

IN THE MATTER OF

NATIONAL CENTER FOR NUTRITION, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3393. Complaint, Aug. 10, 1992--Decision, Aug. 10, 1992*

This consent order prohibits, among other things, the Virginia marketer of the Ultrafast liquid diet program from misrepresenting the efficacy of any very-low-calorie diet program, and requires the respondent to possess competent and reliable scientific evidence to substantiate any claims about the success of patients on any diet program in achieving or maintaining weight loss. It also requires that claims about the safety of the program be accompanied by a clear disclosure that physician monitoring is needed to minimize the potential for health risks.

Appearances

For the Commission: *Richard F. Kelly, Michael C. McCarey and Walter C. Gross, III.*

For the respondent: *David Smith, Pierson, Semmes & Bemis, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that National Center for Nutrition, Inc., a corporation, (hereinafter "respondent"), has 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. Respondent National Center for Nutrition, Inc., is a Virginia corporation, with its offices and principal place of business at 8560 Cinderbed Road, Suite 1500, Newington, Virginia.

PAR. 2. Respondent is engaged, and has been engaged, in the sale and offering for sale of the physician-supervised Ultrafast very-

low-calorie diet ("VLCD") programs and related nutritional products to the public through cooperating physicians, hospitals and clinics. VLCDs are rapid weight-loss, modified fasting diets of 800 calories or less per day requiring medical supervision. The Ultrafast VLCD diet programs provide between 450 and 800 calories per day. Ultrafast also offers diet programs providing more than 800 calories per day. The Ultrafast diet programs include "foods" or "drugs" within the meaning of Section 12 of the Federal Trade Commission Act, 15 U.S.C. 52.

PAR. 3. Respondent has created advertisements, and provided camera-ready advertising copy to participating physicians, hospitals and clinics for placement in various periodicals that are in general circulation to the public, to promote its Ultrafast diet programs to prospective patients. Typical of respondent's advertising, but not necessarily inclusive thereof, are the advertisements entitled "Ultrafast Now. If you're tired of weighting," "Because your life isn't worth the weight," and "Weight Loss Myth 4" attached hereto as Exhibits A-1 through A-3. Respondent further advertises its Ultrafast diet programs to the public by means of brochures and pamphlets which it provides to participating physicians, hospitals and clinics to give to patients and prospective patients. Typical of respondent's brochures and pamphlets, but not necessarily inclusive thereof, is the brochure entitled "Tired of Being Overweight?" attached hereto as Exhibit B-1.

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

PAR. 5. Respondent's advertising contains the following statements:

(a) "Take control of your weight - and your life - with a weight management program that works."

"Our physician-supervised ULTRAFAST program has shown thousands the safe and effective route to long-term results." (Exhibit A-1)

(b) "Studies have shown that supplemental fasting, when medically supervised, is the quickest, safest way of losing excess body weight...."

"Medically supervised ULTRAFAST offers an effective maintenance program that enables you not only to lose the weight, but to keep it off!" (Exhibit B-1)

(c) "...with our help and your commitment to succeed, you can lose weight, keep it off, feel better about yourself and live longer."

"The ULTRAFast program works. That's why our medical staff and thousands of physicians nationwide trust it for patients seeking long-term results." (Exhibit A-2)

(d) "Weight Loss Myth #4:"

"Once You Lose It, You'll Gain It Back"

"Fact: With most programs success is easy at first. As time goes by, old habits return and so does the weight. But with the support of the ULTRAFast Program, you get a new attitude. The weight stays off." (Exhibit A-3)

PAR. 6. By and through the use of the statements referred to in paragraph five, and others not specifically set forth herein of similar import and meaning, respondent represents, and has represented, directly, or by implication, that the Ultrafast diet programs are unqualifiedly free of health risks. Respondent has failed to disclose that physician supervision is required to minimize the potential risk to patients of the development of health complications on very-low-calorie diets. In view of the representation that the Ultrafast program is free of health risks, the disclosure as to the requirement for medical supervision is necessary. Therefore, in light of respondent's failure to disclose, said representation was and is misleading.

PAR. 7. By and through the use of the statements referred to in subparagraph (b) of paragraph five, and others not specifically set forth herein of similar import and meaning, respondent represents, and has represented, directly, or by implication that competent and reliable scientific tests have established that Ultrafast diet programs are safer than all non-VLCD diet programs.

PAR. 8. In truth and in fact, competent and reliable scientific tests have not established that the Ultrafast diet programs are safer than all non-VLCD diet programs. Therefore, the representations set forth in paragraph seven were and are false and misleading.

PAR. 9. By and through the use of the statements referred to in subparagraphs (a) - (d) of paragraph five, and others not specifically set forth herein of similar import and meaning, respondent represents, and has represented, directly, or by implication that:

(a) The Ultrafast diet programs are successful long-term or permanent treatments for obesity; and

(b) The typical Ultrafast patient is successful in maintaining achieved weight loss.

PAR. 10. By and through the statements and representations referred to in paragraphs five and nine, respondent represents, and has represented, directly, or by implication, that at the time respondent made those representations, respondent possessed and relied upon a reasonable basis for those representations.

PAR. 11. In truth and in fact, at the time respondent made the statements and representations referred to in paragraphs five and nine, respondent did not possess and rely upon a reasonable basis for those representations. Therefore, the representation set forth in paragraph ten was and is false and misleading.

PAR. 12. The dissemination of the aforesaid false and misleading representations constituted, and now constitutes, unfair or deceptive acts or practices in or affecting commerce and false advertisements in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. 45(a) and 52.

Complaint

115 F.T.C.

EXHIBIT A-1

ULTRAFAST NOW

If you're tired of weighting.



Don't shoot the scale!

Take control of your weight — and your life — with a weight management program that works.

Our physician supervised ULTRAFAST program has shown thousands the safe and effective route to long term results.

For more information, call today. And save your scale. You'll be friends again someday soon.

ULTRAFAST

Weight management that makes a difference.

The ULTRAFAST program of FACILITY NAME
Address: City, State, ZIP Telephone
Ask for FIRST NAME

ULTRAFAST NOW

If you're tired of weighting.



Don't shoot the scale!

Take control of your weight — and your life — with a weight management program that works.

Our physician supervised ULTRAFAST program has shown thousands the safe and effective route to long term results.

For more information, call today. And save your scale. You'll be friends again someday soon.

ULTRAFAST

Weight management that makes a difference.

The ULTRAFAST program of FACILITY NAME Address: City, State, ZIP Telephone Ask for FIRST NAME

All the ads on this sheet are reproducible camera-ready artwork. The sizes are standard to most newspapers, but can be enlarged or reduced slightly if needed to fit a particular space.

Your own name and address must be typeset and inserted where indicated. To match the style of these ads, specify the typeface "Galliard".

Exhibit A-1



C-3393
912302
B12901

Don't shoot the scale!

Take control of your weight — and your life — with a weight management program that works.

Our physician supervised ULTRAFAST program has shown thousands the safe and effective route to long term results.

For more information, call today. And save your scale. You'll be friends again someday soon.

ULTRAFAST

Weight management that makes a difference.
The ULTRAFAST program of FACILITY NAME
Address: City, State, ZIP Telephone
Ask for FIRST NAME

ULTRAFAST NOW

If you're tired of weighting.



Don't shoot the scale!

Take control of your weight — and your life — with a weight management program that works.

ULTRAFAST

Ask us about it today.

And save your scale. You'll be friends again someday soon.

ULTRAFAST

Weight management that makes a difference.
The ULTRAFAST program of FACILITY NAME
Address: City, State, ZIP Telephone
Ask for FIRST NAME

Tired of the weight?

ULTRAFAST

Weight management that makes a difference.

The ULTRAFAST program of FACILITY NAME
Address: City, State, ZIP Telephone
Ask for FIRST NAME

722

Complaint

EXHIBIT A-2

...
worth the weight.



Being seriously overweight is most likely shortening your life.

But with our help, and your commitment to succeed, you can lose weight, keep it off, feel better about yourself, and live longer.

The ULTRAFAST® program works. That's why our medical staff and thousands of physicians nationwide trust it for patients seeking long-term results.

Call today for more information.

ULTRAFAST.

Weight management that makes a difference!™

The ULTRAFAST program of
FACILITY NAME
Address, City, State, ZIP Telephone
Ask for FIRST NAME

Because your life isn't
worth the weight.



Being seriously overweight is most likely shortening your life.

But with our help, and your commitment to succeed, you can lose weight, keep it off, feel better about yourself, and live longer.

The ULTRAFAST® program works. That's why our medical staff and thousands of physicians nationwide trust it for patients seeking long-term results.

Call today for more information.

ULTRAFAST.

Weight management that makes a difference!™

The ULTRAFAST program of FACILITY NAME Address, City, State, ZIP Telephone Ask for FIRST NAME

All the ads on this sheet are reproducible camera-ready artwork. The sizes are standard to most newspapers, but can be enlarged or reduced slightly if needed to fit a particular space.

Your own name and address must be typeset and inserted where indicated. To match the style of these ads, specify the typeface "Galliard."

Why weight?

ULTRAFAST.

Weight management that makes a difference!™

The ULTRAFAST program of Facility Name
Address, City, State, ZIP Telephone
Ask for FIRST NAME

Exhibit A-2



C-3393
9123024
B129014

Being seriously overweight is most likely shortening your life.

But with our help, and your commitment to succeed, you can lose weight, keep it off, feel better about yourself, and live longer.

The ULTRAFAST® program works. That's why our medical staff and thousands of physicians nationwide trust it for patients seeking long-term results.

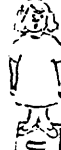
Call today for more information.

ULTRAFAST.

Weight management that makes a difference!™

The ULTRAFAST program of FACILITY NAME
Address, City, State, ZIP Telephone
Ask for FIRST NAME

Because your life isn't
worth the weight.



Being seriously overweight is most likely shortening your life.

But with our help, and your commitment to succeed, you can lose weight, keep it off, feel better about yourself, and live longer.

Ask us about the ULTRAFAST® program today.

ULTRAFAST.

Weight management that makes a difference!™

The ULTRAFAST program of FACILITY NAME
Address, City, State, ZIP Telephone
Ask for FIRST NAME

Why
weight?

ULTRAFAST.

Weight management that makes a difference!™

The ULTRAFAST program of Facility Name
Address, City, State, ZIP Telephone
Ask for FIRST NAME

Complaint

115 F.T.C.

EXHIBIT A-3

Weight Loss Myth #4:

Once You Lose It,
You'll Gain It Back.

Fact: With most weight loss programs success is easy at first. As time goes by, old habits return and so does the weight. But with the support of the ULTRAFAST[®] Program, you get a new attitude. The weight *stays* off. Find out the facts about weight loss. Call today!

ULTRAFAST.*Weight management that makes a difference.™*

YOUR NAME HERE
Address
Phone Number

Weight Loss Myth #4:

Once You Lose It, You'll Gain It Back.

Fact: With most weight loss programs success is easy at first. As time goes by, old habits return and so does the weight. But with the support of the ULTRAFAST[®] Program, you get a new attitude. The weight *stays* off. Find out the facts about weight loss. Call today!

ULTRAFAST.*Weight management that makes a difference.™*

YOUR NAME HERE Address

Phone Number

Once You
Lose It,
You'll Gain It
Back.

C-3393
9123024
B129014

Fact: With most weight loss programs success is easy at first. As time goes by, old habits return and so does the weight. But with the support of the ULTRAFAST[®] Program, you get a new attitude. The weight *stays* off. Find out the facts about weight loss. Call today!

ULTRAFAST.*Weight management that makes a difference.™*

YOUR NAME HERE
Address
Phone Number

Weight Loss Myth #4:

Once You Lose It,
You'll Gain It Back.

Fact: Dieting is easy at first. One time, old habits return and so does the weight. But with ULTRAFAST[®], you get a new attitude. The weight *stays* off. Call today!

ULTRAFAST.*Weight management that makes a difference.™*

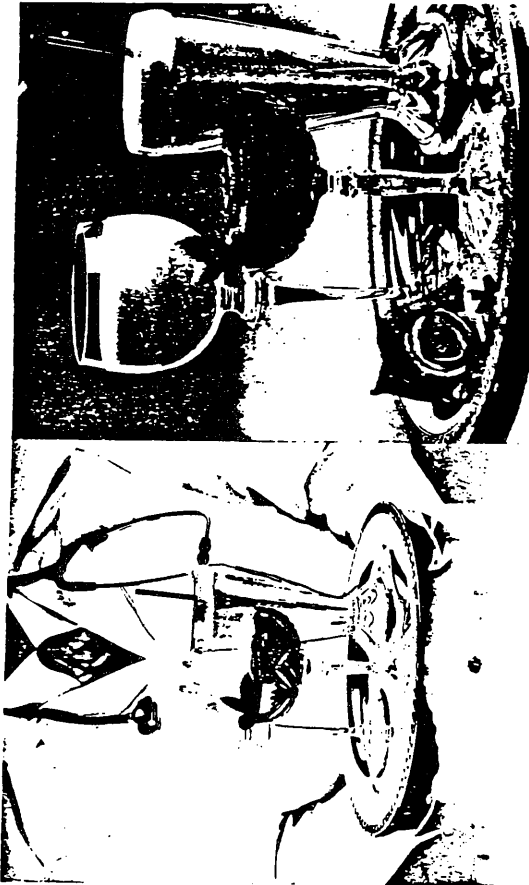
YOUR NAME HERE
Address
Phone number

All the ads on this sheet are reproducible camera-ready artwork. The sizes are standard to most newspapers, but can be enlarged or reduced slightly if needed to fit a particular space.

Your own name and address must be typeset and inserted where indicated. To match the style of these ads, specify the typeface "Galliard."

Exhibit A-3

EXHIBIT B-1



Tired of Being Overweight?

A Physician Supervised
Weight Loss Program

ULTRAFAST

National Center of Nutrition, Inc.
1-800-678-5800 1-703-339-0700
8560 Confield Rd. Suite 1500
Newport News, Virginia 23122
©National Center of Nutrition 1994



ULTRAFAST™ is a dietary supplement
applied only to physicians and
hospitals for the use of treating over-
weight patients. ULTRAFAST™ is nutri-
tionally complete and contains:

The highest biological quality
protein available

More than 100% of the
Recommended Daily Allowance
of essential vitamins, minerals and
trace elements

Adequate amounts of fiber

The ULTRAFAST™ program consists
of a medical-behavioral treatment
regimen for achieving immediate
and lasting results

ULTRAFAST™ is different from other
diet loss programs you may have
in the past. Medically super-
vised, ULTRAFAST™ offers an effective
weight management program, which enables
you to not only lose the weight, but
keep it off! You will be provided
with nutritional counseling, exercise
program, behavior modification
instruction, and most importantly,
supervision and support you may
not receive from a physician and asso-
ciated staff.

Studies have shown that supplemental fasting, when medically supervised, is the quickest, safest way of losing excess body weight. During the program you will experience the following:

- High energy level throughout the program
- **Virtually NO HUNGER**
- A significant reversal in conditions such as: diabetes, hypertension, high blood cholesterol, and other related conditions
- Women: 2-5 lb. weight loss per week
- Men: 3-7 lb. weight loss per week

The ULTRAFAST™ program begins with an Orientation, followed by a Consultation, and progresses into the three phases of the program.

ORIENTATION:

Individual or group question and answer session designed to acquaint prospective patients with the program.

CONSULTATION:

Physical Exam	Urinalysis
Blood Tests	Medical History
EKG	Other Tests as Indicated

PHASE I:

- Supplemental Fasting or Modified Fasting, 12 week period or until goal weight is reached
- Weekly visits
- No whole foods and virtually no hunger
- Weight loss:
Women: 2-5 lbs. per week
Men: 3-7 lbs. per week
- On-going support, guidance and counseling

PHASE II:

- Re-introduction of food, 6 week period (Stabilization of weight)
- Weekly visits
- On-going support, guidance and counseling

PHASE III:

- Maintenance Phase, 6-18 month period (introduces new life style changes)
- Monthly visits
- On-going support, guidance and counseling

The Consultation and all three phases are extremely important to obtain your goals and to insure future success in maintaining your weight loss. Patients show a dramatic improvement in overall health while achieving an average weight loss of 70 pounds.

The cost of the program depends upon the amount of weight to be lost, the time needed to re-introduce food and other factors. The cost of the program is minimal when compared to the medical, physical and mental benefits you will experience during and after the program.

Depending on the insurance company, many of them cover a portion of the costs for office visits, lab work and medical examinations. The Internal Revenue Service has approved a full medical deduction for participation in a weight reduction program undertaken primarily for the treatment or cure of hypertension or other health problems directly related to excessive weight.

Take charge of your life and take the first step to begin your new life.

If you are interested in this program, we urge you to attend one of our orientation sessions. At the orientation, the program will be outlined in detail and any questions you may have will be answered.

The orientation is free of charge and there are no obligations. Schedule a visit, and if you are committed to losing weight, we are committed to helping you.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent 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 respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has 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. Respondent National Center for Nutrition, Inc., is a Virginia corporation, with its offices and principal place of business at 8560 Cinderbed Road, Suite 1500, Newington, Virginia.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITION

For purposes of this order, "*competent and reliable scientific evidence*" shall mean those tests, analyses, research, studies, surveys or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession or science to yield accurate and reliable results.

I.

It is ordered, That respondent National Center for Nutrition, a Virginia corporation, its successors and assigns, officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, or sale of any weight loss or weight control product, program 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 safety of any very-low-calorie diet ("VLCD") program (providing 800 calories or less per day), unless respondent clearly and prominently discloses in close proximity to any such representation that physician monitoring is required to minimize the potential for health risks, or otherwise misrepresenting any health risk of the program.

B. Misrepresenting the likelihood that patients of respondent's diet program(s) will regain all or any portion of lost weight.

C. Making any representation, directly or by implication, about the success of patients on any diet program to achieve or maintain weight loss or weight control unless, at the time of making any such representation, respondent possesses and relies upon a reasonable basis consisting of competent and reliable scientific evidence substantiating the representation; *provided, however*, that for any representation that:

(1) Any weight loss achieved or maintained through any diet program is typical or representative of all or any subset of patients using the program, said evidence shall, at a minimum, be based on a representative sample of: (a) all patients who have entered the program, where the representation relates to such persons; or (b) all patients who have completed a particular phase of the program or the entire program, where the representation only relates to such persons;

(2) Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of patients who were followed for a period of at least two years after completion of respondent's program (including any periods of participation in active maintenance); and

(3) Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of patients who were followed for a period of time after completing the program that is either: (a) generally recognized by experts in the field of treating obesity as being of sufficient length to constitute a reasonable basis for predicting that weight loss will be permanent or (b) demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

D. Representing, directly or by implication, that any patients of any diet program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in close proximity to such representation:

(1) The following information:

(a) The average percentage of weight loss maintained by those patients,

(b) The duration, over which the weight loss was maintained, measured from the date that patients ended the active weight loss phase of the program, *provided, however*, that if any portion of the time period covered includes participation in respondent's maintenance program(s) that follows active weight loss, such fact must also be disclosed, and

(c) If the patient population referred to is not representative of the general patient population for that program, the proportion of the

total patient population in respondent's programs that those patients represent, expressed in terms of a percentage or actual numbers of patients, or the statement: "Ultrafast makes no claim that this [these] result[s] is [are] representative of all patients in the Ultrafast program;" and

(2) The statement: "For many dieters, weight loss is temporary." *Provided, however*, that, respondent shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondent's diet programs.

E. Making comparisons between the safety of respondent's diet program or programs and the safety of any other diet program or programs, unless at the time of making such representation, respondent possesses and relies upon a reasonable basis for making such representation. Such reasonable basis shall consist of a competent and reliable scientific study or studies substantiating the representation in terms of both the safety of respondent's diet program or programs and the safety of the diet program or programs with which the comparison is made.

F. Misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study.

II.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, the filing of a bankruptcy petition, or any other change in the corporation(s) that may affect compliance obligations arising out of this order.

III.

It is further ordered, That respondent 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 staff upon request

for inspection and copying, all materials possessed and relied upon to substantiate any claim or representation covered by this order, and all test reports, studies, surveys or information in its possession or control or of which it has knowledge that contradict, qualify or call into question any such claim or representation.

IV.

It is further ordered, That respondent and its successors or assigns, shall forthwith distribute a copy of this order to each of its officers, agents, representatives, independent contractors and employees, that are engaged in the preparation and placement of advertisements or promotional materials, who communicate with patients or prospective patients, or who have any responsibilities with respect to the subject matter of this order; and, for a period of ten (10) years from the date of entry of this order, distribute same to all of respondent's future officers, agents, representatives, independent contractors and employees having said responsibilities. *Provided, however,* that nothing in this order shall obligate respondent with respect to advertising or promotional materials of participating physicians, hospitals and clinics that are neither owned, operated or controlled by respondent when said advertising is not prepared, approved or placed by respondent.

V.

It is further ordered, That respondent and its successors or assigns shall, within thirty (30) days after service of this order, advise physicians, hospitals and clinics using the Ultrafast diet program that advertising previously furnished by respondent for their use, and brochures, pamphlets and booklets previously provided by respondent to physicians, hospitals, and clinics for dissemination to patients and prospective patients, shall not be further used by those physicians, hospitals and clinics where that advertising or other materials would violate this order. If, after providing the notification required by the first sentence in this paragraph V, respondent becomes aware that any physician, hospital or clinic using the Ultrafast diet program, uses advertising or other materials previously

furnished by respondent that would violate this order, respondent shall again communicate with that physician, hospital or clinic in an attempt to ensure that such advertising or other materials shall not be further used by said physician, hospital or clinic.

VI.

It is further ordered, That respondent and its successors or assigns 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 this order.

Commissioner Owen dissenting with respect to the numerical disclosure requirements for television and radio advertisements.

CONCURRING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

I have voted to accept the consent agreements in these matters. In addition to the injunctive provisions, the advertising disclosures that the orders require are appropriate given the allegations in the complaints that the firms failed to have a basis for previous advertising claims about weight loss maintenance. This does not mean that similar disclosures are necessarily required for other firms in the diet industry. Indeed, if their advertising claims have a valid basis, such a requirement might be unduly burdensome, for firms who routinely use broadcast advertising, and without clear, countervailing benefits for consumers.

STATEMENT OF COMMISSIONER DEBORAH K. OWEN CONCURRING IN PART AND DISSENTING IN PART

The consent orders with these three marketers of very low calorie diet programs go a long way toward protecting consumers against misrepresentations about the safety and efficacy of these programs. However, legitimate concerns have been raised as to whether the mandated, company-specific maintenance disclosures in television and radio ads are effective in communicating useful information to consumers, unduly cumbersome, and consistent with the Commission's position in other situations. Based on comments received and

other information, I believe that consumers would be better served by a different approach to company-specific disclosures when weight-loss maintenance claims are made in certain television and radio advertisements. Accordingly, I have voted in favor of issuing the consent agreements in final form, except as to those provisions, with respect to which I dissent.

I support requiring in all maintenance advertising by these respondents general disclaimers which alert consumers to the fact that weight loss is temporary for many dieters. This counterbalances any unrealistically rosy scenario that a diet program might try to present in this regard. However, the orders compel additional disclosures, including a string of statistics, which may well be among the more informationally complex disclosures that have been required in Commission orders. While these numerically intricate disclosures may ultimately prove helpful to consumers in the context of print ads, which afford the opportunity for absorption, reflection, and comparison, I am concerned that the orders may fail to appreciate that consumers' ability to assimilate such complicated messages is likely to be much poorer for TV and radio ads of 30 seconds or less. One study of FTC orders with disclosure requirements noted that, generally, broadcast media would not appear especially effective in providing detailed or complex disclosures.¹ A more recent study suggests that consumers are less likely to become well informed when certain disclosures are displayed in a video, as compared to a print, format.²

In the past, the Commission itself has recognized that less detailed disclosure requirements are sometimes appropriate for broadcast claims, and has entered orders which tailored the disclosure requirements to particular media. For instance, in *Sorga, Inc.*, 97 FTC 205 (1981), the Commission charged an advertising agency with having made deceptive and unsubstantiated representations about the efficacy and safety of a contraceptive, where the potential adverse

¹ W. Wilkie, *Affirmative Disclosure at the FTC: Communication Decisions*, 6 J. Pub. Pol'y & Marketing 33, 35 (1987).

² See A. Best, *The Talismanic Use of Incomprehensible Writings: An Empirical and Legal Study of Words Displayed in TV Advertisements*, 33 St. Louis U. L. J. 285 (1989).

impact of the misrepresentations was highly serious. Lengthy disclosures were required in print ads, whereas the television and radio ad disclosures were greatly abbreviated. Similarly, in *Southwest Sunsites, Inc.*, 105 FTC 7 (1985), a brief, simple disclosure concerning the riskiness of land purchases was required for radio, television, and short print advertisements, with a lengthy, more complex disclosure mandated for larger print ads, promotional materials, and oral sales presentations. In addition, a detailed disclosure about cancellation rights was required in each land sale contract.

More recently, the Commission has recognized the differences between disclosures in print on labels, and in broadcast media. In Congressional testimony presented in November of last year, the Commission noted that:

we feel it is important that the Commission have the ability to take account of the practicalities of regulating advertising. For example, regulations enacted pursuant to the [Nutrition Labeling and Education Act] might require more extensive explanations of a health claim in food labeling than would be necessary for a television or radio advertisement.³

Finally, the length and detailed nature of the disclosures mandated by the Commission for radio and television ads in these orders appear to resemble proposed Food and Drug Administration labeling disclosure requirements that Commission staff from the Bureau of Consumer Protection and Economics have recently criticized, in the print context of labels. With respect to the length of the numerical disclosures required in connection with relative nutrient content claims, the staff argued:

The length of the required disclosure is a concern primarily because it could reduce the information available to consumers by reducing producers' incentives to make valid relative claims.... Lengthy disclosures contribute to label clutter, which may discourage consumers from reading the information on the label.

³ Prepared Statement of the Federal Trade Commission before the Transportation and Hazardous Materials Subcommittee, Energy and Commerce Committee, U.S. House of Representatives (Nov. 21, 1991) at 12.

The staff proposed, instead, a more concise disclosure similar in length to the general maintenance disclaimer that would be required under these consent orders.⁴

I strongly suspect that many consumers will have great difficulty in absorbing or recalling the relatively complex disclosures of these orders if made during broadcast ads. Although these particular respondents have to date not made great use of broadcast media in marketing their programs, some such undesirable effects from the present orders will still obtain in the broadcast advertising that they do. Moreover, I am very concerned that the approach in these orders may be viewed as precedent in any future matter that involves firms whose use of broadcast media is much more extensive.

In my view, the orders would have been more effective had they required for broadcast ads only the general disclaimer on weight-loss maintenance. But I am also convinced that the other disclosures on percent of weight loss maintained, duration of that maintenance, and the representativeness of the triggering claim would be important in helping consumers decide whether they will get their money's worth when they sign up for a particular program. Consequently, based on available information, I would have supplemented the more concise general disclosure for broadcast ads with requirements that respondents provide at point-of-sale, and prior to the execution of any contract, a clearly written statement of all the disclosures otherwise required,⁵ and that the broadcast ads alert consumers to the

⁴ The staff cited as an example of a problematic mandated disclosure: "Less fat -- 38 percent less fat than our regular popcorn. This popcorn has 5 grams of fat compared to 8 grams in our regular popcorn." They proposed as an alternative: "Less fat -- 3 grams less than our regular popcorn." Federal Trade Commission Staff Comments Before the Dept. of Health and Human Services, Food and Drug Administration, In the Matters of Nutrition Labeling; Nutrient Content Claims; Health Claims; Ingredient Labeling, Prop. Rules, Dkt. Nos. 91N-0384, 84N-0153, 85N-0061, 91N-0098, 91N-0099, 91N-0094, 91N-0096, 91N-0095, 91N-0219 (Feb. 25, 1992) at 39-40.

⁵ See, e.g., *Arthur Murray, Inc.*, 95 FTC 347 (1980) (disclosures required of firm and its franchisees in contracts with consumers); see also, Letter from the Honorable Janet D. Steiger (by direction of the Commission) to Senator Slade Gorton (Sept. 25, 1991) at 7 n.11 ("The principle that detailed information of the kind usually found on labels is most useful when available at the point when comparisons can be made or decisions can be affected has been supported by many

availability of that additional information. This approach, in my view, would provide the relevant information to consumers at a time when they most need it, and in a format more likely to be useful in evaluating and comparing diet programs.

consumer information processing studies.").

IN THE MATTER OF

SANDOZ NUTRITION CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3394. Complaint, Aug. 10, 1992--Decision, Aug. 10, 1992*

This consent order prohibits, among other things, the Minnesota-based marketer of the Optifast diet program from misrepresenting the efficacy of any very-low-calorie diet program, and requires the respondent to possess competent and reliable scientific evidence to substantiate any claims about the success of patients or any diet program in achieving or maintaining weight loss. It also requires that claims about the safety of the program be accompanied by a clear disclosure that physician monitoring is needed to minimize the potential for health risks.

Appearances

For the Commission: *Richard F. Kelly, Michael C. McCarey and Walter C. Gross, III.*

For the respondent: *Daniel Shulman, Gray, Plant, Mooty, Mooty & Bennett, Minneapolis, MN.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Sandoz Nutrition Corporation, a corporation, (hereinafter "respondent"), has 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. Respondent Sandoz Nutrition Corporation is a Delaware corporation, with its offices and principal place of business at 5320 W. 23rd Street, Minneapolis, Minnesota.

PAR. 2. Respondent is engaged, and has been engaged, in the sale and offering for sale of the physician-supervised Optifast 70, and other very-low-calorie diet ("VLCD") programs and related