

IN THE MATTER OF

UNITED WEIGHT CONTROL CORP.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3448. Complaint, July 2, 1993--Decision, July 2, 1993*

This consent order prohibits, among other things, a New York-based marketer of very-low-calorie diet programs (rapid weight loss, modified fasting diets of 800 or fewer calories per day) from making false or unsubstantiated claims about health risks, tests, effectiveness compared to any other diet program, weight loss, or weight loss maintenance; and requires certain disclosures in conjunction with safety and weight loss maintenance claims.

Appearances

For the Commission: *Michael J. Bloom and Alice Au.*

For the respondent: *Nancy L. Buc, Weil, Gotshal & Manges,*
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that United Weight Control Corp., a corporation (hereinafter "UWCC" or "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 United Weight Control Corp. is a Delaware corporation, with its corporate offices at 226 East 54 Street, New York, New York.

PAR. 2. Respondent is engaged, and has been engaged, in the sale and offering for sale of physician-supervised diet programs to the public in joint ventures with hospitals. During the weight loss phase, respondent puts some of its patients on a very-low-calorie

diet ("VLCD"). VLCDs are rapid weight-loss, modified fasting diets of 800 calories or less per day requiring medical supervision. The UWCC 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 and placed advertisements in various periodicals that are in general circulation to the public to promote its diet programs to prospective patients. Respondent has disseminated or has caused to be disseminated advertisements for its diet programs, including, but not necessarily limited to, the exhibits entitled "YOU'VE WON A LOT OF BATTLES BUT YOU'VE NEVER WON THE WAR" and "MOST PEOPLE WHO LOSE WEIGHT GAIN IT BACK. BE THE PERSON WHO DOESN'T," attached hereto as Exhibits A-1 and A-8. Respondent further advertises its diet programs to the public by means of promotional articles which it provides to prospective patients. Respondent has disseminated or has caused to be disseminated promotional materials for its diet programs, including, but not necessarily limited to, the exhibit entitled, "IS PERMANENT WEIGHT LOSS JUST A DREAM TO YOU?," attached hereto as Exhibit B-1. Finally, respondent promotes its diet program to the public by means of orientation sessions for prospective patients.

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.

SAFETY CLAIMS

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

- (a) "The Permanence Program delivers medically-proven safe, healthy weight loss and long-term weight control." (Exhibit A-1)
- (b) "This is the first individualized, completely safe, medically-monitored nutrition education, behavior modification and physical exercise regimen." (Exhibit A-1)
- (c) "For medically-proven safe weight control, CALL: 1-800-765-7475 OR: 1-212-697-8922." (Exhibit A-1)

(d) "The Program is advanced, medically-proven safe and long-term effective." (Exhibit A-2)

(e) "Experts from America's premier University Medical Centers have joined to develop the first program that would safely and effectively address the nation's obesity problems." (Exhibit A-3)

(f) "During the rapid fat loss phase, you will consume the nutritionally complete UWCC formula diet, individually prescribed for you by the program physician to permit you to continue to lose weight of high quality while being assured of the utmost safety." (Exhibit B-1 p. 5)

PAR. 6. By and through the use of the statements set forth in paragraph five, and other statements not specifically set forth herein of similar import and meaning, respondent represents, and has represented, directly or by implication, that the UWCC 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 light of respondent's representation that UWCC diet programs are unqualifiedly 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 set forth in subparagraphs (a), (c), and (d) of paragraph five, and other statements not specifically set forth herein of similar import and meaning, respondent represents, and has represented directly or by implication, that competent and reliable scientific evidence have proven that UWCC diet programs are unqualifiedly free of health risks.

PAR. 8. In truth and in fact, competent and reliable scientific evidence have not proven that the UWCC diet programs are unqualifiedly free of health risks. Therefore, the representation set forth in paragraph seven was and is false and misleading.

MAINTENANCE CLAIMS

PAR. 9. Respondent's advertising contains the following statements:

(a) "FINALLY, A WEIGHT LOSS PROGRAM THAT WORKS EVEN AFTER YOU GO OFF IT." (Exhibit A-4)

(b) "You can jump from one fad diet to the other or you can lose weight once. And forever." (Exhibit A-5)

(c) "You will lose weight quickly, safely, intelligently. More importantly, you'll keep it off." (Exhibit A-5)

(d) "It's a fact. Permanence Program research shows that patients who participate in the weight loss and maintenance program lose weight quickly and safely. More importantly, they keep it off." (Exhibit A-6)

(e) "With The Permanence Program, sustained weight loss, with lasting health benefits, is patient proven." (Exhibit A-1)

(f) "Proven long-term weight loss success." (Exhibit B-1 p.6)

PAR. 10. By and through the use of the statements referred to in paragraph nine, and others not specifically set forth herein of similar import and meaning, respondent represents, and has represented, directly or by implication, that:

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

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

PAR. 11. By and through the statements and representations referred to in paragraphs nine and ten, 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. 12. In truth and in fact, at the time respondent made the statements and representations referred to in paragraphs nine and ten, respondent did not possess and rely upon a reasonable basis for making those representations. Therefore, the representation as set forth in paragraph eleven was and is false and misleading.

PAR. 13. By and through the use of the statements set forth in subparagraphs (d), (e), and (f) of paragraph nine, and other statements not specifically set forth herein of similar import and meaning, respondent represents, and has represented, directly or by implication, that competent and reliable scientific evidence have proven

that UWCC diet programs are successful long-term or permanent treatments for obesity.

PAR. 14. In truth and in fact, competent and reliable scientific evidence have not proven that the UWCC diet programs are successful long-term or permanent treatments for obesity. Therefore, the representation set forth in paragraph thirteen was and is false and misleading.

COMPARATIVE PROGRAM CLAIMS

PAR. 15. Respondents advertising contains the following statements:

(a) "The Risk Reduction Program is the only weight control program developed to reduce the high incidence of heart attacks and other serious health problems among abdominally obese men." (Exhibit A-7)

(b) "FINALLY, A WEIGHT LOSS PROGRAM THAT WORKS EVEN AFTER YOU GO, OFF IT." (Exhibit A-4)

(c) "Most diets turn you into a yo-yo. Your weight goes down and up. The Permanence Program is different. . . . this may well be the most effective, most lasting, most medically sound weight loss program ever created." (Exhibit A-9)

(d) "The Permanence Program differs from other weight loss programs in many critical ways."

DIFFERENCE #1 PRESTIGIOUS TEACHING HOSPITAL AFFILIATIONS. The Permanence Program is the unique weight control program . . .

DIFFERENCE #2 COMPLETE MEDICAL SUPERVISION. Unlike other weight loss regimens, The Permanence Program is doctor-directed and monitored. . . .

DIFFERENCE #4 PROVEN LONG-TERM EFFECTIVENESS. It is no longer inevitable that you will gain back the weight you lose. You can join the many people who are successfully keeping it off with The Permanence Program. [INCLUDES THE CHART OF PP RESULTS OF SUSTAINED WEIGHT LOSS OVER A PERIOD OF 18 MONTHS, WITH AVERAGE WEIGHT LOSS OF 46.5 POUNDS & AVERAGE WEIGHT GAIN OF 4.5 POUNDS OVER 12 MONTHS.] (Exhibit A-8)

(e) "This is the first individualized, completely safe, medically-monitored nutrition education, behavior modification and physical exercise regimen. This unique and scientifically advanced program is affiliated with several of America's most prestigious private university teaching hospitals, as well as leading experts in obesity. . . .

With other diets and weight control programs, most people never really lose the weight. They just sort of misplace it for awhile. With the Permanence Program, the weight can be gone once and forever.” (Exhibit A-1)

(f) “[The Permanence Program] has provided thousands of patients who have been unsuccessful with other diet regimens with the opportunity to finally lose weight safely and rapidly, and keep it off.” (Exhibit A-8)

PAR. 16. By and through the use of the statements set forth in paragraph fifteen, and others not specifically set forth herein of similar import and meaning, respondent represents, and has represented, directly or by implication, that respondent’s diet programs are unique or superior to other diet programs in design and/or effectiveness in promoting weight loss or weight loss maintenance.

PAR. 17. By and through the statements and representations referred to in paragraphs fifteen and sixteen, and others not specifically set forth herein of similar import and meaning, 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. 18. In truth and in fact, at the time respondent made the statements and representations referred to in paragraphs fifteen and sixteen, respondent did not possess and rely upon a reasonable basis for making those representations. Therefore, the representation as set forth in paragraph seventeen was and is false and misleading.

PAR. 19. The acts and practices of respondent alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce and “false advertisements” in violation of Sections 5(a) and 12 of the Federal Trade Commission Act, 15 U.S.C. 45(a) and 52.

Complaint

116 F.T.C.

EXHIBIT A-1

YOU'VE WON A LOT OF BATTLES. BUT YOU'VE NEVER WON THE WAR.

C3448
B141488

You've fought the good fight — lost all that weight — more times than you care to remember.

But, sadly, every weight loss program you've ever tried has ultimately failed you — left you defeated, your self-esteem shot. All those unwanted pounds marching crushingly home again.

(It's an age-old tale told by millions.)

Now, if you can marshal your energies for one last assault, we can assure that you will not only win your battle, but you will win your war.

The Permanence Program delivers medically-proven safe, healthy weight loss and long-term weight control.

There is no other program like it.

The Permanence Program is individually prescribed, doctor-monitored and metabolically designed for fat loss, not muscle loss.

Medical research suggests that when you take off the right kind of weight — at least 75% fat — the chances that you will keep it off are significantly improved.

Health Gains
BLOOD PRESSURE DOWN 10-15%
CHOLESTEROL DOWN 10-15%
TRIGLYCERIDES DOWN 10-15%
GLUCOSE DOWN 10-15%

This unique and scientifically advanced program is affiliated with several of America's most prestigious private university teaching hospitals, as well as leading experts in obesity.

Treatment is personal. Your individualized weight loss prescription is carefully adjusted on a weekly basis through both the weight loss and weight control phases.

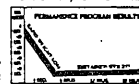


The Permanence Program

is working for thousands of people. It will work for you.

With other diets and weight control programs, most people never really lose the weight. They just sort of misplace it for awhile. With the Permanence Program, the weight can be gone once and forever.

Schedule a free consultation at one of our offices. You're on your way, soldier. Victory is finally at hand.



WIN THE BATTLE. WIN THE WAR.

For medically-proven safe weight control,
CALL: 1-800-765-7475 OR: 1-212-697-8922

THE PERMANENCE PROGRAM

From United Weight Control in Allentown, PA to ST. LUKE'S ROOSEVELT HOSPITAL CENTER

OFFICES IN: MANHATTAN EASTSIDE • MANHATTAN WESTSIDE • BROOKLYN HEIGHTS • NASSAU COUNTY • SUFFOLK COUNTY • ESSEX COUNTY NEW JERSEY
N.Y. Metropolitan Area Teaching Hospital: Albert Einstein College of Medicine; St. Luke's Roosevelt Hospital Center; Long Island College Hospital; Weill-Cornell University Hospital

*Based on 27% weight loss
**For patients attending in Permanence phase 12 months or longer
at 100 lbs. 10% weight loss is 10 lbs. 15% weight loss is 15 lbs.

Exhibit A-1

EXHIBIT A-2

C5446 B14.461

A message straight to the heart of every overweight person. We're your best hope.

Two recent medical news reports significantly affect your life.

1. A study of 115,854 women (ages 30-55) reported in the prestigious New England Journal of Medicine indicates that being even slightly overweight significantly raises the risk of heart disease. The study also shows that women who carry 30% more weight than the ideal triple their risk of heart disease. In an accompanying editorial, Theodore B. Van Itallie, M.D., of St.

Health Gains

BLOOD PRESSURE
DOWN 19.8%
CHOLESTEROL
DOWN 22.2%
TRIGLYCERIDES
DOWN 43.5%
GLUCOSE
DOWN 32.4%

Luke's-Roosevelt Hospital Center, in New York writes "... any remaining belief that some degree of obesity in women is safe is likely to be replaced by deep concern."

2. There is now a lot of debate about the effectiveness of many diet plans and weight approaches. In light of this publicity, experts agree that a physician-supervised, medically directed program with long-term nutrition education, behavior modification and exercise counselling is most effective.

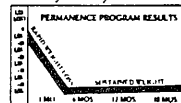
You must lose the weight. And you must keep it off. But how do you deal with this new information?

The Permanence Program is the professional, doctor-supervised weight loss program.

The Program is advanced, medically-proven safe and long-term effective. It is individualized, doctor-directed, and metabolically designed for fat loss, not muscle loss.

The Program includes nutrition education, long-term behavior modification and exercise counseling. A team of doctors, exercise physiologists and registered dietitians starts with you and stays with you.

Average
weight loss:
46.5
pounds.
Average
regain over
12 months: only 4.5 pounds.**



For most patients, medical treatment is insurance company-covered.

Obesity causes heart disease. Heart disease kills. Enroll in the professional weight control program that offers you an opportunity to lose weight safely and rapidly, and keep it off.

Listen to your heart and use your head.

Call for a free consultation.

1-800-765-7475 OR 1-516-772-8922

JOIN THE PERMANENCE PROGRAMSM

IN AFFILIATION WITH

WINTHROP UNIVERSITY HOSPITAL

OFFICES IN: MANHATTAN EASTSIDE • MANHATTAN WESTSIDE • NASSAU COUNTY
SUFFOLK COUNTY • ESSEX COUNTY, NEW JERSEY • PHILADELPHIA • BOSTON

N.J. Member hospitals: New Brunswick Hospital, Atlantic City, N.J. • St. Luke's-Roosevelt Hospital Center, Long Island College Hospital, Winthrop University Hospital

SMBased on 25% weight loss.

^{**}For patients remaining in maintenance phase 12 months or longer who have been enrolled in the Permanence Program in affiliation with St. Luke's-Roosevelt Hospital Center in New York City. In New York, N.J., Medical Services, P.A., In New Jersey, West Jersey Health Services, P.A., In Philadelphia, St. Joseph's Hospital, P.A.

Special financing plans also available.



Physician's

COLOMBIA
5 March 1986

Guerrillas are trying to sabotage the pipeline to Coveñas.

But it is the guerrillas' petition that is causing a major investment in Colombia. In April 1985, the guerrillas in Apartado complained to the United States that the pipeline was in danger of being sabotaged. The guerrillas are threatening environmentalists, talking to the country's head, and saying that they will use oil spills to sabotage the pipeline to Coveñas.

Foreign Companies Are on Two Oil Work is to start next year and a 300-mile pipeline is being built. The pipeline is being built by a consortium of foreign companies. The pipeline is being built by a consortium of foreign companies. The pipeline is being built by a consortium of foreign companies.

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the first

Medical Centers have joined to develop the first

address the nation's obesity problems.

M.D.; Harold Solomon, M.D.

M.D.; Arthur Frank, M.D.

M.D.; Steven Peikin, M.D.

M.D.; R. Steven Peikin, M.D.

M.D.; R. Steven Peikin, M.D.

M.D.; R. Steven Peikin, M.D.

M.D.; R. Steven Peikin, M.D.

M.D.; R. Steven Peikin, M.D.

M.D.; R. Steven Peikin, M.D.

M.D.; R. Steven Peikin, M.D.

M.D.; R. Steven Peikin, M.D.

M.D.; R. Steven Peikin, M.D.

M.D.; R. Steven Peikin, M.D.

M.D.; R. Steven Peikin, M.D.

M.D.; R. Steven Peikin, M.D.

M.D.; R. Steven Peikin, M.D.

M.D.; R. Steven Peikin, M.D.

M.D.; R. Steven Peikin, M.D.

M.D.; R. Steven Peikin, M.D.

M.D.; R. Steven Peikin, M.D.

M.D.; R. Steven Peikin, M.D.



Exhibit A-3 (1 of 3pgs)

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Complaint

EXHIBIT A-3

C3448 B141488



Doctors at university medical centers announce a new approach to weight control.

Recent medical advances have resulted in a unique and safe approach to weight loss and long-term weight control that focuses on significantly reducing health risk factors.

These new comprehensive United Weight Control Programs are offered in affiliation with some of America's finest University Medical Centers, and are staffed by physicians and health care professionals at those centers.

"Weight reduction diets should be tailored

ing Healthy Choice® entrees and ADJUST-A-CAL™ formula diet.

Programs are different for men and women. The goal of the Risk Reduction Program for men is to get rid of dangerous abdominal fat, and reduce risk of heart attack, stroke and diabetes. The Permanence Program addresses the problem of losing and regaining weight repeatedly.

More than just weight loss, health gains.

Most patients experience significant lowering of blood pressure, cholesterol, triglyceride and glucose levels. Further, the programs are designed to preserve lean

Exhibit A-3 (2 of 3pgs)

Complaint

116 F.T.C.

EXHIBIT A-3

C3448

C141488

staffed by physicians and team care professionals at those centers.

"Weight reduction diets should be tailored to the individual needs of the patient; it makes no sense to offer the same diet to all overweight patients." — Theodore Van Itallie, M.D., St. Luke's-Roosevelt Hospital Center, Columbia College of Physicians and Surgeons.

Treatment is individualized, and features a new food/formula program. You get the medical supervision, calorie prescription, nutrition and exercise counseling that's right for your metabolism and your lifestyle. Choose a menu that includes nutritious and appetiz-

regaining weight repeatedly.

More than just weight loss, health gains. Most patients experience significant lowering of blood pressure, cholesterol, triglyceride and glucose levels. Further, the programs are designed to preserve lean muscle tissue—most of your weight loss should be fat loss. These university hospital affiliated United Weight Control Programs now make it easier to attain and maintain a healthy, attractive weight level. Medical treatment is usually covered by private health insurance. *Flexible, affordable payment plans are available.* If you have the will, this is the way.

FOR A FREE CONSULTATION, CALL:
MANHATTAN EASTSIDE 212-697-8922
MANHATTAN WESTSIDE 212-956-8922
NASSAU COUNTY 516-742-8922

Steven R. Peikin, M.D.

Thomas Jefferson University Hospital
 Assoc. Professor of Medicine
 Jefferson Medical College

Arthur S. Gend. M.D.

George Washington University Hospital
 Clin. Assoc. Professor of Medicine
 George Washington University Medical Center

Paul M. Slamon, MD

Brigham and Women's Hospital
 Asst. Clin. Professor of Medicine
 Harvard Medical School

UNITED WEIGHT CONTROL PROGRAMS
in affiliation with ST. LUKE'S-ROOSEVELT HOSPITAL CENTER

(OTHER UNITED WEIGHT CONTROL PROGRAM OFFICES IN PHILADELPHIA AND BOSTON.)

© 1998 by St. Luke's-Roosevelt Hospital Center, New York, N.Y. Medical Services, P.C.

Some of the services are not available in all areas.

EXHIBIT A-4

FINALLY, A WEIGHT LOSS PROGRAM THAT WORKS EVEN AFTER YOU GO OFF IT.

C3448
B142488

This may well be the most medically sound weight loss program ever created, developed in affiliation with the esteemed St. Luke's-Roosevelt Hospital Center.

With it, you will lose weight quickly, safely, intelligently. And, if you adhere to our program, you will keep it off.

FREE CONSULTATION

Visit one of our offices and see how our health care professionals* test and monitor each individual.

Learn how they individualize your weight loss program. Each week, in fact, they customize the amount of formula diet prescribed for you—and then gradually introduce you to a nutritionally sound weight maintenance diet.

Listen to us explain why our program concentrates on the quality of weight you lose, ensuring you lose mostly fat, not lean tissue.

And, let us show you how the quality of the education and related behavior modification we provide will help you keep off the weight you lose.

MEDICAL INSURANCE COVERAGE

In most cases you will find that our program will qualify under your medical insurance.

THE FACTS:

477 POUNDS
AVERAGE
WEIGHT LOSS



ONLY 5.7
POUNDS
REGAINED!

This graph encompasses all current patients who have been through our weight loss program, and have participated in our maintenance program for at least four months. Program patients have lost 17-134 pounds. Average time in our maintenance program is 29.3 weeks.

That's because we're not a fad diet, not merely a formula diet given without proper medical supervision. This is a serious, professionally supervised program that has worked for thousands of others.

Our program's patients have experienced significant improvement in their blood pressure, cholesterol, triglyceride and glucose levels.

CALL

Call today. Schedule an appointment for a free consultation..

THE PERMANENCE PROGRAM

FROM UNITED WEIGHT CONTROL
IN AFFILIATION WITH ST. LUKE'S-ROOSEVELT HOSPITAL CENTER

NOW OPEN IN BROOKLYN: 718-858-8922 MANHATTAN: 212-956-8922 NASSAU: 516-742-8922
in Affiliation With Long Island College Hospital in Affiliation With St. Luke's-Columbia Hospital Center in Affiliation With Winthrop University Hospital
 SUFFOLK: 516-366-0200 ESSEX COUNTY NEW JERSEY: 201-228-2388
in Affiliation With Community Hospital Of Western Suffolk in Affiliation With St. Luke's-Roosevelt Hospital Center
*in New York: Morton H. Marwood, M.D., F.C. in New Jersey: West Essex Health Services, P.A.

Exhibit A-4

Complaint

116 F.T.C.

EXHIBIT A-5

C3448 B141488

FAD DIETS Vs. THE PERMANENCE PROGRAM

You can jump from one fad diet to the other or you can lose weight once. And forever.

The Permanence Program, developed in affiliation with the esteemed St. Luke's-Roosevelt Hospital Center may well be the most medically sound weight loss program ever created.

You will lose weight quickly, safely, intelligently. More importantly, you'll keep it off.

Our individually prescribed weight loss and nutritionally sound weight maintenance programs are led by a highly qualified team of doctors, registered dietitians and exercise physiologists.

THE FACTS

473 POUNDS
AVERAGE
WEIGHT LOSS

ONLY 17
POUNDS
REGAINED!

These graphs are representative of patients who remain in the program. Patients who drop out of the program are not included in the statistics. The 17 pounds regained is the average weight regained by patients who drop out of the program within 12 months.

A recent study indicates that patients who remain in the program lose an average of 473 pounds (from 17 to 134 pounds). They lose mostly fat, not lean tissue. Their blood pressure, cholesterol, glucose and triglyceride levels also improve.

Most patients are even reimbursed by their health insurance.

The Permanence Program has worked for thousands. It can work for you too.

Call today for your free consultation at one of our conveniently located outpatient offices. Convenient office hours available to meet your busy schedule.

THE PERMANENCE PROGRAM™

FROM UNITED WEIGHT CONTROL
IN AFFILIATION WITH ST. LUKE'S-ROOSEVELT HOSPITAL CENTER

AT NEARBY CONVENIENT LOCAL OFFICES

NASSAU: 516-742-8922	SUFFOLK: 516-366-0200	MANHATTAN: 212-956-8922
In Affiliation With Winthrop University Hospital	In Affiliation With Community Hospital Of Western Suffolk	In Affiliation With St. Luke's-Roosevelt Hospital Center
ESSEX COUNTY NEW JERSEY: 201-228-2388	NOW OPEN IN BROOKLYN: 718-858-8922	
In Affiliation With St. Luke's-Roosevelt Hospital Center	In Affiliation With Long Island College Hospital	
The Bronx: York Memorial Hospital, M.D. PC	In New Jersey: West County Hospital Services, PA	

Exhibit A-5

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Complaint

EXHIBIT A-6

THE "I LOVE NEW YORK" DIET
 THE SCARSDALE DIET
 THE BEVERLY HILLS DIET
 THE AIRLINE STEWARDESSES DIET
 THE FIT FOR LIFE DIET
 THE FAT TO WIN DIET
 THE BLOOMINGDALE'S AT HEALTHY DIET
 THE GRAPEFRUIT DIET
 THE WATER DIET
 THE DRINKING MAN'S DIET
 THE RICE DIET
 THE NUTRITECT DIET
 THE BANANA DIET
 THE WHITE DIET
 THE NEVER SAY DIET DIET
 THE SUM FAST DIET
 THE CIDER VANGAR DIET
 THE WEB DIET
 THE CALIFORNIA DIET
 THE CAMBRIDGE DIET
 THE ACURON DIET
 THE TONE TABS DIET
 THE AIDS DIET
 THE HOLLYWOOD PINEAPPLE DIET
 THE RINKERS DIET
 THE LONG WEEKEND DIET
 THE BAHAMIAN DIET
 THE STEAK AND SALAD DIET
 THE BRAIN DIET
 THE NUTRISYSTEMS DIET
 THE L.A. DIET
 THE POPCORN DIET
 THE ROTATION DIET
 THE WILD WEEKEND DIET
 THE UNDERBURNER'S DIET
 THE DIET CENTER DIET
 THE 7 DAY DIET
 THE DR. ATKINS DIET REVOLUTION DIET
 THE DIETS DON'T WORK DIET
 THE IMMUNE POWER DIET
 THE 8 A. DIET FOR WOMEN
 THE PASTA DIET
 THE POST PREGNANCY DIET
 THE FRACON DIET
 THE FIVE STAR VICTORY DIET
 THE NEW AMERICAN DIET
 THE DIET TYPE WEIGHT LOSS PROGRAM
 THE APPLE DIET
 THE JENNY CRAIG DIET

YOU CAN KEEP TRYING DIETS OR YOU CAN LOSE WEIGHT ONCE AND FOREVER.

THE PERMANENCE PROGRAM
 FROM UNITED WEIGHT CONTROL
 3000 CHURCH ST. NEW YORK, N.Y. 10013

NEW YORK OR BOSTON OFFICES: 212-461-4611

NEW YORK OFFICES: 212-461-4611
 BROOKLYN: 212-461-4611
 BOSTON: 212-461-4611
 BOSTON: 212-461-4611
 BOSTON: 212-461-4611

C3448
 B141488

Exhibit A-6

EXHIBIT A-7

ONE OUT OF FOUR AMERICAN MEN IS SERIOUSLY OVERWEIGHT. THEY'RE JUST ASKING FOR A HEART ATTACK.

JOIN THE RISK REDUCTION PROGRAM ST. LUKE'S ROOSEVELT HOSPITAL CENTER

Medical research indicates that 25% of American men are dangerously overweight, and are at significantly increased risk of suffering a heart attack or stroke, developing diabetes, or even dying suddenly.

TAKE THIS 30-SECOND HEART ATTACK TEST

Take off your belt and use it as a measuring tape. First, put it around your hips. Next, put it around your waist. If your waist is bigger than your hips, you are a prime candidate for a heart attack.

The Risk Reduction Program is the only weight control program developed to reduce the high incidence of heart attacks and other serious health problems among abdominally obese men.

Many important features make it the only program of its kind.

DIFFERENCE #1 PRESTIGIOUS TEACHING HOSPITAL AFFILIATIONS.

The Risk Reduction Program is the unique, prudently rapid and safe way to get

rid of dangerous abdominal fat and associated health risks. It was designed by leading cardiac and obesity experts in affiliation with America's most prestigious teaching hospitals. Treatment includes use of the most advanced knowledge in the fields of Nutrition Education, Behavior Modification, Exercise Counseling, and Stress Management.

DIFFERENCE #2 COMPLETE MEDICAL SUPERVISION.

The Risk Reduction Program is doctor-directed and monitored. A team of doctors, registered dietitians and exercise physiologists starts with you and stays with you.

DIFFERENCE #3 EMPHASIS ON ELIMINATING ABDOMINAL FAT.

This serious, medically supervised outpatient program is uniquely tailored to strip off twenty to thirty pounds of fat in just 12 weeks. Improvement occurs quickly. Patients experience significant lowering of blood pressure and cholesterol, triglyceride and glucose levels. An important point is that you need not go through this program more than once. You learn how to keep the weight off so health benefits can become permanent.



DIFFERENCE #4 INDIVIDUALIZED FOR LIFESTYLE AND METABOLIC DIFFERENCES.

The Risk Reduction is the only weight control approach that doesn't force the same standardized diet prescription on every patient. It recognizes that every patient has lifestyle and metabolic characteristics that require individualized treatment.

DIFFERENCE #5 PROVEN LONG-TERM EFFECTIVENESS.

Join the many men who have successfully utilized The Risk Reduction Program to markedly reduce the risk of heart attack by losing abdominal fat quickly. For most patients, medical treatment is insurance company covered.

CALL FOR A FREE CONSULTATION:
1-800-765-RISK or 212-697-8922

BI41486

**MOST PEOPLE
WHO LOSE WEIGHT
GAIN IT BACK.**

**BE THE PERSON
WHO DOESN'T.**

Complaint

116 F.T.C.

EXHIBIT A-8

JOIN THE PERMANENCE PROGRAM™ AT ST. LUKE'S ROOSEVELT HOSPITAL CENTER

The Permanence Program was developed to minimize the high incidence of weight regain associated with diet plans and weight loss regimens. It has provided thousands of patients who have been unsuccessful with other diet regimens with the opportunity to finally lose weight safely and rapidly, and keep it off.

The Permanence Program differs from other weight loss programs in many critical ways.

DIFFERENCE #1

PRESTIGIOUS TEACHING HOSPITAL AFFILIATIONS

The Permanence Program is the unique weight control program designed by leading obesity experts in affiliation with America's most prestigious medical school teaching hospitals. Treatment utilizes the most advanced knowledge in the fields of Nutrition Education, Behavior

Modification and Exercise Counseling

DIFFERENCE #2

COMPLETE MEDICAL SUPERVISION

Unlike other weight loss regimens, The Permanence Program is doctor-directed and monitored. A team of doctors, registered dietitians and exercise physiologists starts with you and stays with you.

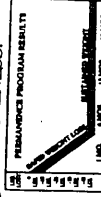
DIFFERENCE #3

INDIVIDUALIZED FOR LIFESTYLE AND METABOLIC DIFFERENCES

The Permanence Program is the only medically directed weight control approach that doesn't force the same standardized diet prescription on every patient. It recognizes that every patient has lifestyle and metabolic differences that require individualized treatment. That's why, unlike other weight loss regimens, The Permanence Program can be metabolic.

ically designed to achieve primarily fat loss, not muscle loss.

DIFFERENCE #4 PROVEN LONG-TERM EFFECTIVENESS



It is no longer inevitable that you will gain back the weight you lose. You can join the many people who are successfully keeping it off with The Permanence Program.

For most patients, medical treatment is insurance company covered.

CALL FOR A FREE CONSULTATION

MANHATTAN EASTSIDE 212-697-8922
MANHATTAN WESTSIDE 212-956-8922
NASSAU COUNTY** 516-742-8922

OTHER PERMANENCE PROGRAM OFFICES IN PHILADELPHIA AND BOSTON

*Having patients participating in maintenance phase 12 months or longer. / In New York, N.Y. Medical Services, P.C. / **In affiliation with Westchester University Hospital

Special financing plans also available

514 4 68

C3448
B141488

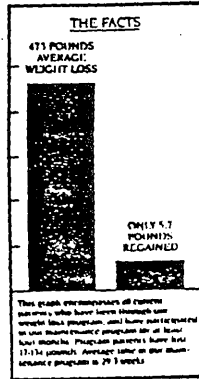
WITH THE PERMANENCE PROGRAM YOU ONLY HAVE TO LOSE WEIGHT ONCE.

Most diets turn you into a yo-yo. Your weight goes down and up.

The Permanence Program is different. Developed in affiliation with the esteemed St. Luke's-Roosevelt Hospital Center, and leading obesity experts, this may well be the most effective, most lasting, most medically sound weight loss program ever created.

Our individually prescribed formula diet and nutritionally sound weight maintenance programs are led by a qualified team of doctors, registered dietitians and exercise physiologists.

This isn't a diet factory. We're serious about helping you lose weight quickly, safely, intelligently.



More importantly, we're committed to helping you keep it off.

A recent study indicates that patients who remain in the program lose an average of 473 pounds (from 17 to 134 pounds). They lose mostly fat, not lean tissue. Their blood pressure, cholesterol, glucose and triglyceride levels also improve.

Most patients are even reimbursed by their health insurance. The Permanence Program has worked for thousands. It can work for you too.

Call today for your free consultation at one of our conveniently located out-patient offices. Convenient office hours to meet your busy schedule.

THE PERMANENCE PROGRAM™

FROM UNITED WEIGHT CONTROL
IN AFFILIATION WITH ST. LUKE'S-ROOSEVELT HOSPITAL CENTER

AT NEARBY CONVENIENT LOCAL OFFICES

NEW YORK: 514-742-8922

SUFFOLK: 516-366-0200

MANHATTAN: 212-956-8922

Affiliation With St. Luke's-Roosevelt Hospital Center. In Affiliation With Community Hospital Of Vermont. In Affiliation With St. Luke's-Roosevelt Hospital Center.

ESSEX COUNTY NEW JERSEY: 201-228-2388 NOW OPEN IN BROOKLYN: 718-858-8922

In Affiliation With St. Luke's-Roosevelt Hospital Center.

In Affiliation With Long Island College Hospital.

The New York, Manhattan 11 Madison St., N.Y.C. In New Jersey: West Essex Health Services, P.A.

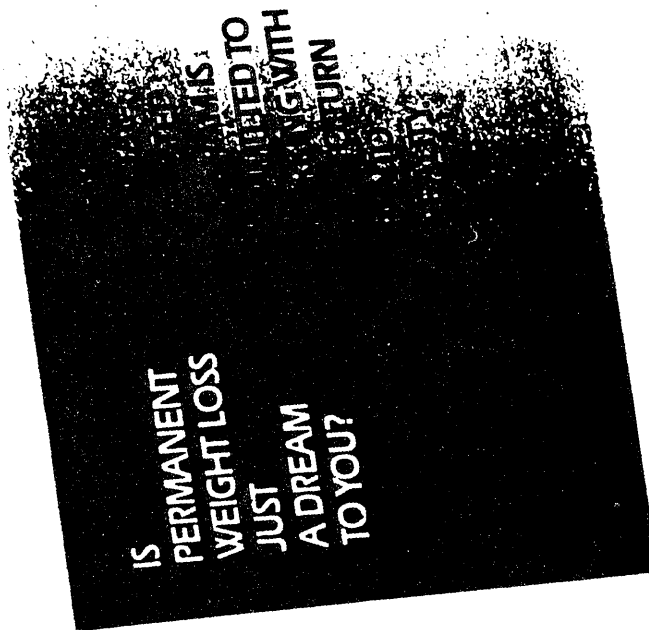
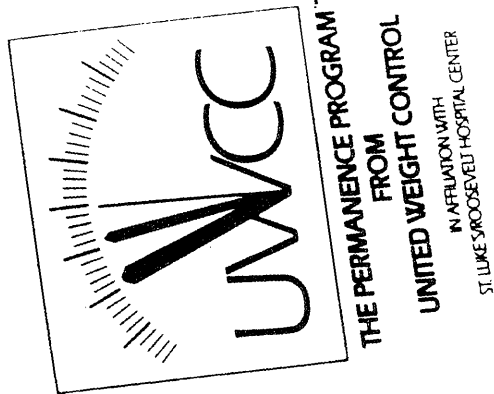
NEWSPAPERS, TUESDAY, MAY 20, 1988

117

Complaint

EXHIBIT B-1

B141488



670

Complaint

EXHIBIT B-1

C3448
B141488**THE TWO SECRETS TO IMPROVING YOUR CHANCES FOR PERMANENT WEIGHT CONTROL**

What makes this program so different from others is its focus on two principles of success which are easy to state but can only be carried out by our highly trained professional staff.*

- Medical Doctors
- Registered Dietitians
- Exercise Physiologists
- Registered Nurses
- Behavioral Counselors

*UNWCC Medical Services, P.C.
100 N. 10th Street, Suite 200, New York, NY 10001

For millions of Americans who are seriously overweight, life has turned into a heartbreaking chain of failed diets. The weight loss achieved today with such great effort is regained usually in a few short months.

If you are one of these people, discouraged with your inability to get control of your weight and worried about the health problems excessive weight may cause... there's a new hospital-affiliated out-patient program that may at last work with you for a permanent solution.

Now, United Weight Control (UWCC) has developed a comprehensive weight control program that we believe is the most advanced of any in existence. It is medically supervised from start to finish. Chief Medical Advisor to the United Weight Control Program is Dr. Theodore Van Itallie, of St. Luke's/Roosevelt Hospital Center, in New York City, a world renowned obesity specialist.

Complaint

116 F.T.C.

EXHIBIT B-1

C3448
B141488**PRINCIPLE ONE: LOSING FAT, NOT LEAN TISSUE**

For too many years, the treatment of obesity has been conducted in an unscientific, simplistic manner. Most programs assume all weight loss is good, the faster the better.

Such programs often sacrifice the quality of weight loss for quantity. Too much weight lost is valuable lean body tissues (water, muscle and organ tissue) instead of fat. Medical research has shown this kind of poor quality weight loss can be dangerous and may contribute to the familiar "yo-yo syndrome" of rapidly regaining lost weight once the diet is over.

The UWCC Permanence Program has been designed to ensure that the weight you lose will be high quality (primarily fat). High quality weight loss is healthier and makes it easier for you to maintain your reduced weight for a long period of time.

PRINCIPLE TWO: INDIVIDUALIZED ATTENTION FROM START TO FINISH

Your weight control problem is as complex and unique as your fingerprint.

UWCC Permanence Program addresses your personal needs with an individualized program that is monitored weekly by our professional staff. You'll receive the precise amount of formula diet you need each week to lose fat fast. And our exercise physiologists are available to give you individualized exercise programs.

This individualized attention doesn't stop when you lose the weight...it continues throughout a maintenance phase. UWCC incorporated eating and exercise habits into your lifestyle that will allow you to keep your weight in control.

670

Complaint

EXHIBIT B-1

00445
B141488

PROVEN SUCCESS

Of current patients who have completed the weight loss phase and have participated in the maintenance program for 4 or more months:

Average Weight Loss in Weight Loss Phase	47.3 LBS.
Average Weight Regained (Average 29.3 Weeks)	5.7 LBS.

Another survey of patients revealed that most of their weight loss was body fat.

Composition of Weight Loss 85-92% FAT

THE HEALTH BENEFITS

Obesity is associated with an increased risk of high blood pressure, diabetes, heart disease, cancer and even sudden death!

The UMCC Permanence Program specializes in the treatment of moderate to severe obesity which is often accompanied by obesity-related health problems. A recent study of the program's patients found that nearly 90% had obesity-related medical conditions when they began the program. After an average of 10 weeks in the weight loss program, these patients' health status had improved dramatically. The study found impressive reductions in blood pressure, cholesterol, blood sugar and other risk factors as patients lost their excess body fat.

In most cases you will find that our program will qualify under your medical insurance. That's because we're not a fad, not merely a diet, given without proper medical supervision. This is a serious, professionally supervised program.

Complaint

116 F.T.C.

EXHIBIT B-1

C3448
B141488**HOW THE UWCC PERMANENCE PROGRAM WORKS****ACCEPTANCE PHASE**

You will receive an obesity-oriented evaluation by a staff physician to determine your individual needs and treatment plan. After you are accepted into the program, a physician and registered dietitian will outline a plan tailored to meet your individual requirements.

WEIGHT LOSS PHASE

Once a week you will return to UWCC for monitoring by our program physicians, nurses, and registered dietitians to ensure the program is working. During your weekly visit you will attend group education sessions devoted to nutrition and exercise education as well as learning the behavioral skills and techniques necessary to provide you the best opportunity to lose excess fat rapidly, safely and permanently.

During the rapid fat loss phase, you will consume the nutritionally complete UWCC formula diet, individually prescribed for you. Your program physician will permit you to continue to lose weight of quality while being assured of the utmost safety.

MAINTENANCE PHASE

Once you have achieved your goals in the weight loss phase of the program, you will advance to the maintenance phase. This consists of weekly group meetings and continuing education devoted to assisting you in setting and achieving new goals to increase your level of physical activity and fitness. Our commitment is to help you maintain your new weight for the rest of your life.

670

Complaint

EXHIBIT B-1

C3448
B141488**THE UWCC PERMANENCE PROGRAM:**

Unique emphasis on losing fat, not lean tissue
 Individualized program of diet, exercise and counseling
 Strict medical supervision
 Superior educational program
 Proven long-term weight loss success
 Wholly owned — not franchised
 Hospital-affiliated

**HOW TO FIND OUT IF THE UWCC
PERMANENCE PROGRAM IS FOR YOU.**

The program is not for everybody. Casual dieters hoping to lose a few pounds will find it's not for them. But if you are serious about losing weight, if your health and self esteem are threatened by your weight problem, the United Weight Control Permanence Program may be perfect for you.

While you're in the program, we want to involve your own physician, keeping him or her informed throughout the process. Here's what to do: just call the listed number and make an appointment to visit the United Weight Control Permanence Program nearest you for a free orientation.

Remember, in most cases you will find that our program will qualify under your medical insurance.

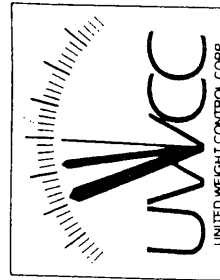
Complaint

116 F.T.C.

EXHIBIT B-1

C3448
B141488

THE PERMANENCE PROGRAM -
FROM
UNITED WEIGHT CONTROL
THE SCIENTIFIC WAY TO PERMANENT WEIGHT LOSS



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 New York Regional Office 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 attorneys, 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, 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 United Weight Control Corp., 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 at 226 East 54 Street, New York, New York.

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

ORDER

DEFINITIONS

A. For purposes of the order, “*competent and reliable scientific evidence*” shall mean those tests, analyses, research, studies, 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 United Weight Control Corp., a 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, service, or program 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, directly or by implication, the likelihood that patients in 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 of any diet program in achieving or maintaining weight loss or weight control, unless, at the time of making 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 in 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 their completion of the respondent's program (including any periods of participation in respondent's maintenance program); 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: "United Weight Control Corp. makes no claim that this [these] result[s] is [are] representative of all patients in the United Weight Control Corp. 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 programs.

E. Making comparisons between the design, safety, or effectiveness of respondent's diet program or programs and the design, safety, or effectiveness 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 competent and reliable scientific evidence substantiating the representation in terms of both the design, safety, or effectiveness of respondent's diet program or programs and the design, safety, or effectiveness of the other diet program or programs with which the comparison is made.

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

II.

It if 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, 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 five (5) 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 representation.

IV.

It is further ordered, That within 15 days after the service of this order on respondent, respondent and its successors or assigns, shall distribute a copy of this order to each of its officers, co-venturers, agents, representatives, independent contractors, and employees, including participating hospitals or clinics, 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.

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 United Weight Control Corp. diet programs that advertising and promotional materials previously furnished by respondent for their use and dissemination to patients and prospective patients, shall not be further used by those physicians, hospitals, and clinics where the advertising or promotional materials would violate this order; and respondent

further shall attempt to insure that such advertising or other materials shall not be further used by physicians, hospitals, and clinics using the United Weight Control Corp. diet programs.

VI.

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this order, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

SEPARATE STATEMENT OF COMMISSIONER MARY L. AZCUENAGA CONCURRING IN PART AND DISSENTING IN PART

I concur with the Commission's decision to accept the settlement but dissent as to the inclusion in the complaint of paragraph 15(a). Paragraph 15(a) recites United Weight Control's claim that its Risk Reduction Program is the "only" weight control program developed to "reduce the high incidence of heart attacks and other serious health problems among abdominally obese men." The claim conveys that there is a focus unique to the Risk Reduction Program, one of minimizing heart attack risk in obese men, in addition to the goal of achieving weight control.

It is not clear to me that we should challenge the claim of uniqueness in paragraph 15(a) for lack of substantiation, when there is at least some, albeit casual, substantiation to form a reasonable basis for the claim.¹ Considering the factors enunciated in *Pfizer, Inc.*, 81 FTC 23 (1972), that we weigh in determining the appropriate level of substantiation in a given case, a relatively low level of substantiation should be sufficient for the uniqueness claim in this

¹ Paragraph 15 of the complaint lists numerous statements that United Weight Control has made in its advertisements, and paragraph 16 characterizes the statements in paragraph 15 as representations of uniqueness or superiority "in design and/or effectiveness in promoting weight loss or weight loss maintenance." While the other claims recited in paragraph 15 do convey that United Weight Control's programs are unique or superior in promoting weight loss or weight control, I question whether the uniqueness claim in paragraph 15(a) falls within the scope of paragraph 16. The statement in paragraph 15(a) describes a uniqueness in qualities other than weight loss or weight control. As drafted, therefore, paragraph 15(a) appears to be outside the theory of the case pleaded in the complaint.

instance. In addition, if other competitors have the same, or similar, programs dealing with reduction of heart attack risks, those competitors could easily rebut United Weight Control's uniqueness claims by advertising the health risk reduction aspects of their own programs.² Indeed, consumers might benefit from this response.

In this instance, given the potential usefulness of the information to consumers, absent a showing of consumer injury from the claim,³ and with some evidence that the claim may be true, we would serve consumers better by leaving the claim unchallenged.

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

The consent order with this marketer of very low calorie diets appropriately addresses several concerns regarding its advertising of safety, efficacy and other claims. However, as explained below, I disagree with certain aspects of the remedy in this matter. I also conclude that there is insufficient evidence to support a reason to believe that United Weight Control's alleged comparative program claims have violated the Federal Trade Commission Act. Accordingly, I dissent in part from the Commission's decision to issue this consent order.

As my statement accompanying the Commission's decision on three previous very low calorie diet orders explains,¹ I believe that the disclosures required when weight-loss maintenance claims are made will likely be too complex to be effective in enlightening consumers during short radio or TV ads. Consequently, I continue to

² If such competitors choose the same advertising medium as United Weight Control, *i.e.*, local newspapers, they should be able to communicate their corrective, competitive claims relatively inexpensively.

³ The claim that the program focuses, in part, on reducing risk factors associated with heart attack is true. The issue is whether the program is sufficiently distinct from other diet programs to make it unique. If it is true that the Risk Reduction Program is substantially the same as other diet programs, the consumer is not necessarily injured by the selection of that program over others. Nevertheless, a consumer might be injured if he or she were persuaded to select the Risk Reduction Program over other programs that provided the same service at less cost.

¹ Statement Concurring in Part and Dissenting in Part in *Jason Pharmaceuticals, Inc.*, File No. 902-3337, *National Center for Nutrition, Inc.*, File No. 912-3024, and *Sandoz Nutrition Corporation*, File No. 912-3023, August 10, 1992.

support an alternate approach to such disclosures in which a more concise disclosure would be permitted for broadcast ads, and supplemented with a requirement of full disclosure at point of sale.²

Concerning United Weight Control's comparative program claims, I particularly disagree with challenging the claim about its Risk Reduction Program, which is set out in paragraph 15(a) of the complaint.³ First, United Weight Control appeared to have some evidence to substantiate the claim that this program is unique in addressing cardiac health risks among men. Second, the comparative claims here are unlike those in some previous cases, which were fairly specific with respect to competing services or products, made use of quantitative data to purport a distinction between the advertiser and competitors,⁴ or invoked studies or tests.⁵ Requiring a higher level of substantiation for these kinds of stronger comparative claims may be appropriate. However, none of these conditions seems to apply very well to United Weight Control's comparative claims generally. Ultimately, of course, a claim's ability to deceive depends on consumers' interpretations and their expectations on substantiation. Unfortunately, in my view, there is insufficient information on actual consumer reactions to these claims. All in all, I conclude that the evidence is too weak to support challenging United Weight Control's comparative claims, and consequently I dissent from the

² While I agree that there is sufficient reason to believe that United Weight Control's weight-loss maintenance claims violate the FTC Act, it is worthy of note that some of these claims appear in a context that plausibly yields alternative interpretations. In particular, the ad shown in Exhibit A-4 contains not only the strong maintenance claim cited in paragraph 9(a) of the complaint ("Finally, a weight loss program that works even after you go off it."), but explicitly features a caveat that weight-loss maintenance is conditioned on adherence to the firm's program. This caveat, plus the ad's explicit reference to weight-loss maintenance results of patients who have participated in an United Weight Control "maintenance program," might suggest another interpretation that merely losing weight in an United Weight Control program does not constitute a permanent or long-term remedy of weight control problems. Without additional information on consumer reactions, however, it remains unclear how many, if any, consumers would hold such an interpretation.

³ In this regard, I am allied with Commissioner Azcuenaga's thoughtful statement.

⁴ See, e.g., claims involving quantitative efficacy comparisons with "commercial" weight loss programs in the proposed complaint in Health Management Resources, File No. 912-3303.

⁵ See, e.g., comparative efficacy and safety claims referring to supporting studies in the accompanying complaints in Sandoz Nutrition Corp., C-3394 (Aug. 10, 1992) and National Center for Nutrition, C-3393 (Aug. 10, 1992).

Commission's decision to allege a violation and seek relief in connection with these claims.

Finally, I am puzzled by, and therefore dissent with respect to the requirement in the order which requires United Weight Control to maintain relevant records for a period of five years. Previous orders with very low calorie diet marketers, and the now pending proposed order for Health Management Resources, require that records be maintained for only three years. I am not currently aware of any justification for imposing on United Weight Control, which happens to be one of the smaller marketers of very low calorie diets, a greater compliance burden than that placed on these other firms.

IN THE MATTER OF

AMERICAN INDUSTRIAL REAL
ESTATE ASSOCIATION, ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3449. Complaint, July 6, 1993--Decision, July 6, 1993*

This consent order prohibits, among other things, a Los Angeles area multiple listing service ("MLS") specializing in industrial properties from conditioning broker membership in the MLS on being primarily engaged in industrial real estate brokerage, or on the amount of industrial real estate experience the brokers have, or on the dollar volume of their business. In addition, the agreement prohibits the respondents from restricting any broker's offering or accepting any exclusive agency listing, or requiring disclosure of commissions that deviate from normal commission rates.

Appearances

For the Commission: *Paul R. Roark.*

For the respondents: *Eliot G. Disner, Shapiro, Posell, Rosenfeld & Close, Los Angeles, CA.*

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 American Industrial Real Estate Association ("A.I.R."), a corporation, and The Industrial Multiple ("Multiple"), a 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 as follows: