

IN THE MATTER OF
VITAL-E T/A MAIL ORDER SERVICES, ET AL.

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

Docket 9082. Complaint, May 11, 1976 — Decision, Nov. 30, 1978

This consent order, among other things, requires a Tarzana, Calif. mail order company and its advertising agency to cease disseminating advertisements which misrepresent that any dietary drug, plan or device will cause weight loss without exercise or caloric restriction; or that any vitamin supplement, food or drug will eliminate adverse skin conditions, stop or reverse the aging process, or enhance sexual potency. The firms are further required to disclose health or cosmetic risks posed by products; offer refunds for products that pose such risks; and furnish substantiation for all claims regarding product performance, safety and efficacy. Additionally, the order prohibits the firms from misrepresenting product sources, or government association.

Appearances

For the Commission: *Kendall H. MacVey* and *Robert J. Enders*.
For the respondents: *Richard M. Crane* and *Milton Linder*,
Beverly Hills, Calif.

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 Vital-E, a corporation trading and doing business under its own name and as Mail Order Services; Advertising Unlimited of America, Inc., a corporation trading and doing business as Normond Linder & Associates; Milton Kalman, individually and as an officer of corporate respondent Vital-E; Sharon Kalman, also known as Sharon Fernandez and as Sharon Hoffman, individually and as an officer of corporate respondent Vital-E; and Normond Linder, individually and as an officer of corporate respondent Vital-E and as an officer of corporate respondent Advertising Unlimited of America, Inc., with all the aforementioned having done and doing business under various fictitious trade names, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PAR. 1. Respondent Vital-E is a corporation organized, existing, and doing business under and by virtue of the laws of the State of

California, trading and doing business under its own name and as Mail Order Services, with its principal office and place of business located at 18588 Ventura Boulevard, Tarzana, California.

Respondent Advertising Unlimited of America, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, trading and doing business as Normond Linder & Associates, with its principal office and place of business located at 12400 Santa Monica Boulevard, Los Angeles, California.

Respondents Milton Kalman, Sharon Kalman, also known as Sharon Fernandez and as Sharon Hoffman, and Normond Linder are individuals and are officers of corporate respondent Vital-E. They formulate, direct, and control the acts and practices of corporate respondent Vital-E. Respondents Milton Kalman, Sharon Kalman, and Normond Linder, individually and with each other, have also operated various other business entities under various fictitious trade names. Respondent Normond Linder is an officer of corporate respondent Advertising Unlimited of America, Inc. Respondent Normond Linder formulates, directs, and controls the acts and practices of corporate respondent Advertising Unlimited of America, Inc. The business address of respondents Milton Kalman and Sharon Kalman is 18588 Ventura Boulevard, Tarzana, California. The business address of respondent Normond Linder is 12400 Santa Monica Boulevard, Los Angeles, California.

Respondents cooperate and act together, and have cooperated and have acted together, to bring about the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of skin creams, oils and lotions, weight and body size reduction devices, physical appearance improvement devices, printed diet plans, dietary and vitamin supplements, art prints, entry blank forms for reserving the right to purchase lottery tickets or enter a lottery, and various other products, hereinafter sometimes referred to as respondents' products. Said skin creams, oils and lotions come within the classification of cosmetics as "cosmetic" is defined in the Federal Trade Commission Act. Said weight and body size reduction and physical appearance improvement devices come within the classification of devices as "device" is defined in the Federal Trade Commission Act. Said dietary and vitamin supplements come within the classification of foods or drugs as "food" and "drug" are defined in the Federal Trade Commission Act.

Respondent Advertising Unlimited of America, Inc., a corporation,

and its officer, respondent Normond Linder, are engaged in the preparation and publication of advertising material. They are now, and for some time last past have been, engaged in formulating, preparing, and placing for publication advertising copy in publications of general circulation and advertising copy for dissemination through the United States mail concerning respondents' products.

PAR. 3. In the course and conduct of their businesses as aforesaid, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from the State of California to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in, affecting, or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid businesses, respondents have disseminated and now disseminate, and have caused and now cause the dissemination of, certain advertisements concerning the said products through the United States mail and through various means in, affecting, or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in newspapers of general interstate circulation, and circulars and flyers disseminated through the United States mail, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of skin creams, oils and lotions, weight and body size reduction devices, physical appearance improvement devices, and dietary and vitamin supplements; and have disseminated and now disseminate, and have caused and now cause the dissemination of, certain advertisements concerning the said products by various means, including the aforesaid media, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of the said products in, affecting, or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their aforesaid businesses, and at all times mentioned herein, respondents have been, and are now, in substantial competition in or affecting commerce, with corporations, firms, and individuals, in the sale of products of the same general kind and nature as those sold by respondents.

COUNT I

Alleging violations of Sections 5 and 12 of the Federal Trade Commission Act, the allegations of Paragraphs One through Five

above are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 6. In the course of their aforesaid businesses, and for the purpose of inducing the purchase of creams, oils, lotions, and other cosmetics, respondents, individually and with each other, have made statements and representations for the promotion and sale, through the United States mail and other means, of said products with respect to the effectiveness or therapeutic value of said products in treating adverse skin conditions.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

Vitamin E Oil literally "feeds" oxygen to problem skin areas.

. . . Ginseng + E oil literally "feeds" oxygen to problem skin areas.

Here's why this natural Vitamin E suntan lotion works so well: Vitamin E: This on external application to the skin provides the benefit of having one of the essential vitamins soothe the epidermis and thereby makes tanning safe.

Natural Vitamin E Oil. It does wonders for: wrinkles, aging skin, rough skin, blemishes, facial lines, facial creases, surface scars, healing burns, healing wounds, stretch marks, under make-up.

[Ginseng + E oil]. . . transmits incredibly fast and beneficial effects to aging skin, wrinkles, stretch marks, blemishes, rough, dry, and other cosmetically related skin problems.

Private and medical literature also contain glowing reports as to its [Ginseng + E oil] effectiveness in the healing of burns, wounds, unsightly scars, and a host of skin problems.

. . . Vitamin E Oil rejuvenates skin and helps regain youthful, radiant looks without pills, drugs, diets, massaging, within minutes.

. . . Ginseng + E oil rejuvenates the skin and quickly helps regain a more youthful and radiant look within minutes.

Look years younger as wrinkles seem to vanish instantly. Natural Anti-Wrinkle Creme is a line smoothing natural high protein creme.

[Vitamin E Oil is] 100% safe.

Ginseng + E oil is 100% safe, non-allergenic and contains no hormones.

PAR. 7. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, respondents have represented and are now representing, directly or by implication, that:

1. The topical application of respondents' "Natural Vitamin E

Oil" and "Ginseng + E oil" will transmit oxygen to problem skin areas.

2. The transmission of oxygen to problem skin areas will alleviate the adverse conditions.

3. When topically applied, Vitamin E is of significant value in making suntanning safer and more effective.

4. The topical application of respondents' "Natural Vitamin E Oil" and "Ginseng + E oil" is highly effective in treating wrinkles, aging skin, rough skin, blemishes, facial lines, facial creases, surface scars, burns, wounds, stretch marks, and other adverse skin conditions.

5. The topical application of respondents' "Natural Vitamin E Oil," "Ginseng + E oil," and "Anti-Wrinkle Creme" will eliminate wrinkles or the appearance of wrinkles and will hinder, stop or reverse the aging process of the skin.

6. The topical application of respondents' "Natural Vitamin E Oils" and "Ginseng + E oil" poses no medical or health risk.

PAR. 8. In truth and in fact:

1. The topical application of respondents' "Natural Vitamin E Oil" and "Ginseng + E oil" will not transmit oxygen to problem skin areas.

2. The transmission of oxygen to problem skin areas will not alleviate the adverse conditions.

3. When topically applied, Vitamin E is not of significant value in making suntanning safer or more effective.

4. The topical application of respondents' "Natural Vitamin E Oil" and "Ginseng + E Oil" is ineffective in treating wrinkles, aging skin, rough skin, blemishes, facial lines, facial creases, surface scars, burns, wounds, stretch marks, and other adverse skin conditions.

5. The topical application of respondents' "Natural Vitamin E Oil," "Ginseng + E oil," and "Anti-Wrinkle Creme" will not eliminate wrinkles or significantly alleviate the appearance of wrinkles or hinder, stop or reverse the aging process of the human skin.

6. The topical application of respondents' "Natural Vitamin E Oil" and "Ginseng + E oil" poses a medical or health risk in that it will result in an irritating skin rash for many users.

Therefore, the advertisements referred to in Paragraphs Six and Seven in connection with inducing the purchase of cosmetics were and are misleading in material respects and constituted and now constitute "false advertisements" as that term is defined in the Federal Trade Commission Act, and the acts and practices as set

forth in Paragraphs Six and Seven hereof were and are false, misleading, and deceptive.

PAR. 9. In the course of their aforesaid businesses, and for the purpose of inducing the purchase of weight and body size reducing and physical appearance improvement devices, respondents, individually and with each other, have made statements and representations for the promotion and sale, through the United States mail and other means, of said devices with respect to said devices' effectiveness or therapeutic value in weight or body size reducing or in contouring the chin and jowls.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

"Reducing belt!". . . Slip into belt and slimming action starts instantly. Wear one hour a day. Some have lost 4-6 inches. No weights, no exercise, no special diet, no trouble at all!

Lose pounds & inches easily. "Sauna Suit" melts away lbs. . . . Fat will melt away when you wear the marvelous new Sauna Suit. . . Effortless way to lose weight fast. Tighten sagging tissue on lower face. "Trim-A-Chin" with special facial lube cream. Doctor designed program will help tighten sagging tissues of lower face, help muscle tone, achieve smoother chin and jowl contours to give a more youthful appearance! Slip on soft comfortable latex belt. . . See big improvement in just 14 days.

PAR. 10. By and through the use of the above-quoted statements and representations, and others of similar import and meaning, but not expressly set out herein, respondents have represented and are now representing, directly or by implication, that:

1. Wearing respondents' "Reducing Belt" will cause a reduction in size and weight for other than a temporary period of time.
2. Wearing respondents' "Sauna Suit" will cause a reduction in fat.
3. Wearing respondents' "Sauna Suit" will cause a reduction in size and weight without exercise or dieting which will be sustained for other than a temporary period of time.
4. Wearing respondents' "Trim-A-Chin" device will reduce the sagging of jowls associated with increasing age.

PAR. 11. In truth and in fact:

1. Wearing respondents' "Reducing Belt" will not cause a reduction in size or weight for other than a temporary period of time.
2. Wearing respondents' "Sauna Suit" will not cause a reduction in fat.
3. Wearing respondents' "Sauna Suit" will not cause a reduction in size and weight without exercising or dieting which will be sustained for other than a temporary period of time.
4. Wearing respondents' "Trim-A-Chin" device will not reduce

the sagging of jowls associated with increasing age except for the time that the device is worn.

Therefore, the advertisements referred to in Paragraphs Nine and Ten in connection with inducing the purchase of devices were and are misleading in material respects and constituted and now constitute "false advertisements" as that term is defined in the Federal Trade Commission Act, and the acts and practices as set forth in Paragraphs Nine and Ten hereof were and are false, misleading, and deceptive.

PAR. 12. Since approximately 1971, in the course of their aforesaid businesses, and for the purpose of inducing the purchase of diet plans, respondents, individually and with each other, have made statements and representations for the promotion and sale of said products through the United States mail and other means. These diet plans have been disseminated as aforementioned under various names, including but not limited to, the "Grapefruit Diet," consisting of a printed diet plan, and the "Vitamin E Diet," the "All-Vitamin Diet," and the "New Grapefruit Pill Diet," all consisting of a printed diet plan and tablets. These tablets fall within the classification of foods or drugs as "food" and "drug" are defined in the Federal Trade Commission Act.

In promoting and disseminating these diet plans, respondents have used substantially similar advertising copy with the major change being in the name of the diet plan. In this advertising respondents have represented directly or by implication that these diets are based upon recent revolutionary scientific discoveries and techniques which allow the user rapidly to lose large amounts of weight with minimal or no effort, exercise, restriction in caloric intake, hunger, or medical risk. Contrary to these claims, adherence to these diets poses medical risks to certain individuals and is effective, if at all, only to the extent that these diets are based upon standard dieting techniques. Respondents have also misrepresented the amount of weight that may be lost and have represented directly or by implication that weight loss will be permanent when in some instances the weight loss involves merely a loss in fluid which may be rapidly regained.

In furtherance of these claims, respondents have represented in advertising that the consumption of certain foods or drugs recommended in these diet plans, including but not limited to, grapefruit, vitamin E, and numerous vitamins, minerals, and nutrients, can or will cause weight loss or significantly curb or eliminate hunger pangs and the desire to eat. In fact, to the extent that adherence to these diet plans results in weight loss, such weight loss is due to

restriction in caloric intake. The said foods or drugs do not have the claimed effects upon hunger pangs and the desire to eat.

Respondents have bolstered some of these claims by representing in advertising that a significant number of the United States population has used and proved the effectiveness of these diet plans when such is not the case. Respondents have also bolstered some of these claims by quoting in advertising an individual represented by respondents as being a nutritionist with a world-wide reputation when in fact this individual is not a nutritionist and is not widely known, if at all, in any scientific or medical field.

PAR. 13. Typical and illustrative of the statements and representations in those advertisements described in Paragraph Twelve, disseminated as aforesaid, but not all inclusive thereof, are the following:

Lose ten pounds with Grapefruit Diet in ten days. A new scientific grapefruit diet that "really works" is sweeping the country, enabling overweight people of all walks of life to easily and quickly become slim, trim and attractive, "while still eating all they want."

The use of Vital-E tablets and foods prescribed in the plan will, through natural action, help your body use up excess fat. Recent clinical tests indicate that Vitamin E added to a diet formerly deficient in it or in protein will "Double the speed of fat utilization."

. . . [T]heir use [Grapefruit Diet Pills] with the foods prescribed in the diet plan will, through nature, act to help your body use up and burn off excess fat and body fluids. . .

New scientific discoveries have produced an "all vitamin" diet tablet that eliminates hunger pangs and prevents overeating. . . . Those who use the new all-vitamin (plus E) diet tablet report that it is so effective you will lose weight the very first day and keep on losing day after day until you reach your most attractive size—without exercise and starvation.

PAR. 14. By and through the use of the above-quoted statements and representations, and others of similar import and meaning, but not expressly set out herein, respondents have represented, and are now representing, directly or by implication, that:

1. Most individuals adhering to the "Grapefruit Diet" will lose ten pounds within ten days and such weight loss will be sustained for other than a temporary period of time.
2. Individuals adhering to the "Grapefruit Diet" can consume food without regard to caloric intake and still lose weight.
3. The consumption of grapefruit, its constituents or extracts, or vitamin E will cause weight loss in whole or in part.
4. The tablets taken in accordance with the "All-Vitamin Diet"

will have a physiological effect which will significantly eliminate or reduce hunger pangs and thereby prevent overeating.

PAR. 15. In truth and in fact:

1. Most individuals adhering to the "Grapefruit Diet" will not lose ten pounds within ten days. In those instances in which an individual does lose ten pounds within ten days the weight loss will be mostly loss of fluid which will be rapidly regained if the user does not continue to restrict his caloric intake.

2. Individuals adhering to the "Grapefruit Diet" cannot consume food without regard for caloric intake in that said plan requires the user to reduce his caloric intake in order to lose weight.

3. The consumption of grapefruit, its constituents or extracts, or vitamin E will not cause weight loss in whole or in part.

4. The tablets taken in accordance with the "All-Vitamin Diet" will not have a physiological effect which will significantly eliminate or reduce hunger pangs and thereby prevent overeating.

Therefore, the statements as set forth in Paragraphs Twelve, Thirteen, and Fourteen in connection with inducing the purchase of foods and drugs were and are misleading in material respects and constituted and now constitute "false advertisements" as that term is defined in the Federal Trade Commission Act, and the acts and practices set forth in Paragraphs Twelve, Thirteen, and Fourteen hereof were and are false, misleading, and deceptive.

PAR. 16. At the time the scientific, medical, or therapeutic representations and statements referred to and described in Paragraphs Six, Seven, Nine, Ten, Twelve, Thirteen, and Fourteen were made respondents directly or by implication represented that they had a reasonable basis for said representations and statements when in truth and in fact respondents had no competent and reliable scientific or medical evidence to support such representations and statements.

Therefore, the statements as set forth in Paragraphs Six, Seven, Nine, Ten, Twelve, Thirteen, and Fourteen in connection with inducing the purchase of foods, drugs, cosmetics, and devices were and are misleading in material respects and constituted and now constitute "false advertisements" as that term is defined in the Federal Trade Commission Act, and the acts and practices set forth in Paragraphs Six, Seven, Nine, Ten, Twelve, Thirteen and Fourteen hereof were and are false, misleading, unfair, and deceptive.

PAR. 17. In the course and conduct of their aforesaid businesses, and at all times mentioned herein, respondents have been, and are now, in substantial competition in, affecting, or having an effect upon commerce, with corporations, firms, and individuals in the sale

of products of the same general kind and nature as those sold by respondents.

PAR. 18. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations, acts and practices, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 19. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in, affecting, or having an effect upon commerce and unfair or deceptive acts and practices in, affecting, or having an effect upon commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

COUNT II

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Nineteen above are incorporated in Count II as if fully set forth verbatim.

PAR. 20. In the course and conduct of their aforesaid businesses, and for the purpose of inducing the purchase of art prints, respondents, individually and with each other, have made numerous statements and representations in circulars, periodicals, and other materials with respect to the nature of their business and products.

Typical and illustrative of such statements and representations, but not all inclusive thereof, are the following:

PUBLIC OFFERED 1937 U.S. GOV'T ART PRINTS.

Send cash, check or money order to: U.S. Surplus, Department C, P.O. Box 605, Tarzana, Calif. 91356.

PAR. 21. By and through the use of the above-quoted statements and representations, and others of similar import and meaning, but not expressly set out herein, respondents have represented and are now representing, directly or by implication, that:

1. The United States government or any of its agencies, subdivisions, instrumentalities, or representatives or agents in their official capacities printed or caused to be printed in 1937 certain art prints sold by respondents.

2. Respondents' business engaged in the sale of art prints is a United States government agency, enterprise or entity and that

respondents' sale of said art prints is sponsored by or supported under the auspices of the United States government or any of its agencies, subdivisions, instrumentalities, or representatives or agents in their official capacities.

PAR. 22. In truth and in fact:

1. The United States government or any of its agencies, subdivisions, instrumentalities, or representatives or agents in their official capacities did not print or cause to be printed the said 1937 art prints.

2. Respondents' business engaged in the sale of art prints is not a United States government agency, enterprise or entity and respondents' sale of said art prints is not sponsored by or supported under the auspices of the United States government, or any of its agencies, subdivisions, instrumentalities, or representatives or agents in their official capacities.

Therefore, respondents' statements or representations as set forth in Paragraphs Twenty and Twenty-One hereof, were and are false, misleading, and deceptive.

PAR. 23. In the course and conduct of their aforesaid businesses, and for the purpose of inducing the purchase of entry blank forms for reserving the right to purchase lottery tickets or to enter a lottery or lotteries, respondents, individually and with each other, have made numerous statements and representations in circulars, periodicals and other materials with respect to the nature of said entry blank forms.

Typical and illustrative of these statements and representations, but not all inclusive thereof, are the following:

You can become a "millionaire over night" with a 50¢ per week gamble in a legalized eastern state sponsored lottery no matter where you now live.

Your chances are great! There are on an average of 20,000 WINNERS EACH WEEK ranging from \$40, \$400, \$4,000 to \$50,000. You also have a chance to win the "Millionaire" Grand Prize which is drawn once every six weeks.

Winners, who now come from all over the country, are promptly notified and automatically paid by the State Treasury through a computerized system. It's absolutely legal, State Government sponsored, certified and honest. Take a chance! You may win a fortune!

Everybody can participate no matter where you live. To get your simple entry blank and full details send \$3. . .

PAR. 24. By and through the use of the above-quoted statements and representations, and others of similar import and meaning, but not expressly set out herein, respondents have represented, directly or by implication, that:

1. Those who purchase said entry blank forms from respondents are purchasing lottery tickets or are entering a lottery or lotteries sponsored by a state government.

PAR. 25. In truth and in fact:

1. A purchaser does not purchase a lottery ticket and does not enter a lottery or lotteries. Instead, a buyer receives an application form for a lottery ticket reservation plan which requires additional payment to the State of New Jersey before the buyer may enter a lottery.

Therefore respondents' statements and representations as set forth in Paragraphs Twenty-Three and Twenty-Four hereof, were and are false, misleading, and deceptive.

PAR. 26. The use by respondents of aforesaid false, misleading, and deceptive statements, representations, acts and practices, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 27. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having issued its complaint on May 11, 1976, charging respondents with violation of Sections 5 and 12 of the Federal Trade Commission Act, and the respondents having been served with a copy of that complaint and the administrative law judge having issued his order on October 18, 1976, amending the said complaint in accordance with Sections 3.15(a)(1) and 3.22 of the Commission's Rules, and the respondents having been served with a copy of that order; and

The Commission having duly determined upon a joint motion of complaint counsel and respondents' counsel that in the circumstances presented, the public interest would be served by withdrawal of the matter from adjudication pursuant to Section 3.25 of the Commission's Rules; and

The respondents and complaint counsel having 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 respondents that the law has been violated as alleged in such complaint, as amended, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(d) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent Vital-E is or was a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, trading and doing business under its own name and as Mail Order Services, with its principal office and place of business located at 18588 Ventura Boulevard, Tarzana, California.

Respondent Advertising Unlimited of America, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, trading and doing business as Normond Linder & Associates, with its principal office and place of business located at 12400 Santa Monica Boulevard, Los Angeles, California.

Respondents Milton Kalman, Sharon Kalman, also known as Sharon Fernandez and as Sharon Hoffman, and Normond Linder are individuals and are or were officers of corporate respondent Vital-E. They formulate(d), direct(ed) and control(led) the acts and practices of corporate respondent Vital-E. Respondents Milton Kalman and Sharon Kalman, individually and with each other, have also operated various other business entities under various fictitious trade names. Respondent Normond Linder is an officer of corporate respondent Advertising Unlimited of America, Inc. Respondent Normond Linder formulates, directs, and controls the acts and practices of respondent Advertising Unlimited of America, Inc. The business address of respondent Milton Kalman is 18588 Ventura Boulevard, Tarzana, California. The business address of Sharon Kalman is 18584 Ventura Boulevard, Tarzana, California. The business address of respondent Normond Linder is 12400 Santa Monica Boulevard, Los Angeles, 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

Definitions

"Capacity of an advertising agent" refers to the creation, preparation or placement of advertising by a designated respondent (or the respondent's officers, agents, representatives, and employees) on the behalf of others for the receipt of compensation which is reasonable and customary in the advertising industry.

"Food," "drug," "cosmetic," and "device," when explicitly or implicitly referring to products, shall be defined as these terms are defined in the Federal Trade Commission Act, as amended.

I.

It is ordered. That respondents Vital-E, a corporation trading and doing business under its own name and as Mail Order Services; and Advertising Unlimited of America, Inc., a corporation trading and doing business as Normond Linder & Associates; and Milton Kalman, individually and as an officer of corporate respondent Vital-E; and Sharon Kalman, also known as Sharon Fernandez and as Sharon Hoffman, individually and as an officer of corporate respondent Vital-E; and Normond Linder, individually and as an officer or former officer of corporate respondent Vital-E and as an officer of corporate respondent Advertising Unlimited of America, Inc.; and each of the respondents, their successors and assigns, and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of skin creams, oils and lotions; weight-reduction and body-size-reduction devices; physical-appearance-improvement devices; diet plans; dietary and vitamin supplements; any food, drug, cosmetic, or device; or any other products; do forthwith cease and desist from:

1. Disseminating, or causing to be disseminated, by means of the United States mail or by any means in, affecting, or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, any advertisement which represents, directly or by implication, that:

A. Vitamin E, vitamin E oil, or ginseng oil is effective or has value in transmitting oxygen to skin areas.

B. The transmission of oxygen to adversely affected skin areas is of therapeutic or cosmetic value.

C. Vitamin E is effective or of value in making suntanning safer or more effective.

D. Vitamin E, vitamin E oil, or ginseng oil is effective or of value in treating rough skin, blemishes, scars, stretch marks or any other adverse skin condition.

E. Any cream, oil, lotion, drug, cosmetic or any other product is effective or of value in treating or eliminating blemishes, scars, burns, wounds, stretch marks, or any other adverse skin condition, unless respondents can establish such is the fact.

F. Vitamin E, vitamin E oil, ginseng oil, or any cream, oil, lotion, cosmetic, drug or other product is effective or of value in treating or eliminating wrinkles, creases, aging skin or is effective or of value in hindering, stopping, or reversing the aging process.

G. The "Reducing Belt," "Sauna Suit," or any other device purported to be effective or of value for the purpose of weight control, weight reduction, or reduction in body size, without dieting or exercise, is effective or of value for that said purpose.

H. The "Trim-A-Chin" or any other device purported to firm, contour, or eliminate sagging jowls is effective or of value in firming, contouring, or eliminating sagging jowls.

I. Any diet plan, dietary or vitamin supplement, or any other purported weight-control, weight-reducing, or body-size-reducing product or any other product is based upon recent significant or revolutionary scientific or medical discoveries or techniques, unless respondents can establish such is the fact.

J. Vitamin E, vitamin E oil, ginseng oil, any diet plan, dietary or vitamin supplement, or any other purported weight-control, weight-reducing or body-size-reducing device, or any food, drug, cosmetic or device, or other product has any health, nutritional, cosmetic or other use, when such use poses any health or cosmetic risk known to respondents or established by competent and reliable medical or scientific evidence, without

(i) clearly and conspicuously stating in any advertisement for said product that the product may pose health or cosmetic risks to some users;

(ii) clearly and conspicuously stating on the product or its container, or in instructions accompanying the product, the extent and nature of such risks;

(iii) making to the purchaser a bona fide offer of a full refund of the price paid by the purchaser, with this refund to be paid within a reasonable period of time; and

(iv) clearly and conspicuously stating in immediate conjunction with the statement required by provision I.1.J. (ii) that the purchaser may receive a refund as described in provision I.1.J.(iii).

K. Any diet plan, dietary or vitamin supplement, or any other purported weight-control, weight-reducing or body-size-reducing product will cause any amount of weight reduction or reduction in body size, or any amount of weight reduction or reduction in body size within any particular period of time, unless respondents can establish such is the fact.

L. Any diet plan, dietary or vitamin supplement, or any other purported weight-control, weight-reducing or body-size-reducing product will cause any amount of weight reduction or reduction in body size, or any amount of weight reduction or reduction in body size within any particular period of time, when most of such reduction in weight or body size will be due to fluid loss.

M. Any diet plan, dietary or vitamin supplement, or any other purported weight-control, weight-reducing or body-size-reducing product is effective or of value for the purpose of weight control or reducing weight or body size, unless in immediate conjunction therewith it is disclosed clearly and conspicuously that any weight control or reduction in weight or body size which might result after use of said product would be by reason of exercise or restriction in caloric intake or a combination of the two.

N. Any diet plan, dietary or vitamin supplement, or any other purported weight-control, weight-reducing or body-size-reducing product will allow the user to lose weight without exercise or restriction in caloric intake.

O. The consumption of grapefruit, its constituents or extracts, vitamin E, or any other food or drug may or will cause weight loss in whole or in part.

P. The consumption of grapefruit, its constituents or extracts, vitamin E, or any other vitamins, or minerals will have a physiological effect which may or will significantly reduce or eliminate hunger or the desire to eat.

Q. The consumption of any food or drug or the use of any other product will significantly reduce or eliminate hunger or the desire to eat, unless respondents can establish such is the fact.

R. Any diet plan, food, drug, cosmetic, device or other product has been used, tested or proved effective by a significant number of individuals, unless respondents can establish such is the fact.

S. Any individual is a nutritionist or has any formal qualifications, training, credentials, scientific, medical or other kind of expert reputation, unless respondents can establish such is the fact.

T. "E-Pill" or vitamin E will restore, maintain, enhance or rejuvenate sexual potency or sexual drives.

U. Any food, drug or device, other than "E-Pill" or vitamin E,

will restore, enhance or rejuvenate sexual potency or sexual drives, unless respondents can establish such is the fact.

2. With the exception of respondents Advertising Unlimited of America, Inc. (a corporation trading and doing business as Normond Linder & Associates) and Normond Linder (individually and as an officer of corporate respondent Advertising Unlimited of America, Inc.), but only to the extent that they act in the capacity of an advertising agent—making any statement or representation, directly or by implication, in, affecting, or having an effect upon commerce, as “commerce” is defined in the Federal Trade Commission Act, as amended, concerning the safety, performance or effectiveness of any skin cream, oil, or lotion; any physical-appearance-improvement device; any diet plan, dietary or vitamin supplement or other purported weight-control, weight-reducing, or body-size-reducing product; or any food, drug, cosmetic or device; unless

A. The statement or representation is substantiated by controlled scientific tests, conducted by recognized experts on behalf of respondents or others, with these tests relied upon by respondents at the time said statement or representation is made; and

B. The results and methodology of the tests required by provision I.2.A., together with the original data collected, are maintained by respondents for so long as material containing said statement or representation is disseminated or approved for dissemination, or said statement or representation is made by respondents, and for a further period of three (3) years after respondents’ last dissemination of such material, termination of approval of dissemination of such material, or last such statement, whichever period is longest; and

C. The records described in provision I.2.B. are so organized as to refer to the said statement or representation and may be inspected by Commission staff members upon reasonable notice.

3. Excluding respondents Vital-E, Milton Kalman and Sharon Kalman, as these respondents are described in the main preamble, but including, to the extent that they act in the capacity of an advertising agent, respondents Advertising Unlimited of America, Inc. (a corporation trading and doing business as Normond Linder & Associates) and Normond Linder (individually and as an officer of corporate respondent Advertising Unlimited of America, Inc.)

A. Making any statement or representation, directly or by implication, in, affecting, or having an effect upon commerce, as “commerce” is defined in the Federal Trade Commission Act, as amended, concerning the safety, performance or effectiveness of any skin cream, oil or lotion; any physical-appearance-improvement

device; any diet plan, dietary or vitamin supplement, or other purported weight-control, weight-reducing, or body-size-reducing product; or any food, drug, cosmetic or device; unless there exists competent and reliable scientific or medical evidence to provide a reasonable basis for such statement or representation upon which respondents relied at the time such statement or representation was made.

B. Failing to keep adequate records which may be inspected by Commission staff members upon reasonable notice:

(i) which provided the basis upon which respondents relied at the time the statement or representation as described in provision I.3.A. was made; and

(ii) which shall be maintained by respondents for so long as material containing said statement or representation is disseminated or approved for dissemination, or said statement or representation is made by respondents, and for a further period of three (3) years after respondents' last dissemination of such material, termination of approval of dissemination of such material, or last such statement, whichever period is longest.

4. With the exception of respondents Advertising Unlimited of America, Inc. (a corporation trading and doing business as Normond Linder & Associates) and Normond Linder (individually and as an officer of corporate respondent Advertising Unlimited of America, Inc.), but only to the extent that they act in the capacity of an advertising agent—misrepresenting by any means or in any manner in, affecting, or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, the quality, merits, or result of use of any food, drug, cosmetic or device, or advertising, offering for sale, selling or distributing the said product or products with the effect, purpose or intent to deceive, to mislead, or to make any false or unsubstantiated claim concerning the quality, the merits, or the result of the use of the said product or products.

5. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of any skin cream, oil or lotion, weight-reduction or body-size-reduction device, physical-appearance-improvement device, diet plan, dietary or vitamin supplement, or any food, drug, cosmetic, or device, in, affecting, or having an effect upon commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, any advertisement which contains any representations prohibited in provisions I.1., 2., 3., and 4. hereto.

II.

It is further ordered, That respondents Vital-E, a corporation trading and doing business under its own name and as Mail Order Services; and Advertising Unlimited of America, Inc., a corporation trading and doing business as Normond Linder & Associates; and Milton Kalman, individually and as an officer of corporate respondent Vital-E; and Sharon Kalman, also known as Sharon Fernandez and as Sharon Hoffman, individually and as an officer of corporate respondent Vital-E; and Normond Linder, individually and as an officer or former officer of corporate respondent Vital-E and as an officer of corporate respondent Advertising Unlimited of America, Inc.; and each of the respondents, their successors and assigns, and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of art prints, order blank forms for reserving the right to purchase lottery tickets or to enter a lottery or lotteries, or any other product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, directly or by implication, that any businesses or enterprises are government agencies or entities, or that any businesses, enterprises, or products are supported, sponsored, endorsed by or affiliated with any government agency or entity, or are supported, sponsored, endorsed by or affiliated with any government officers, agents, representatives or employees in their official capacities, unless respondents can establish such is the fact.
2. With the exception of respondent Advertising Unlimited of America, Inc., a corporation trading and doing business as Normond Linder & Associates, misrepresenting in any manner the nature or scope of respondents' business operations or the source of any product.
3. Advertising for the sale of order blank forms to be used for reserving the right to purchase lottery tickets or to enter a lottery or lotteries without clearly and conspicuously stating therewith that the purchaser is not entering a lottery or lotteries.

III.

It is further ordered, That for a period of ten (10) years from the effective date of this order the individual respondents named herein shall promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new

business or employment engaged, during the time of such employment or affiliation, in the advertising, offering for sale, sale, or distribution of diet plans; dietary and vitamin tablets; products to be applied to skin; physical-appearance-improvement devices; weight-reducing or body-size-reducing devices; foods; drugs; cosmetics; devices; art prints; or order blank forms to be used for reserving the right to purchase lottery tickets or to enter a lottery or lotteries.

It is further ordered, That for a period of ten (10) years from the effective date of this order the individual respondents named herein shall promptly notify the Commission of their acquisition, directly or indirectly, of 10% or more of the beneficial ownership of voting stock in any corporation, or of their disposition of such stock, whenever such disposition results in their beneficial ownership decreasing below 10%; *provided, however,* this provision shall be limited to corporations engaging or which have been engaged in the advertising, offering for sale, sale, or distribution of diet plans; dietary and vitamin tablets; products to be applied to skin; physical-appearance-improvement devices; weight-reducing or body-size-reducing devices; foods; drugs; cosmetics; devices; art prints; or order blank forms to be used for reserving the right to purchase lottery tickets or to enter a lottery or lotteries.

It is further ordered, That respondents, including respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, for a period of three (3) years from the effective date of this order, upon the submission of an advertisement for publication or broadcasting, shall furnish each newspaper, periodical, or other advertising medium with a written statement indicating for which respondents, as respondents are named in this order, the advertisement was created, prepared, disseminated or caused to be disseminated; *provided, however,* this provision shall be limited to the submission of advertisements pertaining to the advertising, offering for sale, sale, or distribution of diet plans; dietary and vitamin tablets; products to be applied to skin; physical-appearance-improvement devices; weight-reducing or body-size-reducing devices; foods; drugs; cosmetics; devices; art prints; or order blank forms to be used for reserving the right to purchase lottery tickets or to enter a lottery or lotteries.

It is further ordered, That respondents, including respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, for a period of three (3) years following an advertisement's last dissemination, shall retain and make available for inspection by Commission staff members upon reasonable notice any advertisement which respon-

dents created, prepared, disseminated or caused to be disseminated, as well as those records indicating the media, by name and address, and date of each dissemination of said advertisement; *provided, however,* this provision shall be limited to advertisements pertaining to the advertising, offering for sale, sale or distribution of diet plans; dietary and vitamin tablets; products to be applied to skin; physical-appearance-improvement devices; weight-reducing or body-size-reducing devices; foods; drugs; cosmetics; devices; art prints; or order blank forms to be used for reserving the right to purchase lottery tickets or to enter a lottery or lotteries.

It is further ordered, That respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions engaged in advertising or in mail order sales.

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a written report setting forth in detail the manner and form in which they have complied with this order.

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

IN THE MATTER OF

ALDENS, INC.

CONSENT ORDER, ECT., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION, EQUAL CREDIT OPPORTUNITY
AND FAIR CREDIT REPORTING ACTS

Docket C-2940. Complaint, Nov. 30, 1978 — Decision, Nov. 30, 1978

This consent order requires a Chicago, Ill. mail order house to cease discriminating against credit applicants on basis of sex or marital status, and to cease failing to timely provide rejected applicants with the reasons for such adverse action. Further, when denial of credit is based on consumer credit reports, the firm is required to furnish affected parties with the names and addresses of reporting companies.

Appearances

For the Commission: *C. Lee Peeler and Sally Gold.*

For the respondent: *Lawrence F. Henneberger and Christopher Smith, Arent, Fox, Kintner, Plotkin & Kahn, Chicago, Ill.*

COMPLAINT

Pursuant to the provisions of the Equal Credit Opportunity Act, as amended, its implementing regulation, Regulation B, the Fair Credit Reporting Act and the Federal Trade Commission Act, and by virtue of the authority vested in it by such Acts, the Federal Trade Commission, having reason to believe that Aldens, Inc., a corporation, has violated the provisions of said Acts and regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. For the purposes of this complaint the following definitions are applicable:

1. The terms "account," "applicant," "application," "contractually liable," "credit," "creditor," "credit transaction," "discriminate against an applicant because of sex or marital status," "marital status" and "open-end credit" shall be defined as provided in Section 202.3 of Regulation B (12 C.F.R. 202.3 (1976)).

2. The terms "consumer report" and "consumer reporting agency" shall have the same meaning as provided in Sections 603(d) and 603(f), respectively, of the Fair Credit Reporting Act (15 U.S.C. 1681, 1681a(d) and (f)(1970)).

3. "Joint account" shall mean an account where the nonapplicant spouse will be contractually liable or will be an authorized user