SUPPLEMENTARY INFORMATION: On Tuesday, January 31, 1995, there was published in the **Federal Register**, 60 FR 5922, a proposed consent agreement with analysis In the Matter of Formu-3 International, 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 cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 95–11547 Filed 5–10–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3570]

HEALTHSOUTH Rehabilitation Corp.; 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, HEALTHSOUTH, an Alabama-based corporation, to divest Nashville Rehabilitation Hospital and related assets in Nashville, TN. within twelve months to a Commission approved entity. If the divestiture is not completed on time, the Commission is permitted to appoint a trustee to complete the transaction. In addition, the consent order requires HEALTHSOUTH to terminate management contracts to operate rehabilitation units at Medical Center East in Birmingham, AL. and Roper Hospital in Charleston, S.C. Also, the consent order requires HEALTHSOUTH, for ten years, to obtain Commission approval before merging, by acquisition, lease, management contract or otherwise, any of its rehabilitation hospital facilities in any of the three areas with any competing facilities in those areas.

DATES: Complaint and Order issued April 12, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Mark Horoschak or Oscar Voss, FTC/S–3115, Washington, DC 20580. (202) 326–2756 or 326–2750.

SUPPLEMENTARY INFORMATION: On Friday, January 27, 1995, there was published in the **Federal Register**, 60 FR 5401, a proposed consent agreement with analysis In the Matter of HEALTHSOUTH Rehabilitation Corporation, 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 compliant 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.

(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. 95–11552 Filed 5–10–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932–3224]

Nature's Bounty, Inc., 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 require, among other things, respondent and two of its wholly-owned subsidiaries to pay $250,000 in consumer redress, and to have scientific evidence to back up a variety of specific health-related advertising and promotional claims for any product they market in the future.

DATES: Comments must be received on or before July 10, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC. 20580.

FOR FURTHER INFORMATION CONTACT: Dean Graybill, FTC/S–4302, Washington, DC 20580. (202) 326–3284 or Peter Metrinko, S–4631, Washington, DC 20580. (202) 326–2104.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 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 § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

In the matter of Nature's Bounty, Inc., a corporation, Puritan's Pride, Inc., a corporation, and Vitamin World, Inc., a corporation.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Nature's Bounty, Inc., Puritan's Pride, Inc., and Vitamin World, Inc., and it now appearing that Nature's Bounty, Inc., Puritan's Pride, Inc., and Vitamin World, Inc., hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an Order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Nature's Bounty, Inc., Puritan's Pride, Inc., and Vitamin World, Inc., by their duly authorized officers and attorneys, and counsel for the Federal Trade Commission, that:

1. Nature's Bounty, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 90 Orville Dr., Bohemia, NY. Puritan's Pride, Inc., and Vitamin World Inc., wholly-owned subsidiary corporations of Nature's Bounty, Inc., are organized under and by virtue of the laws of the State of Delaware, with their offices and principal places of business located at 90 Orville Dr., Bohemia, NY.

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

3. Proposed respondents waive:

a. Any further procedural steps;

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

c. All rights to seek judicial review or otherwise to challenge or contest the

[1] 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.

validity of the Order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

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 the circumstances may require) and decision, in disposition of the proceeding.

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

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to cease and desist in disposition of the proceeding and (2) make information public in 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. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any rights 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 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 occurring after the Order becomes final.

Order

Definitions

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

1. ''Product'' means any good that is offered for sale, sold or distributed to the public by respondents, their successors and assigns, under any brand name of respondents, their successors and assigns, or under the brand of any third party. ''Product'' also means any product sold or distributed to the public by third parties under any brand name of respondents, or under private labeling agreements with respondent, their successors and assigns.

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 by others in the profession to yield accurate and reliable results.

I

It is ordered that respondents Nature's Bounty, Inc., Puritan's Pride, Inc., and Vitamin World, Inc., their successors and assigns, and their officers, agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacture, advertising, packaging, labeling, 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, the existence, contents, validity, results, conclusions, or interpretations of any test, study, research article, or any other scientific opinion or data.

II

It is further ordered that respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of ''Sleeper's Diet,'' ''L-Arginine,'' or ''L-Ornithine,'' or any other substantially similar amino acid 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:

A. Any such product stimulates greater production or release of human growth hormone in a user than a non-user of such product;

B. Any such product promotes muscular development; or

C. Any such product burns fat or otherwise alters human metabolism to use up or burn stored fat, or promotes weight loss.

For purposes of this Order paragraph, ''substantially similar amino acid product'' shall mean any product which is of substantially similar composition or possesses substantially similar properties to Sleeper's Diet, L-Arginine or L-Ornithine.

III

It is further ordered that respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of L-Cysteine, L-Methionine, or any other substantially similar hair care 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 such product will prevent or retard hair loss or promote hair growth where hair has already been lost. For purposes of this Order paragraph, ''substantially similar hair care product'' shall mean any product that is advertised or intended for sale over-the-counter to treat, cure or curtail hair loss or to promote hair growth where hair has already been lost, and which is of substantially similar composition or possesses substantially similar properties to L-Cysteine or L-Methionine.

IV

It is further ordered that respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of any hair care product or service, 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

(1) The use of the product or service will prevent, cure, relieve, reverse, or reduce hair loss; or

(2) The use of the product or service will promote the growth of hair where hair already has been lost.

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

B. Manufacturing, advertising, labeling, packaging, promoting, offering for sale, selling, or distributing any product that is represented as promoting hair growth or preventing hair loss, unless the product is the subject of an approved new drug application for such purpose under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 *et seq.*, *provided that,* this requirement shall not limit the requirements of Order paragraphs III or IV.A. herein.

V

It is further ordered that respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, labeling, packaging, 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 making any representation, directly or by implication, that any such product:

A. Cures, treats, prevents, or reduces the risk of developing any disease, disorder or condition in humans or relieves symptoms thereof;

B. Provides any weight loss or weight control benefit or otherwise provides an effective treatment for obesity;

C. Suppresses appetite, reduces the body's absorption of calories, stimulates metabolism, or reduces serum cholesterol;

D. Cures, treats, prevents, or reduces the risk of benign prostatic hypertrophy;

E. Promotes greater muscular development, endurance, strength, power, definition, or stamina, or shorter exercise recovery or recuperation time in a user than a non-user of such product;

F. Removes or diminishes dark circles under the eyes;

G. Improves mental clarity, mental concentration, mental comprehension, mental retention or mental alertness;

H. Aids digestion or promotes increased absorption of nutrients from ingested foods;

I. Relieves stress or promotes relaxation; or

J. Prevents, relieves or treats fatigue or boosts energy;

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Provided however, that respondents shall not be liable under this paragraph for any representation contained on a package label or package insert for a product that meets all of the following conditions:

1. The product is manufactured and distributed by a third party and is not manufactured or distributed exclusively for respondents;

2. The product is generally available at competing retail outlets;

3. The product is not identified with respondents and does not contain respondents' names or logos;

4. The product was not developed or manufactured at the instigation or with the assistance of respondents; and,

5. The product representation is not otherwise advertised or promoted by respondents.

Provided further, that the proviso in the preceding paragraph is currently identical to the ''safe harbor'' proviso contained in Paragraph V. of the order in *General Nutrition, Inc.*, Docket No. 9175, entered February 2, 1989. It is the intention of the parties to the order herein that the provisos shall remain identical. Therefore, except upon respondents filing a petition to reopen the proceeding herein and making a satisfactory showing that changed conditions of law or fact or the public interest warrants modification of the order herein by the Commission, respondents agree to be bound by any subsequent modifications (including vacation) of the safe harbor proviso in Docket No. 9175, without any further formal modification of the instant order.

VI

It is further ordered that nothing in this Order shall prohibit respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, from making any representation that is specifically permitted in labeling for any product by regulations promulgated by the Food and Drug Administration (FDA) pursuant to the Nutrition Labeling and Education Act of 1990; *moreover,* nothing in this Order shall prohibit respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, from making any representation for any drug that is permitted in labeling for any 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 respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, labeling, packaging, 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:

1. Using the name ''Sleeper's Diet'' or any other brand name that represents, directly or by implication, that such product has the ability to promote weight loss during sleep;

2. Using the name ''Memory Booster'' or any other brand name that represents, directly or by implication, that such product improves memory retention;

3. Using the name ''Dark Circle Eye Treatment'' or any other brand name that represents, directly or by implication, that such product removes dark circles from under the eyes; or

4. Using the name ''Super Fat Burners'' or any other brand name that represents, directly or by implication, that such product reduces body fact

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

VIII

It is further ordered that respondents, their successors and assigns, 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, DC 20580, the sum of two hundred and fifty thousand dollars ($250,000). Respondents shall make this payment on or before the tenth day following the date of issuance 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 to provide direct redress to consumers allegedly injured by respondents 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 consumers is impracticable or unwarranted, any funds not used for redress 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.

IX

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 labeling, packaging, advertisements and promotional materials setting forth any representation covered by this Order;
2. All materials that were relied upon by respondents to substantiate any representation covered by this Order; and
3. All test reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation or the basis upon which respondents relied for such representation, including complaints from consumers.

X

It is further ordered that for a period of ten (10) years after service upon them of this Order, respondents, their successors and assigns, shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the respondents 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 that may affect compliance obligations arising under this Order.

XI

It is further ordered that the respondents shall distribute a copy of this Order to each of their operating divisions, to each of their officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this Order, and to all distributors of products manufactured or marketed by respondents.

XII

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

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Nature's Bounty, Inc., Puritan's Pride, Inc., and Vitamin World, Inc. (''respondents'').

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

The Commission's complaint alleges that respondents manufactured, advertised, offered for sale, sold or distributed a variety of products, for which they made the following representations:

A. Sleeper's Diet promotes weight loss during sleep.

B. L-Arginine stimulates the release of human growth hormone which increases muscle mass while decreasing body fat.

C. L-Ornithine stimulates the release of human growth hormone which increases muscle mass while decreasing body fat.

D. Prostex relieves the symptoms of benign prostatic hypertrophy.

E. L-Cysteine (1) increases hair growth, (2) prevents hangovers and brain and liver damage from alcohol, and (3) helps prevent harm caused by cigarette smoke.

F. L-Lysine improves stress tolerance and reduces fatigue.

G. L-Methionine prevents premature hair loss.

H. Octacosanol increases stamina, vigor, and endurance, improves reaction time, lowers cholesterol levels and strengthens muscles.

I. New Zealand Green Lipped Mussel Extract prevents arthritis and relieves its symptoms.

J. KLB6 causes weight loss and reduces cholesterol levels.

K. Glucomannan causes weight loss by suppressing appetite and allowing calories to pass through the body undigested.

L. Sugar Blocker prevents weight gain by impeding the body's absorption of sugar.

M. Spirulina 500 mg. tablets suppress the appetite, enabling adherence to a diet.

N. KLB6 Grapefruit Diet causes weight loss by stimulating metabolism and suppressing appetite.

O. Herbal Cellulex Formula causes weight loss by eliminating body fat.

P. Memory Booster improves memory retention and mental alertness.

Q. Ginsana helps build physical endurance and mental alertness.

R. Fatbuster Diet Tea causes weight loss by eliminating fatty substances from the body.

S. Shake-A-Weigh reduces the body's absorption of calories from food.

T. Dark Circle Eye Treatment removes dark circles from under the eyes.

U. Natural Sterol Complex promotes growth in muscle mass and improves strength.

V. Super Fat Burners reduces body fat, thereby promoting muscle definition.

W. Super Cut reduces body fat, thereby promoting muscle definition.

X. Papaya Enzyme Tablets aid digestion and promote greater absorption of nutrients from food.

Y. Calmtabs relieves stress and promotes relaxation.

The Commission's complaint alleges that the above representations for Sleeper's Diet, L-Arginine, L-Ornithine, L-Cysteine, and L-Methionine are false and misleading. Further, the Commission alleges that respondents did not possess and rely upon a reasonable basis that substantiated any of the representations in (A) through (Y).

The Commission's complaint also alleges that respondents falsely and in a misleading manner represented that scientific research, including scientific papers and/or studies, prove that (1) Octacosanol may improve reaction time, lower cholesterol levels and strengthen muscles; (2) New Zealand Green Lipped Mussel Extract prevents arthritis and relieves its symptoms; (3) as to Eye-Vites, also sold as CATA–RX, patients undergoing antioxidant therapy such as that provided by Eye-Vites and CATA–RX are 70% less likely to develop cataracts; and (4) Ginsana improves

physical endurance and mental alertness.

The complaint also alleges that through the use of trade names, respondents falsely and misleadingly represented that (1) ''Sleeper's Diet'' promotes weight loss during sleep; (2) ''Memory Booster'' improves memory retention; (3) ''Dark Circle Eye Treatment'' removes dark circles from under the eyes; and (4) ''Super Fat Burners'' reduces body fat.

The consent agreement resolving these allegations requires respondents to cease and desist from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, research article, or any other scientific opinion or data. As to the products ''Sleeper's Diet,'' ''L-Arginine,'' or ''L-Ornithine,'' or any other substantially similar amino acid product, respondents are to cease and desist from representing that (1) any such product stimulates greater production or release of human growth hormone in a user than a non-user of such product; (2) any such product promotes muscular development; or (3) any such product burns fat or otherwise alters human metabolism to use up or burn stored fat, or promotes weight loss.

In connection with the products L-Cysteine, L-Methionine, or any other substantially similar hair care product, respondents are to cease and desist from representing that any such product will prevent or retard hair loss or promote hair growth where hair has already been lost. As to any hair care product or service, respondents are to cease and desist from representing that (1) the use of the product or service will prevent, cure, relieve, reverse, or reduce hair loss; or (2) the use of the product or service will promote the growth of hair where hair already has been lost, unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Respondents are also prohibited from manufacturing, advertising, labeling, packaging, promoting, offering for sale, selling, or distributing any product that is represented as promoting hair growth or preventing hair loss, unless the product is the subject of an approved new drug application for such purpose under the Federal Food, Drug, and Cosmetic Act.

Respondents also are required to possess and rely upon competent and reliable scientific evidence as substantiation for any representation that any product (1) cures, treats, prevents, or reduces the risk of developing any disease, disorder or condition in humans or relatives symptoms thereof (2) provides any weight loss or weight control benefit or otherwise provides an effective treatment of obesity; (3) suppresses appetite, reduces the body's absorption of calories, stimulates metabolism, or reduces serum cholesterol; (4) cures, treats, prevents or reduces the risk of benign prostatic hypertrophy; (5) promotes greater muscular development, endurance, strength, power, definition, or stamina, or shorter exercise recovery or recuperation time in a user than a non-user of such product; (6) removes or diminishes dark circles under the eyes; (7) improves mental clarity, mental concentration, mental comprehension, mental retention or mental alertness; (8) aids digestion or promotes increased absorption of nutrients from ingested foods; (9) relieves stress or promotes relaxation; or (10) prevents, relieves or treats fatigue or boosts energy. However, the agreement states that this substantiation requirement does not apply if respondents are merely selling another manufacturer's products, and, *inter alia,* the product representation is made only on a product label or insert, and is not otherwise advertised or promoted by respondents. The consent agreement also notes that this ''safe harbor'' provision is currently identical to the ''safe harbor'' proviso contained in Paragraph V. of the order in *General Nutrition, Inc.,* Docket No. 9175, that it is the intention of the parties to the instant order that the provisos shall remain identical, and that respondents agree to be bound by any subsequent modifications (including vacation) of the safe harbor proviso in Docket No. 9175, without any further formal modification of the instant order. Respondents retain their right to file a petition to modify or vacate the instant order.

Also under the order, respondents may not use the name ''Sleeper's Diet'' or any other brand name that represents that such product has the ability to promote weight loss during sleep; use the name ''Memory Booster'' or any other brand name that represents that such product improves memory retention; use the name ''Dark Circle Eye Treatment'' or any other brand name that represents that such product removes dark circles from under the eyes; or use the name ''Super Fat Burners'' or any other brand name that represents that such product reduces body fat, unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Under the terms of the order, respondents shall pay $250,000.00 to the Federal Trade Commission. The funds paid by respondents shall, in the discretion of the Federal Trade Commission, be used to provide direct redress to consumers allegedly injured by respondents. If redress to consumers is impracticable or unwarranted, any funds not used for redress shall be paid to the United States Treasury.

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

Donald S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga Concerning Nature's Bounty, Inc.

File No. 932 3224

I dissent from the Commission's decision to accept a proposed consent order with Nature's Bounty and its subsidiaries, Puritan's Pride, Inc., and Vitamin World, Inc., because the order leaves the respondents free to sell products they know, or should know, are deceptively labeled.

The proviso in Paragraph V of the consent order states that the respondents would not necessarily be liable for false or unsubstantiated claims appearing on the labels or in the packaging of the products sold at its stores, even it if were clear that the companies had actual knowledge that those claims were unsubstantiated or untrue. I believe that the other should hold the respondents liable if they know, or should know, that the labels or packaging of any such product contains false or unsubstantiated claims.

[FR Doc. 95–11554 Filed 5–10–95; 8:45 am]
BILLING CODE 6750–01–M

[Dkt. C–3566]

Ninzu, 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, the Maryland-based marketers to possess and rely upon competent and reliable scientific substantiating evidence to