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Complaint

IN THE MATTER OF

IVF AUSTRALIA, LTD., ET AL.

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

*Docket C-3319. Complaint, Dec. 31, 1990—Decision, Dec. 31, 1990*

This consent order prohibits, among other things, a Connecticut based corporation and its two subsidiaries, all of whom are major providers of infertility services, especially *in vitro* fertilization, from misrepresenting in its advertising, promotion, or sale the success rate in achieving pregnancies or births.

*Appearances*

For the Commission: *Michael A. Katz and Michael C. McCarey.*

For the respondents: *Hope S. Foster, O'Connor & Hannan,*  
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that IVF Australia, Ltd., a corporation, IVF Australia (NY), Inc., a corporation, and IVF Australia (MA), Inc., a corporation, hereinafter referred to as respondents, have violated Section 5(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45(a), and that an action by it is in the public interest, issues this complaint and alleges that:

PARAGRAPH 1. Respondent IVF Australia, Ltd., is a Delaware corporation with its principal office and place of business located at 500 West Putnam Avenue, Greenwich, Connecticut.

Respondent IVF Australia (NY), Inc., d/b/a IVF Australia Program at United Hospital, is a Delaware corporation and wholly-owned subsidiary of IVF Australia, Ltd. Its principal office and place of business is located at 406 Boston Post Road, Port Chester, New York.

Respondent IVF Australia (MA), Inc., d/b/a IVF Australia-Boston, is a Delaware corporation and wholly-owned subsidiary of IVF Australia, Ltd. Its principal office and place of business is located at Waltham Weston Hospital & Medical Center, Hope Avenue, Waltham, Massachusetts.

PAR. 2. Respondents are, and have been, engaged in offering and

providing services for the treatment of infertility under the names, "IVF Australia," "IVF Australia at United Hospital," and "IVF Australia-Boston". One of respondents' methods for treating infertility is through *in vitro* fertilization ("IVF").

PAR. 3. Respondents have placed or caused to be placed, and have disseminated or caused to be disseminated, advertising and promotional materials, including, but not limited to, the advertising and promotional materials referred to herein, to promote the services they provide in treating infertility and in particular, their IVF program.

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

PAR. 5. In the course and conduct of its business, respondents have disseminated and caused the dissemination of advertisements and promotional materials relating to its IVF program, by various means, including, *inter alia*, placing advertisements in newspapers and magazines distributed through the mail and across state lines, and mailing promotional materials to prospective infertility patients, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of respondents' infertility services.

PAR. 6. Respondents' advertisements and promotional materials relating to its IVF program contain representations as to their success in achieving live births and pregnancies for patients who purchase respondents' infertility services. Typical of respondents' representations of success in promotional materials is Exhibit A. Typical of respondents' representations of success found in advertisements, but not necessarily all-inclusive thereof, are Exhibits B and C. The aforesaid promotional materials and advertisements contain the following statements, respectively:

1. "Likely Treatment Outcomes. . . Our experience indicates that when a patient at an IVF Australia Program completes four IVF treatment cycles, the chance of giving birth is about 50%. . . . [Presented in diagram which follows] If 25 women begin a total of 100 IVF cycles . . . About 13 (or about 50%) of the women give birth to 18 babies" (emphasis in original) [Exhibit A].

2. "[M]ore than 28% of the couples who complete a cycle of treatment are becoming pregnant" [Exhibit B].

3. "[O]ne out of three couples who complete a cycle of treatment is becoming pregnant" [Exhibit C].

PAR. 7. Through the use of the statements referred to in paragraph six, respondents have represented, directly or by implication, that:

1. Women who participate in a treatment program consisting of four IVF cycles have a 50 percent chance of giving birth as a result of that treatment program.

2. Women who participate in a treatment program consisting of one IVF cycle have better than a 28 percent chance of becoming pregnant as a result of that treatment program.

3. Women who participate in a treatment program consisting of one IVF cycle have a one in three, or 33 percent, chance of becoming pregnant as a result of that treatment program.

PAR. 8. In truth and in fact, women who participate in respondents' treatment program consisting of four IVF cycles have considerably less than a 50 percent chance of giving birth, and women who participate in respondents' treatment program consisting of one IVF cycle have considerably less than a 28 to 33 percent chance of becoming pregnant. Therefore, respondents' representations as set forth in paragraph six were, and are, misleading.

PAR. 9. Through the use of the statements referred to in paragraph six, respondents have represented, directly or by implication, that a specified percentage of their patients have achieved a pregnancy or a live birth without disclosing that respondents, in calculating those percentages, have excluded patients who had begun respondents' IVF treatment programs, but were unable to become pregnant or give birth because they did not achieve an embryo transfer.

PAR. 10. The fact that respondents' success rate statistics have excluded patients who had undergone respondents' treatment programs but who were unsuccessful because they could not achieve an embryo transfer is a material fact, and the failure to disclose it renders respondents' representations of success, as set forth in paragraph six, deceptive because they are likely to mislead potential purchasers of respondents' services into believing that the chances of becoming pregnant or giving birth are greater than they actually are.

PAR. 11. The acts and practices of respondents alleged in this complaint constitute unfair and deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

Commissioner Starek not participating.

## EXHIBIT A

IVF AUSTRALIA PROGRAM AT UNITED HOSPITAL  
406 Boston Post Road, Port Chester, NY 10573  
(914) 934-7484

## APPLICATION/ACCEPTANCE PROCEDURE

Your application to seek treatment with the IVF Australia Program at United Hospital will be processed with appropriate urgency and attention to detail. Together we will need to determine whether

- in vitro fertilization is advisable for you.
- you can enter treatment in a time frame convenient for you.
- you are comfortable with signing our informed consent form.

The following outline will help you estimate the time requirements and probability that your condition makes you acceptable for treatment

| STEPS                                                                                                                                                                                                                                                          | ESTIMATED TIME REQUIRED                                                                                                                     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| 1. You return enclosed application.                                                                                                                                                                                                                            | 3 days                                                                                                                                      |
| 2. We receive and review your medical records.                                                                                                                                                                                                                 | 2 to 4 weeks                                                                                                                                |
| 3. Our medical staff discusses with you whether additional tests are indicated and how they should be conducted. (If you have been treated for infertility for more than a year, it is likely that your existing medical records are adequate.)                | Within 2 weeks of receipt of existing medical records.                                                                                      |
| 4. An initial consultation is arranged and you receive our second information packet which contains more detailed information and consent forms. At the consultation, you will meet as a couple with a physician, nurse, psychologist and financial counselor. | Within 2 to 4 weeks of receipt of complete medical records.                                                                                 |
| 5. If treatment is advised, your first treatment cycle is scheduled.                                                                                                                                                                                           | Treatment to begin within 2 months after you are accepted for treatment, providing that a space is available within the Program's schedule. |

## LIKELY TREATMENT OUTCOMES

The most meaningful way to express IVF success rates is the

chance of treatment resulting in a *live birth*. Our experience indicates that if any patient at an IVF Australia Program completes four IVF treatment cycles, the chance of giving birth is expected to be about 50%. Some women establish a successful pregnancy after one attempt, others after several tries and some do not become pregnant after repeated attempts, depending on the woman's age, the number of embryos available for transfer and to some extent, cause of infertility. Please review the diagram below to understand how success is likely to evolve from each important step in a treatment cycle.

| STEP 1                                                                | STEP 2                                     | STEP 3                                          | STEP 4                                              | STEP 5                                                                                 |
|-----------------------------------------------------------------------|--------------------------------------------|-------------------------------------------------|-----------------------------------------------------|----------------------------------------------------------------------------------------|
| If <u>25</u><br>women begin<br>a total of<br><u>100</u> IVF<br>cycles | About <u>82</u><br>egg retrievals<br>occur | About <u>76</u><br>embryo<br>transfers<br>occur | About <u>18</u><br>clinical<br>pregnancies<br>begin | About <u>13</u> (or<br>about 50%) of<br>the women give<br>birth to <u>18</u><br>babies |

Please note that embryos frozen in an IVF treatment cycle and transferred during a subsequent menstrual cycle may result in additional live births.

#### COST OF TREATMENT

While your treatment may vary depending on your individual needs, you can determine approximate costs from the following sample breakdown of costs that could be incurred during treatment. Please note that this is our current estimate of costs and may change. Costs have been grouped as:

- Basic Evaluation—the basic testing and consultation required prior to your first IVF treatment cycle.
- An IVF Treatment Cycle.
- Cryopreserved Embryo Cycle—applies when you are having embryos transferred which were frozen during one or more prior IVF treatment cycles.

We will assist you in both evaluating and obtaining insurance coverage for treatment. However, we ask that you plan to deposit with us the full cost of treatment in advance.

The following reflects a sample breakdown of fees that could be incurred during an IVF treatment cycle up to and including the first pregnancy test.

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| SERVICES                                           | BASIC<br>EVALUATION<br>(1st cycle only) | IVF TREATMENT<br>CYCLE<br>Nonsurgical<br>(payable in<br>advance of cycle) | CRYOPRESERVED<br>EMBRYO CYCLE |
|----------------------------------------------------|-----------------------------------------|---------------------------------------------------------------------------|-------------------------------|
| Initial Consultation                               | 200                                     |                                                                           |                               |
| Comprehensive Physical<br>& Medication Instruction | 125                                     |                                                                           |                               |
| Hormone Assays (if necessary)                      | (281)                                   |                                                                           |                               |
| Endocrine Monitoring                               | 1,295                                   | 1,425                                                                     |                               |
| Ultrasound Monitoring                              | 220                                     |                                                                           |                               |
| Egg Retrieval                                      |                                         |                                                                           |                               |
| —Physician's Services                              | 1,000                                   |                                                                           |                               |
| Embryology                                         | 715                                     | 640                                                                       |                               |
| Embryo Transfer                                    |                                         |                                                                           |                               |
| —Sounding of Uterus                                | 100                                     | 100                                                                       |                               |
| Ambulatory Surgery                                 | 1,700                                   | 675                                                                       |                               |
| Anesthesiologist                                   | 300                                     |                                                                           |                               |

## NOTE:

1. If the option of cryopreservation is chosen, a \$400 embryology fee will be charged at the onset of each treatment cycle in which embryos are collected and frozen. This fee is credited to the amount charged for a cryopreservation cycle.
2. A \$300 nonrefundable administrative fee is required at the onset of each cycle.
3. If your treatment is discontinued in midcycle, your charges will reflect services incurred up to the point of cancellation.
4. Occasionally a surgical retrieval is medically necessary and an additional \$700 charge is incurred.
5. In our experience, most patients have obtained partial insurance coverage of our fees.
6. Above fees do not include cost of medication and self-administration teaching, estimated to be \$500 per cycle.
7. Fees are subject to change.

## YOUR TIME REQUIREMENTS

## Frozen Embryo Transfer Cycle

If you have had embryos from a treatment cycle frozen (cryopreservation) and stored, they can be transferred to the uterus during a subsequent menstrual cycle. Frozen embryo transfer cycles are much simpler (and also less costly) than an IVF treatment cycle in which eggs are collected. In our experience, 13% of patients who have retrievals have embryos which can be frozen after each treatment cycle.

| APPROXIMATE<br>DAY OF<br>YOUR MENSTRUAL<br>CYCLE | YOUR TIME<br>REQUIRED<br>(Excluding<br>travel time) | NATURE OF YOUR PARTICIPATION                                                         |
|--------------------------------------------------|-----------------------------------------------------|--------------------------------------------------------------------------------------|
| Day 1                                            | 10 minutes                                          | ● Telephone the Program to confirm you are beginning a frozen embryo transfer cycle. |
| Daily from day 8 to 14                           | 30 minutes daily                                    | ● Have a blood sample drawn twice daily.                                             |
| Day 18                                           | 2-3 hours                                           | ● Have frozen embryo(s) transferred to the uterus.                                   |
| Days 28-30                                       | 15 minutes                                          | ● Have blood drawn for pregnancy test.                                               |

**TRAVEL/ACCOMMODATIONS**

United Hospital is located in Port Chester, New York, in Westchester County—at the intersection of I-287 and I-95—about 15 miles northeast of New York City.

**By Automobile**

From New York City-East Side: Take I-95 North to Exit 21, Route 1 North, Port Chester. At the end of the ramp proceed onto Route 1. At the first light turn left into the hospital parking lot.

From New York City-West Side: Take the West Side Highway to the Henry Hudson Parkway to the Saw Mill River Parkway. Take first exit after toll to Cross Country Parkway East to Hutchinson River Parkway North to 287 East (Rye). Take Exit 12, bear right on ramp. At first traffic light turn left and then right into the hospital parking lot.

From upper Westchester or Rockland: From upper Westchester take I-684 to I-287 East. From Rockland take the Tappan Zee Bridge to I-287 East. Get off at Exit 12 (Route 1, Port Chester) and bear right circling back over I-287. At the first light, turn left into the hospital parking lot.

From Connecticut: Travel south on I-95, take the exit for I-287 West and immediately follow the sign for Exit 21 (Midland Avenue, Port Chester). Turn left at the end of the ramp, then take the first right. At the next light, turn right onto Route 1 North. In about a ½ mile, turn left into the hospital parking lot.

**By Train**

Take the New Haven line from Grand Central Station in Manhattan to Rye, New York (approximately a 1/2 hour trip). Cabs are available to the hospital which is a mile from the Rye station. There is a station in Port Chester, but Rye is closer.

**By Plane**

United Hospital is about 13 miles from La Guardia Airport in New York City and three miles from Westchester County Airport in White Plains, New York. The Rye Town Hilton, which is one mile from the hospital, offers limousine service from La Guardia to the hotel.

We can provide additional information on area accommodations.

## EXHIBIT B

## EXHIBIT B

# EACH MONTH WE GIVE 60 COUPLES THE CHANCE OF A LIFETIME.



For couples with infertility problems, waiting for the chance of a lifetime may seem like an eternity.

Yet, it's a reality for one out of six couples in America today.

At United Hospital, we're not simply accepting this alarming fact of life. We're doing something about it.

Which is why we're offering the IVF Australia Program, an in vitro fertilization program that utilizes advanced technology and training developed by the world-renowned physicians and scientists at Monash University, Melbourne, Australia.

As a result, more than 28% of the couples who complete a cycle of treatment are becoming pregnant. And that makes us one of the most successful in vitro fertilization programs in the world.

What's more, these couples have become pregnant without surgery, using ultrasound-guided transvaginal egg retrieval.

And our experience to date shows that our patients are receiving 80% insurance reimbursement.

Not surprisingly, the IVF Australia Program at United Hospital has become the largest in vitro fertilization program in the nation, while maintaining a commitment to patient-centered care.

For more information, please call (914) 934-7484. Or ask your physician. The IVF Australia Program at United Hospital.

It may be the chance of a lifetime.



**United Hospital**



IVF Australia Program at United Hospital, 406 Boston Post Road, Port Chester, NY 10573, (914) 934-7484.

## EXHIBIT C

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# EACH MONTH WE GIVE 80 COUPLES THE CHANCE OF A LIFETIME.



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It may be the chance of a lifetime.



**IVF Australia Program at United Hospital**

605 Boston Post Road, Port Chester, NY 10573, (914) 934-7484

## DECISION AND ORDER

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

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such an agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent IVF Australia, Ltd., 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 500 West Putnam Avenue, Greenwich, Connecticut.

Respondent IVF Australia (NY), 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 406 Boston Post Road, Port Chester, New York.

Respondent IVF Australia (MA), 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 Waltham Weston Hospital & Medical Center, Hope Avenue, Waltham, Massachusetts.

2. The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding and of the respondents, and the proceeding is in the public interest.

#### ORDER

##### I.

*It is ordered*, That respondents, IVF Australia, Ltd., a corporation, its successors and assigns, IVF Australia (NY), Inc., a corporation, its successors and assigns, and IVF Australia (MA), Inc., a corporation, its 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, promotion, sale or offering for sale of services relating to the treatment of infertility through *in vitro* fertilization, do forthwith cease and desist from representing, directly or by implication, that a percentage of respondents' patients have given birth or achieved pregnancy, unless:

A. The percentage represented accounts for all patients who received medication in an effort to stimulate ovulation in connection with the provision of *in vitro* fertilization services; or

B. Respondents disclose the basis used in calculating or arriving at the percentage represented. Such disclosure shall include the numerator and denominator used in calculating the percentage represented, and shall be made clearly and prominently, in close proximity to such percentage, and in a manner that can be easily understood by prospective purchasers of respondents' services.

##### II.

*It is ordered*, That respondents, IVF Australia, Ltd., a corporation, its successors and assigns, IVF Australia (NY), Inc., a corporation, its successors and assigns, and IVF Australia (MA), Inc., a corporation, its 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, promotion, sale or offering for sale of services relating to the treatment of infertility, do forthwith cease and desist from representing, directly or by implication, that a number or percentage of respondents' patients give birth or achieve pregnancy, or have given

birth or achieved pregnancies, unless such is the case, or otherwise misrepresent respondents' success rate in achieving births or pregnancies.

### III.

*It is further ordered,* That respondents shall maintain for a period of three (3) years after the date the representation was last made, and make available to the Federal Trade Commission upon request, business records supporting any claims of success in connection with their infertility treatment programs.

### IV.

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

### V.

*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 with all requirements of this order.

Commissioner Starek not participating.

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Complaint

IN THE MATTER OF

## GUILD MORTGAGE COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE TRUTH IN LENDING ACT, REGULATION Z, AND  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-3320. Complaint, Dec. 31, 1990—Decision, Dec. 31, 1990*

This consent order requires, among other things, a San Diego, Ca., corporation to accurately calculate and disclose the annual percentage rate, finance charge, payment schedule and other information required by Regulation Z; and to make adjustments to the accounts of consumers listed, by paying restitution to consumers totalling almost \$500,000 over a five-year-period.

*Appearances*

For the Commission: *Carole L. Reynolds* and *Stephen Cohen*.

For the respondent: *Stephen Douglas Royer, Seltzer, Caplan, Wilkins & McMahon*, San Diego, CA.

## COMPLAINT

The Federal Trade Commission, having reason to believe that Guild Mortgage Company, a corporation, hereinafter sometimes referred to as respondent, has violated the Federal Trade Commission Act (FTC Act), 15 U.S.C. 45-58, as amended, and the Truth in Lending Act (TILA), 15 U.S.C. 1601-1667, as amended, and its implementing Regulation Z, 12 CFR Part 226, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint and alleges:

PARAGRAPH 1. Guild Mortgage Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 4180 Ruffin Road, San Diego, California.

PAR. 2. Respondent has been and is now engaged in the business of offering "consumer credit" to the public and is a "creditor," as those terms are defined in the TILA and Regulation Z.

PAR. 3. The acts and practices of respondent alleged in this