, "Is There New Thinking on Vertical Mergers? A Comment," 63 *Antitrust L.J.* 917 (1995). See also Roscoe B. Starek, III, "Reinventing Antitrust Enforcement? Antitrust at the FTC in 1995 and Beyond," Remarks at "A New Age of Antitrust Enforcement: Antitrust in 1995" Conference, Marina Del Rey, California (Feb. 24, 1995).

⁴ See Robert H. Bork, "The Antitrust Paradox" 232 (1978) (referring to similar foreclosure reasoning in A.G. Spalding, Bork observed that "the Commission could have cured this aspect of the situation by throwing an industry social mixer").

for SGI's workstation rivals. Even so, this would primarily be a consequence of the horizontal aspects of the transaction -- *i.e.*, the combination of two of the three principal vendors of the relevant software -- rather than its vertical aspects. The Commission eschews an enforcement action based on a horizontal theory, however, because of its cost in forgone efficiencies. If the horizontal software combination of Alias and Wavefront is efficiency-enhancing, the net anticompetitive impact of these transactions comes from SGI's vertical integration with Alias and Wavefront. If this is so, why not seek injunctive relief against the vertical integration, and avoid the costs of the ineffective regulatory remedy presented in the order?

There are at least two reasons for rejecting the alternative of seeking injunctive relief. The first is that there are demonstrable efficiencies associated with exclusive arrangements between hardware and software vendors.⁵ Second, The merger's anticompetitive effects are difficult to establish. More generally, in order to establish SGI's preeminence among producers of entertainment graphics workstations, the complaint alleges that entry into the manufacture of such hardware is extremely unlikely because of the substantial costs of porting SGI-specific software (especially the "high end" variants) to non-SGI platforms. This undermines the contention that the merger would induce a substantial lessening of competition in the entertainment graphics workstation market.⁶

⁵ A software producer's decision to write software exclusively for a specific hardware producer suggests an efficiency rationale for the software producer's subsequent integration with that hardware manufacturer by means of a vertical merger -- namely, to avoid the expropriation by the hardware producer of any software assets that are specialized to that hardware firm. An input supplier's specialized software may become so specialized to a hardware firm. An input supplier's specialized software may become so specialized to a specific hardware producer that the software has no value to other potential customers. This exposes the software supplier to the risk that the hardware manufacturer might behave opportunistically, to the detriment of the "committed" supplier, once the specialized software assets are created. Vertical integration of the buyer and the "committed" supplier eliminated the possibility of such opportunism. This is a well-established procompetitive rationale for vertical mergers. *See, e.g.*, Benjamin Klein, "Vertical Integration as Organizational Ownership: The Fisher Body-General Motors Relationship Revisited," 4 J.L. Econ. & Org. 199 (1988); Kirk Monteverde & David J. Teece, "Supplier Switching Costs and Vertical Integration in the Automobile Industry," 13 Bell J. Econ. 206 (1982); Kirk Monteverde & David J. Teece, "Appropriable Rents and Quasi-Vertical Integration," 25 J.L. & Econ. 321 (1982); Benjamin Klein, Robert G. Crawford & Armen A. Alchian, "Vertical Integration, Appropriable Rents, and the Competitive Contracting Process," 21 J.L. & Econ. 297 (1978).

⁶ The preceding discussion assumes, *arguendo*, the existence of relevant markets that are most favorable to the Commission's theory of competitive harm from vertical integration. Whether these narrowly defined markets are appropriate is questionable, however. To the extent that PCs are becoming closer substitutes for entertainment graphics workstations, for example, it is increasingly unlikely that a prerequisite for anticompetitive effects from a vertical merger -- pre-merger market power in a relevant market -- is satisfied.

Overall, I am unpersuaded that this transaction diminishes competition in any relevant market.⁷ Even had I concluded otherwise, however, I would not endorse the consent order, the terms of which would require SGI to: (1) port its software to a workstation competitor⁸ and (2) maintain an open architecture providing access to software developers on nondiscriminatory terms. The problems with remedies of this sort are substantial.⁹ For example, requiring a firm to sell an input to a rival is an ineffective remedy unless the Commission also regulates the terms of the sale. Absent such regulation (which the Commission does not undertake in the Final Order it has approved), the seller simply raises price and/or diminishes quality to the point where profitable entry is precluded. The burden associated with enforcing an order that regulates the terms of sale -- the Commission would be required to determine the "competitive price" and "competitive quality" for such porting rights -- cannot be overestimated. For this reason, the Commission has prudently shied away from such remedies in the past.

Second, requiring SGI to port entertainment graphics software to a third party will likely create substantial inefficiencies. The evidence suggests that there are one or more efficiencies associated with exclusive arrangements between software and hardware vendors; such arrangements existed well before the current transaction was proposed. Preventing SGI from availing itself of those efficiencies is not likely to benefit consumers.

For the foregoing reasons, I respectfully dissent from the Commission's decision to issue its Final Order in this matter.

⁷ The complaint also alleges that vertical integration of SGI with Alias and Wavefront will foster anticompetitive price discrimination against certain entertainment graphics customers. If the customers are already differentiable according to their demand elasticities for SGI workstations (or for the acquired software products), it is not clear how vertical integration enhances the probability of price discrimination. To the extent that price discrimination possibilities are enhanced, it would appear to be as a result of the horizontal combination of Alias and Wavefront. And if SGI and the combined Alias/Wavefront would have market power in their respective complementary markets, the most likely effect of vertical integration may be lower prices (due to elimination of the "double mark-up" problem). See, e.g., Jean Tirole, "The Theory of Industrial Organization" 174-75 (1988).

⁸ Shortly after the conclusion of the public comment period in this matter, the Commission deleted from the proposed order the mention of four companies in paragraph II.B as possible "platform partners." Although I applaud this modest change for removing the implication that those four firms were somehow "favored" candidates to serve as platform partners, the deletion of the four names does not affect my substantive competition analysis of the Commission's Final Order.

⁹ For a discussion of why nondiscrimination remedies are problematic, see, for example, Timothy Brennan, "Why Regulated Firms Should Be Kept Out of Unregulated Markets: Understanding the Divestiture in *U.S. v. AT&T*," 32 Antitrust Bull. 741 (1987).

Modifying Order

120 F.T.C.

IN THE MATTER OF

OCCIDENTAL PETROLEUM CORPORATION, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket 9205. Modified Final Order, Feb. 3, 1994--Modifying Order, Nov. 16, 1995*

This order reopens a 1994 modified final order that settled allegations that Occidental's acquisition of Tenneco would substantially reduce competition in the U.S. market for mass and suspension PVC and required the Commission's prior approval before acquiring the stock or PVC assets of any PVC producer in the United States. This order modifies the consent order by deleting the prior approval requirements in paragraph VI of the consent order pursuant to the Commission's Prior Approval Policy, under which the Commission presumes that the public interest requires reopening cases and setting aside the prior approval provisions in outstanding merger orders, making them consistent with the policy.

ORDER REOPENING AND MODIFYING ORDER

On August 7, 1995, Occidental Petroleum Corp. and Occidental Chemical Corp (collectively "Occidental"), filed a Petition To Reopen and Modify Order ("Petition") in this matter. Occidental asks that the Commission reopen and modify the 1994 order in this matter pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51, and consistent with the Statement of Federal Trade Commission Policy Concerning Prior Approval and Prior Notice Provisions, issued June 21, 1995 ("Prior Approval Policy Statement").¹ Occidental in the Petition requests that the Commission reopen and modify the order in Docket No. 9205 by deleting the requirement in paragraph VI that Occidental seek prior Commission approval for certain acquisitions. The Petition was on the public record for thirty days; no comments were received.

The Commission in its Prior Approval Policy Statement "concluded that a general policy of requiring prior approval is no longer needed," citing the availability of the premerger notification and waiting period requirements of Section 7A of the Clayton Act, 15

¹ 60 Fed. Reg. 39, 745 (Aug. 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241, at 20,991 (June 22, 1995).

U.S.C. 18a, to protect the public interest in effective merger law enforcement. Prior Approval Policy Statement at 2. The Commission announced that it will "henceforth rely on the HSR process as its principal means of learning about and reviewing mergers by companies as to which the Commission had previously found a reason to believe that the companies had engaged or attempted to engage in an illegal merger." As a general matter, the Commission said, "Commission orders in such cases will not include prior approval or prior notification requirements." *Id.*

Narrow prior approval or prior notification provisions may be necessary to protect the public interest in some circumstances. The Commission said in its Prior Approval Policy Statement that "a narrow prior approval provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for the provision, attempt the same or approximately the same merger." The Commission also said that "a narrow prior notification provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for an order, engage in an otherwise unreportable anticompetitive merger." *Id.* at 3.

The Commission in the Prior Approval Policy Statement announced its intention "to initiate a process for reviewing the retention or modification of these existing requirements" and invited respondents subject to such requirements "to submit a request to reopen the order." *Id.* at 4. The Commission determined that "when a petition is filed to reopen and modify an order pursuant to . . . [the Prior Approval Policy Statement], the Commission will apply a rebuttable presumption that the public interest requires reopening of the order and modification of the prior approval requirement consistent with the policy announced" in the Statement. *Id.*

The presumption is that setting aside the prior approval requirement in paragraph VI of the order in Docket No. 9205 is in the public interest. Nothing to overcome the presumption has been presented, and nothing in the record, including the complaint and order, suggests that the exceptions described in the Prior Approval

Policy Statement are warranted. The Commission has determined to reopen the proceeding in Docket No. 9205 and modify the order to set aside the prior approval requirement set forth in paragraph VI.²

Accordingly, *It is hereby ordered*, That this matter be, and it hereby is, reopened;

It is further ordered, That the Commission's order issued on February 3, 1994, be, and it hereby is modified, as of the effective date of this order, to set aside paragraph VI of the order.

Chairman Pitofsky recused.

² Occidental completed the divestitures required by the order in 1995. There is one remaining substantive obligation under the order. Paragraph III requires, for one year following the divestiture required by the order, that Occidental provide the acquirer or acquirers of the PVC divestiture assets, if the acquirer(s) so requests, such additional know-how as may reasonably be required to enable the acquirer(s) to manufacture and sell PVC. Occidental must also submit reports of its compliance with the order, if requested to do so by the staff.

IN THE MATTER OF

PAPERMAKERS FELT ASSOCIATION, ET AL.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-828. Consent Order, Sept. 9, 1964--Set Aside Order, Nov. 22, 1995

This order reopens a 1964 consent order--which prohibited Papermakers Felt Association and its members from combining or conspiring to fix prices or terms of sale, or to enter into specific other agreements to restrain competition in the papermakers felt industry--and sets aside the consent order pursuant to the Commission's Sunset Policy Statement, under which the Commission presumes that the public interest requires terminating competition orders that are more than 20 years old.

ORDER REOPENING PROCEEDING
AND SETTING ASIDE ORDER

On August 1, 1995, Albany International Corp., the successor to respondent Albany Felt Company (collectively "Albany"), filed its Petition To Reopen and Set Aside Consent Order ("Petition") in this matter. Albany requests that the Commission set aside the 1964 order pursuant to Rule 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, and the Statement of Policy With Respect to Duration of Competition Orders and Statement of Intention to Solicit Public Comment With Respect to Duration of Consumer Protection Orders, issued July 22, 1994, and published at 59 Fed. Reg. 45,286-92 (Sept. 1, 1994) ("Sunset Policy Statement"). In the Petition, Albany affirmatively states that it has not engaged in any conduct violating the terms of the order. The Petition was placed on the public record, and the thirty-day comment period expired on September 11, 1995. No comments were received.

The Commission in its July 22, 1994, Sunset Policy Statement said, in relevant part, that "effective immediately, the Commission will presume, in the context of petitions to reopen and modify existing orders, that the public interest requires setting aside orders in effect for more than twenty years."¹ The Commission's order in Docket No. C-828 was issued on September 9, 1964, and has been in effect for approximately thirty-one years. Consistent with the

¹ See Sunset Policy Statement, 59 Fed. Reg. at 45,289.

Commission's Sunset Policy Statement, the presumption is that the order should be terminated. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceeding and set aside the order in Docket No. C-828 as to respondent Albany.

Accordingly, *It is ordered*, That this matter be, and it hereby is, reopened;

It is further ordered, That the Commission's order in Docket No. C-828 be, and it hereby is, set aside as to respondent Albany, as of the effective date of this order.

IN THE MATTER OF

COLUMBIA/HCA HEALTHCARE CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3627. Complaint, Nov. 24, 1995--Decision, Nov. 24, 1995

This consent order, among other things, permits a Tennessee-based corporation to acquire John Randolph Medical Center in Hopewell, VA., and requires the respondent to divest, within 12 months, Poplar Springs Hospital, in Petersburg, VA., to a Commission-approved entity. In addition, the consent order requires the respondent, for 10 years, to notify the Commission before combining its psychiatric facility with any other psychiatric hospital facility in the Tri-Cities area of south central Virginia.

Appearances

For the Commission: *Oscar M. Voss* and *Mark J. Horoschak*.

For the respondent: *Ky Ewing, Vinson & Elkins*, Washington, D.C. and *Ray Hartwell, Hutton & Williams*, Washington, D.C.

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 respondent Columbia/HCA Healthcare Corporation ("Columbia/HCA"), a corporation subject to the jurisdiction of the Commission, has entered into an agreement whereby Columbia/HCA will acquire John Randolph Medical Center in Hopewell, Virginia, and certain related assets, from the Hopewell Hospital Authority ("HHA"); that the acquisition agreement violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11(b) of the Clayton Act, 15 U.S.C. 21(b), and Section 5(b) of the Federal

Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

DEFINITIONS

PARAGRAPH 1. For purposes of this complaint, the following definitions shall apply:

(a) "*Psychiatric hospital*" means a health care facility, licensed or certified as a psychiatric hospital (except for a facility limited by its license or certificate to residential treatment or other long-term care), that provides 24-hour inpatient services for the psychiatric diagnosis, treatment, and care of persons suffering from acute mental illness or emotional disturbance, and may also provide treatment for alcohol or drug abuse.

(b) "*Psychiatric unit*" means a department, unit, or other organizational subdivision of a general acute care or other non-psychiatric hospital, licensed or certified as a provider of inpatient psychiatric care (except for a facility limited by its license or certificate to residential treatment or other long-term care), that provides 24-hour inpatient services for the psychiatric diagnosis, treatment, and care of persons suffering from acute mental illness or emotional disturbance, and may also provide treatment for alcohol or drug abuse.

(c) "*Psychiatric hospital services*" mean the provision by psychiatric hospitals or psychiatric units of inpatient services for the psychiatric diagnosis, treatment, and care of persons suffering from acute mental illness or emotional disturbance, or alcohol or drug abuse. "Psychiatric hospital services" do not include the long-term psychiatric treatment provided by residential treatment facilities, other long-term treatment of chronic mental illness, or such treatment and other services provided by federally-owned facilities and state mental hospitals.

THE PARTIES

PAR. 2. Columbia/HCA is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee. Columbia/HCA owns and operates, *inter alia*, over 300 hospitals throughout the United States. One of those hospitals is Poplar

Springs Hospital ("Poplar Springs"), a 100-bed psychiatric hospital in Petersburg, Virginia. In 1994, Columbia/HCA had total sales of over \$13.7 billion.

PAR. 3. HHA is a non-profit hospital authority organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal place of business at 441 West Randolph Road, Hopewell, Virginia. HHA owns and operates John Randolph Medical Center ("John Randolph"), a 150-bed general acute care hospital including a 34-bed psychiatric unit, in Hopewell, Virginia, which is about ten miles northeast of Petersburg. In 1994, John Randolph had total sales of over \$40 million.

JURISDICTION

PAR. 4. Columbia/HCA and HHA are, and at all times relevant herein have been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12. The businesses of Columbia/HCA and HHA are, and at all times relevant herein have been, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

THE PROPOSED ACQUISITION

PAR. 5. On or about October 31, 1994, Columbia/HCA and HHA entered into an agreement whereby Columbia/HCA will acquire John Randolph Medical Center, and certain related assets, from HHA. The total value of the assets Columbia/HCA is to acquire from HHA is about \$45 million.

NATURE OF TRADE AND COMMERCE

PAR. 6. For purposes of this complaint, the relevant line of commerce in which to analyze the proposed acquisition is the production and sale of psychiatric hospital services and/or any narrower group of services contained therein. Psychiatric hospital services represent a line of commerce distinct and separate from outpatient psychiatric care, as well as from the long-term treatment of chronic mental illness (which is the province of facilities such as residential treatment facilities and state mental hospitals). Psychiatric

hospital services are provided to patients with a compelling clinical need for inpatient, acute psychiatric treatment, whose mental health care needs generally cannot reasonably be met by other, much less expensive forms of psychiatric health care.

PAR. 7. For purposes of this complaint, the relevant section of the country is the "Tri-Cities" area of south central Virginia, encompassing: the independent cities of Colonial Heights, Hopewell, and Petersburg; Dinwiddie and Prince George counties; and southwestern Charles City and southeastern Chesterfield counties.

MARKET STRUCTURE

PAR. 8. Columbia/HCA's acquisition of John Randolph would combine the largest psychiatric hospital facility in the Tri-Cities area with one of the only two other competing providers of psychiatric hospital services in the area. The only other provider of psychiatric hospital services in the Tri-Cities area is Southside Regional Medical Center, a general acute care hospital in Petersburg, Virginia with a 31-bed psychiatric unit.

PAR. 9. The market for psychiatric hospital services in the Tri-Cities area is highly concentrated, whether measured by four-firm concentration ratios or by the Herfindahl-Hirschmann Index ("HHI"). The proposed merger would significantly increase concentration in this market. It would increase Columbia/HCA's market share in the Tri-Cities area from over 50% to over 70%. The HHI would increase more than 2400 points, to a post-acquisition level of over 6400.

ENTRY CONDITIONS

PAR. 10. Entry of new psychiatric hospitals or psychiatric units in the Tri-Cities area would not be likely to deter or counteract anticompetitive effects of the acquisition in the relevant market. In Virginia, certificate of need approval from a state regulatory agency is required for the establishment of new psychiatric hospitals and psychiatric units. Obtaining such approval would be difficult in the Tri-Cities area, because the existing supply of psychiatric hospital beds in the Tri-Cities area substantially exceeds that which is needed (according to state standards) to meet the mental health needs of that area's residents.

COMPETITION

PAR. 11. In the relevant market, Columbia/HCA and HHA are direct, actual, and potential competitors.

EFFECTS

PAR. 12. The acquisition described in paragraph five, if consummated, may substantially lessen competition in the relevant market in the following ways, among others:

(a) It would eliminate actual and potential competition between Columbia/HCA and HHA as providers of psychiatric hospital services;

(b) It would significantly increase the already high level of concentration in the relevant psychiatric hospital services market;

(c) It would eliminate the psychiatric unit at HHA's John Randolph Medical Center as a substantial, independent, and competitive provider of psychiatric hospital services;

(d) It may permit Columbia/HCA to unilaterally raise prices for psychiatric hospital services in the Tri-Cities area;

(e) It may result in less favorable prices and other terms for health plans that contract with providers of psychiatric hospital services in the Tri-Cities area;

(f) It may increase the possibility of collusion or interdependent coordination by the remaining providers of psychiatric hospital services in the Tri-Cities area; and

(g) It may deny patients, physicians, third-party payers, and other consumers of psychiatric hospital services the benefits of free and open competition based on price, quality, and service.

VIOLATIONS CHARGED

PAR. 13. The acquisition agreement described in paragraph five above violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 14. The acquisition described in paragraph five, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition of John Randolph Medical Center in Hopewell, Virginia, and certain related assets, by Columbia/HCA Healthcare Corporation ("Columbia/HCA" or "respondent") from the Hopewell Hospital Authority, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; 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 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 Acts, 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 Columbia/HCA is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee.

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, as used in this order, the following definitions shall apply:

A. "*Columbia/HCA*" or "*respondent*" means Columbia/HCA Healthcare Corporation, its partnerships, joint ventures, companies, subsidiaries, divisions, and groups and affiliates controlled by Columbia/HCA; their directors, officers, employees, agents, and representatives; and their successors and assigns.

B. "*Commission*" means the Federal Trade Commission.

C. The "*Acquisition*" means the transaction contemplated by the October 31, 1994, agreement between Columbia/HCA and the Hopewell Hospital Authority, whereby Columbia/HCA will acquire John Randolph Medical Center in Hopewell, Virginia, and certain related assets.

D. "*Psychiatric hospital*" means a health care facility licensed or certified as a psychiatric hospital (except for a facility limited by its license or certificate to residential treatment or other long-term care), that provides 24-hour inpatient services for the psychiatric diagnosis, treatment, and care of persons suffering from acute mental illness or emotional disturbance, and may also provide treatment for alcohol or drug abuse.

E. "*Psychiatric unit*" means a department, unit, or other organizational subdivision of a general acute care or other non-psychiatric hospital, licensed or certified as a provider of inpatient psychiatric care (except for a facility limited by its license or certificate to residential treatment or other long-term care), that provides 24-hour inpatient services for the psychiatric diagnosis, treatment, and care of persons suffering from acute mental illness or emotional disturbance, and may also provide treatment for alcohol or drug abuse.

F. "*Psychiatric hospital facility*" means a psychiatric hospital, a non-psychiatric hospital with a psychiatric unit, or a psychiatric unit.

G. "*Psychiatric hospital services*" mean the provision by psychiatric hospitals or psychiatric units of inpatient services for the psychiatric diagnosis, treatment, and care of persons suffering from acute mental illnesses or emotional disturbance, or alcohol or drug

abuse. "Psychiatric hospital services" do not include the long-term psychiatric treatment provided by residential treatment facilities, other long-term treatment of chronic mental illnesses, or such treatment and other services provided by federally-owned facilities and state mental hospitals.

H. To "*operate*" a psychiatric hospital facility means to own, lease, manage, or otherwise control or direct the operations of a psychiatric hospital facility, directly or indirectly.

I. To "*acquire*" a psychiatric hospital facility means to directly or indirectly, through subsidiaries, partnerships, or otherwise:

1. Acquire the whole or any part of the assets of a psychiatric hospital facility;
2. Acquire the whole or any part of the stock, share capital, equity, or other interest in any person operating a psychiatric hospital facility;
3. Acquire or otherwise obtain the right to designate, directly or indirectly, directors or trustees of a psychiatric hospital facility; or
4. Enter into any other arrangement to obtain direct or indirect ownership, management, or control of a psychiatric hospital facility or any part thereof, including, but not limited to, a lease of or management contract for a psychiatric hospital facility.

J. "*Relevant area*" means the area in Virginia encompassing the independent cities of Colonial Heights, Hopewell, and Petersburg; Dinwiddie and Prince George counties; and those portions of Charles City and Chesterfield counties within a fifteen (15) mile radius of the present site of Poplar Springs Hospital in Petersburg, Virginia.

K. "*Affiliate*" means any entity whose management and policies are controlled in any way, directly or indirectly, by the person with which it is affiliated.

L. "*Person*" means any natural person, partnership, corporation, company, association, trust, joint venture, or other business or legal entity, including any governmental agency.

M. "*Assets and Businesses*" include, but are not limited to, all assets, properties, businesses, rights, privileges, contractual interests, licenses, and goodwill of whatever nature, tangible and intangible, including, without limitation, the following:

1. All real property interests (including fee simple interests and real property leasehold interests, whether as lessor or lessee), together with all buildings, improvements, and fixtures located thereon, all construction in progress thereat, all appurtenances thereto, and all licenses and permits related thereto (collectively, the "Real Property");

2. All contracts and agreements with physicians, other health care providers, unions, third party payors, HMOs, customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, cosigners, and consignees (collectively, the "Contracts");

3. All machinery, equipment, fixtures, vehicles, furniture, inventories, and supplies (other than such inventories and supplies as are used in the ordinary course of business during the time that Columbia/HCA owns the assets) (collectively, the "Personal Property");

4. All research materials, technical information, management information systems, software, software licenses, inventions, trade secrets, technology, know how, specifications, designs, drawings, processes, and quality control data (collectively, the "Intangible Personal Property");

5. All books, records, and files, excluding, however, the corporate minute books and tax records of Columbia/HCA and its affiliates; and

6. All prepaid expenses.

II.

It is further ordered, That:

A. Respondent shall divest, absolutely and in good faith, within twelve (12) months of the date this order becomes final, all Assets and Businesses, including all improvements, additions, and enhancements made prior to divestiture, of Poplar Springs Hospital in Petersburg, Virginia (the "paragraph II Assets").

B. Respondent shall also divest such additional Assets and Businesses ancillary to the paragraph II Assets and effect such arrangements as are necessary to assure the marketability, viability, and competitiveness of the paragraph II Assets.

C. Respondent shall divest the paragraph II Assets only to an acquirer or acquirers that receive the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the paragraph II Assets is to ensure the continuation of the paragraph II Assets as an ongoing, viable psychiatric hospital and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

D. Respondent shall comply with all terms of the Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I. Said Agreement to Hold Separate shall continue in effect until such time as respondent has fulfilled the divestiture requirements of this order or until such other time as said Agreement to Hold Separate provides.

E. Pending divestiture of the paragraph II Assets, respondent shall take such actions as are necessary to maintain the present marketability, viability, and competitiveness of the paragraph II Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of the paragraph II Assets, except for ordinary wear and tear.

F. A condition of approval by the Commission of the divestiture shall be a written agreement by the acquirer(s) of the paragraph II Assets that it will not sell for a period of ten (10) years from the date of divestiture, directly or indirectly, through subsidiaries, partnerships, or otherwise, without prior notification to the Commission in the manner prescribed by paragraph IV of this order, any paragraph II Asset to any person who operates, or will operate immediately following the sale, any other psychiatric hospital facility in the relevant area.

III.

It is further ordered, That:

A. If the respondent has not divested, absolutely and in good faith and with the Commission's prior approval, the paragraph II Assets, in accordance with this order, within twelve (12) months of the date this order becomes final, the Commission may appoint a trustee to divest the undivested paragraph II Assets.

B. In the event that the Commission or the Attorney General brings an action for any failure to comply with this order or in any way relating to the Acquisition, pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, the respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under paragraph III.A, shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it for any failure by the respondent to comply with this order.

C. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A of this order, the respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of the respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the paragraph II Assets.

3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph III.C.3 to accomplish the divestiture(s), which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the

case of a court-appointed trustee, by the court; provided however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the undivested paragraph II Assets, or to any other relevant information as the trustee may request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by respondent shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court appointed trustee, by the court.

6. Subject to Columbia/HCA's absolute and unconditional obligation to divest at no minimum price the paragraph II Assets (and subject to the terms described in paragraph II.A), and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to the respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture(s) shall be made in the manner and to the acquirer as set out in paragraph II; provided, however, if the trustee receives *bona fide* offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of the respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction

of the respondent and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the undivested paragraph II Assets.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A of this order.

10. The Commission or, in the case of a court-appointed trustee, the court may, on its own initiative, or at the request of the trustee, issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture(s) required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the paragraph II Assets.

12. The trustee shall report in writing to the respondent and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, respondent shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any person operating a psychiatric hospital facility in the relevant area;

B. Acquire any assets of a psychiatric hospital facility in the relevant area;

C. Enter into any agreement or other arrangement to obtain direct or indirect ownership, management, or control of any psychiatric

hospital facility, or any part thereof, in the relevant area, including but not limited to, a lease of or management contract for any such facility;

D. Acquire or otherwise obtain the right to designate, directly or indirectly, directors or trustees of any psychiatric hospital facility in the relevant area;

E. Permit any psychiatric hospital facility it operates in the relevant area to be acquired by any person that operates, or will operate immediately following such acquisition, any other psychiatric hospital facility in the relevant area.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent shall provide the Notification to the Commission at least thirty days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 CFR 803.20), respondent shall not consummate the transaction until twenty days after submitting such additional information and documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a.

Provided, however, that prior notification pursuant to this paragraph IV, or pursuant to paragraph II.F. of this order, shall not be required for:

1. The establishment by respondent of a new psychiatric hospital facility in the relevant area: (a) that is a replacement for an existing psychiatric hospital facility, if that facility is operated by respondent and is not required to be divested pursuant to paragraph II of this

order; or (b) that is not a replacement for any psychiatric hospital facility in the relevant area;

2. Any transaction otherwise subject to this paragraph IV of this order if the fair market value of (or, in case of an asset acquisition, the consideration to be paid for) the psychiatric hospital facility or part thereof to be acquired does not exceed one million dollars (\$1,000,000);

3. The acquisition of products or services in the ordinary course of business; or

4. Any transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

V.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, respondent shall not permit all, or any substantial part of, any psychiatric hospital facility it operates in the relevant area to be acquired by any other person (except pursuant to the divestiture required by paragraph II), unless the acquiring person files with the Commission, prior to the closing of such acquisition, a written agreement to be bound by the provisions of this order, which agreement respondent shall require as a condition precedent to the acquisition.

VI.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until the respondent has fully complied with paragraph II of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with paragraph II of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraph II of this order, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondent shall

include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestitures.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and it is complying with this order.

VII.

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

VIII.

It is further ordered, That, for the purpose of determining or securing compliance with this order, the respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the respondent relating to any matters contained in this order; and

B. Upon five days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent, who may have counsel present regarding such matters.

APPENDIX I

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate ("Agreement") is by and between Columbia/HCA Healthcare Corporation ("Columbia/HCA" or "respondent"), a corporation organized, existing, and doing

business under and by virtue of the laws of the State of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

PREMISES

Whereas, on October 31, 1994, Columbia/HCA and the Hopewell Hospital Authority entered into an agreement whereby Columbia/HCA will acquire John Randolph Medical Center in Hopewell, Virginia, and certain related assets, from the Authority (the "Acquisition"); and

Whereas, Columbia/HCA, with its principal place of business at One Park Plaza, Nashville, Tennessee, owns and operates, among other things, psychiatric hospitals; and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("consent order"), which would require the divestiture of certain assets specified in paragraph II of the consent order ("paragraph II Assets"), the Commission must place the consent order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the paragraph II Assets during the period prior to the final acceptance and issuance of the consent order by the Commission (after the 60-day public comment period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestitures of the paragraph II Assets, and the Commission's right to have the paragraph II Assets continue as a viable psychiatric hospital independent of Columbia/HCA; and

Whereas, the purposes of this Agreement and the consent order are to:

(i) Preserve the paragraph II Assets as a viable, competitive, and ongoing psychiatric hospital, independent of Columbia/HCA, pending the divestitures of the paragraph II Assets as required under the terms of the consent order;

(ii) Prevent interim harm to competition from the operation of the paragraph II Assets pending divestiture as required under the terms of the consent order; and

(iii) Remedy any anticompetitive effects of the Acquisition;

Whereas, respondent's entering into this Agreement shall in no way be construed as an admission by respondent that the Acquisition is illegal; and

Whereas, respondent understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the consent order for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the consent order, it will not seek further relief from respondent with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the consent order to which it is annexed and made a part thereof, and in the event the required divestiture of the paragraph II Assets is not accomplished, to appoint a trustee to seek divestiture of said assets pursuant to the consent order or to seek civil penalties or a court appointed trustee or other equitable relief, as follows:

1. Respondent agrees to execute the agreement containing consent order and be bound by the attached consent order.

2. Respondent agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a or 2.b, it will comply with the provisions of paragraph three of this Agreement:

a. Three (3) business days after the Commission withdraws its acceptance of the consent order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. The day after the divestiture of the paragraph II Assets, as required by the consent order, is completed.

3. To ensure the complete independence and viability of the paragraph II Assets, and to assure that no competitive information is exchanged between Columbia/HCA and the managers of the paragraph II Assets, respondent shall hold the paragraph II Assets, as they are presently constituted, separate and apart on the following terms and conditions:

a. The paragraph II Assets, as they are presently constituted, shall be held separate and apart and shall be managed and operated independently of respondent (meaning here and hereinafter, Columbia/HCA excluding the paragraph II Assets), except to the extent that respondent must exercise direction and control over such assets to assure compliance with this Agreement or the consent order, and except as otherwise provided in this Agreement.

b. Prior to, or simultaneously with the Acquisition, respondent shall organize a distinct and separate legal entity, either a corporation, limited liability company, or general or limited partnership ("New Company") and adopt constituent documents for the New Company that are not inconsistent with other provisions of this Agreement or the consent order; provided, however, that Columbia/HCA may designate as the "New Company" under this agreement, the "New Company" created pursuant to the Agreement to Hold Separate regarding the Florida, Texas, and Louisiana Assets between Columbia/HCA and the Commission in connection with FTC File No. 951-0022. Respondent, shall transfer all ownership and control of all paragraph II Assets to the New Company.

c. The board of directors of the New Company, or, in the event respondent organizes an entity other than a corporation, the governing body of the entity ("New Board"), shall have three members. Respondent shall elect the members of the New Board. The New Board shall consist of the following three persons: Winfield C. Dunn; Samuel H. Howard; and David C. Colby. The Chairman of the New Board shall be Winfield C. Dunn (provided he agrees), or a comparable, knowledgeable person, who shall remain independent of

Columbia/HCA and competent to assure the continued viability and competitiveness of the paragraph II Assets. The New Board shall include no more than one member who is a director, officer, employee, or agent of respondent, who shall be David C. Colby, provided he agrees, or a comparable knowledgeable person ("the respondent's New Board member"). The New Board shall meet monthly during the course of the Hold Separate, and as otherwise necessary. Meetings of the New Board during the term of this Agreement shall be audiographically transcribed and the tapes retained for two (2) years after the termination of this Agreement.

d. Respondent shall not exercise direction or control over, or influence directly or indirectly, the paragraph II Assets, the independent Chairman of the Board of the New Company, the New Board, or the New Company or any of its operations or businesses; provided, however, that respondent may exercise only such direction and control over the New Company as is necessary to assure compliance with this Agreement or the consent order, or with all applicable laws.

e. Respondent shall maintain the viability, competitiveness, and marketability of the paragraph II Assets; shall not sell, transfer, or encumber said Assets (other than in the normal course of business); and shall not cause or permit the destruction, removal, wasting, or deterioration, or otherwise impair their viability, competitiveness, or marketability of said Assets.

f. Except for the respondent's New Board member, respondent shall not permit any director, officer, employee, or agent of respondent to also be a director, officer, or employee of the New Company.

g. The New Company shall be staffed with sufficient employees to maintain the viability and competitiveness of the paragraph II Assets, which employees shall be selected from the existing employee base of each facility or entity and may also be hired from sources other than these facilities and entities.

h. With the exception of the respondent's New Board member, respondent shall not change the composition of the New Board unless the independent Chairman consents. The independent Chairman shall have power to remove members of the New Board for cause. Respondent shall not change the composition of the management of the New Company except that the New Board shall have the power to remove management employees for cause.

i. If the independent Chairman ceases to act or fails to act diligently, a substitute Chairman shall be appointed in the same manner as provided in paragraph 3.c of this Agreement.

j. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating agreements to divest assets, or complying with this Agreement or the consent order, respondent shall not receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about the New Company or the activities of the hospital to be operated by the New Board. Nor shall the New Company or the New Board receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about respondent and relating to respondent's hospitals. Respondent may receive, on a regular basis, aggregate financial information relating to the New Company necessary and essential to allow respondent to prepare United States consolidated financial reports, tax returns, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph. ("Material Confidential Information," as used herein, means competitively sensitive or proprietary information not independently known to an entity from sources other than the entity to which the information pertains, and includes, but is not limited to, customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.)

k. Except as permitted by this Agreement, the respondent's New Board member shall not, in his or her capacity as a New Board member, receive Material Confidential Information and shall not disclose any such information received under this Agreement to respondent, or use it to obtain any advantage for respondent. The respondent's New Board member shall enter a confidentiality agreement prohibiting disclosure of Material Confidential Information. The respondent's New Board member shall participate in matters that come before the New Board only for the limited purposes of considering a capital investment or other transaction exceeding \$250,000, approving any proposed budget and operating plans, and carrying out respondent's responsibilities under this Agreement and the consent order. Except as permitted by this Agreement, the respondent's New Board member shall not participate

in any matter, or attempt to influence the votes of the other members of the New Board with respect to matters, that would involve a conflict of interest if respondent and the New Company were separate and independent entities.

l. Any material transaction of the New Company that is out of the ordinary course of business must be approved by a majority vote of the New Board; provided that the New Company shall engage in no transaction, material or otherwise, that is precluded by this Agreement.

m. If necessary, respondent shall provide the New Company with sufficient working capital to operate the paragraph II Assets at their respective current rates of operation, and to carry out any capital improvement plans for the paragraph II Assets which have already been approved.

n. Columbia/HCA shall continue to provide the same support services to the paragraph II Assets, as are being provided to those Assets by Columbia/HCA as of the date this Agreement is signed. Columbia/HCA may charge the paragraph II Assets the same fees, if any, charged by Columbia/HCA for such support services as of the date of this Agreement. Columbia/HCA personnel providing such support services must retain and maintain all Material Confidential Information of the paragraph II Assets on a confidential basis, and, except as is permitted by this Agreement, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of respondent's businesses. Such personnel shall also execute a confidentiality agreement prohibiting the disclosure of any Material Confidential Information of the paragraph II Assets.

o. During the period commencing on the date this Agreement is effective and terminating on the earlier of (i) twelve (12) months after the date the consent order becomes final, or (ii) the date contemplated by subparagraph 2.b (the "Initial Divestiture Period"), respondent shall make available for use by the New Company funds sufficient to perform all necessary routine maintenance to, and replacements of, the paragraph II Assets ("normal repair and replacement"). Provided, however, that in any event, respondent shall provide the New Company with such funds as are necessary to maintain the viability, competitiveness, and marketability of such Assets.

p. Columbia/HCA shall circulate, to its management employees responsible for the operation of hospitals (including non-psychiatric facilities) either in the relevant area defined in the consent order in this matter, or in the city of Richmond or Henrico or Chesterfield counties in Virginia, a notice of this Hold Separate and consent order in the form attached as Attachment A.

q. The New Board shall serve at the cost and expense of Columbia/HCA. Columbia/HCA shall indemnify the New Board against any losses or claims of any kind that might arise out of its involvement under this Hold Separate, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the New Board directors.

r. The New Board shall have access to and be informed about all companies who inquire about, seek, or propose to buy any paragraph II Assets.

s. The New Board shall report in writing to the Commission every thirty (30) days concerning the New Board's efforts to accomplish the purposes of this Hold Separate.

4. Should the Commission seek in any proceeding to compel respondent to divest any of the paragraph II Assets, as provided in the consent order, or to seek any other injunctive or equitable relief for any failure to comply with the consent order or this Agreement, or in any way relating to the Acquisition, as defined in the draft complaint, respondent shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Respondent also waives all rights to contest the validity of this Agreement.

5. To the extent that this Agreement requires respondent to take, or prohibits respondent from taking, certain actions that otherwise may be required or prohibited by contract, respondent shall abide by the terms of this Agreement or the consent order and shall not assert as a defense such contract requirements in a civil penalty action brought by the Commission to enforce the terms of this Agreement or consent order.

6. For the purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to its

principal office, respondent shall permit any duly authorized representatives of the Commission:

a. Access, during office hours of respondent and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of the respondent relating to compliance with this Agreement;

b. Upon five (5) days' notice to respondent and without restraint or interference from respondent, to interview officers, directors, or employees of respondent, who may have counsel present, regarding such matters.

7. This Agreement shall not be binding until approved by the Commission.

ATTACHMENT A

NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

Columbia/HCA Healthcare Corporation has entered into a Consent Agreement and Agreement to Hold Separate with the Federal Trade Commission relating to the divestiture of Poplar Springs Hospital in Petersburg, Virginia and certain related assets and businesses ("Poplar Springs"). Until after the FTC's order becomes final and Poplar Springs is divested, Poplar Springs must be managed and maintained as a separate, ongoing business, independent of all other Columbia/HCA businesses. All competitive information relating to Poplar Springs must be retained and maintained by the persons involved in the operation of Poplar Springs on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other Columbia/HCA business. Similarly, all such persons involved in Columbia/HCA shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves Poplar Springs.

Any violation of the Consent Agreement or the Agreement to Hold Separate, incorporated by reference as part of the consent order, may subject Columbia/HCA to civil penalties and other relief as provided by law.

IN THE MATTER OF

THIRD OPTION LABORATORIES, INC., ET AL.

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

Docket C-3628. Complaint, Nov. 29, 1995--Decision, Nov. 29, 1995

This consent order requires, among other things, an Alabama company and its officers to pay \$480,000 to be used either for refunds to consumers or as disgorgement to the U.S. Treasury, and to send a notice to consumers and distributors of the beverage, Jogging in a Jug, advising them of the consent order which requires the respondents to possess competent and reliable scientific evidence to substantiate any representation they make about the performance, safety, benefits, or efficacy of any food, dietary supplement, or drug they market in the future. In addition, the consent order prohibits the deceptive use of testimonials or endorsements and requires the respondents to clearly and prominently include a disclosure statement in future advertisements.

Appearances

For the Commission: *Toby M. Levin and Loren G. Thompson.*

For the respondents: *Bruce A. Rawls and Ross Forman, Burr & Forman, Birmingham, AL.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Third Option Laboratories, Inc., a corporation; and William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, individually and as officers 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. Respondent Third Option Laboratories, Inc., is an Alabama corporation with its principal office or place of business at 2806 Avalon Avenue, Muscle Shoals, Alabama.

Respondent William J. McWilliams is the President, and an owner and director of the corporate respondent. His principal office

or place of business is the same as that of the corporate respondent. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint.

Respondent Danny Bishop McWilliams is the Treasurer, and an owner and director of the corporate respondent. His principal office or place of business is the same as that of the corporate respondent. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint.

Respondent Susan McWilliams Bolton is the Secretary, and an owner and director of the corporate respondent. Her principal office or place of business is the same as that of the corporate respondent. Individually or in concert with others, she formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint.

PAR. 2. Respondents have labeled, advertised, promoted, offered for sale, sold, and distributed "Jogging in a Jug," a liquid made from apple cider vinegar, apple juice, and grape juice, as a preventive or treatment for numerous diseases and symptoms. Jogging in a Jug is a "food" and/or "drug" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

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

PAR. 4. Respondents have disseminated or have caused to be disseminated advertisements and promotional materials for Jogging in a Jug, including but not necessarily limited to the attached Exhibits A through F. These advertisements contain the following statements and depictions:

A. "Jogging in a Jug® has Health Woes on the Run [headline]. TOO OLD to take up running? Maybe you should start drinking instead. . .drinking 'Jogging in a Jug,' that is!

Just ask retired dairy farmer Jack McWilliams, who concocted the tart-tasting tonic 2 years ago. 'I used to be nearly disabled with heart-blockage and arthritis,' says Jack, who's 64. 'But after I started drinking Jogging in a Jug, I noticed a difference right away.'

'In less than a year, my arthritis cleared up, and I stopped suffering the pain and symptoms of heart disease!'

. . . Jack receives hundreds of testimonials from folks who feel that it's lowered their cholesterol, lifted their lethargy and lessened their arthritis.

'Vinegar is nature's own cleansing agent,' Jack insists, 'Vinegar will clean the drain in the kitchen sink, dissolve calcium and mineral deposits in pipes, tenderize meats. . .and remove decals from trucks.'

'I figure if vinegar can breakdown calcium and chemicals outside of the body, it'll do the same inside, leading to a healthier circulatory system and cleaner organs.' . . .

Just a few ounces of his tasty Jogging in a Jug will give you energy and stamina which is what the Jogger is trying to achieve." [Exhibit A]

B. "Jogging in a Jug BULLETIN [headline]. When your body tells you it's 4th down and 50 yards to go with no time outs, get Jogging in a Jug and keep on going.

Jogging in a Jug is a drink that achieves many of the things a jogger wishes to gain from jogging.

Jogging in a Jug is for people of all ages. Its formula, a self cleansing agent for the body, is a revival of a century-old process designed to cleanse the body cells of crystal and solid build up. This helps each system do its individual task more effectively, promoting an atmosphere for a more energetic and healthful you." [Exhibit B]

C. "Jogging in a Jug (USDA Approved) [headline]. JOGGING IN A JUG is a drink that achieves many of the things a jogger wishes to gain from jogging." [Exhibit C]

D. [Announcer] "Were [sic] Here to tell you about a product on the market thats [sic] so popular and so healthy, that people are writing letters from this great country of ours, and their [sic] talking about Jogging In A Jug! And here to tell you more is the inventor of Jogging In A Jug, Jack McWilliams from Cherokee Alabama. Jack, What do all these Letters say health wise about what Jogging In A Jug can do?

[McWilliams] That It lowers Cholesterol, Triglycerides [sic] that swelling in the legs, muscle spasms were going away." [Exhibit D]

E. [Announcer] "Jack McWilliams from Cherokee Alabama, and he's interested in your good health and quality of life, as a matter of fact Jack was so upset about his own declining health in 1985 that he invented an all natural drink, its [sic] called Jogging In A Jug. This new Jogging In A Jug product has become so popular that people from all over the Southeast and other parts of the United States are raving about their improved health and outlook on life. Jack, what exactly do the letters say?

[McWilliams]. . .we have letters that say that those people who are suffering dysentery and constipation when they go on Jogging In A Jug those little 2 ounces a day, both of them seem to clear up." [Exhibit E]

F. 'I developed heart disease about five years ago with 70 percent blockage,' he [Jack McWilliams] said.

'I also have arthritis. . .'

'I started taking a mixture of vinegar and I began to improve. The swelling in my hands and the (arthritic) pain in my shoulder went away and I stopped suffering the pain and symptoms of heart disease.'

McWilliams said his claim may sound strange in a high technology world of nuclear medicine, but he is convinced the addition of a few ounces of vinegar per week to the diet can greatly reduce the risk of heart disease, cancer in the internal organs and some forms of arthritis.

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Vinegar, he said, is like a natural solvent for the body, cleaning crystal deposits that are the base of clogged arteries and arthritis." [Exhibit F, p. 1]

* * *

[Testimonial] "'I know it's working for me and my wife. The family doctor even wrote a note on my cholesterol read out, 'Mike continue taking "Jogging in a Jug." . . . My cholesterol had dropped the first time down 44 points and my wife's 22 points. Now this report down to 228.' . . . E.M.G." [Exhibit F, p. 2]

* * *

". . . Mr. McWilliams began drinking his concoction every day. In less than a year his arthritis cleared up, and he stopped suffering the pain and symptoms of heart disease. The retired dairy farmer had developed a new vinegar/juice beverage which he says is as good for you as a jog around the block. In fact he named his new life restorer 'Jogging in a Jug.'

Mr. McWilliams says, 'Vinegar is nature's own cleansing agent. Vinegar will clean the drain in the kitchen sink, dissolve calcium and mineral deposits in pipes, tenderize meats and even remove decals from trucks. I figure if vinegar can break down calcium and chemicals outside of the body, it'll do the same inside, leading to a healthier circulatory system and cleaner organs.'

. . . Jack receives hundreds of testimonials from people every where [sic] who feel that the vinegar/juice beverage has lowered their cholesterol, helped their arthritis and given them a new lease on life. . .

You're never too old to take up jogging. Even if it is in a jug." [Exhibit F, p. 2]

* * *

"Jack McWilliams at this date had received high tech medical treatment for seven years, with an average hospital stay of 30 days per year for a total of about 210 days, at a cost of approximately \$50,000 - \$54,000 to the insurance company plus minor cost to the family.

Convinced the fruit of the vine type of acetic acid is no longer in the diet nor on the market and is needed; McWilliams continued high-tech medication and added acetic acid through 'Jogging in a Jug' at two ounces per day at a cost of \$5.90 per month. Health was restored slowly in twelve to sixteen months."

[Depiction - two photographs of McWilliams, one with the subscript "January 1986 - age 59 atherosclerosis/arthritis (wt 148)" and the second with the subscript "January 1991 - age 64 no health problems (wt 210)"] [Exhibit F, p. 3]

* * *

"Riddled with arteriosclerosis [sic] and arthritis, Alabama dairy farmer Jack McWilliams, now 65, had lost the desire to live in 1985 when he developed 'Jogging in a Jug.'

He was also suspicious about why six people in his community of Cherokee, Alabama, died of heart disease and cancer in just six weeks, and he began to research into what was lacking in the modern diet.

It was acetic acid, he says today, and that is the elixir he mixes into the purple fluid he calls Jogging in a Jug.'

He is careful to note that the Food and Drug Administration will not allow him to make any health claims about his drink, but 'I have the First Amendment right to tell my own personal story.'

'People just don't take in the acetic acid they used to in the old days,' McWilliams said. . .

The credibility of cider vinegar in our diets began to fall into place, according to McWilliams, when he noted all it's [sic] known attributes such as the ability to clean calcium and mineral deposits off plumbing and to make meat tender. . .

He decided that if vinegar could break down calcium and chemicals outside the body, it could break down calcium and chemicals inside the body as well. . .

McWilliams has received many enthusiastic letters from 'Jogging in a Jug' drinkers telling how their cholesterol has gone down, energy has gone up and arthritis has become less painful.

And McWilliams said he was relieved of his heart disease symptoms, most of his arthritis and his shoulder stiffness is gone.

McWilliams attributes these reactions to the acetic acid in the drink which he believes helps cleanse the arteries and cells in the body. . .

This is a 2,000 year old known technology that gives us a third option to slow the rise of cancer, leukemia, heart disease and arthritis." [Exhibit F, p. 3]

[Testimonial] "My husband is an insulin dependent diabetic. . . .

This past year, on a friend's recommendation, he began taking 2 oz. of 'Jogging in a Jug' each morning. His doctor said it wouldn't hurt his control of his disease. Jack's sugar level has always tended to go too low, we were never sure what would trigger this at any time.

After beginning 'Jogging in a Jug' his episodes of low blood sugar have decreased markedly. Then in the summer haying season he ran out of 'Jogging in a Jug'. I kept forgetting to buy more. His blood sugar level began to fluctuate wildly, very high to very low seemingly without cause. We couldn't get it under control. Finally after about a week I remembered to purchase another jug.

Immediately, Jack's blood sugar leveled off to normal levels of 90-120 and stayed there.

We don't allow ourselves to be out of 'Jogging in a Jug' anymore!

I am convinced that this product has leveled his sugar off to manageable levels. Sincerely Mrs. J.A.W. Cherokee, AL" [Exhibit F, p. 4]

* * *

[Testimonial] "On 12 January 1991, my cholesterol count, was 272. I read an article about your product, Joggin [sic] in a Jug. I have been sipping the drink ever since. On 11 March 1991, my cholesterol count was 188, I am now a believer.' R.M. Montgomery, Alabama." [Exhibit F, p.4]

* * *

[Testimonial] "My cholesterol dropped from 330 to 276. My doctor told me to keep doing what I'm doing. . . ' A.H. Rockwood, TN" [Exhibit F, p. 4]

* * *

[Testimonial] "'Your juice has helped to lower my mother's cholesterol, thank you.' J.C. Phil Campbell, AL" [Exhibit F, p. 4]

[Testimonial] "'My cholesterol count had been hovering around 235, I tried your product for 3 weeks and my doctor was pleased to inform me it had dropped to 200.' P.H. Ft. Lauderdale, FL" [Exhibit F, p. 4]

[Testimonial] "'I was stricken by a virus, after 6 weeks I was exhausted and couldn't work. I heard of your drink, after taking it for 6 weeks I am myself again and back to working 8-10 hours a day.' E.L. Hamilton, AL" [Exhibit F, p. 4]

[Testimonial] "'After drinking Jogging in a Jug my husband's cholesterol has dropped from 217 to 190 and triglycerides from 419 to 148 and he can close his

hands from arthritis after three months.' F.W.B. Montgomery, AL" [Exhibit F, p. 4]

[Testimonial] "My mother is 83 years old, and in very good health, except for high cholesterol. It was 448 when she [sic] a check-up in March. We bought her some Jogging in a Jug. I am happy to report her cholesterol is down by 124 points in just five weeks.' J.H.N. Selma, AL" [Exhibit F, p. 4]

[Testimonial] "Thank you for helping me to reduce my cholesterol count. I took the product for two weeks before I had a cholesterol test. My doctor was so pleased he wrote across my chart, "Call her and congratulate her.'" F.R.W. Canonsburg, PA" [Exhibit F, p. 4]

[Testimonial] ". . . I had arthritis pain to the point of not being able to do work with my arms over my head. Now I am able to work with my arms over my head in a normal manner.' J.C. Lawrenceville, GA" [Exhibit F, p. 4]

[Testimonial] "I have lowered my cholesterol from 269 in September to 209 in January. Thanks.' B.Y. St. Cloud, FL" [Exhibit F, p. 4]

[Testimonial] "For the past 6 years, I have been going to the Rheumatologist with arthritis in my hips. Sometimes [sic] could not get around. Two weeks after starting to drink Jogging in a Jug, I began feeling much better. This was five months ago and I have not been to the doctor since. It is the longest I have ever gone without taking Arthritis medication. I was even taking Cortizone [sic] shots. Thanks to Jogging in a Jug, I feel great.' G.T. Winchester, TN" [Exhibit F, p. 4]

PAR. 5. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through F, respondents have represented, directly or by implication, that:

- A. Jogging in a Jug cures or alleviates heart disease and its symptoms, including arterial blockages;
- B. Jogging in a Jug substantially lowers serum cholesterol and triglycerides;
- C. Jogging in a Jug cures or alleviates arthritis and its symptoms;
- D. Jogging in a Jug breaks down or eliminates calcium or other mineral or chemical deposits in the circulatory system;
- E. Jogging in a Jug improves the condition of the circulatory system;
- F. Jogging in a Jug cleans internal organs;
- G. Jogging in a Jug prevents or reduces the risk of cancer, leukemia, heart disease, and arthritis;
- H. Jogging in a Jug provides the same health benefits as a jogging regimen;
- I. Jogging in a Jug cures or alleviates lethargy;

- J. Jogging in a Jug cures or alleviates dysentery;
- K. Jogging in a Jug cures or alleviates constipation;
- L. Jogging in a Jug stabilizes blood sugar levels in insulin-dependent diabetics;
- M. Jogging in a Jug aids in the recovery from viral diseases;
- N. Jogging in a Jug cures or alleviates swelling of the legs and muscle spasms;
- O. Jogging in a Jug is approved by the United States Department of Agriculture; and
- P. The testimonials or endorsements from consumers contained in the advertisements and promotional materials reflect the typical or ordinary experiences of members of the public who use Jogging in a Jug.

PAR. 6. In truth and in fact:

- A. Jogging in a Jug does not cure or alleviate heart disease or its symptoms, including arterial blockages;
- B. Jogging in a Jug does not substantially lower serum cholesterol or triglycerides;
- C. Jogging in a Jug does not cure or alleviate arthritis or its symptoms;
- D. Jogging in a Jug does not break down or eliminate calcium or other mineral or chemical deposits in the circulatory system;
- E. Jogging in a Jug does not improve the condition of the circulatory system;
- F. Jogging in a Jug does not clean internal organs;
- G. Jogging in a Jug does not prevent or reduce the risk of cancer, leukemia, heart disease, or arthritis;
- H. Jogging in a Jug does not provide the same health benefits as a jogging regimen;
- I. Jogging in a Jug does not cure or alleviate lethargy;
- J. Jogging in a Jug does not cure or alleviate dysentery;
- K. Jogging in a Jug does not cure or alleviate constipation;
- L. Jogging in a Jug does not stabilize blood sugar levels in insulin-dependent diabetics;
- M. Jogging in a Jug does not aid in the recovery from viral diseases;
- N. Jogging in a Jug does not cure or alleviate swelling of the legs or muscle spasms;

O. Jogging in a Jug is not approved by the United States Department of Agriculture; and

P. The testimonials or endorsements by consumers contained in the advertisements and promotional materials do not reflect the typical or ordinary experiences of members of the public who use Jogging in a Jug.

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 promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through F, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph five, respondents, possessed and relied upon a reasonable basis that substantiated such representations.

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

PAR. 9. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

Chairman Pitofsky not participating.

EXHIBIT A

Jogging in a Jug[®]
Has Health Woes on the Run

TOO OLD to make up running? Maybe you should start cranking instead... cranking "Jogging in a Jug", that is!

Just ask retired dairy farmer Jack McWilliams, who concocted the tantalizing tonic 2 years ago. "I used to be nearly disabled with heart blockage and arthritis," says Jack, who's 64. "But after I started drinking Jogging in a Jug, I noticed a difference right away.

"In less than a year, my arthritis cleared up, and I stopped suffering the pain and symptoms of heart disease!"

The only symptoms he suffered after that were sore feet from pounding the pavement promoting his new product. Merchants in his hometown of Cherokee, Alabama laughed at first, but Jack - like any farmer - persisted. His persistence paid off. Nowadays, Jogging in a Jug is sold in supermarkets all across the South, and Jack receives hundreds of testimonials from folks who feel that it's lowered their cholesterol, lifted their lethargy and lessened their aches.

Such success may be sweet, but the taste of Jogging in a Jug certainly isn't - it's main ingredient is vinegar.


"Vinegar is nature's own cleansing agent," Jack insists. "Vinegar will clean the drain in the kitchen sink, dissolve calcium and mineral deposits in pipes, tenderize meat... and remove decals from trucks.

"I figure if vinegar can break down calcium and coemencis outside of the body, it'll do the same inside, leading to a healthier circulatory system and cleaner organs."

Healthy skepticism keeps some folks from trying out his treatment, Jack admits. But he points out that vinegar has been valued as a tonic and preservative since Biblical times. "My grandmother was a strong believer in using vinegar for all ailments," he adds. "She raised her family on creek water and vinegar, and her children all lived at least 90 years."

Jack's own family, wife Rebecca, son Danny, and daughter Susan, have a different health regimen these days - they're running to help him keep up with the demand for Jogging in a Jug. If this friendly former farmer has his way, you just might see it in your store!

DRINK UP!
Just a few ounces of his tasty Jogging in a Jug will give you energy and stamina which is what the Jogger is trying to achieve. Says dairyman Jack McWilliams, Here's to your good health.



Available at your local grocery store.
For Free Brochure
call 1-800-267-2598
Mon.-Fri. 8-5 p.m. Central Time.

DISTRIBUTED BY SERVICE DIST. INC., LORTON, VA.

Exhibit A

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EXHIBIT B

*Jogging in a Jug***BULLETIN**

When your body tells you it's 4th down and 50 yards to go with no time outs, get *Jogging in a Jug* and keep on going.



Jogging in a Jug is a drink that achieves many of the things a jogger wishes to gain from jogging.

Jogging in a Jug is for people of all ages. Its formula, a self cleansing agent for the body, is a revival of a century-old process designed to cleanse the body cells of crystal and solid build up. This helps each system do its individual task more effectively, promoting an atmosphere for a more energetic and healthful you.

Jogging in a Jug contains a blend of fresh and aged products of the orchard and vineyard. It contains no chemicals and no preservatives.

Jogging in a Jug is new, yet centuries old.

Make *Jogging in a Jug* a daily habit by taking a small amount each day as a part of your regular health routine.

2 Ounces per day is all it takes - 32 day supply - 64 oz. unit - \$5.95

At Your Local Grocery Store

DEVELOPED BY

Third Option Laboratories, Inc.

Route 3, Box 430

Cherokee, AL 35616

205-359-6178

Jack McWilliams

Bottled by Southern Specialty Food

Exhibit B

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EXHIBIT C

10A The Huntsville Times, Wednesday, February 7, 1990

Jogging in a Jug
(USDA Approved)

JOGGING IN A JUG is a drink that contains more of the things a jogger needs to gain fresh energy.

JOGGING IN A JUG is for people of all ages. Its formula, a mild cleansing agent for the body, is a revival of a century old formula designed to clean the lower side of horses and not to be used on. This basic and effective use as an antioxidant has more benefits, promoting an energy source for a more energetic and beneficial use.



Make **JOGGING IN A JUG** a daily habit by taking a small amount each day as part of your regular health routine.

JOGGING IN A JUG, it's new yet centuries old! 2 Ounces per day is all it takes-32 day supply-64 oz. unit \$5.95.

At Your Local Grocery Store

Third Option Laboratories
Route 2 Box 436 Cherokee, AL 35616 (205) 359-6178 Jack McWilliams

Exhibit C

Complaint

120 F.T.C.

EXHIBIT D

Jogging In A Jug EM-020

Announcer: Were Here to tell you about a product on the market thats so popular and so healthy, that people are writing letters from this great country of ours, and their talking about Jogging In a Jug! And here to tell you more is the inventor of Jogging In A Jug, Jack McWilliams from Cherokee Alabama. Jack, What do all these Letters say health wise about what Jogging In A Jug can do?

Mr. McWilliams: That it lowers Cholesterol, Triglycerides that swelling in the legs, muscle spasms were going away.

Announcer: And Jogging In A Jug will cost you just pennies a day. Jogging In A Jug is healthy and completely natural but Jack, what exactly does Jogging In A Jug taste like?

Mr. McWilliams: Jogging In A Jug if you grew up in a rural community it taste like a home brew, if you grew up in the city, it taste like a fine wine.

Announcer: (Laugh) Now that a health drink for me.

Jingle: Try the healthy choice Jogging In A Jug, Just 2 ounces a day and once you try it when you need more youre gonna buy it Jogging In A Jug.

EXHIBIT E

Jogging In a Jug EM-022

Announcer: Jack McWilliams from Cherokee Alabama, and he's interested in your good health and quality of life, as a matter of fact Jack was so upset about his own declining health in 1985 that he invented an all natural drink, its called Jogging In a Jug. This new Jogging In A Jug product has become so popular that people from all over the Southeast and other parts of the United States are raving about their improved health and outlook on life. Jack, what exactly do the letters say?

Mr. McWilliams: All right we have letters that say that those people who are suffering dysentery and constipation when they go on Jogging In A Jug those little 2 ounces a day, both of them seem to clear up.

Announcer: Sounds Great Jack, but where does this incredible popularity for Jogging In A Jug come from.

Mr. McWilliams: It got around by the word of mouth and people used it, they knew it helped them so their calling their neighbors and friends and tell them about the product.

Announcer: Its the talk of the town, Jogging In A Jug!!

Jingle: Try the healthy choice Jogging In A Jug, just 2 ounces a day and once you try it when you need more your gonna buy it, Jogging In A Jug.

973

Complaint

EXHIBIT F

Third Option Laboratories
P. O. Box 648
Tuscumbia, AL 35674



The Jogging in a Jug information you requested.

CHECKS MONEY ORDERS: \$24.95 per case 6 cases
SHIPPING

Third Option Laboratories, Inc.
P.O. Box 648
Tuscumbia, AL 35674

VISA MASTERCARD
1-800-161-1898

Sorry to C.O.D.'s
Shipped only by the case!

"Times Daily" 1/27/90

Drink makes way to grocers' shelves

By Robert Palmer
Special Features Editor

Jack McWilliams doesn't claim to know much about medicine... but he believes a new product he is marketing can contribute to a healthier life for those who use it.

McWilliams, of Cherokee, has developed a drink that contains apple juice, grape juice and elder vinegar that he is marketing as "Jogging in a Jug."

"Vinegar is the element of the product that he says is the key to its success.

"I developed heart disease about five years ago when 70 percent blockage," he said.

"I also have arthritis. Several of my friends have died of heart disease recently.

"I started re-examining vinegar in the diet and I tried to identify a hypothesis I have about it, but I could not," he said.

"I started taking a mixture of vinegar and I began to improve. The arthritis in my hands and the 'stitching' pain in my shoulder went away and I stopped suffering the pain and symptoms of heart disease."

McWilliams said his claims may sound strange in a high technology world of nuclear medicine, but he is convinced the addition of a few ounces of vinegar per week to the diet can greatly reduce the risk of heart disease, cancer in internal organs and some forms of arthritis.

"Vinegar, he said, is like a natural solvent for the body, dissolves crystal deposits that are the cause of clogged arteries and arteries.

It contains acetic acid, he said, which has been missing from the diets of the industrialized world for 100 years.

"The erosion of acetic acid from the diet in the advanced nations is part of my hypothesis," he said.

"There are four things that replaced it in our food: vitamin packing, the use of preservatives, sweetening and some things other than vinegar to enhance taste."

McWilliams said observation and research led him to pursue the use of vinegar in the diet.

He said he remembers his grandmother and her children using vinegar as a regular part of their diets.

His grandmother and four of her children lived to be 85 years old, he added.

In a press release, he listed some qualities of vinegar in addition to its use in making pickles. For example, McWilliams

said that many pregnant women often crave pickles, which he believes is the body craving acetic acid.

A 64 ounce bottle of "Jogging in a Jug" sells for \$5.99 and is now stocked in several grocery stores in Colbert and Lauderdale counties, he said.

He recommends that two ounces

per day be taken, which allows one bottle to last for 32 days.

A smaller bottle is on the drug board that could be sold in cafes and restaurants, he said.

McWilliams, a cattle and pig farmer, said the medical community is probably aware of the benefits acetic acid and vinegar, but has attempted to promote it because its pungent taste.

Colbert and Lauderdale were targeted as test markets and he said consumer reaction to its taste has



"Jogging in a Jug" is a product of McWilliams' Third Option Laboratories.



Jack McWilliams, a Cherokee resident, has developed a beverage he calls "Jogging in a Jug" that is available at some stores in Lauderdale and Colbert counties.

EXHIBIT F

Complaint

120 F.T.C.

EXHIBIT F

Mars, Inc. 00-0
 May 1, 1992

Dear Mr. McWilliams,

Here is another order from Mars (PA that is) keep giving your literature out and bragging about your "Jogging in a Jug". But these people want me to keep ordering. They all love it. I know it's working for me and my wife. The family doctor even wrote a note in my cholesterol read out. "Mike continue taking "Jogging in a Jug". I had even sent samples and you wrote a letter to him and all his nurses. My cholesterol had dropped the first time down 44 points and my wife's down 22 points. Now this report down to 228. Please send TWO CASES to the above address.

Thanks again.
 A friend,
 E. M. G.

Page Information from Reader Service, Inc. (704) 366-4970

"READ" ALL ABOUT IT

By Pettus Read
 Associate Editor



It sure is wonderful what modern medicine can do these days. In no time they can put a new heart in and have a person back in the mainstream of life. There are new ways of seeing into the human body by sound waves and using this same method to do surgery without cutting. Yes, a person can live today a whole lot longer than they use to way back in the old days. But don't sell those old-fashioned remedies short. Modern medicine is great but grandma has a few tricks up her sleeve too.

All practices should not be ever looked in the same light. In fact, I'm going to give you an insight into just an old-fashioned custom that may have saved a man's life. I know it saved my family farm and has given me a great new outlook.

One summer Jack McWilliams of Cherokee, Alabama went up and repaired his ways on his farm may be running out. He was angry because with heart trouble and arthritis. Mr. McWilliams's grandfather and his brother and sisters had lived to be over 90 years old. This caused him to think back about what they had done different in their lives than he had done. He remembered an old family beverage his grandmother drank everyday of his life. It's strange ingredients was vinegar.

With vinegar as the main item of a tart-tasting beverage Mr. McWilliams began drinking his concoction every day. In less than a year his arthritis cleared up, and he stopped suffering the pain and symptoms of heart disease. The retired dairy farmer had developed a new vinegar juice beverage which he says is as good for you as a pig around the block. In fact he named his new life-saver "Jogging in a Jug."

Mr. McWilliams says, "Vinegar is nature's own cleaning agent. Vinegar will clean the drain in the kitchen sink, dissolve calcium and mineral deposits in pipes, tenderize meats and even remove decay from teeth. I figure if vinegar can break down calcium and chemicals inside of the body, it'll do the same inside, leading to a healthier circulatory system and clearer organs."

Servicepeople in his hometown first laughed at his new product. On January 7, 1990 he placed three six-bottle cases of Jogging in a Jug on three stores. As of this writing his new brand on life beverage can be found in 14 states and his company is producing three to four thousand cases per week. The demand has become so great Mr. McWilliams's son Danny had to give up his trucking job to come back and work full-time with the new business. Both McWilliams children, Danny and Susan, are "gunning" to keep up with dad's discovery.

Jogging in a Jug can be found in stores all across the state of Tennessee and Jack receives hundreds of testimonials from people every where who feel that the vinegar juice beverage has lowered their cholesterol, helped their arthritis and given them a new lease on life. Mr. McWilliams points out that vinegar has been used as a tonic and preservative since Biblical times. He says, "My grandmother was a strong believer in vinegar for what ails you. She raised her family on creek water and vinegar, and her children all lived to be at least 80." Even several members of the Tennessee Farm Bureau will tell you about using the tart drink. Murray Miles, editor of the FARMER, has tried it and believes it has helped his shoulder feel a lot better. He has even started on his second jug.

The vinegar, grape and apple juice beverage has even saved a family farm. Danny McWilliams says his father's discovery has brought the family home and restored their 400-acre family farm. Danny had to leave the farm to get work elsewhere during tough times on the McWilliams farm. But due to Jogging in a Jug Danny is home and says that's where he plans to be the rest of his life.

So you may want to check your local grocery or drug store to see if they have any of this life-giving beverage. If you are unable to find it or need more information about Jogging in a Jug, just write to Third Option Laboratories Inc., P.O. Box 648, Tusculuma, Alabama 35674 or call toll-free 1-800-362-2598.

This is another example of the persistence of a farmer and the teaching of a grandmother. Just goes to show you, you're never too old to take up jogging. Even if it is in a jug.

AGRICULTURE
LEADING EDGE
 FFA

EXHIBIT F

Jogging in a Jug



January 1986 - age 59
rheumatoid arthritis (wt 148)



January 1991 - age 64
no health problems (wt 210)

Jack McWilliams at this date had received high level medical treatment for seven years, with an average hospital stay of 30 days per year for a total of about 210 days, at a cost of approximately \$50,000 to \$75,000 to the insurance company plus minor cost to the family.

It was noted that one of the vine types of acetic acid who number in the diet but on the market and is needed. McWilliams consumed high-stem medicinal and added acetic acid through "Jogging in a Jug" at two ounces per day at a cost of \$5.99 per month. Health was restored slowly in twelve to sixteen months.

Herald - Citizen

Cookeville, Tennessee, Tuesday, September 23, 1991

Vinegar is essential to health, says tonic maker

BY JENNIFER RIDEOUT
—SPECIAL TO THE HERALD—

Riddled with arthrosisclerosis and arthritis, Alabama dairy farmer Jack McWilliams, now 65, had lost the desire to live in 1985 when he developed "Jogging in a Jug."

He was also suspicious about why his people in his community of Cherokee, Alabama, died of heart disease and cancer in just six weeks, and he began to research into what was lacking in the modern diet.

It was acetic acid, he says today, and that is the elixir he mixes into the purple fluid he calls "Jogging in a Jug."

He is careful to note that the Food and Drug Administration will not allow him to make any health claims about his drink, but "I have the First Amendment right to tell my own personal story."

"People just don't take in the acetic acid they used to in the old days," McWilliams said.

"My family is noted for its longevity, and I just couldn't figure out why I was dying so young."

"I remembered that my grandmother used to take cider vinegar daily and used it for everything. It was always on the table," McWilliams said.

The credibility of cider vinegar in our diets began to fade some years ago, according to McWilliams, when he noted all its known attributes such as the ability to clean calcium and mineral deposits off plumbing and to make meat tender.

Cider vinegar is also a living bacterial acid made from juices, and it is the only known acid that will break down mineral, chemical and oil crystals and not harm growing, living tissue, according to McWilliams.

He decided that if vinegar could break down calcium and chemicals outside the body, it could break down calcium and chemicals inside the body as well.

So, McWilliams began combining various juices to achieve a combination that would produce the beautiful results of cider vinegar with a taste more appealing to the

public. The final combination was an apple juice, grape juice and apple cider vinegar drink called "Jogging in a Jug."

"Jogging in a Jug" was named by McWilliams's son-in-law who teased him about his enthusiasm for the beverage, saying the energy-releasing mixture was "like putting jogging into a jug."

McWilliams has received many enthusiastic letters from "Jogging in a Jug" drinkers telling how their cholesterol has gone down, energy has gone up and arthritis has become less painful.

And McWilliams said he was relieved of his heart disease symptoms, most of his arthritis and his shoulder stiffness is gone.

McWilliams attributes these reactions to the acetic acid in the drink which he believes helps cleanse the arteries and cells in the body.

Further evidence, McWilliams cited concerned church history. He said Last Supper services contained acetic acid until commercial grape juice came into use in the 1850's.

He added about the time we lost acetic acid in the religious ritual, pressure canning and preservatives came into use. That was followed by freezing foods for preservation.

Therefore, diets of people of affluent nations have been eroded of acetic acid over the years, McWilliams said.

Today, we eat a diet of refined foods containing no vinegar. We then go the doctors who mechanically open our chests and clean out our arteries of crystals and solids, McWilliams said.

He added that mechanical cleaning this way has become a multi-billion dollar industry. Only 200 years ago it was done chemically.

This is a 2,000 year old known technology that gives us a third option to slow the rate of cancer, leukemia, heart disease and arthritis.

McWilliams's company, Third Option Laboratories, has a 10-state market with 20 distributors for "Jogging in a Jug," which has been available for 20 months with 115,000-120,000 bottles distributed each month.

The distributor for this area is W. R. Whitaker and Company.

Kroger, Red Food and some Mini Mart's carry the product, claimed by many to reduce swelling and lower arthritis pain and cholesterol within a month.

W. R. Whitaker is also aware the



NEW BREW - Jack McWilliams, a 65-year old Alabama dairy farmer who said was dying five years ago, holds the tonic created that relieved him of heart disease and arthritis symptoms. "Jogging in a Jug" sold in 10 states in the south and marketed in Red Food, Kroger and some Mini Mart's here. H-C Photo: Gail Carr

authorization of "Jogging in a Jug" for in the new Food Lion stores here, already sold in Food Lion stores elsewhere.

"We've been selling more than 100 a day and are receiving calls every minute about the product," McWilliams said.

"I've had investors offer me a lot of money for the product, but I want a company endorsed. It's not a money-making venture."

"I recommend taking a two-ounce every morning and starting it at any iron children to the elderly."

"The 64-ounce jug will last about a year, if two ounce doses are taken as McWilliams said.

According to McWilliams, the price for "Jogging in a Jug" is about five dollars and it costs \$5.95 per jug.

For information call 1-800-262-2598.



Complaint

120 F.T.C.

EXHIBIT F

Cherokee, Alabama
January 92Third Option Laboratories
P. O. Box 430
Cherokee, AL 35616

Dear Sirs:

My husband is an insulin dependent diabetic. He works as a construction ironworker and farms also in Cherokee, Alabama.

Over the past year, on a friend's recommendation, he began taking 2 oz. of "Jogging in a Jug" each morning. His doctor said it wouldn't hurt his control of his disease. Jack's sugar level has always tended to go too low. We were never sure what would trigger this at any time.

After beginning "Jogging in a Jug" his episodes of low blood sugar have decreased in length. Then in the summer (having season he ran out of "Jogging in a Jug," I kept forgetting to buy more, his blood sugar started to fluctuate wildly, set high to very low seemingly without cause. We couldn't get it under control. Finally after about 2 weeks I remembered to purchase another jug.

Immediately, Jack's blood sugar leveled off to normal levels of 90-120 and stayed there.

We don't allow ourselves to be out of "Jogging in a Jug" anymore!

I'm convinced that this product has leveled his sugar off to manageable levels.

Sincerely
Mrs. J.A.W.
Cherokee, AL 35616*Jogging in a Jug*
A Juice-Vinegar Beverage
Comments from Customer's Letters"On 12 January 1991, my cholesterol count was 272. I read an article about your product, Joggin in a Jug. I have been sipping the drink ever since. On 11 March 1991, my cholesterol count was 188. I am now a believer."
R. M. Montgomery, Alabama

"I use to get up in the morning still tired, but now when I get up I'm ready to start my day." V. F. Tuscumbia, AL

"My cholesterol dropped from 320 to 276. My doctor told me to keep doing what I'm doing. My blood pressure is 128/74, which is the best reading I can remember." A.H. Rockwood, TN

"I fell and hurt my arm several years ago and it was hurting me so bad I could not sleep until I began taking your juice. My arm has not bothered me since." V. K. Huntsville, AL

"Your juice has helped to lower my mother's cholesterol, thank you." J. C. Phil Campbell, AL

"My cholesterol count had been hovering around 235, I tried your product for 3 weeks and my doctor was pleased to inform me it had dropped to 200." P. H. Ft. Lauderdale, FL

"I was stricken by a virus, after 6 weeks I was exhausted and couldn't work. I heard of your drink, after taking it for 6 weeks I am myself again and back to working 8 - 10 hours a day." E. L. Hamilton, AL

"After drinking Jogging in a Jug my husband's cholesterol has dropped from 217 to 190 and triglycerides from 412 to 148 and he can close his hands from arthritis after three months." F.W.B. Montgomery, AL

"My mother is 83 years old, and in very good health, except for high cholesterol. It was 448 when she checked up March. We bought her some Jogging in a Jug. I am happy to report her cholesterol is down by 124 points in just five weeks." J.H.N. Selma, AL

"Thank you for helping me to reduce my cholesterol count. I took the product for two weeks before I had a cholesterol test. My doctor was so pleased he wrote across my chart, "Call her and congratulate her." F.R.W. Canonsburg, FL

"Thanks for shipping me a case. I had arthritis pain to the point of not being able to do work with my arms over my head. Now I am able to work with my arms over my head in a normal manner." J.C. Lawrenceville, GA

"I have lowered my cholesterol from 269 in September to 209 in January. Thanks." B.Y. St. Cloud, FL

"For the past 6 years, I have been going to the Rheumatologist with arthritis in my hips. Sometimes could not get around. Two weeks after starting to drink Jogging in a Jug, I began feeling much better. This was five months ago and I have not been to the doctor since. It is the longest I have ever gone without taking Arthritis medication. I was even taking Cortizone shots. Thanks to Jogging in a Jug, I feel great." G.T. Winchester, TN

*Actual letters on file in corporate office for viewing during business hours. Tuscumbia, Alabama.

Third Option Laboratories, Inc.
P. O. Box 648
Tuscumbia, AL 35674
1-800-262-2598

Ex. F



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 Bureau of Consumer Protection 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, and 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, 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 a 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 received, now in further conformity with the procedure described 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 Third Option Laboratories, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business at 2806 Avalon Avenue, Muscle Shoals, Alabama.

Respondents William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton are owners and officers of said corporation. They formulated, directed, and controlled the policies, acts and practices of said corporation and their address is the same as that of said corporation.

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

I.

It is ordered, That respondents, Third Option Laboratories, Inc., a corporation, its successors and assigns, and its officers, and William J. McWilliams, individually and as an officer of said corporation, Danny Bishop McWilliams, individually and as an officer of said corporation, and Susan McWilliams Bolton, individually and as an officer of said corporation, and respondents' 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 Jogging in a Jug, or any substantially similar product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that such product:

- A. Cures or alleviates heart disease or its symptoms, including arterial blockages;
- B. Substantially lowers serum cholesterol or triglycerides;
- C. Cures or alleviates arthritis or its symptoms;
- D. Breaks down or eliminates calcium or other mineral or chemical deposits in the circulatory system;
- E. Improves the condition of the circulatory system;
- F. Cleans internal organs;
- G. Prevents or reduces the risk of cancer, leukemia, heart disease, or arthritis;
- H. Provides the same health benefits as a jogging regimen;
 - I. Cures or alleviates lethargy;
 - J. Cures or alleviates dysentery;
 - K. Cures or alleviates constipation;
 - L. Stabilizes blood sugar levels in insulin-dependent diabetics;
 - M. Aids in the recovery from viral diseases;
 - N. Cures or alleviates swelling of the legs or muscle spasms; or
 - O. Is approved by the United States Department of Agriculture.

II.

It is further ordered, That respondents, Third Option Laboratories, Inc., a corporation, its successors and assigns, and its officers, and William J. McWilliams, individually and as an officer of said corporation, Danny Bishop McWilliams, individually and as an officer of said corporation, and Susan McWilliams Bolton, individually and as an officer of said corporation, and respondents' 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 food, food or dietary supplement, or drug, as "food" and "drug" are defined in Sections 12 and 15 of the Federal Trade Commission Act, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, regarding the performance, safety, benefits, or efficacy of such product, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates such representation.

For purposes 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 have 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.

III.

It is further ordered, That respondents, Third Option Laboratories, Inc., a corporation, its successors and assigns, and its officers, and William J. McWilliams, individually and as an officer of said corporation, Danny Bishop McWilliams, individually and as an officer of said corporation, and Susan McWilliams Bolton, individually and as an officer of said corporation, and respondents' 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 product in or affecting commerce, as

"commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, that such product has been tested, approved, or endorsed by any person, firm, organization, or government agency.

IV.

It is further ordered, That respondents, Third Option Laboratories, Inc., a corporation, its successors and assigns, and its officers, and William J. McWilliams, individually and as an officer of said corporation, Danny Bishop McWilliams, individually and as an officer of said corporation, and Susan McWilliams Bolton, individually and as an officer of said corporation, and respondents' 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 product 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 any endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) of any such product represents the typical or ordinary experience of members of the public who use such product, unless such is the fact.

V.

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

VI.

Nothing in this order shall prohibit respondents from making any representation that is specifically permitted in labeling for any product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

VII.

It is further ordered, That respondents, Third Option Laboratories, Inc., a corporation, its successors and assigns, and its officers, and William J. McWilliams, individually and as an officer of said corporation, Danny Bishop McWilliams, individually and as an officer of said corporation, and Susan McWilliams Bolton, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of Jogging in a Jug or any substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from employing the name "Jogging in a Jug" or any other name that communicates the same or similar meaning for such product; provided, however, that nothing in this order shall prevent the use of such name if the material containing the name clearly and prominently contains the following disclosure:

"THERE IS NO SCIENTIFIC EVIDENCE THAT JOGGING IN A JUG
[OR OTHER NAME] PROVIDES ANY HEALTH BENEFITS."

For the purposes of this order, "clearly and prominently" shall mean as follows:

A. In a television or video advertisement less than fifteen (15) minutes in length, the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement, accompanying the first presentation of the name. When the first presentation of the name appears in the audio portion of the advertisement, the disclosure shall immediately follow, the name. When the first presentation of the name appears in the visual portion of the advertisement, the disclosure shall appear immediately adjacent to the name. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer, to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen, for a duration, sufficient for an ordinary consumer to read and comprehend it;

B. In a video advertisement fifteen (15) minutes in length or longer, the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement, accompanying the first presentation of the name and immediately before each presentation of ordering instructions for the product. When the name that triggers the disclosure appears in the audio portion of the advertisement, the disclosure shall immediately follow the name. When the name that triggers the disclosure appears in the visual portion of the advertisement, the disclosure shall appear immediately adjacent to the name. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. Provided that, for the purposes of this provision, the oral or visual presentation of a telephone number or address for viewers to contact to place an order for the product in conjunction with the name shall be deemed a presentation of ordering instructions so as to require the presentation of the disclosure provided herein;

C. In a radio advertisement, the disclosure shall immediately follow the first presentation of the name and shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it;

D. In a print advertisement, the disclosure shall be in close proximity to the largest presentation of the name, in a prominent type thickness and in a type size that is at least one-half that of the largest presentation of the name; provided, however, that the type size of the disclosure shall be no smaller than twelve (12) point type. The disclosure shall be of a color or shade that readily contrasts with the background of the advertisement;

E. On a product label, the disclosure shall be in close proximity to the largest presentation of the name, in a prominent type thickness and in a type size that is at least one-half that of the largest presentation of the name; provided, however, that the type size of the disclosure shall be no smaller than twelve (12) point type. The disclosure shall be of a color or shade that readily contrasts with the background of the label; and

F. On any packaging of the product shipped directly to consumers, the disclosure shall appear on each side of the packaging on which the name appears, in close proximity to the largest

presentation of the name. The total area of the disclosure shall be at least half that of the name that triggers the disclosure. The disclosure shall be of a color or shade that readily contrasts with the background of the packaging.

Nothing contrary to, inconsistent with, or in mitigation of the above-required language shall be used in any advertising or labeling.

Nothing in this Part shall apply to: (1) advertising appearing on items that are sold or given or caused to be sold or given by respondents to consumers for their personal use and that display the name "Jogging in a Jug" or any other name that communicates the same or similar meaning; or (2) the use of such name in a nonpromotional manner and solely for purposes of identification of the respondent corporation, including the use of such name as part of respondents' letterhead, on shipping labels, or on crates provided only to purchasers for resale.

VIII.

It is further ordered, That respondents, Third Option Laboratories, Inc., its successors and assigns, William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, shall pay to the Federal Trade Commission, by cashier's check or certified check made payable to the Federal Trade Commission and delivered to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Ave., NW, Washington, D.C., the sum of four hundred and eighty thousand dollars (\$480,000). Respondent shall make this payment on or before the tenth day following the date of entry of this order. In the event of any default on any obligation to make payment under this Section, interest, computed pursuant to 28 U.S.C. 1961(a), shall accrue from the date of default to the date of payment. The funds paid by respondents shall, in the discretion of the Federal Trade Commission, be used by the Commission to provide direct redress to purchasers of Jogging in a Jug in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the Federal Trade Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondent shall be

notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty, or punitive assessment.

IX.

It is further ordered, That respondents, Third Option Laboratories, Inc., its successors and assigns, William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, shall, within thirty (30) days after the date of service of this order, send by first class mail, postage prepaid and address correction requested, to the last address known to respondents of each consumer who purchased Jogging in a Jug in any manner directly from respondents since January 1, 1993, an exact copy of the notice attached hereto as Attachment A. The mailing shall not include any other documents.

X.

It is further ordered, That respondents, Third Option Laboratories, Inc., its successors and assigns, and William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, shall:

A. Within thirty (30) days after the date of service of this order, send by first class certified mail, return receipt requested, to each purchaser for resale of Jogging in a Jug with which respondents have done business since January 1, 1993 an exact copy of the notice attached hereto as Attachment B. The mailing shall not include any other documents;

B. In the event that respondents receive any information that subsequent to its receipt of Attachment B any purchaser for resale is using or disseminating any advertisement or promotional material that contains any, representation prohibited by this order, respondents shall immediately notify the purchaser for resale that respondents will terminate the use of said purchaser for resale if it continues to use such advertisements or promotional materials; and

C. Terminate the use of any purchaser for resale about whom respondents receive any information that such purchaser for resale has continued to use advertisements or promotional materials that

contain any representation prohibited by this order after receipt of the notice required by subparagraph B of this part.

XI.

It is further ordered, That respondents, Third Option Laboratories, Inc., its successors and assigns, and William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, shall, for five (5) years after the last correspondence to which they pertain, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. Copies of all notification letters sent to consumers pursuant to part IX of this order;
- B. Copies of all notification letters sent to purchasers for resale pursuant to subparagraph A of part X of this order; and
- C. Copies of all communications with purchasers for resale pursuant to subparagraphs B and C of Part X of this order.

XII.

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. Any advertisement making any representation covered by this order;
- 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, and complaints or inquiries from governmental organizations.

XIII.

It is further ordered, That respondent Third Option Laboratories, Inc., its successors and assigns, shall:

A. Within thirty (30) days after the date of service of this order, provide a copy of this order to each of respondent's current principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order; and

B. For a period of seven (7) years from the date of service of this order, provide a copy of this order to each of respondent's principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order within three (3) days after the person assumes his or her position.

XIV.

It is further ordered, That respondents William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton shall, for a period of seven (7) years from the date of service of this order, notify the Commission within thirty (30) days of the discontinuance of his or her present business or employment and of his or her affiliation with any new business or employment involving the manufacturing, labeling, advertising, marketing, promotion, offering for sale, sale, or distribution of any food, food or dietary supplement, or drug, as "food" and "drug" are defined in Sections 12 and 15 of the Federal Trade Commission Act. Each notice of affiliation with any new business or employment shall include respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his or her duties and responsibilities.

XV.

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 under this order.

XVI.

This order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

XVII.

It is further ordered, That respondents shall, within sixty (60) days after service of this order, 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.

Chairman Pitofsky not participating.

ATTACHMENT A

BY FIRST CLASS MAIL, POSTAGE PREPAID AND
ADDRESS CORRECTION REQUESTED

[To Be Printed on Third Option Laboratories, Inc. Letterhead]

[date]

Dear Consumer:

Our records indicate that you purchased Jogging in a Jug from Third Option Laboratories, Inc. This letter is to inform you of our settlement of a civil dispute with the Federal Trade Commission ("FTC") regarding certain claims made in our advertising for Jogging in a Jug.

The FTC alleged that advertisements for Jogging in a Jug have made false and unsubstantiated claims that the product can cure, treat, or prevent: (1) heart disease (including arterial blockages); (2) arthritis; (3) cancer; (4) leukemia; (5) dysentery; (6) constipation; (7) lethargy; (8) swelling of the legs; and (9) muscle spasms. The FTC has also alleged that our claims that Jogging in a Jug can "clean" internal organs, break down or eliminate deposits in the circulatory system, aid in the recovery from viral diseases, lower serum cholesterol and triglyceride levels, and stabilize blood sugar levels in diabetics, are false and unsubstantiated. Finally, the FTC has alleged that we have made false and unsubstantiated claims that Jogging in a Jug provides the same health benefits as jogging.

Our settlement with the FTC prohibits us from making these or other claims for Jogging in a Jug or any other food, drug, or supplement in the future unless the claims are supported by competent and reliable scientific evidence. We deny the FTC's allegations, but have agreed to send this letter as a part of our settlement with the FTC.

Sincerely,

William J. McWilliams
President
Third Option Laboratories, Inc.

ATTACHMENT B

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED
[To Be Printed on Third Option Laboratories, Inc. letterhead]
[date]

Dear [purchaser for resale]:

Third Option Laboratories, Inc. recently settled a civil dispute with the Federal Trade Commission ("FTC") regarding certain claims for our product, Jogging in a Jug. As a part of the settlement, we are required to make sure that our distributors and wholesalers stop using or distributing advertisements or promotional materials containing those claims.

The FTC alleged that the advertisements for Jogging in a Jug have made false and unsubstantiated claims that the product can cure, treat, or prevent: (1) heart disease (including arterial blockages); (2) arthritis; (3) cancer; (4) leukemia; (5) dysentery; (6) constipation; (7) lethargy; (8) swelling of the legs; and (9) muscle spasms. The FTC has also alleged that our claims that Jogging in a Jug can "clean" internal organs, break down or eliminate deposits in the circulatory system, aid in the recovery from viral diseases, lower serum cholesterol and triglyceride levels, and stabilize blood sugar levels in diabetics, are false and unsubstantiated. Finally, the FTC has alleged that we have made false and unsubstantiated claims that Jogging in a Jug provides the same health benefits as jogging.

Our settlement with the FTC prohibits us from making these or other claims for Jogging in a Jug or any other food, drug, or supplement in the future unless the claims are supported by competent and reliable scientific evidence. We deny the FTC's allegations, but have agreed to send this letter as a part of our settlement with the FTC.

We request your assistance by asking you to discontinue using, relying on or distributing any of your current Jogging in a Jug advertising or promotional material. Please also notify any of your retail or wholesale customers who may have such materials to discontinue using them. If you continue to use those materials, we are required by the FTC settlement to stop doing business with you.

Thank you very much for your assistance.

Sincerely,

William J. McWilliams
President
Third Option Laboratories, Inc.

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

Today, the Commission approves and issues a consent agreement to remedy various misrepresentations concerning the purported health benefits of a drink called "Jogging in a Jug." The Commission's investigation shows that the alleged claims are far removed from reality, and there is ample reason to believe they violated Section 5 of the FTC Act. I concur in the complaint on which the order is based except to the extent that it alleges as a violation the content of newspaper articles that are reproduced in the respondents' promotional materials and those materials accurately identify and reproduce such articles in their original format without modification. Complaint ¶ 7 and Exhibit F.

Second, I dissent from Part VII of the order. Although the complaint does not challenge as materially misleading the unadorned use of the product's name, Jogging in a Jug (nor would I, given the absence of evidence), Part VII of the order prohibits, in connection with the advertising and sale of Jogging in a Jug (or any similar product), use of the name Jogging in a Jug, or any other name communicating a similar meaning, unless the name is accompanied clearly and prominently by a disclosure stating: "THERE IS NO SCIENTIFIC EVIDENCE THAT JOGGING IN A JUG [or other name] PROVIDES ANY HEALTH BENEFITS," and which includes six extensive paragraphs minutely detailing what will constitute "clearly and prominently" for purposes of compliance with this requirement.

The Commission in the past has used this form of relief, which can substantially limit potentially lawful conduct, to remedy health claims that seem more credible than those likely to be taken by reasonable consumers here. For example, the Commission imposed a similar requirement to remedy the pain relief claim it found to have been conveyed by the name "Aspercreme" in *Thompson Medical Co.*, 104 FTC 648 (1984). The likelihood that a consumer would expect that a product named Aspercreme would contain aspirin and would rely on that claim to his or her detriment seems to me far greater than the likelihood that a consumer would rely to his or her detriment on an implied message that a product called Jogging in a Jug would provide the health benefits of jogging.