

IN THE MATTER OF
TWIN STAR PRODUCTIONS, INC., ET AL.

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

*Docket C-3307. Complaint, Oct. 2, 1990—Decision, Oct. 2, 1990**

This consent order prohibits, among other things, an infomercial marketing corporation and six individuals, all based in Scottsdale, Arizona, from making specified representations regarding the efficacy of certain purported weight loss, baldness and impotence products; from making unsubstantiated efficacy claims concerning weight loss, baldness and impotence for any products or services; from using endorsements, unless the respondents have good reason to believe that the endorsements reflect the honest opinion or belief of the endorser; from disseminating four different infomercials, including a 30-minute advertisement for a book; and from misrepresenting that their commercials are independent programs and not paid advertising. In addition, the consent order requires the corporation and five of the six individuals to pay a total of \$1.5 million in consumer redress.

Appearances

For the Commission: *Tracy S. Thorleifson, Charles A. Harwood and Patricia A. Hensley.*

For the respondents: *Robert Fleishman, Steptoe & Johnson, Washington, D.C. and Sheldon Lustigman, New York, N.Y.*

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 Twin Star Productions, Inc., a corporation, and Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officers of said corporation, hereinafter sometimes 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:

*Prior to leaving the commission, former Commissioner Calvani registered a vote in the affirmative for issuing the complaint and the order in this matter.

PARAGRAPH 1. (a) Respondent Twin Star Productions, Inc. ("Twin Star"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware.

(b) Twin Star has its principal office and place of business at 7345 E. Evans Road, Scottsdale, Arizona. Twin Star advertises, markets, and sells numerous products throughout the United States, and intends to market and sell new products. Among other things, Twin Star advertises, markets, and sells a weight-loss product, the "EuroTrym Diet Patch," a hair-loss product, "Foliplexx," and an impotence treatment, "Y-Bron."

(c) Respondent Jerald H. Steer is an officer and shareholder of Twin Star. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. He resides at 4906 East Desert Fairways, Paradise Valley, Arizona.

(d) Respondent Allen R. Singer is an officer and shareholder of Twin Star. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. He resides at 6809 North 48th Street, Paradise Valley, Arizona.

(e) Respondent Judith P. Singer is or was an officer of Twin Star. Individually or in concert with others, she formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. She resides at 6809 North 48th Street, Paradise Valley, Arizona.

(f) Respondent Douglas E. Gravink is an officer and shareholder of Twin Star. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. He resides at 14836 North 57th Place, Scottsdale, Arizona.

(g) Respondent Peter Claypatch is an officer and shareholder of Twin Star. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. He resides at 6514 East Paradise Lane, Scottsdale, Arizona.

(h) Respondent Steven L. Singer is an officer and shareholder of Twin Star. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. He resides at 5702 East LeMarche, Scottsdale, Arizona.

PAR. 2. Respondents are now and for some time have been engaged in advertising, marketing and selling numerous products throughout the United States, primarily by means of television advertisements made to simulate independent investigative news programs, talk shows, or regular television programs. Among other things, respondents have advertised, marketed and sold a weight-loss product, the "EuroTrym Diet Patch," a hair-loss product, "Foliplexx," an impotence treatment, "Y-Bron," and a book titled *How to Start Your Own Business By Doing Business with the Government*. Respondents' program-length commercials, which run for 30 minutes or less and fit within normal television broadcasting time slots, are broadcast on network, independent and cable television stations an aggregate of approximately 1,000 to 2,500 times each month on approximately 500 television stations throughout the United States.

PAR. 3. Respondents are engaged in the advertising, offering for sale, sale and distribution of food, drugs, devices, cosmetics, and other general products found in commerce. In particular, the EuroTrym Diet Patch, Foliplexx, and Y-Bron come within the classification of "drug," as that term is defined in Section 15(c) of the FTC Act, 15 U.S.C. 55(c).

PAR. 4. The acts and practices of respondents alleged in this complaint have been or are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. 44.

EUROTRYM DIET PATCH

PAR. 5. Since at least 1988, respondents promoted the sale of and sold numerous packages of the EuroTrym Diet Patch to consumers in various areas of the United States. Respondents sold a one-month supply of the EuroTrym Diet Patch for \$49.95, plus shipping and handling costs of \$4.00. Sales of the EuroTrym Diet Patch totalled approximately \$4,833,000. To promote the sale of the EuroTrym Diet Patch, respondents used a 30-minute television commercial identified as "The Michael Reagan Show," which was broadcast in various areas throughout the United States.

PAR. 6. By and through the "Michael Reagan Show" and other statements and depictions, respondents represented, directly or by implication, that:

- (a) Use of the EuroTrym Diet Patch prevents feelings of hunger.
- (b) Use of the EuroTrym Diet Patch enables users to lose substantial amounts of weight.

(c) Use of the EuroTrym Diet Patch enables users to lose weight in a large majority of cases.

(d) Competent and reliable tests or studies establish that the EuroTrym Diet Patch promotes weight loss.

PAR. 7. In truth and in fact:

(a) Use of the EuroTrym Diet Patch does not prevent feelings of hunger.

(b) Use of the EuroTrym Diet Patch does not enable users to lose substantial amounts of weight.

(c) Use of the EuroTrym Diet Patch does not enable users to lose weight in a large majority of cases.

(d) No competent and reliable test or study establishes that the EuroTrym Diet Patch promotes weight loss.

Therefore, each of the representations set forth in paragraph 6 was and is false, misleading or deceptive.

PAR. 8. Through the use of the statements and representations set forth in paragraph 6 and others not specifically set forth herein, respondents represented, directly or by implication, that they possessed and relied upon a reasonable basis for each of the representations set forth in paragraph 6 at the time such representations were made.

PAR. 9. In truth and in fact, respondents did not possess and rely upon a reasonable basis for making each of the representations set forth in paragraph 6 at the time such representations were made. Therefore, the representation set forth in paragraph 8 was and is false, misleading or deceptive.

FOLIPLEXX

PAR. 10. Since at least 1988, respondents promoted the sale of and sold numerous packages of Foliplexx to consumers in various areas of the United States. Respondents sold each package of Foliplexx for \$49.95, plus shipping and handling costs of \$4.00. Total sales of Foliplexx exceeded \$4,900,000. To promote the sale of Foliplexx, respondents used a 30-minute television commercial identified as "Breakthrough '88," which was broadcast in various areas throughout the United States.

PAR. 11. By and through "Breakthrough '88" and other statements and depictions, respondents represent, directly or by implication, that:

- (a) Use of Foliplexx curtails loss of hair, thus relieving or preventing baldness.
- (b) Use of Foliplexx promotes growth of new hair where hair has already been lost, thus curing or reversing the advance of baldness.
- (c) Foliplexx is an effective remedy for baldness in a large percentage of cases.
- (d) Competent and reliable tests or studies establish that Foliplexx relieves, cures, prevents, or reverses the advance of baldness.

PAR. 12. In truth and in fact:

- (a) Use of Foliplexx does not curtail loss of hair, and does not relieve or prevent baldness.
- (b) Use of Foliplexx does not promote growth of new hair where hair has already been lost, and does not cure or reverse the advance of baldness.
- (c) Foliplexx is not an effective remedy for baldness in a large percentage of cases.
- (d) No competent and reliable test or study establishes that Foliplexx relieves, cures, prevents, or reverses the advance of baldness.

Therefore, each of the representations set forth in paragraph 11 was and is false, misleading or deceptive.

PAR. 13. Through the use of the statements and representations set forth in paragraph 11 and others not specifically set forth herein, respondents represented, directly or by implication, that they possessed and relied upon a reasonable basis for each of the representations set forth in paragraph 11 at the time such representations were made.

PAR. 14. In truth and in fact, respondents did not possess and rely upon a reasonable basis for making each of the representations set forth in paragraph 11 at the time such representations were made. Therefore, the representation set forth in paragraph 13 was and is false, misleading and deceptive.

Y-BRON

PAR. 15. Since at least 1988, respondents promoted the sale of and sold numerous packages of Y-Bron to consumers in various areas of the United States. Respondents sold each package of Y-Bron for \$49.95, plus shipping and handling costs of \$4.50. Total sales of Y-Bron exceeded \$8,000,000. To promote the sale of Y-Bron, respondents used a 30-minute television commercial identified as "Let's Talk," which was broadcast in various areas throughout the United States.

PAR. 16. By and through "Let's Talk" and other statements and depictions, respondents represent, directly or by implication, that:

- (a) Use of Y-Bron relieves, cures, prevents, or reverses impotence.
- (b) Use of Y-Bron increases sexual drive, ability, desire, or libido.
- (c) Y-Bron is an effective remedy for impotence or increases sexual drive, ability, desire, or libido in a substantial percentage of cases.
- (d) Competent and reliable tests or studies establish that Y-Bron is an effective remedy for impotence or increases sexual drive, ability, desire, or libido.

PAR. 17. In truth and in fact:

- (a) Use of Y-Bron does not relieve, cure, prevent, or reverse impotence.
- (b) Use of Y-Bron does not increase sexual drive, ability, desire, or libido.
- (c) Y-Bron is not an effective remedy for impotence nor does it increase sexual drive, ability, desire, or libido in a substantial percentage of cases.
- (d) No competent and reliable test or study establishes that Y-Bron is an effective remedy for impotence or increases sexual drive, ability, desire, or libido.

Therefore each of the representations set forth in paragraph 16 was and is false, misleading or deceptive.

PAR. 18. Through the use of the statements and representations set forth in paragraph 16 and others not specifically set forth herein, respondents represented, directly or by implication, that they possessed and relied upon a reasonable basis for each of the representations set forth in paragraph 16 at the time such representations were made.

PAR. 19. In truth and in fact, respondents did not possess and rely upon a reasonable basis for making each of the representations set forth in paragraph 16 at the time such representations were made. Therefore, the representation set forth in paragraph 18 was and is false, misleading or deceptive.

DECEPTIVE FORMAT

PAR. 20. By and through "The Michael Reagan Show," "Break-through '88," and "Let's Talk," respondents represent, directly or by implication, that:

(a) "The Michael Reagan Show" is an independent consumer program that discusses a variety of topics, including products like the Eurotrym Diet Patch.

(b) "Breakthrough '88" is an independent consumer program that conducts independent and objective investigations of products like Foliplexx.

(c) "Let's Talk" is an independent consumer program that discusses a variety of topics, including products like Y-Bron.

PAR. 21. In truth and in fact:

(a) "The Michael Reagan Show" is not an independent consumer program or anything other than paid commercial advertising;

(b) "Breakthrough '88" is not an independent consumer program or anything other than paid commercial advertising;

(c) "Let's Talk" is not an independent consumer program or anything other than paid commercial advertising.

Therefore, the representations set forth in paragraph 20 are false, misleading or deceptive.

PAR. 22. Respondents are producing or have produced other program-length commercials for the purpose of advertising, marketing, or selling various products. By and through these program-length commercials, respondents, in numerous instances, represent, directly or by implication, that such commercials are something other than paid commercial advertising.

PAR. 23. In truth and in fact, respondents' program-length commercials are paid commercial advertising. Therefore, the representation set forth in paragraph 22 was and is false, misleading or deceptive.

ENDORSEMENTS

PAR. 24. By and through their program-length commercials and other statements and depictions, respondents, in numerous instances, represent, directly or by implication, that endorsements appearing in advertisements for the Eurotrym Diet Patch, Foliplexx and Y-Bron:

(a) Reflect the honest opinions, findings, beliefs, or experience of the endorser;

(b) Reflect the typical or ordinary experience of members of the public who have used these products; and

(c) Were obtained from individuals or other entities who, at the time of providing their endorsements, were independent from all of the individuals and entities marketing the product.

PAR. 25. In truth and in fact, in numerous instances, the

endorsements appearing in advertisements for the EuroTrym Diet Patch, Foliplexx, Y-Bron:

- (a) Do not reflect the honest opinions, findings, beliefs, or experience of the endorser;
- (b) Do not reflect the typical or ordinary experience of members of the public who have used these products; and
- (c) Were obtained from individuals or other entities who, at the time of providing their endorsements, were not independent from all of the individuals and entities marketing the product.

Therefore, each of the representations set forth in paragraph 24 was and is false, misleading and deceptive.

CONCLUSION

PAR. 26. Respondents' dissemination of the false and misleading representations as alleged in this complaint constitutes unfair or deceptive acts or practices in or affecting commerce in violation of Sections 5(a) and 12 of the FTC Act.

PAR. 27. Respondents' unfair or deceptive acts or practices as alleged in this complaint have caused substantial injury to consumers.

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 Seattle Regional Office 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 agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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. Twin Star Productions, Inc., is a Delaware corporation. Its principal office or place of business is at 7345 E. Evans Road, Scottsdale, Arizona.

2. Jerald H. Steer resides at 4906 East Desert Fairways, Paradise Valley, Arizona. He is an officer and shareholder of Twin Star Productions, Inc.

3. Allen R. Singer resides at 6809 North 48th Street, Paradise Valley, Arizona. He is an officer and shareholder of Twin Star Productions, Inc.

4. Judith P. Singer resides at 6809 North 48th Street, Paradise Valley, Arizona. She is or was an officer of Twin Star Productions, Inc.

5. Douglas E. Gravink resides at 14836 North 57th Place, Scottsdale, Arizona. He is an officer and shareholder of Twin Star Productions, Inc.

6. Peter Claypatch resides at 6514 East Paradise Lane, Scottsdale, Arizona. He is an officer and shareholder of Twin Star Productions, Inc.

7. Steven L. Singer resides at 5702 East LeMarche, Scottsdale, Arizona. He is an officer and shareholder of Twin Star Productions, Inc.

8. 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 respondent Twin Star Productions, Inc., a corporation, its successors and assigns, and its officers, and respond-

ents Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from selling, broadcasting or otherwise disseminating, or assisting others to sell, broadcast or otherwise disseminate, in part or in whole:

A. The 30-minute television advertisement for the EuroTrym Diet Patch described in the complaint and sometimes known as "The Michael Reagan Show."

B. The 30-minute television advertisement for Foliplexx described in the complaint and sometimes known as "Breakthrough '88."

C. The 30-minute television advertisement for Y-Bron described in the complaint and sometimes known as "Let's Talk" or "Let's Talk with Lyle Waggoner."

D. The 30-minute television advertisement for the book *How to Start Your Own Business By Doing Business With the Government* described in the complaint and sometimes known as "Government Grants."

II.

It is further ordered, That respondent Twin Star Productions, Inc., a corporation, its successors and assigns, and its officers, and respondents Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of the EuroTrym Diet Patch or any other substantially similar weight control or weight reduction product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

- (1) Use of such product or service prevents feelings of hunger;
- (2) Use of such product or service enables users to lose substantial amounts of weight;
- (3) Use of such product or service enables users to lose weight in a large majority of cases; or
- (4) Any competent and reliable test or study establishes that such product or service promotes weight loss.

For purposes of this Part II a “*substantially similar weight control or weight reduction product*” shall be defined as any product that is advertised to cause or aid weight loss through acupressure, acupathy or homeopathy or that uses a bandaid or patch to apply a solution to the skin or that purportedly contains as its active ingredient *calcarea carbonica*.

B. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any other product or service in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, that:

- (1) Use of the product or service prevents or reduces feelings of hunger;
- (2) Use of the product or service enables users to lose substantial amounts of weight;
- (3) Use of the product or service enables users to lose weight in a substantial number of cases; or
- (4) Any competent and reliable test or study establishes that use of the product or service promotes weight loss,

unless the representation is true and, at the time of making the representation, respondents possess and rely upon a reasonable basis consisting of competent and reliable scientific evidence that substantiates the representation. Competent and reliable scientific evidence shall mean for purposes of this order any test, analysis, research, study, survey or other evidence that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

C. Failing to disclose clearly and prominently in any advertisement for any weight control or weight reduction product or service in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, that dieting and/or exercise is required in order to lose weight; *provided, however*, that this disclosure shall not be

required if respondents possess and rely upon competent and reliable scientific evidence demonstrating that the product or service in question is effective without dieting and/or exercise.

III.

It is further ordered, That respondent Twin Star Productions, Inc., a corporation, its successors and assigns, and its officers, and respondents Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officer of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of Foliplexx or any other substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

- (1) Use of such product curtails loss of hair;
- (2) Use of such product promotes growth of new hair where hair has already been lost;
- (3) Use of such product relieves, cures, prevents or reverses baldness;
- (4) Such product is an effective remedy for baldness in a large majority of cases; or
- (5) Any competent and reliable test or study establishes that such product relieves, cures, prevents or reverses the advance of baldness.

For purposes of this Part III, a "*substantially similar product*" shall be defined as any product that is advertised as preventing or reversing baldness or hair loss and that purportedly contains as an ingredient: sulfanated muccopolysaccharides, polysorbates, trichopeptides, takanal, kallikrein, alpha-tocopheral, methyl nicotinate, retinyl palmitate, allantoin, or bovine serum albumin.

B. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any other product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

- (1) Use of the product prevents or reduces loss of hair;

(2) Use of the product promotes growth of new hair where hair has already been lost;

(3) Use of the product relieves, cures, prevents or reverses baldness;

(4) The product is an effective remedy for baldness in a substantial number of cases; or

(5) Any competent and reliable test or study establishes that the product relieves, cures, prevents or reverses baldness,

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

IV.

It is further ordered, That respondent Twin Star Productions, Inc., a corporation, its successors and assigns, and its officers, and respondents Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of Y-Bron or any other substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

(1) Use of such product relieves, cures, prevents or reverses impotence;

(2) Use of such product increases sexual drive, ability, desire or libido;

(3) Such product is an effective remedy for impotence or increases sexual drive, ability, desire or libido in a substantial number of cases; or

(4) Any competent and reliable test or study establishes that such product is an effective remedy for impotence or increases sexual drive, ability, desire or libido.

For purposes of this Part IV, a "*substantially similar product*" shall be defined as any product that is advertised for sale over-the-counter as a sexual stimulant or as a treatment for impotence and that

purportedly contains as its active ingredient yohimbine or any derivative thereof.

B. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any other product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

(1) Use of the product relieves, cures, prevents, reverses or is an effective remedy for impotence;

(2) Use of the product increases sexual drive, ability, desire or libido;

(3) The product is an effective remedy for impotence or increases sexual drive, ability, desire or libido at any stated measure of efficacy; or

(4) Any competent and reliable test or study establishes that the product relieves, cures, prevents or reverses impotence or increases sexual drive, ability, desire or libido,

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

V.

It is further ordered, That respondent Twin Star Productions, Inc., a corporation, its successors and assigns, and its officers, and respondents Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officer of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, regarding the performance, benefits, efficacy or safety of any food, drug or device, as those terms are defined in Section 15 of the FTC Act, 15 U.S.C. 55, unless at the time of making the representation respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

B. Making any representation, directly or by implication, regarding the performance, benefits, efficacy or safety of any product or service (other than a product or service covered under Subpart V.A above), unless at the time of making the representation respondents possess and rely upon a reasonable basis for each such representation.

VI.

It is further ordered, That respondent Twin Star Productions, Inc., a corporation, its successors and assigns, and its officers, and respondents Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Using, publishing, or referring to any endorsement (as "endorsement" is defined in 16 CFR 255(b)), unless respondents have good reason to believe that at the time of such use, publication or reference, the endorsement reflects the honest opinions, findings, beliefs or experience of the endorser and contains no representation that would be false or unsubstantiated if made directly by respondents.

B. Failing to disclose, clearly and prominently, a material connection, where one exists, between an endorser of any product or service and any respondent or respondents. For purposes of this Part VI, a "*material connection*" shall mean any relationship between an endorser of any product or service and any individual or other entity advertising, promoting, offering for sale, selling or distributing such product or service, which relationship might materially affect the weight or credibility of the endorsement and which relationship would not reasonably be expected by consumers.

C. Representing, directly or by implication, that any endorsement of the product or service represents the typical or ordinary experience of members of the public who use the product or service, unless the representation is true.

VII.

It is further ordered, That respondent Twin Star Productions, Inc., a corporation, its successors and assigns, and its officers, and respondents Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officer of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from creating, producing, selling or disseminating:

A. Any commercial or other advertisement for any such product or service that misrepresents, directly or by implication, that it is an independent program and not a paid advertisement;

B. Any commercial or other advertisement for any such product or service fifteen (15) minutes in length or longer or intended to fill a broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer that does not display visually, in a clear and prominent manner, within the first thirty (30) seconds of the commercial and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

"THE PROGRAM YOU ARE WATCHING IS A PAID ADVERTISEMENT FOR
[THE PRODUCT OR SERVICE]."

VIII.

It is further ordered, That respondent Twin Star Productions, Inc., shall pay to the Federal Trade Commission the total amount of one million dollars (\$1,000,000) in three installments in the following manner:

A. The first installment payment of four hundred thousand dollars (\$400,000) shall be paid by respondent Twin Star Productions, Inc., on or before the tenth day following the date of entry of this order.

B. The second installment payment of three hundred fifty thousand dollars (\$350,000) shall be paid by respondent Twin Star Productions,

Inc., no later than one (1) year following the date of entry of this order.

C. The third installment payment of two hundred fifty thousand dollars (\$250,000) shall be paid by respondent Twin Star Productions, Inc., no later than eighteen (18) months following the date of entry of this order.

D. All payments required by Subparts VIII.A, VIII.B and VIII.C of this order shall be made by cashier's check or certified check payable to the Federal Trade Commission and shall be delivered to the Federal Trade Commission, 915 Second Avenue, Suite 2806, Seattle, Washington 98174.

E. Should Twin Star Productions, Inc., default on any portion of any payment required by Subparts VIII.A, VIII.B or VIII.C of this order, Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer shall be jointly and severally liable for the full amount of such payment and for any interest required by Subpart VIII.F of this order.

F. In the event of default of any payment required by Subparts VIII.A, VIII.B or VIII.C of this order, which default continues for more than ten (10) days beyond the due date, all unpaid installments shall become immediately due and payable without any notice required to be given to respondent Twin Star Productions, Inc., and interest, at the rate prescribed under 28 U.S.C. 1961, as amended, as of the date of entry of this order, shall begin to accrue on the unpaid balance commencing as of the date of such default.

G. Respondent Twin Star Productions, Inc., shall execute and record a mortgage, in compliance with the laws of the State of Arizona, on or before the tenth day following the date of entry of this order, to grant and perfect a security interest to the Federal Trade Commission in property acceptable to the Federal Trade Commission and valued by an independent appraisal to have a value of one million dollars (\$1,000,000) or more, in excess of all other perfected security interests, as security for the payments required to be paid by Twin Star Productions, Inc. under Subparts VIII.B and VIII.C of this order and for the payments required to be paid by Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer under Subparts IX.B and IX.C of this order. The appraisal required by this Subpart shall be conducted by an appraiser acceptable to the Federal Trade Commission and paid by Twin Star Productions, Inc. Default by Twin Star Productions, Inc. or by Jerald H. Steer, Allen R.

Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer under the terms of this order will entitle the Federal Trade Commission to enforce this security interest after ten (10) days' notice to respondents. The Federal Trade Commission will release this security interest upon receipt of all payments required by Subparts VIII.B, VIII.C, IX.B and IX.C of this order.

H. The funds paid by respondent Twin Star Productions, Inc., shall be deposited by the Federal Trade Commission in an interest-bearing account and shall be used to provide direct redress to purchasers of the EuroTrym Diet Patch, Foliplexx and/or Y-Bron and to pay any attendant expenses of administration. If the Commission determines that redress to purchasers of these products is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondent Twin Star Productions, Inc., shall be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission.

I. Within ninety (90) days after the date of entry of this order, Twin Star Productions, Inc., shall furnish to the Federal Trade Commission a complete written list containing the name, last known address, telephone number, date of purchase and amount of any refund for each past purchaser of the EuroTrym Diet Patch, Foliplexx and Y-Bron. Twin Star Productions, Inc., shall also provide this list of purchasers in computer readable form, on standard MS-DOS diskettes or IBM-mainframe compatible tape. Further, Twin Star shall provide the name and last known address of each purchaser on pressure-sensitive labels.

IX.

It is further ordered, That respondents Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer shall pay to the Federal Trade Commission the total amount of five hundred thousand dollars (\$500,000) in three installments in the following manner:

A. The first installment payment of one hundred thousand dollars (\$100,000) shall be paid by respondents Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer on or before the tenth day following the date of entry of this order.

B. The second installment payment of one hundred fifty thousand

dollars (\$150,000) shall be paid by respondents Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer no later than one (1) year following the date of entry of this order.

C. The third installment payment of two hundred fifty thousand dollars (\$250,000) shall be paid by respondents Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer no later than eighteen (18) months following the date of entry of this order.

D. All payments required by Subparts IX.A, IX.B and IX.C of this order shall be made by cashier's check or certified check payable to the Federal Trade Commission and shall be delivered to the Federal Trade Commission, 915 Second Avenue, Suite 2806, Seattle, Washington 98174.

E. Should Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer default on any portion of any payment required by Subparts IX.A., IX.B or IX.C of this order, Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer shall be jointly and severally liable for the full amount of such payment and for any interest required by Subpart IX.F of this order.

F. In the event of default of any payment required by Subparts IX.A, IX.B or IX.C of this order, which default continues for more than ten (10) days beyond the due date, all unpaid installments shall become immediately due and payable without any notice required to be given to respondents Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, and interest, at the rate prescribed under 28 U.S.C. 1961, as amended, as of the date of entry of this order, shall begin to accrue on the unpaid balance commencing as of the date of such default.

G. The funds paid by respondents Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer shall be deposited by the Federal Trade Commission in an interest-bearing account and shall be used to provide direct redress to purchasers of the EuroTrym Diet Patch, Foliplexx and/or Y-Bron and to pay any attendant expenses of administration. If the Commission determines that redress to purchasers of these products is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondents Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer shall be notified as to how the funds are disbursed, but shall

have no right to contest the manner of distribution chosen by the Commission.

X.

It is further ordered, That respondent Twin Star Productions, Inc., shall:

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

B. For a period of ten (10) years from the date of entry of this order, provide a copy of this order to each of respondent's principals, officers, directors and managers, and to all personnel, agents and representatives having sales, advertising or policy responsibility with respect to the subject matter of this order who are associated with respondent or any subsidiary, successor or assign, within three (3) days after the person assumes his or her position.

XI.

It is further ordered, That respondent Twin Star Productions, Inc., shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its corporate structure, including but not limited to dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, the planned filing of a bankruptcy petition, or any other corporate change that may affect compliance obligations arising out of this order.

XII.

It is further ordered, That each individual respondent shall, for a period of ten (10) years from the date of entry of this order, notify the Commission within thirty (30) days of the discontinuance of his or her present business or employment and of his or her affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include the respondent's new business address and telephone number, current home address, and a state-

ment describing the nature of the business or employment and his or her duties and responsibilities. The expiration of the notice provision of this Part XII shall not affect any other obligation arising under this order.

XIII.

It is further ordered, That for three (3) years from the date that the practices to which they pertain are last employed, respondents shall maintain and upon reasonable request make available to the Federal Trade Commission, at a place designated by Commission staff for inspection and copying:

A. All advertisements and promotional materials subject to this order;

B. All materials relied on as substantiation for any representation covered by this order;

C. All test reports, studies or other materials in respondents' possession or control at any time that contradict, qualify or call into question any representation of respondents covered by this order or the basis on which respondents relied for such claim or representation; and

D. All other materials and records that relate to respondents' compliance with this order.

This Part XIII shall expire ten (10) years after the date of entry of this order.

XIV.

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

IN THE MATTER OF
MONEY MONEY MONEY, INC., ET AL.

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

Docket C-3308. Complaint, Oct. 2, 1990—Decision, Oct. 2, 1990

This consent order prohibits, among other things, a California corporation and its officer, that create and distribute television programs and commercials for various products, from selling, broadcasting, or disseminating the "Government Grants" commercial, which purports to show people how to secure government grants. The consent order also prohibits respondents from making unsubstantiated claims; from using, publishing or referring to any endorsement, unless it reflects the honest opinion of the endorser, in any future advertisements and from making any commercial that misrepresents that it is an independent program and not a paid commercial. In addition, the consent order requires respondents to turn over \$175,000 to the FTC to be used to establish a consumer redress fund.

Appearances

For the Commission: *Steven A. Shaffer, Jeffrey A. Klurfeld and Sylvia J. Kundig.*

For the respondents: *Montie Day, Day Law Corporation, Oakland, CA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Money Money Money, Inc., a corporation; and Hal Morris, individually and as an officer of Money Money Money, Inc. ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. (a) Respondent Money Money Money, Inc., is a California corporation. Its principal office or place of business is at 155 South El Molino, Suite 203, Pasadena, CA.

(b) Respondent Hal Morris ("Morris") is an officer of respondent Money Money Money, Inc. He formulates, directs and controls the acts and practices of corporate respondent, including the acts and practices