

[Dkt. 9266]

**Red Apple Companies, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions**

AGENCY: Federal Trade Commission.

ACTION: Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, three New York-based companies and their officer to divest six supermarkets, within 12 months, to a Commission-approved acquirer or acquirers. If the respondents fail to satisfy the divestiture requirements, the consent order permits the Commission to appoint a trustee to divest supermarkets to satisfy the terms of the order. The consent order also prohibits the respondents, for ten years, from acquiring, without prior Commission approval, any supermarket or any interest in an entity that owns or operates a supermarket in New York County south of 116th Street. In addition, the respondents, for ten years, are prohibited from entering into or enforcing any restrictions that would prevent any person acquiring any supermarket owned or operated by any respondent in New York County south of 116th Street from operating the stores as supermarkets.

**DATES:** Complaint issued May 27, 1994. Order issued February 28, 1995.<sup>1</sup>

**FOR FURTHER INFORMATION CONTACT:** Ronald Rowe, FTC/S-2105, Washington, DC 20580. (202) 326-2610.

**SUPPLEMENTARY INFORMATION:** On Monday, December 19, 1994, there was published in the **Federal Register**, 59 FR 65364, a proposed consent agreement with analysis in the Matter of Red Apple Companies, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

<sup>1</sup> Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18).

**Donald S. Clark,***Secretary.*

[FR Doc. 95-7632 Filed 3-28-95; 8:45 am]

BILLING CODE 6750-01-M

[Docket No. C-3559]

**Sulzer Limited; Prohibited Trade Practices, and Affirmative Corrective Actions**

AGENCY: Federal Trade Commission.

ACTION: Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, Sulzer, a Swiss firm to divest, within six months, a copy of all the information necessary to purchase ingredients for, to manufacture and to sell aluminum polyester powder—equivalent to Sulzer's Amdry 2010—to a Commission-approved acquirer. If the divestiture is not completed on time, the consent order permits the Commission to appoint a trustee to divest copies of both the Amdry 2010 information and all product information relating to the acquired firms aluminum polyester powder. In addition, the consent order requires the respondent, for ten years, to obtain Commission approval before acquiring any assets in the aluminum polyester powder market.

**DATES:** Complaint and Order issued February 23, 1995.<sup>1</sup>

**FOR FURTHER INFORMATION CONTACT:** Ann Malester, FTC/S-2224, Washington, DC 20580. (202) 326-2682.

**SUPPLEMENTARY INFORMATION:** On Thursday, October 13, 1994, there was published in the **Federal Register**, 59 FR 51983, a proposed consent agreement with analysis in the Matter of Sulzer Limited, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent

<sup>1</sup> Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

agreement, in disposition of this proceeding.

(Sec. 6, 38, Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18).

**Donald S. Clark,***Secretary.*

[FR Doc. 95-7633 Filed 3-28-95; 8:45 am]

BILLING CODE 6750-01-M

[File No. 912 3232]

**Taleigh Corporation, et al.; Proposed Consent Agreement With Analysis to Aid Public Comment**

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, two marketing corporations and the owner from misrepresenting that any product is new or unique, the existence or conclusions of any test or study, or that an endorsement for any product represents the typical experience of people who use it. The consent agreement would require the respondents to possess scientific evidence to substantiate any representation regarding the performance, benefits, efficacy or safety of any weight-loss or stop-smoking product, or of any food, dietary supplement, drug, or device. In addition, the consent agreement would require the owner to post a \$300,000 performance bond, or to establish an escrow account in the amount of \$300,000, as a condition of advertising, promoting, selling or distributing any weight-loss or smoking deterrent or cessation product.

**DATES:** Comments must be received on or before May 30, 1995.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Joel Winston or Richard Cleland, FTC/S-4002, Washington, D.C. 20580. (202) 326-3153 or 326-3088.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final

approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of: Raleigh Corporation, and Choice Diet Products, Inc., corporations; and William J. Santamaria, individually and as an officer and director of said corporations.

#### Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of Taleigh Corporation, a Florida corporation, Choice Diet Products, Inc., a New York corporation, and William J. Santamaria, individually and as an officer of said corporations ("proposed respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Taleigh Corporation, a Florida corporation, by its duly authorized officer, Choice Diet Products, Inc., a New York corporation, by its duly authorized officer, and William J. Santamaria, individually and as an officer of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Taleigh Corporation, formerly known as Taleigh, Inc., a Florida corporation, is organized, exists and does business under and by virtue of the laws of the State of Florida. At times relevant hereto, its office and principal place of business was located at 4800 N.W. Boca Raton Boulevard, Boca Raton, FL 33431.

Proposed respondent Choice Diet Products, Inc., a New York corporation, is organized, exists and does business under and by virtue of the laws of the State of New York. At times relevant hereto, its office and principal place of business was located at 4800 N.W. Boca Raton Boulevard, Boca Raton, FL 33431.

Proposed respondent William J. Santamaria is an officer of said corporations. He formulates, directs and controls the policies, acts and practices of said corporation and his address is 20640 Baybrooke Court, Boca Raton, FL 33498.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement.

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

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

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is subsequently withdrawn by the Commission pursuant to the provision of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not

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

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

#### Order

For purposes of this Order:

1. "Clearly and prominently" as used herein shall mean as follows:

(a) In a television or videotape advertisement: (1) an audio disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it; and (2) a 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 print advertisement, the disclosure shall be in close proximity to the representation that triggers the disclosure in at least twelve (12) point type.

(c) In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

2. "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.

3. "Purchase price" shall mean all amounts paid to respondents in cash or by check, or charged to a consumer's credit card account or debited from a consumer's checking account, including, where applicable, sales tax, and any charges not authorized by consumers to be charged to their charge card accounts or debited from their checking accounts, *provided however*, with regard to Part XIV, purchase price shall not include shipping or handling charges if such charges are not included in respondents' guarantee or refund offer.

4. "Weight-loss product" shall mean any product or program designed or used to prevent weight gain or to produce weight loss, reduction or

elimination of fat, slimming, or caloric deficit in a user of the product or program.

5. "Smoking deterrent or cessation product" shall mean any product or program designed to aid or assist the user to stop or reduce the cigarette urge, break the cigarette habit, or stop or reduce smoking.

#### I

It is ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of FormulaTrim 3000, MegaLoss 1000, MegaLoss 3000, MiracleTrim, or any other weight-loss product containing phenylpropranolamine as the active ingredient, 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:

A. Such product causes or assists in causing rapid weight loss;

B. Such product causes or assists in causing substantial weight loss without the need to exercise or reduce caloric intake;

C. Such product is new or unique or contains a new or unique ingredient;

D. Such product causes the burning of more body fat than five hours of aerobics, running ten miles nonstop, swimming two and a half miles, exercising six hours nonstop, or any similar exercise activity; or

E. Such product contains an active ingredient that, prior to the sale of such product, was available only through doctors.

#### II

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or

distribution of any weight-loss 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 weight-loss product has any effect on weight or body size, unless respondents disclose, clearly and prominently, and, in a television or videotape advertisement, simultaneously in both the audio and video portions of the advertisement, that reducing caloric intake and/or increasing exercise is required to lose weight; *provided however*, that this disclosure shall not be required if respondents possess and rely upon competent and reliable scientific evidence demonstrating that such product is effective without reducing caloric intake and/or increasing exercise.

#### III

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, 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:

A. Such product or program causes or assists in causing weight loss, or assists in maintaining weight loss;

B. Such product or program causes or assists in causing weight loss without exercise or reducing caloric intake;

C. Such product or program causes the burning of more body fat than any amount of exercise activity; or

D. Such product or program causes or assists the user to stop or reduce smoking easily; 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 the representation.

#### IV

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their

successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of Nicotain, or any substantially similar 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:

A. Such product or program enables users to stop smoking easily; or

B. Such product or program works through a mechanism substantially similar or equivalent to a prescription smoking deterrent patch.

#### V

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of Nicotain, or any other smoking deterrent cessation product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making, in any manner, directly or by implication, any misrepresentation, including through the name of the product, concerning the nature or mechanism of operation of such product, including, but not limited to, that such product contains nicotine or works through a mechanism substantially similar or equivalent to a prescription smoking deterrent patch.

#### VI

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in

connection with the manufacturing, 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, that:

A. Such product or program is new or unique or contains a new or unique ingredient;

B. Consumers who order the product or program will receive a personal consultation from a physician, medical professional or weight-loss counselor; or

C. Any endorsement (as "endorsement" is defined in 16 C.F.R. § 255.0(b)) of such product or program represents the typical or ordinary experience of members of the public who use the product or program.

#### VII

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, 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 failing to disclose, clearly and prominently, a material connection, where one exists, between a person providing an endorsement of any product or program, as "endorsement" is defined in 16 C.F.R. § 255.0(b), and any respondent, or any other individual or entity manufacturing, labeling, advertising, promoting, offering for sale, selling, or distributing such product or program. For purposes of this Order, "material connection" shall mean any relationship that might materially affect the weight or credibility of the endorsement and would not reasonably be expected by consumers.

#### VIII

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents,

representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, 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, the contents, validity, results, conclusions, or interpretations of any test or study.

#### IX

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, 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:

A. Such product or program does not cause any dangerous side effects, nervous jitters, or insomnia;

B. Such product or program burns, reduces, or diminishes body fat; or

C. Such product or program significantly shrinks fat cells; unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

#### X

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any weight-loss product, smoking deterrent or cessation product, food, food or dietary supplement, drug,

or device, as "food," "drug," and "device" are defined in Section 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, in any manner, directly or by implication, any representation regarding the performance, benefits, efficacy, or safety of any such product, unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

#### XI

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.

#### XII

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.

#### XIII

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, 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 charging a consumer's credit card account or debiting a consumer's checking account in an amount in excess of the amount affirmatively authorized by the consumer.

#### XIV

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their

officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, 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:

A. Representing, directly or by implication, that consumers can receive a refund, through such terms as "money back guarantee" or similar terms, unless respondents refund the full purchase price at the consumer's request in accordance with the provisions of this Part;

B. Failing to disclose, clearly and prominently, any material limitations or conditions that apply to a guarantee, warranty or refund policy;

C. Failing to comply, where applicable, with the requirements of Section 166 of the Truth in Lending Act, 15 U.S.C. § 1666e and 12 CFR 226.12(e)(1); and

D. Failing to refund the full purchase price in accordance with the terms of a guarantee, warranty or refund policy within a reasonable period of time after a consumer complies with the conditions for receiving a refund. For purposes of this Part, "a reasonable period of time" shall be:

(1) That period of time specified in respondents' solicitation if such period is clearly and prominently disclosed to the consumer in the solicitation; or

(2) If no period of time is clearly and prominently disclosed, a period of thirty (30) days following the date that the consumer complies with the conditions for receiving a refund.

For purposes of determining whether a consumer has complied with the conditions for receiving a refund, the date for determining whether the consumer has returned the product or program within the specified time shall be the date the consumer mails or causes the product or program to be shipped to the respondents or respondents' designated agents.

#### XV

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents,

representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, 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 violating any provision of The Mail or Telephone Order Merchandise Rule, 16 CFR Part 435, as amended, effective March 1, 1994, 58 F.R. 49095.

#### XVI

It is further ordered that respondent William J. Santamaria, and respondent Santamaria's agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, joint venture or other device, do forthwith cease and desist from advertising, promoting, offering for sale, selling, or distributing any weight-loss product or smoking deterrent or cessation product to the general public, unless, prior to advertising, promoting, offering for sale, selling, or distributing to the general public any such product, respondent Santamaria first obtains a performance bond in the principal sum of three hundred thousand dollars (\$300,000). Said bond shall be conditioned upon compliance by respondent Santamaria with the provisions of the Federal Trade Commission Act, and with the provisions of this Order. The bond shall be deemed continuous and remain in full force and effect as long as respondent Santamaria continues to advertise, promote, offer for sale, sell, or distribute any weight-loss product or smoking deterrent or cessation product, directly or indirectly, to the general public, and for at least five (5) years after he has ceased any such activity. The bond shall cite this Order as the subject matter of the bond and provide surety against respondent Santamaria's failure to pay consumer redress or disgorgement as set forth herein. Such performance bond shall be an insurance agreement providing surety issued by a surety company that is admitted to do business in a state in which respondent Santamaria is doing business and that holds a Federal Certificate of Authority as Acceptable Surety on Federal Bond and Reinsuring.

Respondent Santamaria shall provide a copy of such performance bond to the associate director of the Federal Trade Commission's Division of Enforcement, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580, prior to

the commencement of any business for which such bond is required.

*Provided, however,* in lieu of a performance bond, respondent Santamaria may establish and fund, pursuant to the terms set forth herein, an escrow account in the principal sum of three hundred thousand dollars (\$300,000) in cash, or such other assets of equivalent value, which the Commission, or its representative, in its sole discretion may approve. Respondent Santamaria shall maintain such amount in that account for so long as he continues to advertise, promote, offer for sale, sell, or distribute any weight-loss product or smoking deterrent or cessation product, directly or indirectly, to the general public, and for at least five (5) years after he has ceased any such activity. Respondent Santamaria shall pay all costs associated with the creation, funding, operation, and administration of the escrow account. The Commission, or its representative, shall, in its sole discretion, select the escrow agent. The escrow agreement shall be in substantially the form attached to this Order as Exhibit A.

The performance bond or escrow agreement shall provide that the surety company or escrow agent, within thirty days following receipt of notice that a final judgment or an order of the Commission against respondent Santamaria for consumer redress or disgorgement in an action brought under the provisions of the Federal Trade Commission Act has been entered, or, in the case of an order of the Commission, has become final, finding that he has violated the terms of this Order or the Federal Trade Commission Act, and determining the amount of consumer redress or disgorgement to be paid, shall pay to the Commission so much of the performance bond or funds of the escrow account as does not exceed the amount of consumer redress or disgorgement ordered, and which remains unsatisfied at the time notice is provided to the surety company or escrow agent, *provided that*, if respondent Santamaria has agreed to the entry of a court order or an order of the Commission, a specific finding that Santamaria violated the terms of this Order or the provisions of the Federal Trade Commission Act shall not be necessary. A copy of the notice provided for herein shall be mailed to respondent Santamaria at his last known address.

Respondent Santamaria may not disclose the existence of the performance bond or escrow account to any consumer, or other purchaser or prospective purchaser, to whom a

covered product is advertised, promoted, offered for sale, sold, or distributed, without also disclosing at the same time and in a like manner that the performance bond or escrow account is required by order of the Federal Trade Commission in settlement of charges that respondent Santamaria engaged in false and misleading representations.

#### XVII

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., shall:

A. Within thirty (30) days after service of this Order, provide a copy of this Order to each of respondents' 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 five (5) years from the date of issuance of this Order, provide a copy of this Order to each respondents' future 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 who are associated with respondents or any subsidiary, successor, or assign, within three (3) days after the person assumes his or her responsibilities.

#### XVIII

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 or its staff for inspection and copying:

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

B. 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.

#### XIX

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in their corporate structures, including but not limited to dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates,

the planned filing for a bankruptcy petition, or any other corporate change that may affect compliance obligations arising out of this Order.

#### XX

It is further ordered that respondent, William J. Santamaria, shall, for a period of seven (7) years from the date of issuance of this Order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment. Each notice of affiliation shall include respondent's new business address and telephone number, current home address, and a statement describing the nature of the business of employment and his duties and responsibilities.

#### XXI

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; shall, within sixty (60) days after service of this Order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

#### **Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from proposed respondents Taleigh Corporation, Choice Diet Products, Inc., and William J. Santamaria.

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

This matter concerns advertising and trade practices related to the sale of several weight-loss pills and a smoking cessation product. The Commission's Complaint alleges that proposed respondents Taleigh Corporation, Choice Diet Products, Inc., and William J. Santamaria made a number of false claims regarding the speed and ease with which consumers can burn fat and

lose substantial amounts of weight with proposed respondents' weight-loss pills—MegaLoss, FormulaTrim, and MiracleTrim. The Complaint also alleges that proposed respondents falsely promoted these products as new or unique, as causing weight loss without the need for users to diet or exercise, and as providing the same weight-loss benefits as exercise. With respect to MiracleTrim, the Complaint also alleges that respondents falsely represented that consumers who ordered MiracleTrim would receive a personal weight-loss consultation from a qualified professional.

With respect to MegaLoss, the Complaint also alleges that proposed respondents represented that the product would not cause nervous jitters or insomnia, or have any dangerous side effects, and that, prior to the sale of MegaLoss, the active ingredient in the product was not available without a prescription. The Complaint further alleges that respondents represented that FormulaTrim and MegaLoss would "burn fat" and that MegaLoss and MiracleTrim would significantly shrink millions of fat cells.

The Complaint also alleges that proposed respondents falsely and misleadingly represented that they possessed and relied upon a reasonable basis when they made the claims set forth above. The Complaint further alleges that proposed respondents falsely represented that the MegaLoss and FormulaTrim pills are scientifically proven to cause significant weight loss. The Complaint also charges that proposed respondents failed to disclose adequately that certain consumer endorsers appearing in their advertising had a material connection to proposed respondents, in that the consumers had been compensated or offered significant compensation for their endorsement.

The Complaint further alleges that proposed respondents have engaged in several unfair and deceptive trade practices, including: (1) Debiting consumers' bank accounts or billing consumers' credit card accounts without their authorization; (2) offering a money-back guarantee in their ads and then denying refunds or failing to make timely refunds to consumers who have returned the product within the required time period; (3) failing to deliver products at all or failing to deliver products within a reasonable period of time; and (4) violating the Truth in Lending Act by not processing credit charges in a timely fashion.

Regarding Nicotain, a purported smoking cessation product, the Complaint charges proposed respondents with representing falsely

and without a reasonable basis that Nicotain enables smokers to stop smoking quickly and easily, and that it works through the same mechanism as a prescription smoking deterrent patch.

With respect to the advertising for both the weight loss pills and Nicotain, the Complaint alleges that proposed respondents falsely represented that consumer testimonials appearing in the ads reflect the typical or ordinary experience of members of the public who have used the products.

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

Part I of the proposed order prohibits proposed respondents from representing that MegaLoss, FormulaTrim, and MiracleTrim, or any other weight-loss product containing phenylpropanolamine as the active ingredient: (1) Causes or assists in causing rapid weight loss; (2) causes or assists in causing substantial weight loss without the need to exercise or reduce caloric intake; (3) is new or unique or contains a new or unique ingredient; (4) causes the burning of more body fat than certain strenuous exercise; or (5) contains an active ingredient that, prior to the sale of such product, was available only through doctors.

Part II requires the proposed respondents to disclose that diet or exercise are required to lose weight in connection with any representation about the effect of a weight-loss product on weight or body size, unless they have competent and reliable scientific evidence to the contrary. Part III prohibits proposed respondents from making the types of weight-loss, fat burning and smoking cessation claims alleged in the complaint to be false and unsubstantiated, unless the claims are true and substantiated by competent and reliable scientific evidence. Part IV prohibits proposed respondents from representing that Nicotain or any substantially similar product (a) will enable smokers to stop smoking easily, or (b) works through a mechanism substantially similar to a prescription smoking deterrent patch. Part V prohibits any misrepresentation concerning the nature or mechanism of operation of any smoking cessation product.

Part VI prohibits proposed respondents from misrepresenting that: (1) Any product or program is new or unique, or contains a new or unique ingredient; (2) consumers who order any product or program will receive a personal consultation from a physician or medically trained weight-loss

counselor; or (3) the results claimed in consumer testimonials constitute the typical or ordinary experience of members of the public who use the advertised product or program.

Part VII of the proposed order requires proposed respondents to disclose, clearly and prominently, a material connection, where one exists, between any endorser and the proposed respondents.

Part VIII prohibits proposed respondents from misrepresenting the contents, validity, results, conclusions, or interpretations of any test or study. Part IX requires that proposed respondents have competent and reliable scientific evidence to substantiate the following categories of claims for any product or program: (1) Any representations regarding dangerous side effects, nervous jitters, insomnia, or any other adverse health effects; (2) any representations that the product or program burns, reduces, or diminishes body fat; and (3) any representations that the product or program will significantly shrink fat cells. Part X requires proposed respondents to possess scientific substantiation before making representations regarding the performance, benefits, efficacy, or safety of any weight-loss product, smoking deterrent or cessation product, food, food or dietary supplement, drug, or device.

Parts XI and XII contain safe harbors for claims that are permitted on the labeling of foods and drugs under the applicable FDA regulations.

Part XIII bans proposed respondents' practice of charging a consumer's credit card account of debiting a consumer's checking account in excess of the amount affirmatively authorized by the consumer. Under Part XIV, proposed respondents are prohibited from misrepresenting the terms of a money-back guarantee and from failing to provide a refund when a consumer has complied with the conditions stated in the advertisement for obtaining a refund. Part XV prohibits proposed respondents from failing to comply with the requirements of the Commission's Mail or Telephone Order Merchandise Rule, as amended, effective March 1, 1994.

Part XVI requires that as a condition of advertising, promoting, offering for sale, selling, or distributing any weight-loss product or smoking deterrent or cessation product, proposed respondent Santamaria either obtain a performance bond or establish an escrow account in the amount of \$300,000.

Part XVII requires proposed respondents to maintain, for five (5)

years, all materials that support, contradict, qualify, or call into question any representations they make which are covered by the proposed order. Part XVIII requires the proposed corporate respondents to distribute a copy of the order to current and future principals, officers, directors, and managers, as well as to any employees having sales, advertising, or policy responsibility with respect to the subject matter of the order. Under Part XIX of the proposed order, the proposed corporate respondents must notify the Federal Trade Commission at least thirty (30) days prior to certain proposed changes in their structures. Part XX requires that proposed respondent Santamaria, for a period of seven (7) years, notify the Commission of any change in his business or employment. Part XXI obliges proposed respondents to file compliance reports with the Commission.

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

**Donald S. Clark,**

*Secretary.*

[FR Doc. 95-7634 Filed 3-28-95; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the months of April/May 1995:

*Name:* HRSA AIDS Advisory Committee Clinical Issues Subcommittee.

*Time:* April 26, 1995, 10:00 a.m.-4:00 p.m.

*Place:* Grand Hyatt Washington Hotel, 1000 S Street NW., Washington, D.C. 20001.

The meeting is open to the public.

*Purpose:* To facilitate timely dissemination of information about new developments in clinical research, drug development, and policies on HIV diseases into language relevant for practicing caregivers supported by HRSA's HIV/AIDS programs.

*Agenda:* The meeting will include a discussion of the purpose of the subcommittee and the mechanisms for accomplishing its activities.

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*Name:* HRSA AIDS Advisory Committee Evaluation Subcommittee.

*Time:* May 4, 1995, 10:00 a.m.-4:00 p.m.